

Members

Per A. Ramfjord, Chair
 Hon. Elizabeth Welch, Vice-Chair
 Thomas M. Christ
 Michael De Muniz
 Kristen Bell
 Mark Hardin
 Lisa Ludwig

**Ex-Officio Member**

Chief Justice Martha Walters

Executive Director

Lane Borg

PUBLIC DEFENSE SERVICES COMMISSION

Thursday December 19, 2019
 10am-2pm
 1133 Chemeketa Street NE
 Salem, Oregon 97301

MEETING AGENDA

- | | |
|--|-------------------|
| 1. Action Item: Approval of minutes – PDSC meeting held on November 14, 2019. (<i>Attachment 1</i>) | Chair Ramfjord |
| 2. Public Meeting Law and ORS 151 | E. Deitrick |
| 3. Action Item: OPDS Personnel Policies (<i>Attachments 2a & 2b</i>) | W. Heckman |
| 4. Action Item: OPDS Classification and Compensation Changes (<i>Attachment 3</i>) | W. Heckman |
| 5. Investigator Rates (<i>Attachment 4</i>) | S. Petersen |
| 6. Action Item: Attorney Qualification Standards (<i>Attachments 5a & 5b</i>) | E. Deitrick |
| 7. Action Item: Complaint Policy (<i>Attachments 6a & 6b</i>) | W. Perez/E. Herb |
| 8. Action Item: Yamhill County Contract (<i>Attachment 7</i>) | A. Jackson |
| 9. Introduction: PCR Manager, Keren Farkas | L. Borg/K. Farkas |
| 10. OPDS Monthly Report | OPDS Staff |
| 11. Public Comment | All |

Please note: Lunch will be provided for Commission members at 12:00 p.m. The meeting location is accessible to persons with disabilities. Please make requests for an interpreter for the hearing impaired, or other accommodation for persons with disabilities, at least 48 hours before the meeting, to Brooke Sturtevant at (503) 378-3349.

*Next meeting: **Thursday, January 23, 2020 10am-2pm in Salem.** Meeting dates, times, and locations are subject to change; future meetings dates are posted at:*

<https://www.oregon.gov/opds/commission/Pages/meetings.aspx>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION
OFFICIAL MINUTES

Thursday, November 14, 2019
10:30 a.m. – 2:30 p.m.
Oregon State Capitol Building
Room HR 50
Salem, Oregon 97301

MEMBERS PRESENT: Per Ramfjord (Chair)
Elizabeth Welch (Vice-Chair)
Mark Hardin
Kristin Bell
Lisa Ludwig
Thomas Christ
Michael De Muniz

STAFF PRESENT: Lane Borg
Greg Byler
Eric Deitrick
Wendy Heckman
Erica Herb
Amy Jackson
Ernest Lannet
Whitney Perez
Stephanie Petersen
Billy Strehlow
Shannon Storey
Shelley Winn
Nikita Gillis
Caroline Meyer

The November 14, 2019 PDSC Meeting was held at the Oregon State Capitol Building.

The meeting was called to order at 10:30 AM. Commissioner Ramfjord welcomed everyone to the meeting. He welcomed the newest commissioner, Kristin Bell, and asked her to introduce herself. Commissioner Bell introduced herself and summarized her background.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on October 25, 2019

With a few minor corrections, commission members unanimously approved the minutes from October 25, 2019.

Public Comment – Taken out of order (scheduled as Agenda Item No. 7)

Commissioner Ramfjord allowed two people who provide investigative services to speak before moving to the next agenda item because they needed to leave for work and had only a brief comment. Two investigators, James Comstock and Steve (last name not clear), spoke as representatives of the new OCDLA Investigators Committee. In August, they had proposed three different wage increase options for investigators to the commission. They requested that the investigator wage increase be placed on the agenda for the December Commission meeting. Following some discussion, the Commission agreed that the investigator wage increase would be placed on the December agenda.

Agenda Item No. 2 Approval of Attorney Qualification Standards for Court-Appointed Counsel

Eric Deitrick, General Counsel, explained that since the last meeting OPDS had received feedback on their proposed changes to the attorney qualification standards. He noted that he had not reevaluated the proposed standards in light of those comments. He explained for Commissioner Bell's benefit that OPDS has attorney qualification standards that govern what experience and qualifications attorneys must have to handle specific case types and that the commission has to adopt those standards.

Mr. Deitrick explained that two issues with OPDS's current attorney qualification standards had developed in the last year. First, the agency revised the attorney qualification standards in 2016, which made it difficult for attorneys to be certified to handle termination of parental rights (TPR) cases. At the last commission meeting, several providers explained how difficult it was to become certified for TPR cases. Thus, OPDS proposed changing those standards to eliminate that difficulty and there did not appear to be any disagreement about that.

The second issue developed with the passage of SB 1008. OPDS must develop qualification standards for attorneys who will represent 15-, 16-, and 17-year-olds charged with serious and violent offenses in juvenile court who face the possibility of being waived or transferred to adult court. OPDS proposed that attorneys be major felony-qualified in both juvenile and adult court to handle the waiver cases. OPDS's plan was to have two attorneys on those cases with the lead counsel being qualified and able to train his or her co-counsel. OPDS received feedback that asked why each case could not have one attorney who was major felony-qualified in juvenile and one attorney who was major felony-qualified in criminal on each case. Mr. Deitrick explained why OPDS believed that attorneys appointed to handle juvenile waiver cases should be qualified in both juvenile and adult criminal court, but asked the Commission to defer action on the standards to allow for more feedback.

Lane Borg, OPDS Executive Director, added that in anticipation of the law taking effect on January 1, 2020, the agency had decided and already made mitigation experts available for the teams representing juvenile clients facing waiver hearings.

Commissioner Ludwig asked whether OPDS was going to require all waiver cases to have two attorneys, or just have a second attorney available upon request. Mr. Deitrick explained that the goal for having co-counsel assigned to waiver cases was to train more attorneys to handle waiver cases. But, if the assigned attorney was qualified to handle the case on his or her own, OPDS would not force that attorney to have co-counsel.

Commissioner Welch expressed her concern with the proposed standards and explained that she believed that it was most important for an attorney assigned to a waiver case to be qualified to handle juvenile cases, because juvenile lawyers have the most experience in negotiating before any trial occurs.

Mr. Deitrick acknowledged Commissioner Welch's concerns and agreed that the qualification standards needed to take into account not just the case type, but the familiarity and experience the attorney has with working with juvenile clients.

Commissioner Hardin asked a question about the format and structure of how the qualification standards are written, and Mr. Deitrick responded. Another commissioner posited that appointing one juvenile qualified attorney and one adult criminal qualified attorney to each case was a good system for each of those attorneys to become qualified to handle waiver cases. Mr. Deitrick acknowledged that the commissioner's point was valid and that it mirrored the feedback that OPDS had received.

One commissioner asked whether there were proposed qualification standards for attorneys to handle appeals from wavier proceedings. Mr. Deitrick responded that he believed that the attorneys in OPDS's Appellate Division were qualified to handle those appeals.

Chair Ramfjord deferred taking action on the qualification standards to the next meeting. Before moving on to the next agenda item, Commissioner Hardin proposed making a minor change to the proposed TPR qualification standards as short term fix to address the concerns expressed at the last commission meeting. He also expressed his opinion that the dependency qualification standards needed a complete revision. He suggested that in the future, OPDS should convene a work group to revise the dependency qualification standards.

Mr. Deitrick agreed that the dependency qualification standards should be revised and noted that the Commission could move to adopt just the changes proposed to the TPR qualification standards. Mr. Deitrick and two commissioners discussed the proposed changes to the TPR qualification standards. He clarified the direction that he was receiving from the Commission for those standards and stated that he would report back to the Commission in December.

Commissioner Hardin pressed for agreement that OPDS would convene a group to review and revise the dependency qualifications. Mr. Deitrick responded that he agreed with the commissioner, but explained that it could not happen within the next few months because of how busy agency staff was with other matters. Commissioner Hardin agreed and reiterated that he

expected Mr. Deitrick to report back in December with some minor modifications to the dependency qualification standards for the short term and that in the long term, the agency would revisit the standards with a stakeholder group. Mr. Deitrick agreed.

Agenda Item No. 3 Approval of Public Defense Complaint Policy

Mr. Deitrick explained that the revised complaint policy had been on the Commission's previous meeting agenda and that the previous policy had been confusing and did not provide agency staff with adequate direction for how to investigate complaints. In August, Deputy General Counsels Erica Herb and Whitney Perez revised the complaint policy with the goal of simplifying the policy and providing clear investigation direction to the agency. Mr. Deitrick explained how OPDS's complaint policy differed from the Oregon State Bar's complaint policy and summarized the revisions to the policy. He also noted that there had been previous discussion about whether there should be an appeal process if the attorney complained or disagreed with the decision of OPDS's general counsel division. Mr. Deitrick explained why an appeal process to the executive director, but not to the Commission, was appropriate and should be added to the policy. He asked the Commission not to take any action on the proposed complaint policy until staff added an appeal procedure.

Commissioner Hardin expressed his belief that the standard proposed in the complaint policy for an attorney's representation was too low and that it should not be based on a constitutionally adequate minimum. He also believed that the policy should allow for OPDS to take action on its own if the agency was unhappy with a contractor's performance regardless of whether a complaint had been received. He applauded the staff that drafted the revised policy and noted that it was nicely done.

Commissioner Hardin was concerned with a mandate for providing a copy of any complaint to the attorney complained of when OPDS dismissed the complaint and did not take action. He believed that OPDS should have discretion as to whether to share the complaint and the identity of the complainant with the attorney who was the subject of the complaint. He agreed that it was appropriate to have an appeal process to the executive director for complaints.

Commissioner Hardin suggested that OPDS keep a detailed record of all complaints for at least some specified minimum period of time.

Mr. Deitrick explained that the complaint policy is not the entire oversight policy for public defense services and that OPDS does initiate investigations of attorneys on its own and had done so in the past year. He explained that if a provider is in breach of the contract, then OPDS can take action because the provider is in breach. Commissioner Hardin asked whether a written policy is used when the agency enforces contract requirements. Mr. Deitrick responded that the contract terms discuss the obligations and duties of the parties and the remedy for breach.

Commissioner Hardin asked whether there was a procedure for disqualifying an attorney based on a breach of contract. Commissioner Christ interjected and stated that if a person believed that the agency breached its contract, then that person could take up the matter in court, complain to the agency, or even complain to the Commission. He did not see the value in establishing a separate procedural process for handling contract disputes between the agency and providers. He explained that the complaint policy's purpose was to provide recourse for clients who believe that they have not been well served by one of the agency's providers. He believed that the policy provided a fair and reasonable process for complaints and agreed that a right of appeal to the executive director should be added.

Mr. Deitrick thanked and agreed with Commissioner Christ. He explained that the agency maintains a record of all complaints dating back to the agency's inception, that there is a state retention policy for how long agencies are required to keep data, and that the agency had satisfied that requirement.

The discussion of the complaint policy included whether the records were subject to public records requests. Mr. Deitrick indicated that complaints were subject to public records requests. Lane Borg, OPDS Executive Director, clarified that the complaints would be reviewed to determine if the complaints contained any client information that was not subject to disclosure under public records law.

Commissioner Hardin asked for additional information into defense attorney performance standards as it applied to the complaint policy and the complaint policy's reference to state and federal constitutional requirements.

Commissioner Bell indicated that the proposed complaint policy included a provision allowing the agency to investigate a complaint even if the complaint does not present sufficient information to meet the requisite standard. Mr. Deitrick confirmed that this was correct.

Whitney Perez, Deputy General Counsel, clarified that the standard encompassed in the proposed complaint policy was not intended to encompass post-conviction relief law, although the language was very similar.

Commissioner Hardin was concerned that the language in the proposed complaint policy was too narrow and needed to encompass defense attorney standards.

Commission members discussed what language should be used in the complaint policy and what level of performance violation should trigger action by the agency.

Mr. Deitrick added for the Commission's consideration that it was also a goal of the complaint policy to differentiate it from the Oregon State Bar.

Ms. Perez also addressed earlier questions by indicating that the proposed policy does allow for confidential complaints, subject to public records requests, and that the policy includes language that all complaints are retained by OPDS.

Chair Ramfjord confirmed that the complaints would be retained in accordance with the state's document retention policy.

Commissioner Hardin questioned what documents would be retained pursuant to the policy. Ms. Perez read the retention language verbatim from the policy.

Commissioner Christ questioned whether the records would be retained indefinitely, noting that attorneys may not want unsubstantiated complaints being retained beyond the state's required retention policy.

Commissioner Ludwig felt that a long retention period was appropriate because it could become relevant to clients in capital or other cases. She pointed out that even if the complaint was not substantiated, other records could reveal a pattern that is significant to the client later on.

Commissioner Christ indicated that on the other side, attorneys may not want baseless claims following them around for the rest of their life.

Mr. Borg added that this was not an academic question because the agency was currently answering a civil subpoena that requests records that predate the agency.

Commissioner Bell asked for additional information on how the documents are retained. Mr. Deitrick explained that the records are in Microsoft Access software and he described the process for the complaints are scanned and uploaded into Microsoft Access. Mr. Deitrick also explained how one can search for records in this software and the deficiencies in the outdated software. Mr. Deitrick informed the Commission that the agency did receive funding from the legislature for an integrated case management system.

Chair Ramfjord concluded the discussion of the complaint policy since it needed to have changes made and would be addressed at the next Commission meeting.

Agenda Item No. 4 Executive Session – Review of OPDS Contracts

Chair Ramfjord indicated that the next item on the agenda was to go into executive session to review approval of OPDS contracts for legal services beginning on January 1, 2020. The executive session was called pursuant to ORS 192.660. Persons who were not representatives of the news media or staff were directed to leave the room for the duration of the executive session and the executive session was not recorded.

Agenda Item No. 5 Approval of OPDS Contracts

Commission members approved the public defense contract extensions for the term January 1, 2020, through June 30, 2020. Commissioner De Muniz was opposed to the approval of this set of contracts because of the Jefferson County contract not being included. Commissioner De Muniz indicated that he found the letters from the two retired veteran judges and the importance in having the local presence of that consortium persuasive.

Commission members unanimously approved the extensions for the public defense capital and mitigation contracts.

Commission members approved the contract for the forensic justice project. Commissioner Ludwig abstained from this vote.

Commission members unanimously approved the parent-child-representation program contracts for the term of January 1, 2020, through December 31, 2021.

Agenda Item No. 6 OPDS Monthly Report

Chair Ramfjord determined that no one had any additional public comment.

Lane Borg, OPDS Executive Director, indicated that the appellate division did not have any updates since he had just reported last month. Mr. Borg informed the Commission that he had filled the juvenile manager position and that she would be starting the following Monday. Keren Farkas practiced in New York with the Bronx Defenders doing juvenile representation, for the Brooklyn defenders, and worked both as a provider and a manager. Ms. Farkas' went to undergrad at Berkeley, has a Master's in Education, and her law degree from NYU.

Mr. Borg stated that she will not be a part of the general counsel office, but rather the operations manager for juvenile representation and a direct report to him.

Stephanie Peterson, Chief Financial Officer, informed the Commission that the Secretary of State audit has been completed. The final letter has not been received, but the audit was passed with no errors and no findings. This was a proud accomplishment and she thanked Director Borg for all of his support during this process and the dedication of her staff.

Mr. Borg noted that the Commission should soon expect to see an agreement with the appellate division and their union, because there is a tentative agreement that is up for ratification by the union. He also noted that negotiations with the bargaining unit for support staff of the appellate division were ongoing and that he hoped an agreement would be before the Commission soon.

Agenda Item No. 8 PDSC Training – Oregon Government Ethics Commission

Eric Deitrick, General Counsel, began to provide an overview of this agenda item.

Chair Ramfjord indicated that with scheduling conflicts and the limited remaining time, there was not sufficient time to complete the training. The training would have to be deferred to another meeting.

Commission members motioned to adjourn. The meeting adjourned at 11:24 am.

Attachment 2a



Oregon

Public Defense Services Commission

Office of Public Defense Services

Human Resources

198 Commercial St SE, Suite 205

Salem, Oregon 97301

Telephone: (503) 378-2509

Fax: (503) 551-3722

www.oregon.gov/opds

Date: December 19, 2019

To: Public Defense Services Commission
Lane Borg, Director

From: Wendy Heckman, Human Resources Manager

RE: Personnel Policy Changes

Motion: Move to approve revised personnel policies for OPDS employees.

Overview of Issue:

The agency has reviewed the personnel policies and updated the language to reflect statutory changes and other housekeeping items as highlighted below.

Housekeeping:

- Language and grammar cleanup.
- Apply the use of acronyms for standard terms.
 - Executive Director (ED)
 - Administrative Authority (AA)
 - Salary Eligibility Date (SED)
 - Limited Duration (LD)
 - Recognized Service Date (RSD)
 - Work out of Class (WOC)
 - Leave without Pay (LWOP)
- Policies alphabetically organized.

Substantive Changes:

Definitions

- Adds “Allowance” to replace “Differential”
- Deletes the following definitions because they are either not used in the policies or defined in a specific policy
 - “American with Disabilities Act”
 - “Class or Classification”
 - “Classification Specifications”
 - “Classification System”
 - “Conflict of Interest”
 - “Initial Hire”

- “Management Level Employee”
- “Public Employee Benefit Board (PEBB)”
- “Public Employee Retirement System”
- “Temporary Interruption of Employment”
- Modifies “Salary Eligibility Date” as this term is used throughout the policies and the explanation of application is explained in the individual policies.

Classification Policy – NEW

- This policy provides definitions about the state’s classification system and how it is applied.
- The policy outlines a procedure for reclassifying positions.
- This policy is in conformance with other state policies

Leaves Policy

- Changes appointing authority to HR
- Clarifies written certification must be provided to the HR Manager.
- Adds reporting requirement for AA to report approved leave without pay to the HR Manager.
- Changes OPDS to DAS Payroll regarding reporting requirement to PERS.
- Changing Special Recognition Leave to fiscal year as per state practice.
- Temporary Interruption of Employment –
 - Deletes language about recording work time and time off.
 - Adds reference to a new Appendix document that outlines the scenarios and application of each the scenarios.
- Vacation Leave –
 - Changes language to pay out all vacation accruals upon separation from service.
 - Adds one time payout of vacation on an annual basis.

Nepotism – NEW

- This policy addresses relative working relationships.

Non-Discrimination, Harassment, and Professional Workplace

- Adds new language incorporating professional workplace conduct.
- Procedure updated to expand on reporting requirements.

Pay Practices

- Initial Hire, simplifies language regarding initial salary placement.
- Removes Classification language and added to the new Compensation Policy.

Political Activity – NEW

- This policy addresses political activities as required by ORS 260.432.

Recruiting and Hiring

- Criminal Records Check language has been updated to reflect the statutory changes that passed under SB 775, providing all agencies the opportunity to run criminal records checks for employment purposes directly through Oregon State Police.
- This policy applies to non-attorney staff only.

Appendix B – NEW

- Outlines acceptable political activity as published by Secretary of State.

Appendix C - NEW

- Outlines employee expectations and recording of time during an interruption in employment.

Recommendation:

OPDS recommends the PDSC adopts the revised personnel policies effective immediately.

Attachment 2b



Personnel Policies and Procedures

Office of Public Defense Services

Revised December 19, 2019



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PURPOSE

The purpose of these personnel policies and procedures is to ensure all employees enjoy the same rights, terms, and conditions of employment. The Office of Public Defense Services (OPDS) is committed to continually improving and refining its personnel administration system.

APPLICABILITY

The following policies and procedures apply to all OPDS employees on and after December 19, 2019, except where in conflict with the provisions of a collective bargaining agreement.

SECTION 1: General Definitions

1. **Administrative Authority (AA).** The Executive Director (ED) of OPDS or any other management level employee designated, in writing, as an AA by the ED.
2. **Allocation.** The duties, responsibilities, authority, and required employment qualifications assigned to a position of an existing classification.
3. **Allowance.** A fixed percentage of pay added to an employee's base pay in recognition of performance of a specialized set of skills, assigned by the supervisor, which are not normally a requirement of the position. Examples include; bilingual allowance or assignment of lead work for more than 10 work days.
4. **Annual Salary Increase.** Subject to approval by the AA, an annual salary increase is a one-step pay increase given to a limited duration (LD) or regular status employee on the employee's salary eligibility date (SED), provided the employee's pay does not equal or exceed the maximum step of the current salary range.
5. **Break in Service.** A break in service is a separation from, or interruption of paid employment which exceeds 15 consecutive calendar days.
6. **Calendar Month.** A calendar month is any month encompassing the first calendar day through the last calendar day inclusive.
7. **Compensation Plan.** A list of the designated salary ranges, and pay rates within those ranges, for each classification.
8. **Compensatory Time.** Paid leave (in lieu of cash payment) accrued at the rate of time and one-half for overtime hours worked.
9. **Continuous Service.** Continuous service is uninterrupted employment. Interruption of employment occurs any time a break in service exceeds 15 consecutive calendar days.
10. **Day.** A consecutive 24-hour period beginning at 12:00:01 a.m. (one second after midnight), ending at 12:00 midnight.
11. **Demotion.**
 - a. **Involuntary.** An employer-initiated movement of a non-temporary employee, from the employee's classification and position to a classification and position at a lower salary range.

- b. **Voluntary.** An employee-initiated movement of a non-temporary employee, for non-disciplinary reasons, from the employee's classification and position to a classification or position at a lower salary range.
- 12. **Dismissal.** An employer-initiated separation from employment of a regular status or promotional trial service employee as a result of improper conduct or inadequate performance, including situations that may be beyond the control of the employee.
- 13. **Exempt Employee.** Executive, administrative, or professional employees as defined by the Fair Labor Standards Act (FLSA) paid on a salary basis and exempt from both minimum wage and overtime provisions of the FLSA.
- 14. **Fair Labor Standards Act (FLSA).** A federal law governing minimum wage, overtime pay, recordkeeping and youth employment standards. Sets forth criteria regarding work which may be exempt from these standards.
- 15. **Family Medical Leave Act (FMLA).** A federal law entitling eligible employees to take job-protected leaves for specified family and medical reasons. (Also see Oregon Family Leave Act.)
- 16. **Full-Time Employee.** A full-time employee is one who normally is scheduled to work 40 hours each work week in a monthly pay period or any average of 40 hours per week over the course of a monthly pay period.
- 17. **Job-Share.** A full-time position held by two or more employees working part-time.
- 18. **Layoff.** An employer-initiated separation from employment due to lack of work, shortage of funds, organizational restructuring, or other circumstance not related to employee performance for 10 or more consecutive days.
- 19. **Lead Work.** Duties assigned in writing to a non-management service employee to perform all the following on a recurring daily basis:
 - a. to prioritize and assign tasks to efficiently complete work;
 - b. give direction to workers concerning work procedures and performance standards;
 - c. review the completeness, accuracy, quality, and quantity of work; and
 - d. provide informal feedback of employee performance to the supervisor, if the classification for the employee's position does not include lead work duties in writing.

20. **Limited Duration (LD) Position.** A position created for a project or special study or in anticipation of legislative approval of a regular position. An LD position has a specified end date that is no later than the last day of the current biennium.
21. **Limited Duration Status.** Employment in a regular or LD position, for project or special study, by initial hire (or by transfer, promotion, or voluntary demotion of an employee), for a stated period of time. The project or study is subject to renewal for a specified or unspecified period or subject to termination on or before the stated expiration date. Time worked as a LD employee does not apply toward completion of a trial service period or toward attaining regular status.
22. **Merit Increase.** A salary increase awarded by an AA to an employee whose performance equals or exceeds the established standards, provided the employee has not reached the maximum of the salary range.
23. **Minimum Qualifications.** The minimum experience, training, knowledge, and skills necessary for successful entry and performance in a classification position.
24. **Non-Exempt Employee.** An overtime eligible employee covered by FLSA.
25. **Oregon Family Leave Act (OFLA).** State law governing family leave needs and bereavement leave. (Also see Family Medical Leave Act)
26. **Overtime.** Time worked (including paid leave taken) by an FLSA non-exempt employee in excess of 40 hours in a work week.
27. **Part-Time Employee.** An employee who normally is scheduled to work less than the equivalent of 40 hours each work week in a monthly pay period.
28. **Personal Leave.** Paid leave given to non-temporary employees at the beginning of each fiscal year, July 1, and which exhausts on June 30th of the following year if not utilized.
29. **Personnel Action.** Any action taken with reference to an employee or a position including, but not limited to, appointment, rate of pay, promotion, demotion, transfer, layoff, dismissal, or classification.
30. **Position.** A group of duties, authorities, and responsibilities assigned by the AA requiring the employment of a person to perform the duties. Types of positions include regular, LD, and temporary.
31. **Position Description.** The written description of the specific work assigned to a position which describes the duties, authorities, and responsibilities assigned by management, identifying the essential functions of the job.

32. **Promotion.** The movement of an employee from the employee's current classification and position to a classification and position having a higher salary range.
33. **Reclassification.** The change in allocation of an employee, a position, or both from one existing class to another existing class as a result of a substantive change in the duties assigned to the position.
34. **Recognized Service Date (RSD).** The date an employee began working for OPDS or a State of Oregon agency (with the exception of temporary or volunteer work), adjusted by any break(s) in service of more than 15 consecutive calendar days, used to determine the employee's retirement service credits and vacation accrual rate.
- a. The RSD does not change when leave without pay is less than 15 calendar days, due to military leave, to FMLA and/or OFLA leave, or Workers' compensation leave.
 - b. A break in service of more than two years, for reasons other than approved leave without pay, voids all previous employment and reemployment, setting a new RSD.
35. **Reemployment.** The non-competitive employment of a former regular or trial service status OPDS employee to a position in a class of work with a salary range equal to or lower than the salary range for the classification the employee last held.
36. **Regular Position.** A position approved by the legislative assembly. A regular position, subject to administrative or organizational change, is anticipated to continue in future biennia.
37. **Regular Status.** Status attained upon successful completion of the most recent trial service period (initial or promotional). Time employed with temporary or LD status does not apply toward attaining regular status.
38. **Salary Eligibility Date (SED).** The date an employee is eligible for consideration for a salary increase.
39. **Salary Range.** A range of pay established for each classification, normally including a minimum rate, maximum rate and intermediate rates.
40. **Status.** The employment relationship between an employee and OPDS. Types of status include LD, regular, temporary and trial service.
41. **Supervisor.** An individual delegated the authority in the interest of the employer to provide first line supervision; assign and review work, manage performance expectations, and conduct performance evaluations at the direction of the AA.

42. **Suspension.** The temporary, involuntary removal of an employee from the work site with or without pay, usually for disciplinary reasons.
43. **Temporary Position.** A position created as a result of a non-recurring or periodic workload increase or due to a regular, trial service, or LD status employee's absence. A temporary position has a specified end date that is usually no later than one year from the date the position was created.
44. **Temporary Status.** A non-competitively appointed employee (in any type of position) for a period of up to one year and subject to renewal for a specific period of time. Employees with temporary status have no rights or benefits except as provided by state and federal law.
45. **Termination.** The involuntary separation of an employee from state service.
46. **Transfer.** The lateral movement of an employee from one position to another position in the same classification or to another position in a different classification having the same salary range.
47. **Trial Service.** A work test period during which an employee is required to demonstrate, by conduct and actual performance of duties, the qualification and fitness for the position.
- a. The status of trial service is for a period of the first six months following initial hire, rehire, or promotion in a regular position at OPDS, or the six months following a transfer from other state agency.
 - b. An AA may extend the trial service period so long as the total trial service period does not exceed 12 months. Trial service is extended by any period of leave without pay in excess of 15 consecutive calendar days by adding to it the number of calendar days absent without pay, thereby making the completion date later than it would have been if leave without pay had not occurred.
48. **Underfill.** The employment of a person in a classification with a salary range lower than the salary range of the budgeted or established classification level of the position. When applying this personnel policy, the qualification level of the employee, not the position or classification, is the determining factor in the case of an underfill.
49. **Work-out-of-Class (WOC).** The temporary assignment of an employee to perform additional duties in their current position or essentially all of the duties, authority, and responsibility of a position classified at a higher salary level for a limited period of time.
50. **Work Week.** A fixed and regular recurring period of 168 hours during seven consecutive 24-hour periods. The work week for all employees shall begin at one second after midnight Sunday and end at midnight the following Saturday.

51. **Y-Rate/Red Circle.** A term used for an employee whose salary exceeds the salary range of the classification occupied. The employee will remain at the rate of pay until the maximum rate of the salary range exceeds the employee's retained salary rate.

Section 2: Classification

Purpose

- I. The purpose of classification is to identify and group similar types and levels of work into classes, to describe those classes accurately, to ensure the classes are clearly differentiated so that each employee and position can be allocated appropriately, to provide a framework for conducting recruitment and selection activities, and to provide a foundation to identify relationships between and among classifications for purposes of salary administration.
- II. A class specification describes typical duties an employee(s) in that class may be required to perform. A class specification identifies a type and level of work and is explanatory but not restrictive. The description of particular tasks in a class specification shall not be construed as a detailed statement of the work requirements of that class and does not preclude the assignment of other appropriate tasks.
- III. The PDSC may adopt and delete classifications at the request of OPDS.

Procedure

1. When a new position is established, the AA shall submit a position description (PD) to the HR Manager. The HR Manager shall review the duties, authorities, and responsibilities and then allocate the position to its appropriate classification. If it appears the duties, authorities, and responsibilities require establishment of a new class of work, the HR Manager shall initiate such action.
2. Request Review. An employee or the AA may request a review of the appropriateness of the allocation of an employee, position, or both. Such requests shall be processed as follows:
 - a. An employee request must be submitted in writing to the HR Manager and must include why the employee believes the assigned duties are inconsistent with the employee's current classification. The employee must sign and date such a request. The HR Manager will request an updated position description from the AA.
 - b. An AA may request a review of a classification when reorganization occurs, or positions duties have substantially changed. The AA shall submit the request to

the HR Manager with an updated position description outlining the changes from the original duties and a written explanation for the request.

3. HR Manager Review and Determination. The HR Manager shall review the request(s) and determine the appropriate classification within;
 - a. 60 calendar days after receipt of a reclassification request involving one employee or position, or
 - b. 120 days after receipt of multiple reclassification requests (received within 14 calendar days of each other) or a request involving more than one employee or position.
4. Implementation to a higher classification. The HR Manager shall, within 30 calendar days after receipt of the final determination on the reclassification request:
 - a. Request a current resume, including work experience and education, from the employee to:
 - i. Determine the employee meets the minimum qualifications of the classification, and
 - ii. Conduct a pay equity analysis to determine appropriate salary placement. The employee will be provided a salary increase to an established rate of pay (step) within the salary range of the new classification.
 - iii. The current SED is retained. If the employee's SED is no longer available because the employee was at the maximum rate in the previous classification, the last SED in the previous classification will be used.
 - b. If the employee meets the minimum qualifications of the classifications, reclassify the employee and position to a higher-level classification. The effective date for a reclassification shall be the date the request was received by the employee or the AA, or
 - c. If the employee does not meet the minimum qualifications of the classification, at the discretion of the HR Manager, the employee may;
 - i. be placed in an underfill; or
 - ii. have higher-level duties removed; or

- iii. the employee may be placed in the position as a developmental opportunity to gain the skills and experience to qualify for the position at a future date. The employee's rate of pay shall not change until such time as the employee qualifies for the higher-level classification.
 - d. The HR Manager or ED may elect to remove the higher-level duties in order to retain the current classification level and compensate the incumbent employee for WOC from the date the request for reclassification was received by the HR Manager until the date the higher-level duties were removed.
 - e. Provide written notification to the employee and the AA of the final determination.
- 5. Implementation to a lower level classification. When the classification determination indicates the position should be reclassified to a lower level, the HR Manager shall, within 30 calendar days after receipt of the final determination on the reclassification request, take one of the following actions:
 - a. Request a current resume, including work experience and education, from the employee to determine the employee meets the minimum qualifications of the classification.
 - b. If the employee meets the minimum qualifications of the classifications, reclassify the employee and position to a lower level classification. The effective date of the reclassification shall be determined by the HR Manager, and must occur within 30 calendar days after receipt of the final determination.
 - i. The employee's salary rate from the previous higher classification is retained when the position is reclassified to a lower classification.
 - ii. If the employee's current salary rate is within the salary range of the new salary range, the employee will be placed at the corresponding step in the new classification.
 - iii. If the new salary range places the employee off-step, the employee's salary rate shall be increased only to the next full step on the SED.
 - iv. If the employee's current salary rate is above the maximum rate of the lower classification, the employee's current salary rate is retained as a y-rate.
 - v. The current SED is retained. If the employee's SED is no longer available because the employee was at the maximum rate in the previous classification, the last SED in the previous classification will be used.

- c. If the employee does not meet the minimum qualifications of the classification, at the discretion of the HR Manager,
 - i. the employee may be placed in an underfill; or
 - ii. moved to another classification for which they are qualified; or
 - iii. the employee may continue to work in the position as a developmental opportunity to gain the skills and experience to qualify for the position at a future date.
 - A. The employee's salary rate from the previous higher classification is retained when the position is reclassified to a lower classification.
 - B. If the employee's current salary rate is within the salary range of the new salary range, the employee will be placed at the corresponding step in the new classification.
 - C. If the new salary range places the employee off-step, the employee's salary rate shall be increased only to the next full step on the SED.
 - D. If the employee's current salary rate is above the maximum rate of the lower classification, the employee's current salary rate is retained as a y-rate.
 - E. The current SED is retained. If the employee's SED is no longer available because the employee was at the maximum rate in the previous classification, the last SED in the previous classification will be used.
 - d. Provide written notification to the employee and the AA of the final determination.
- 6. Equal level classification. When the classification determination indicates the position should be reclassified to an equal level, the HR Manager shall provide written notification to the employee and the AA of the final determination. The employee's rate of pay will remain the same.
 - 7. Appeal Rights. An employee or AA who disagrees with the HR Manager's determination on a reclassification request may appeal, in writing, to the HR Manager within 30 calendar days from the date of the HR Manager determination.

- a. The appeal must state the reason(s) the determination is believed to be in error and include any available documentation that supports the appeal.
- b. The HR Manager will review with the ED.
- c. The ED shall render a written decision within 30 calendar days after receipt of the recommendation.
- d. The decision shall be provided to both the employee and the AA and shall be final. Once the ED has rendered a decision, an employee or AA may not submit another additional request for reclassification unless the assigned duties, responsibilities, or authorities significantly change.

SECTION 3: Conflict of Interest

Policy

- I. OPDS has the responsibility to ensure staff members engage in activities consistent with the OPDS mission and values in delivering OPDS programs and services. Employees are held personally responsible for complying with the provisions in Oregon Government Ethics law.¹
- II. Situations in which employees are engaged in activities that could constitute a conflict of interest, OPDS has the responsibility to review each situation and determine whether a conflict exists.
- III. Employees shall:
 - A. Abstain from using information received in the course of employment to further private interest of self or others.
 - B. Withdraw from processing, unless otherwise authorized by an AA, any court document or matter involving anyone who is a personal acquaintance or relative of the employee or a member of the employee's family.
 - C. Use state property, equipment (including electronic systems), and funds only for the official business of OPDS in accordance with laws, rules, policies and procedures unless a specific exception is stated within those laws, rules, policies, and procedures.
 - D. Abstain from the use of employment to influence (or attempt to influence) others or to gain (or attempt to gain) preferential treatment for self or others.
 - E. Refuse to accept money or other consideration, except for honoraria² unless otherwise restricted by the AA from anyone other than OPDS for activities which are part of the employee's official duties.
 - F. Abstain from engaging in outside employment or activities that constitute a conflict of interest as determined by the AA.
- IV. Any employee with a potential conflict of interest shall promptly advise the AA.

¹ ORS Chapter 244

² ORS 244.020(7)

- V. Employees appointed, employed, or volunteering with OPDS faced with an actual or potential conflict of interest must provide a written notice to the AA. The notice must describe the nature of the conflict of interest with which they are met.
- VI. The AA will review the notice within a reasonable time, record the actual or potential conflict of interest in the official records, and provide direction to the employee in disposing the conflict.

SECTION 4: Discipline

Policy

- I. Discipline is designed to educate and assist an employee in correcting improper or inadequate conduct, performance, or behavior that OPDS find inappropriate or deficient and ensure it is not repeated.
- II. OPDS may, at the discretion of the ED, provide an employee with an opportunity to correct deficiencies interfering with the accomplishment of the mission or operations of OPDS.
- III. Any employee may be disciplined for inability or unwillingness to fully and faithfully perform the duties of the employee's position satisfactorily. The reasons for discipline may include:
 - A. conduct, performance, or behavior including acts or omission on or off the job that may interfere with the mission or operations of OPDS or that affect the employee's suitability for the position; or
 - B. other conduct, performance, or behavior that affect the employee's suitability for his/her position.
- IV. A specific warning, in any reasonable form, of OPDS's concerns and reasonable opportunity to correct the problem shall be given to the employee prior to the imposition of discipline unless the employee knew or reasonably should have known the conduct, performance and behavior could lead to disciplinary action.
- V. The ED or the AA shall determine the severity of the disciplinary action based on the seriousness of the conduct, performance or behavior, the level of fault, or the unsuitability of the employee, and the needs of OPDS. The severity of the discipline must have a reasonable basis in fact.
- VI. Verbal warning, work plans, coaching, counseling, evaluations, and removal from trial service are not discipline and are not subject to appeal.
- VII. The types of discipline that may be taken under this policy include:
 - A. Written reprimand;
 - B. Temporary salary reduction;
 - C. Suspension without pay; and

- D. Involuntary demotion when an appropriate vacancy, as determined by OPDS, exists at a lower level.
- VIII. When disciplinary action is contemplated, the ED or the AA shall meet with the employee to provide a reasonable opportunity for the employee to respond before taking final disciplinary action. The ED or the AA shall notify the employee in writing of disciplinary action.

Procedure

1. The AA will investigate the alleged misconduct or deficient performance to determine whether grounds exist for disciplinary action or dismissal.
 - a. The AA meets with the employee to hear the employee's response.
 - b. The employee may request to have a representative present with them at the investigatory meeting. The attendance of a representative may not obstruct the investigation.
 - c. The employee may request to delay the meeting and such request will not be unreasonably denied by the AA.
2. In accordance with the foregoing policy, OPDS may take the following disciplinary actions as follows:
 - a. Reprimand. The reprimand shall be in writing and shall reasonably inform the employee of the conduct, performance, or behavior supporting the reprimand and the potential for further discipline if the conduct, performance or behavior is not corrected;
 - b. Temporary Salary Reduction. The salary reduction shall be one or more steps within the employee's classification salary range for a period of time determined to be necessary to improve or monitor the conduct, performance, or behavior in question. The employee will be notified of the potential for further discipline if the conduct, performance or behavior is not corrected.
 - c. Suspension. The suspension shall be without pay for a specified period of time. For employees exempt under the FLSA, the suspension is in increment of 40-hours work weeks or full days in cases of major safety violations. The employee will be notified of the potential for further discipline if the conduct, performance or behavior is not corrected;

- d. Demotion.
 - i. This action is available when an appropriate vacancy, as determined by the agency, exists at a lower level, with a commensurate permanent reduction in salary. The employee will be notified of the potential for further discipline if the conduct performance or behavior is not corrected while performing the new job duties.
 - ii. Involuntary demotions shall not be used if an employee is not qualified for employment in the lower class or position, or if such action would cause a regular employee in a lower class to be laid off.
- 3. The ED or the AA shall notify the employee in writing of disciplinary actions. The written notice shall contain:
 - a. Action being taken. Reprimand, temporary reduction in pay, suspension without pay for a stated period of time, or demotion;
 - b. The date on which the action takes effect;
 - c. Grounds for the action. Grounds or cause as defined in the foregoing policy;
 - d. Background. Any pertinent information such as length of service, classification, training, statements in positions description, written policies or rules, descriptions of long-standing practices, and/or statement from performance evaluations that are relevant and apply to the current issue; and any other data or information which would have reasonably made the employee aware of the conduct, performance or behavior to be expected;
 - e. Supporting facts. The dates, times, places and other facts known by OPDS sufficient to apprise the employee of the acts, omission, and conditions being charged;
 - f. Conclusion. A statement as to why the employee's supervisor is concerned about the conduct, performance, or behavior at issue. It is also meant to advise the employee of the relative seriousness of the conduct, performance, or behavior as viewed by the supervisor, as well as to advise the employee that future conduct, performance or behavior of similar nature will result in more severe discipline; and
 - g. Notice of appeal. A statement that the action taken may be appealed according to the appeal process.
- 4. The written notice of disciplinary action may be hand delivered to the employee or mailed by certified or registered mail to the employee's last known address. The

effective date shall be three calendar days after the postmark date on the letter or the date hand delivery was accomplished.

5. The employee may appeal a disciplinary action as follows:
 - a. The appeal shall be in writing and mailed or hand-delivered to the ED not later than 15 calendar days after the effective date of the personnel action in question.
 - b. The ED shall rule in writing not later than 15 calendar days after the receipt of the appeal. Failure of the ED to respond within 15 days after receipt of the appeal shall constitute a denial of the appeal, unless the parties mutually agree in writing to extend the time limit.
6. Documentation shall be maintained to support any actions taken under the foregoing policy.
7. Failure of the ED or AA to comply with one or more of the provisions of the foregoing procedure in taking any disciplinary action against an employee shall not invalidate the action unless the employee is deprived of a constitutionally protected right and there is no possibility of correcting or reversing the deprivation of the employee's constitutionally protected right. When the potential deprivation of the employee's rights is brought to the attention of OPDS, the ED or AA may rescind the action, may take a new action of the same or different nature, or may let the action stand.

SECTION 5: Dismissal

Policy

- I. OPDS is authorized to dismiss an employee for actions or omissions as provided by law, personnel policies and procedures, or that interfere with the accomplishments of the mission, goals or objectives of OPDS.
- II. OPDS may, at the discretion of the ED, provide an opportunity for an employee to correct deficiencies pursuant to the Discipline policy and procedure before dismissal action is taken, unless the conduct or unfitness of the employee warrants dismissal and the employee knows or should have known that dismissal would be logical under the circumstances.
- III. When dismissal is contemplated, the employee shall be given an opportunity to be heard in a pre-dismissal meeting.
- IV. Appropriate action shall be determined within any time periods noted in the accompanying procedure.

Procedure

1. When dismissal is contemplated, the written notice of pre-dismissal shall be hand-delivered to the employee or mailed by certified or registered mail to the employee indicating dismissal is being considered. The pre-dismissal notice shall:
 - a. State the ground, provide relevant background facts, and state supporting facts to the employee, including facts necessary to apprise the employee of the nature of the charges;
 - b. Indicate the time, date, and place for the pre-dismissal meeting that would allow the employee an opportunity to refute the charges or present mitigating circumstance to the ED or the AA;
 - c. Provide the consequences of failure to appear at the pre-dismissal meeting; and
 - d. State that the employee may be represented during the pre-dismissal proceedings.
2. The date the pre-dismissal meeting shall not be sooner than five calendar days and not later than 15 calendar days following the postmark date or date of personal delivery of

the notice to the employee. The parties may mutually waive the timelines established for the pre-dismissal meeting.

3. Upon reasonable advance request by the employee or the employee's representative, the ED or the AA may reschedule the date and time of the pre-dismissal meeting.
4. Pending the completion of the pre-dismissal process, the employee may be:
 - a. authorized to continue the normal or alternative work assignment;
 - b. continued in the current employment status;
 - c. placed in an administrative assignment to work from home; or
 - d. placed on administrative leave with pay.
5. The ED or the AA shall conduct the pre-dismissal meeting. At the meeting, the ED or the AA shall:
 - a. verify that the employee has read and understands the pre-dismissal notice; and
 - b. inform the employee of their right to refute the charges and present mitigating circumstance and information, and provide the employee with the opportunity to do so.
6. The pre-dismissal meeting is not a formal hearing proceeding and does not include rights of direct examination or cross-examination of witnesses.
7. If the employee fails to appear at the pre-dismissal meeting or offer any refutation of the charges or present mitigating circumstances or information, in writing or otherwise, a decision shall be made without input from the employee. The failure of the employee to appear shall not be construed as an admission or denial of any charges and shall have not bearing on any other rights, including post-suspension and post-termination remedies, which may be available to the employee.
8. If new facts are discovered during the pre-dismissal process:
 - a. The ED or the AA may send a supplemental notice to the employee incorporating the new facts as an additional basis for discipline and give the employee an opportunity to refute the new charges if the new facts are unfavorable to the employee; or
 - b. The ED or the AA may disregard the new facts and proceed with the original action based on the original charges if the new facts are unfavorable to the employee, or if, in the judgement of the ED or the AA, the remaining facts justify dismissal; or

- c. A portion of the charges may be withdrawn; however, no withdrawal by OPDS of any portion of the charges supporting a dismissal or other disciplinary action shall require OPDS to rescind the action or take new action.
- 9. The ED or the AA shall determine the appropriate action within 15 calendar days after completion of the pre-dismissal meeting. The ED or the AA may choose to impose other discipline as outlined in the foregoing policy, in lieu of dismissal.
- 10. The ED or the AA shall notify the employee of dismissal or alternative disciplinary action in writing. The written notice shall contain:
 - a. The action being taken;
 - b. The date on which the action takes effect, which must be on or after the date of delivery of the written notice;
 - c. The grounds for the action as set forth in the foregoing policy and this procedure;
 - d. Relevant background: Any pertinent information such as length of service, classification, trainings, statements in position description, written policies and rules, description of long-standing practices, and statement from performance evaluation that are relevant and apply to the issue; specific performance standards; prior advisory, corrective, or disciplinary actions; and any other data or information which would have reasonably made the employee aware of the conduct, performance, or behavior to be expected;
 - e. Supporting facts: The dates, times, places and other facts known to OPDS sufficient to apprise the employee of acts, omissions, and conditions being charged;
 - f. Conclusion: A statement as to why the employee's conduct, performance, or behavior violates applicable law or OPDS policies and procedure or interferes with the accomplishment of OPDS's mission, goals and objectives. For an employee subject to alternative disciplinary action, the statement should inform the employee of the relative seriousness of the conduct, performance, or behavior as viewed by the supervisor, and advise the employee that future conduct, performance, or behavior of a similar nature will result in more severe discipline; and
 - g. Notice of appeal: A statement that the action taken may be appealed according to the appeal process.
- 11. The written notice of dismissal or alternative disciplinary action shall be hand-delivered to the employee or mailed by certified or registered mail to the employee's last known

address. The effective date shall be the date on which the hand-delivery was accomplished or three calendar days after the postmark on the date of the letter.

12. The employee may appeal the dismissal as follows:
 - a. The appeal shall be in writing and mailed or hand-delivered to the ED not later than 15 calendar days after the effective date of the personnel action in question.
 - b. The ED shall rule in writing not later than 15 calendar days after receipt of the appeal. Failure of the ED to respond within 15 calendar day after receipt of the appeal shall constitute a denial of the appeal, unless the parties mutually agree in writing to extend the time limit.
13. Failure of the ED or AA to comply with one or more provisions of these procedures in taking any action against an employee shall not invalidate the action unless the employee is deprived of a constitutionally protected right and no possibility of correcting or reversing the deprivation of the employee's constitutionally protected right. When the potential deprivation of the employee's rights is brought to the attention of OPDS, the ED or AA may rescind the action, may take a new action of the same or different nature, or may let the action taken stand.

SECTION 6: Holidays

Policy

- I. OPDS shall observe the following holidays:
 - A. New Year's Day, January 1;
 - B. Martin Luther King Jr.'s Birthday, third Monday in January;
 - C. President's Day, third Monday in February;
 - D. Memorial Day, last Monday in May;
 - E. Independence Day, July 4;
 - F. Labor Day, first Monday in September;
 - G. Veterans Day, November 11;
 - H. Thanksgiving Day, fourth Thursday in November; and
 - I. Christmas Day, December 25
- II. In addition to the foregoing holidays, OPDS shall observe as a holiday every day appointed as a holiday in accordance with state law³.
- III. If a holiday falls on Saturday, it shall be observed on the preceding Friday.
- IV. If a holiday falls on a Sunday, it shall be observed on the following Monday.
- V. If the courts are closed on the Friday after Thanksgiving, that day will be considered a holiday. If the courts are open on the Friday after Thanksgiving, employees will be expected to work a regular day and will be granted eight hours paid leave to be used as a floating holiday between the November 1st and March 31st of the following year.

Procedure

Holiday Leave shall be granted as follows:

³ ORS 187.020

1. Full-time employees. Full-time employees shall be granted eight hours of holiday leave for each holiday.
2. Part-time employees. Part-time employees shall be granted holiday leave for each holiday based upon the same percentage or fraction of a month as the employee is normally scheduled to work.
3. Effect of leave without pay. Exclusive of the holiday, an employee on unpaid leave for more than 32 consecutive work hours (prorated for part-time employees) shall be granted the paid holiday if the holiday falls during the period of leave without pay.
4. Employees working alternate schedule. If an employee is on an alternate work schedule, the AA may:
 - a. make appropriate schedule adjustments for the work week in which the holiday falls that result in a total of 40 hours work time and holiday leave (or, for a part-time employee, the normal number of weekly hours); or
 - b. permit the employee to use paid leave or leave without pay to account for the scheduled hours in excess of the holiday leave.
5. Employees required to work on a holiday.
 - a. An employee, regardless of salary range and FLSA status, who is required by an AA to work on a holiday and whose shift commences on the holiday shall be entitled to compensatory time for the entire shift worked.
 - b. If the holiday falls on a Saturday or Sunday and is observed on a Friday or Monday and an employee is required to work on both the actual holiday and the day of observance, the employee shall receive compensatory time for the entire shift worked on either the actual holiday or its day of observance.
 - c. Compensatory time shall be at the rate of time and one-half. The rate at which an employee is paid for working on a holiday shall not exceed the rate of time and one-half in addition to regular pay.
6. Effect of appointment and separation on holiday leave.
 - a. Appointment. All non-temporary employees appointed on a holiday observed on the first regularly scheduled work day of the month shall be paid for the holiday pursuant to the other provisions of the foregoing procedure. No appointments shall be made effective on holidays observed on other than the first day of the month.

- b. Separation. An employee who separates from employment in a month including a holiday on the last regularly scheduled work day of the month shall be paid for the holiday if the employee actually works on the work day immediately preceding the holiday and is otherwise eligible to receive holiday leave.

SECTION 7: Leave Policies

To ensure that employees comply with their civic duties and commitments, advance important personal and professional goals, ensure the health and well-being of employees and their families, and recruit and retain valued employees; OPDS provides the following paid and unpaid leave:

Bereavement Leave

- I. At the request of the employee, HR shall grant up to 40 hours of paid bereavement leave per occurrence because of the death of a qualifying family member, as defined in OFLA, to be used intermittently or in a block of time.
- II. At the discretion of HR, up to 24 hours of paid bereavement leave, per occurrence, may be granted because of death(s) of any other relative, or person residing in the same household as the employee.
- III. In determining the amount of time to grant, HR shall consider the significance of the relationship and the need for travel time.
- IV. With prior approval of HR, accrued paid leave may be used to cover time away after paid bereavement leave is exhausted. Accrued sick leave may only be used in accordance with the Sick Leave policy.
- V. Paid time off for bereavement shall be prorated for part-time employees.

Domestic Violence, Harassment, Sexual Assault or Stalking⁴

- I. An employee who works for a state agency on the date leave begins who is the victim of domestic violence, harassment, sexual assault or the parent or guardian of a minor child or dependent who is the victim of domestic violence, harassment, sexual assault or stalking is eligible for leave under this policy.
- II. Up to 160 hours of leave with pay each calendar year is available to eligible employees.
 - A. The leave with pay is in addition to any vacation, sick, personal business, or other form of paid or unpaid leave.
 - B. An employee must exhaust all other forms of paid leave before the employee may use the paid leave established by this policy.
- III. An eligible employee may use the leave with pay for any of the following purposes:

⁴ ORS 659A.270 through 659A.290

- A. To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault or stalking;
 - B. To seek medical treatment for or to recover from injuries caused by domestic violence, harassment, sexual assault or stalking of the eligible employee or the employee's minor child or dependent.
 - C. To obtain, or to assist a minor child or dependent in obtaining counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault or stalking;
 - D. To obtain service from a victim service provider for the eligible employee or the employee's minor child or dependent; or
 - E. To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the employee's minor child or dependent. Relocation includes:
 - i. Transition periods spent moving the eligible employee or the employee's minor child or dependent from one home or facility to another, including but not limited to time to pack and make security or other arrangement for such transitions;
 - ii. Transportation or other assistance required for an eligible employee or the employee's minor child or dependent related to domestic violence, harassment, sexual assault, or stalking.
- IV. An eligible employee seeking leave under the foregoing policy must give reasonable advance notice of the intent to take leave, to the HR Manager, unless giving the advance notice is not feasible.
- A. When taking leave in an unanticipated or emergency situation, an eligible employee must give oral or written notice as soon as practicable.
 - B. Notice may be given by any other person on behalf of an employee taking unanticipated leave.
- V. An employee must provide, within a reasonable amount of time, written certification to the HR Manager, that the leave is for the employee or the employee's minor child or dependent who is a victim of domestic violence, harassment, sexual assault or stalking.

- A. An employee may take leave in multiple blocks of time, intermittently, and/or supplementing an altered work schedule.
- B. To the extent the employee's need for leave under this policy is also covered by FMLA and/or OFLA, the leave types run concurrently.

Donated Leave

- I. OPDS administers a donated leave program that allows employees to support other employees in a serious need of leave by donating vacation leave time to be used for sick, bereavement, or military leave needs.
- II. Any OPDS employee (donor) may voluntarily donate accrued vacation leave in full-hour increments to another non-temporary OPDS employee (requestor) provided the requestor to whom the leave is to be donated requires the leave for sick, bereavement, or military leave, and meets the requirements below.
 - A. Sick leave. The requesting employee:
 - i. is absent due to their own FMLA and/or OFLA qualifying reason, or to care for a qualifying family member (as defined by FMLA and/or OFLA), with a condition that qualifies as a serious health condition under the FMLA and or OFLA, and
 - ii. has exhausted all accrued paid leave, and
 - iii. is not receiving workers' compensation or disability payments, and
 - iv. is not the subject of current or pending disciplinary action, and
 - v. has the approval of the HR Manager to receive donated leave.
 - B. Bereavement leave. The requesting employee:
 - i. meets the OFLA eligibility requirements, and
 - ii. is absent due to the death of a qualifying family member as defined by OFLA, and
 - iii. has exhausted all accrued paid leave
 - iv. has the approval of the HR Manager to received donated leave.
 - C. Military leave. The requesting employee:

- i. is a member of the organized militia of this state and is called in to active service of this state under ORS 399.065(1) or state active duty under ORS 399.075, or
- ii. is a member of the organized militia of another state and is called into active status service by the Governor of the respective state, and
- iii. holds regular status, and
- iv. is in a leave without pay status during active military duty status.
- v. has the approval of the HR Manager to receive donated leave.

VI. Donated leave is subject to approval by the HR Manager.

V. Conversion of donated leave. Donated vacation leave shall be converted to the receiving employee's sick leave account by multiplying the amount of leave donated by the donating employee's hourly rate of pay (exclusive of allowances) and by then dividing this amount by the receiving employee's hourly rate of pay (exclusive of allowances).

VI. Maximum donated leave that may be received:

- A. Sick leave purposes: 480 hours per incident.
- B. Bereavement leave purposes: 40 hours per occurrence. Donated bereavement leave can impact long- and short-term disability benefits. Before applying for donated leave while receiving disability benefits, consult with the agency payroll office for information on how donated bereavement leave will impact your circumstances.
- C. Military leave purposes: May not receive more than the amount the employee was earning in total compensation on the date the employee began the military leave of absence.

VII. Unused donated leave shall be returned to the donor.

Interview Leave

An employee shall be granted a reasonable amount of time off with pay to interview for other jobs within OPDS or with other State of Oregon agencies. Time off shall be granted for the time spent during the employee's regularly scheduled work day and work hours in the interview.

Jury/Witness Leave⁵

- I. While on jury duty or while appearing as a subpoenaed witness (other than as a party in the action), an employee will receive full pay.
- II. The employee must waive any jury fees except for expense reimbursement.
- III. A copy of the jury summons and court release shall, upon request, be provided to the HR Manager, to support the leave.

Leave Without Pay (LWOP)

- I. Conditions. An employee desiring a leave of absence without pay must submit a written request to the AA. The request must specify the duration and purpose of the leave. Except as otherwise provided by law:
 - A. Approval or denial of the request is at the discretion of the AA when the absence of the employee will not seriously impact the work of the agency. The AA will notify the HR Manager of the approval of LWOP.
 - B. LWOP will not be granted until all other appropriate accrued paid leave has been exhausted.
- II. Effect on leave accrual. Vacation and sick leave accrual for an employee who worked less than a full calendar month in a pay period because of LWOP shall be computed on a prorated basis using the number of available work hours, based on the employee's schedule, in that month.
- III. Effect on RSD and SED. LWOP in excess of 15 consecutive calendar days shall result in a permanent adjustment of the employee's RSD. An employee's RSD shall be adjusted by adding to it the number of calendar days absent without pay, thereby making the RSD later than it would have been if LWOP had not occurred. This does not apply to employees with an active FMLA and/or OFLA event.
- IV. Outside employment. An employee, who is accepting employment outside OPDS, must obtain advance, written approval from the ED.
- V. Effect on trial service period. LWOP in excess of 15 consecutive calendar days shall not be considered continuous employment when determining completion of the initial promotional trial service period. An employee's trial service period shall be adjusted by adding to it the number of calendar days absent without pay, thereby making the ending date of the trial service period later than it would have been if LWOP had not occurred.

⁵ ORS 10.061 and 10.090

Military Leave⁶

- I. Eligibility for Military Leave with Pay. An employee eligible for leave with pay:
 - A. Must have been employed, including temporary appointment, by the State of Oregon or by any county, municipality, or other political subdivision of the state for six month or more immediately preceding the employee's request for leave; and
 - B. Is a member of any National Guard, National Guard Reserve, or of any reserve component of the Armed Forces of the United States; and
 - C. Has provided advance written or verbal notice of the absence, except in circumstance involving military necessity or where the giving of notice is otherwise impossible or unreasonable.
- II. To receive pay for the annual active duty training, the employee must provide, before, during, or after the leave, military orders or other official documents that indicates the call-up was for annual active duty training or active duty in lieu of annual training.
 - A. If the employee is called to active duty for a period longer than 15 calendar days, the employee may be paid for the first 11 work days only if such time is served for the purpose of discharging an obligation of annual active duty for training.
 - B. If the employee has been on military active duty training leave for 15 calendar days or less, the employee shall return to work at the beginning of the first regularly scheduled work period following completion of service, after allowance for safe travel home and an eight-hour rest period.
- III. Military LWOP.
 - A. An employee is entitled to military LWOP for military duty when an employee is a member of the organized militia of Oregon, or a member of an organized militia of another state and is called into active service. Leave will continue through any applicable decompression time.
 - B. The employee shall provide verbal or written notice of military service. OPDS will require military orders or other official documents for approval for the absence. The employee may provide the documents prior to, during or upon completion of the military training leave. In instance involving military necessity or where the giving of notice is otherwise impossible or unreasonable, the employee will be relieved of this obligation.

⁶ ORS 399.065, 399.075, 408.240, 408.290 and 659.086

- C. An employee may only be paid during active military leave or applicable decompression time if:
 - i. the employee elects to be paid for accrued vacation time, personal leave, and compensatory time;
 - ii. the employee is an FLSA-exempt employee who works any part of a work week while on temporary military leave of up to three months;
 - iii. the employee receives supplemental income through the Donated Leave policy; or
 - iv. the employee is a member of the Oregon organized militia and is called to active duty⁷. The employee shall be paid in accordance with statute. Otherwise, military leave and decompression time are without pay.
 - D. Accrued leave does not have to be exhausted before LWOP is granted for military leave or subsequent decompression time.
 - E. While the employee is on military LWOP, vacation, sick or personal business leave will not accrue. The employee shall receive full service credit for time spent on military leave and subsequent decompression time upon return to work.
 - F. An FLSA-exempt employee who works any part of a work week while on temporary military leave (defined as up to three months), shall receive a full week's salary for that particular week. However, OPDS will only pay the difference between the amount received from the employee's military pay and the state salary due for that particular week. During such week, the employee shall receive full credit toward accrual of sick and vacation leave hours and will be paid for any holiday occurring during the week.
- IV. Return from military leave. Upon return from Military Leave, an employee will receive his/her vacation accrual rate, SED, and service credits as though the employee had remained continuously employed.
- A. An employee shall notify the HR Manager of the intent to return to work within 90 days of release from service if the period of service was more than 180 days. Otherwise, an employee will resume the duties of employment within seven calendar days of release from service.
 - B. An employee's failure to return to work within the time periods specified in Uniformed Service Employment and Reemployment Rights Act ([USERRA](#)) shall

⁷ ORS 399.065 and 399.075

result in termination of military leave, and the employee shall be considered to have resigned.

- C. If, due to disability resulting from military service, an employee is not qualified to perform the duties of the position the employee held at OPDS before going on leave, but is qualified to perform the duties of another position in the office, the employee will be reemployed in a position of equivalent seniority, status, and pay, so long as the employee is qualified to perform the duties of the position, or could become qualified to perform them with reasonable efforts by the employer.

Personal Business Leave

- I. Full-time non-temporary employees shall be granted 24 hours of personal business leave on July 1 of each year for use until June 30 of the following year.

- II. Leave will be prorated for an employee hired after July 1 of the fiscal year as shown below:

July	24 hours
August	22 hours
September	20 hours
October	18 hours
November	16 hours
December	14 hours
January	12 hours
February	10 hours
March	8 hours
April	6 hours
May	4 hours
June	2 hours

- III. There is no waiting period to use this leave but use of such leave shall be subject to prior approval by the employee’s AA.
- IV. Part-time employees shall be granted personal business leave on a prorated basis.
- V. Personal business leave may not be accrued, donated, converted to vacation or sick leave, or converted to cash remuneration.
- VI. Personal business leave balances not used by June 30 shall be forfeited.
- VII. When an employee from another State of Oregon agency is employed by OPDS and the other agency grants personal business leave, the balance may be transferred.

Pre-Retirement Planning Leave

- I. Pre-retirement leave shall be used to prepare for retirement or to investigate and attend retirement programs or retirement counseling.
- II. A full-time non-temporary employee with five or more year's employment with a PERS-covered employer shall be granted up to 28 hours of paid pre-retirement leave. The 28 hours of leave is the maximum amount of paid pre-retirement leave an employee may take during the entirety of his/her employment with the State of Oregon.
- III. Part-time employees shall be granted pre-retirement leave on a prorated basis.
- IV. The scheduling of pre-retirement leave is subject to prior approval of the AA. Such leave may not be converted to vacation, sick or personal business leave, or to cash remuneration. Pre-retirement leave not used before retirement shall be forfeited.

Red Cross Disaster Relief Services Leave

The AA may grant an employee leave for performance of relief services in Oregon⁸. Such leave may not exceed 15 work days in any 12-month period. To qualify for such leave, the employee must be a certified disaster services volunteer of the American Red Cross and the disaster must be designated at Level II or above by the American Red Cross.

Service Award Leave

- I. All non-temporary employees who have completed at least five years of non-temporary continuous service with OPDS are eligible for service award leave. For the purposes of this section, continuous service in a non-temporary position shall count toward an employee's service eligibility if either:
 - A. the employee was employed by the State Public Defender on October 1, 2001 and transferred to OPDS, or
 - B. the employee was employed by the Oregon Judicial Department and transferred to OPDS on July 1, 2003, or
 - C. the employee has been continuously employed with OPDS.
- II. Time worked for OPDS before and after a break in service will be considered in determining eligibility. Service award leave is granted in one-time intervals to full-time employees for each five-year completion of service, awarding the equal number of service award leave hours. (Example: Upon completion of five years of service, the employee will receive five hours of service award leave, and so on.)
- III. Part-time employees shall be granted service award leave on a prorated basis.

⁸ ORS 401.378

- IV. Service award leave must be scheduled in advance with the AA and may be accrued.
- V. Service award leave shall not be converted to cash remuneration.
- VI. Service award leave not used prior to retirement or separation of employment shall be forfeited.

Sick Leave

- I. Monthly Accrual.
 - A. Full-time employees. Full-time employees shall accrue sick leave at the rate of 8 hours for each full calendar month employed.
 - B. Part-time employees. Part-time employees shall earn sick leave on a prorated basis.
 - C. Trial service employees. During the trial service period, employees are eligible to accrue and use sick leave upon accrual.
- II. Sick leave shall be credited to an employee on the first day of the calendar month following the calendar month in which the leave was earned.
- III. Sick leave accrual for an employee working less than a full calendar month in a pay period due to hire, reduced work schedule, separation, or leave without pay shall be computed on a prorated basis using the number of available work hours, based on the employee's schedule, in that month.
- IV. Sick leave shall accrue without limitation.
- V. Notification.
 - A. Absence not covered by family leave laws. It is the employee's responsibility to notify the immediate supervisor of the need to use sick leave.
 - i. If the employee's absence is unanticipated the employee shall personally contact the immediate supervisor at the beginning of each missed day's regularly scheduled work time unless other arrangements have been approved by the supervisor.
 - ii. If the employee's absence is anticipated, the employee shall notify the supervisor of the need for leave as far in advance as possible.
 - B. Absence covered by family and medical leave laws. If the employee's absence is unanticipated, the supervisor, the employee, or the employee's personal representative shall contact the HR Manager.

- i. In emergency situations, the employee or the employee's representative shall contact the HR Manager as soon as possible during the 24-hour period immediately following the employee's scheduled work time.
 - ii. If the employee's absence is prescheduled, the employee shall notify the HR manager of the need for leave at least 30 days in advance.
- VI. If a holiday occurs while an employee is on paid sick leave, the holiday shall not be deducted from the employee's accrued sick leave.
- VII. Accrued sick leave.
 - A. Personal. An employee who is absent because of his/her own physical illness or injury or medical or dental appointment must use accrued sick leave for the absence before use of any other paid or unpaid leave. An employee who is receiving income from a disability benefit plan may opt to use leave without pay instead of sick leave while receiving such disability income. An employee opting to use leave without pay may be required to provide evidence of such disability income to the HR Manager.
 - B. Family. An employee may request, and shall be allowed to use, accrued sick leave to care for a qualified family member, as defined by FMLA and/or OFLA.
- VIII. Other leave may be used in lieu of sick leave, or when sick leave is exhausted, as follows:
 - A. Personal.
 - i. An employee who is absent because of his/her own FMLA and/or OFLA qualifying condition and who has exhausted accrued sick leave, may request and shall be allowed to use any other form of accrued paid leave or leave without pay during the FMLA and/or OFLA leave entitlement. If the employee uses accrued compensatory time, the amount of compensatory time taken shall not be deducted from the employee's family leave entitlement(s).
 - ii. An employee who has exhausted their accrued sick leave and is absent after exhausting their accrued sick leave and is absent after exhausting FMLA and/or OFLA leave entitlement may request use of any other form of accrued paid leave or leave without pay for the absence. The use of such leave is subject to prior supervisor approval.
 - B. Family. An employee may request, and shall be allowed, to use any form of accrued paid leave or leave without pay prior to, or immediately after, exhausting accrued sick leave when the employee will care for a qualified family member, as

defined by FMLA and/or OFLA, or when the person's condition does not meet the definition of serious health condition under FMLA and/or OFLA, but that person is unable to care for him/herself. In such cases, the employee is responsible to make alternative care arrangements within a reasonable time.

- C. If the employee uses accrued compensatory time to care for a qualified family member, when that family member's condition qualifies as a serious health condition under FMLA and/or OFLA, the amount of compensatory time taken shall not be deducted from the employee's family leave entitlement(s).
- IX. Unless otherwise provided in state or federal law (e.g. FMLA, OFLA, Americans with Disabilities Act, Workers' Compensation), the HR Manager may require the employee to submit substantiating evidence for the use of sick leave. That evidence includes, but is not limited to, a qualified health care provider's certification.
- A. Where in the opinion of the HR Manager, circumstances warrant and applicable law permits, HR may require additional certification or medical opinion from qualified health care providers.
 - B. If the HR Manager does not find the evidence adequate, the request for use of other leave in lieu of sick leave may be denied.
- X. The requirements of Oregon Workers' Compensation laws apply as follows:
- A. Reporting requirements.
 - i. An employee who is injured on the job or becomes ill as a result of the job shall immediately report the occurrence to the HR Manager.
 - ii. The HR Manager shall respond to this report in accordance with the relevant provisions of the Workers' Compensation laws.
 - B. Use of leave.
 - i. An employee who is absent for more than three consecutive work days because of a job-incurred injury or illness may charge the absence to LWOP or may use accrued sick leave.
 - ii. If the employee has no accrued sick leave or exhausts accrued sick leave, the employee may use accrued vacation, compensatory time, or personal business leave.

- iii. An employee who takes LWOP receives no compensation other than the time loss payment authorized by the Workers' Compensation insurance carrier (SAIF).⁹
- iv. An employee who is absent for three or fewer consecutive work days because of a job-incurred injury or illness shall charge the absence in accordance with the foregoing policy.
- v. An employee who is required by SAIF to attend a medical exam in relation to the employee's Workers' Compensation claim, shall charge the absence to LWOP and may submit a claim to SAIF for earnings lost while attending the required medical exam.

XI. Prorated leave charges.

- A. An employee who is absent for more than three consecutive work days because of a job-incurred injury or illness and who chooses to make prorated charges to accrued leave, shall do so by charging for every hour absent, 1/3 of one hour to accrued leave and 2/3 of one hour to leave without pay.
- B. The amount of time charged to LWOP shall represent the amount of time loss compensation received from SAIF.

XII. Effect of reemployment. A former OPDS employee who is hired into a non-temporary OPDS position within two years from the employee's date of separation shall have previously accrued and unused sick leave restored.

XIII. Employees hired from another state agency. An employee from another State of Oregon agency, who is hired by OPDS within two years of separation from that agency, shall have previously accrued unused sick leave transferred.

XIV. Sick leave upon separation. There shall be no compensation for unused sick leave upon separation of employment. DAS Payroll will report unused sick leave to PERS.

XV. Use of donated leave for sick leave purposes. After exhausting all paid leave time, an employee may elect to receive paid sick leave which has been converted from vacation leave donated by other employees.

Special Recognition Leave

- I. At the discretion of the ED, employees ineligible to receive overtime compensation under the FLSA may be granted up to 40 hours special recognition leave per fiscal year. Use of such leave shall be scheduled in advance with the employee's supervisor.

⁹ ORS 656.210(1) and 656.210(2)(d)(3).

- II. Special recognition leave may not be accrued, converted to vacation, sick leave, or converted to cash remuneration.
- III. Special recognition leave not used by June 30 of the year in which granted shall be forfeited.
- IV. There is no eligibility waiting period for special recognition leave.

Temporary Interruption of Employment

- I. Planned temporary interruption of employment.
 - A. A temporary interruption of employment, not exceeding 15 continuous calendar days, due to lack of work, budget deficit, or other unusual or unexpected circumstances shall not be considered as a layoff if, at the termination of the situation that created the need for the interruption, all affected employees are returned to work.
 - B. A temporary interruption due to lack of work or other unusual or unexpected circumstances other than a budget deficit may, at the employee's option, be charged to accrued paid leave or LWOP.
 - C. FLSA-exempt employees will not be required to charge absences of less than one full work week to accrued paid leave or LWOP. Accrued sick leave may only be used in accordance with the Sick Leave policy.
 - D. A temporary interruption of employment due to budget deficit shall be charged to LWOP by both FLSA-exempt and non-exempt employees.
- II. Unplanned temporary interruption of employment due to hazardous environmental conditions or inoperable facility.
 - A. Hazardous environmental condition includes, but is not limited to fire, flood, earthquake, pollution, or inclement weather.
 - B. An inoperable facility is one where essential services are lost due to fire, mechanical failure, accident, weather, or other causes.
 - C. When a hazardous environmental condition does not result in official closure of the work site but prevents individual employees from reporting to work or necessitate their leaving work early, employees will have the option of charging their absence to accrued paid leave or leave without pay. Sick leave may only be used in accordance with the Sick Leave policy.
- III. The ED shall be responsible for declaring an official closure or temporary interruption of employment.

- A. Official closure is defined as the employer-initiated closing of:
 - i. all operations and the cessation of public access to a facility and all service when no employee is allowed to remain at work; or
 - ii. most, but not all, operations and public access to services in that location or another is continued on a limited basis when a minimum number of employees, as determined by the ED, are required to remain at work.
- B. When an official closure is declared prior to the start of the workday, the ED shall make a reasonable effort to notify employees in a timely manner. In such cases, the ED will use email, Flash Alert, and the Court Administrator's recorded message to notify employees of the official closure. The final responsibility for finding out whether or not the operation is open or closed lies with each employee.
- C. Staffing during an official closure when a minimum number of employees are required to remain at work during an official closure, the ED shall:
 - i. Determine whether FLSA-exempt employees are available to remain.
 - ii. If no FLSA-exempt employee is available or if an insufficient number of FLSA-exempt employees are available to remain at work, then a necessary number of FLSA non-exempt employees may be required to remain at work.
 - iii. An employee shall not be required to remain at work if such a requirement would pose a threat to the employee's safety or the safety of a family member residing in the employee's household.
- D. Charging time off due to official closure.
 - i. Official closures of one hour or less shall be considered as regular hours worked.
 - ii. Official closures of more than one hour.
 - a. Employees shall be granted leave with pay not to exceed 16 hours of miscellaneous paid leave in a calendar year as approved by the ED. b. Appendix C provides the instructions for office closures and recording time.

Vacation Leave

OPDS encourages its employees to use vacation leave on an annual basis.

- I. Full-time employees. Full-time employees shall accrue vacation leave at a rate based on each full calendar month employed in accordance with the following schedule, which is based on the employee's RSD.

<u>Years of Service</u>	<u>Hours per Year</u>	<u>Hours per Month</u>
Through 5 th year	120 (15 days)	10
After 5 th year to 10 th year	144 (18 days)	12
After 10 th year to 15 th year	168 (21 days)	14
After 15 th year to 20 th year	192 (24 days)	16
After 20 th year to 25 th year	216 (27 days)	18
After 25 th year	240 (30 days)	20

- II. Part-time employees. Part-time employees shall earn vacation leave on a prorated basis.

- III. Initial trial service employees.

- A. During the initial trial service period, employees are eligible to accrue vacation leave each month.
- B. Accrued vacation leave may be used at the completion of the initial trial service period.
- C. Use of vacation leave may be granted during an extension of the initial trial service period.

- IV. Crediting of vacation. Vacation leave shall be credited to employees on the first day of the calendar month following the calendar month in which it was earned.

- V. Partial month accrual. Vacation leave accrual for employees working less than a full calendar month in a pay period due to hire, separation, or leave without pay shall be computed on a prorated basis using the number of available work hours, based on the employee's schedule, in that month.

- VI. Maximum accumulation. An employee may accrue a maximum of 350 hours of vacation leave. Employees who accrue 350 hours must take vacation or forfeit payment for, or use of additional hours earned that would cause the employee's vacation balance to exceed 350 hours.

- VII. Scheduling of vacation leave. Unless otherwise protected by law, rule or OPDS policy, the time when an employee may take vacation leave shall be subject to the approval of the AA with due regard to the employee and the needs of OPDS.
- VIII. Illness during vacation leave. When an employee is on vacation leave and circumstances arise that would qualify the employee to use accrued sick leave, the employee may charge that time to sick leave.
- IX. Holiday during vacation leave. If a holiday occurs while an employee is on vacation leave, the employee shall charge that time as holiday leave.
- X. Employees hired from another State of Oregon agency. When an employee from another State of Oregon agency is employed by OPDS without a break in service, a maximum of 80 hours of accrued vacation leave may be transferred, at the discretion of the AA, to OPDS. The employee's RSD shall be used to determine the monthly OPDS vacation accrual rate.
- XI. Vacation pay upon Separation. Unless an employee requests to transfer vacation to another State of Oregon agency, an employee (or, in case of death, an employee's beneficiary or estate) shall be compensated for all accrued and unused vacation leave. The rate of pay for vacation shall be the employee's pay rate at time of separation, exclusive of other types of compensation, such as allowances.
- XII. Donation of vacation leave. Vacation leave may be donated to another OPDS employee when requested for sick leave purposes.
- XII. Paid vacation in lieu of time off.
 - A. Eligibility. A regular status employee may make a one-time request to cash out and receive payment for up to 40 hours of vacation leave once per calendar year. Employees must have a remaining balance of at least 60 hours of vacation leave to be eligible for the cash-out option.
At the time of an employee's cash-out request, the agency will consider any pre-approved vacation leave to determine if the minimum vacation balance requirement is maintained.
 - B. Rate of Compensation. The rate of compensation for paid vacation leave in lieu of time off shall be at the employee's current rate of pay at the time the request is made.
 - C. Payment shall be at the employee's straight time rate of pay.
 - D. Requests must be submitted on a form developed by OPDS and submitted to HR.
 - E. Any approved payment shall automatically reduce the number of accrued vacation hours by the amount of hours cashed out.
 - F. Employees on unprotected leave without pay status at the time of the cash out is requested are not eligible to cash out accrued vacation hours.

SECTION 8: Nepotism

Policy

- I. An employee of OPDS may not appoint, transfer, promote, demote, dismiss, or remove an employee who is a relative.
- II. An employee may not participate in any interview, discussion, or debate regarding the appointment, transfer, promotion, demotion, dismissal or removal of an employee who is a relative.
- III. It is prohibited for relatives to occupy positions in which one supervises the other or is in a position to exert direct influence on the appointment, promotion, transfer, pay, or discipline of the other. For the purposes of this policy, “relative”, includes:
 - A. The employee’s husband, wife, domestic partner, son, daughter, mother, father, brother, sister, half-brother, half-sister, in-law, aunt, uncle, niece, nephew, stepparent, stepchild, or the relative of a domestic partner.
 - B. An individual residing in the same household as the employee, or
 - C. An individual sharing a committed, personal relationship with the employee.
- IV. If a transfer or termination is required in order to comply with this policy, the employee affected shall determine who shall transfer or resign and shall complete the action within 90 calendar days from the date the violation of this policy began or was discovered whichever is later. If the affected employee’s fail to address the situation within the 90 calendar days, the ED will work with the affected employees to resolve the situation in the best interest of the agency.

SECTION 9: Non-Discrimination, Harassment Free, and Professional Workplace

Policy

- I. OPDS provides a work environment free from unlawful discrimination or workplace harassment based on or because of an employee's protected class status as defined by statute¹⁰. It is the policy of OPDS that mutual respect between and among supervisors, employees, temporary employees, and volunteers is integral to the efficient conduct of the agency's business. To implement that policy, employees of all service types at every level of the agency must foster an environment that encourages professionalism and is free from unlawful discrimination, harassment, and inappropriate workplace behavior.
 - A. Protected classes as defined by state and federal law include: race, color, religion, gender (including pregnancy), national origin, age (18 or older), disability, genetic information, physical or mental disability, injured worker, a person who uses leave covered by the Oregon Family Leave Act, marital status, family relationship, sexual orientation, whistleblower, expunged juvenile record, and any other protected class as defined by state law.
 - B. Unlawful discrimination is discrimination in any employment practices based on a person's protected class.
 - C. Harassment is unwelcome conduct that is based on a person's protected class. Harassment becomes unlawful when an employee must endure the offensive conduct as a condition of continued employment, or the conduct is pervasive or severe enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.
 - D. Inappropriate workplace behavior is unwelcome or unwanted conduct or behavior that causes a negative impact or disruption to the workplace or the business of the agency, or results in the erosion of employee morale and is not associated with the employee's protected class.

¹⁰ ORS Chapter 659A, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, The Civil Rights Act of 1991, and Title II of the Genetic Information Nondiscrimination Act of 2008,.

1. Examples of inappropriate workplace behavior include but are not limited to comments, actions, or behaviors of an individual or group that embarrass, humiliate, intimidate, disparage, demean or show disrespect for another employee, contractor, or visitor in the workplace.
 2. Inappropriate workplace behavior does not include actions of performance management such as supervisor instructions, expectations, or feedback, administering of disciplinary actions, or investigatory meetings. It also does not include assigned, requested, or unsolicited constructive peer feedback on projects or work.
- II. OPDS requires that all employees cooperate fully to ensure the fulfillment of this policy in all actions and decisions including, but not limited to:
 - A. Hiring, placement, promotion, transfer, and discharge;
 - B. Recruitment, advertising, or solicitation for employment;
 - C. Compensation and benefits; and
 - D. Selection for training
- III. OPDS will make reasonable accommodations for the known physical or mental disabilities of an otherwise qualified applicant or employee, unless an undue hardship would result. Any applicant or employee who requires an accommodation in the hiring process or to perform the essential functions of a job should contact the HR Manager.

Procedure

1. Addressing unlawful discrimination, harassment, and inappropriate workplace behavior.
 - a. Supervisors must address unlawful discrimination, harassment, and inappropriate workplace behavior that they observe or experience and should do so as close to the time of the occurrence as possible and appropriate.
 - b. If an employee observes or experiences unlawful discrimination, harassment, or inappropriate workplace behavior and feels comfortable doing so, he or she should do one of both of the following:
 - i. Redirect inappropriate conversations or behavior to workplace business; or

- ii. Tell the offending employee that his or her behavior is offensive and ask him or her to stop.
2. Employees may report violations of this policy to the ED, AA, or the HR Manager. If the employee's immediate supervisor is the person engaging in the unlawful discrimination, harassment, or inappropriate workplace behavior, the employee should report the behavior to the ED, AA, or HR manager as soon as practical. The report may be written or verbal.
3. The ED or AA shall report the alleged violation to the HR Manager, if not already notified.
4. The HR Manager, or other individual(s) designated by the ED, shall conduct an investigation into the allegations.
5. Upon completion of the investigation, if an employee is found to have engaged in unlawful discrimination, harassment, or inappropriate workplace behavior, the employee will be counseled, or depending on the severity of the behavior, may be subject to the Discipline policy.
6. An employee in trial service found to have engaged in unlawful discrimination, harassment, or inappropriate workplace behavior may be removed from trial service.
7. A supervisor who fails to address unlawful discrimination, harassment, or inappropriate workplace behavior will be counseled, or depending on the severity of the behavior, may be subject to the Discipline policy.
8. Retaliation. Retaliation against someone for addressing or reporting unlawful discrimination, harassment, or inappropriate workplace behavior is prohibited. If an employee believes that he or she is experiencing retaliation as a result of addressing or reporting unlawful discrimination, harassment, or inappropriate workplace behavior, the employee should report the retaliation to his or her immediate supervisor as soon as practical. If the employee believes that his or her immediate supervisor is engaging in retaliation, that employee should report the retaliation to the ED, AA, or HR manager as soon as practical.

SECTION 10: Pay Practices

The following are state-wide pay practices:

1. **Bilingual Allowance.** An employee who, as assigned in writing by the AA, uses bilingual skill(s), including American Sign Language, in the performance of assigned duties and who passes the bilingual skill proficiency test(s), shall receive a monthly pay allowance equal to an additional step for the duration of the assignment as determined by the AA.
2. **Demotion.**
 - a. **Voluntary.**
 - i. When a regular status employee, or limited duration employee, who has been employed by OPDS for one or more calendar years, requests and is granted demotion, the employee's base rate of pay and SED shall not be affected unless the employee's base rate of pay is above the maximum rate for the lower salary range. In this instance, the employee's base rate of pay shall be decreased to the maximum rate of the lower salary range, and the SED shall be maintained.
 - ii. When a promotional trial service employee requests and is granted demotion, the AA shall adjust the employee's base rate of pay to the lower salary range and may:
 - A. Continue the employee's current base rate of pay (provided the employee's base rate of pay is within the lower salary range),
 - B. Reduce the employee's base rate of pay to the step in the lower salary range equaling the employee's base rate of pay prior to promotion, or
 - C. Reduce the employee's base rate of pay to any step in the lower salary range that is between the rates described above.
 - D. The employee's prior SED shall be restored, and the employee shall receive the annual salary increase the employee would have otherwise received (if any) but for the promotion.
 - b. **Involuntary.** When an AA demotes an employee, the AA shall adjust the employee's base rate of pay to the lower salary range and may adjust the employee's base rate of pay to any step within the salary range. The employee's

SED shall not be affected provided the employee's base rate of pay does not equal the maximum rate of the lower salary range.

- c. Removal from promotional trial service. When the AA removes an employee from promotional trial service, the employee's base rate of pay shall be reduced to the step in the salary range prior to the promotion and the employee shall receive the annual salary increase the employee would have otherwise received (if any) but for the promotion. The employee's prior SED shall be restored.

3. General wage adjustment.

- a. When a general increase (cost of living adjustment) is approved by the PDSC and the ED, employees are retained at the same step of the position in the salary range and retain the same SED.
- b. The ED and the PDSC may adjust the compensation plans, subject to the availability of resources, as they deem appropriate.
- c. Compensation plans will be updated to include the adjustment.

4. Initial hire.

An employee's base rate of pay (not including allowances), after completion of a pay equity analysis, shall be at a step within the salary range for the class in which employed.

5. Lead allowance.

- a. An employee shall receive a one-step lead allowance when the AA assigns leadwork or team leader duties to an employee for a period of 10 or more consecutive work days.
- b. Leadwork or team leader duties shall include duties where, on a recurring or daily basis, the employee has been assigned the responsibility to perform substantially all of the following functions:
 - i. Training or orienting new employees;
 - ii. Assigning and reassigning tasks to other employees;
 - iii. Giving direction to other employees concerning day-to-day work procedures;
 - iv. Communicating established standards of performance to affected employees;

- v. Reviewing the work of other employee to assure conformance to established standards; and
 - vi. Providing informal assessment of an employee's performance to the supervisor.
 - c. Lead allowance shall not apply to employees whose classification normally include leadwork or team leader duties, or to voluntary training or developmental assignments.
 - d. Payment of lead allowance shall be five percent of the employee's base salary.
6. Overtime.
- a. OPDS shall determine the status under FLSA of each of its employees as either exempt or non-exempt from the Act, using the guidelines set forth in FLSA. OPDS shall keep accurate records of the status of its employees under FLSA and any overtime accrued by its non-exempt employees.
 - b. Employees covered by FLSA as non-exempt employees are eligible for overtime compensation.
 - c. An employee who is eligible for overtime compensation shall not work overtime without advance approval by the ED or the AA. The ED or the AA may require an employee to work overtime if the operations or mission of OPDS necessitate it.
 - d. All overtime worked shall be recorded on an employee's time sheet. Overtime work shall be compensated at the rate of one and one-half (1.5) times the employee's current hourly rate of pay.
 - e. OPDS may elect to compensate an employee by cash payment or by compensatory time. A maximum of 240 hours compensatory time may be accrued. An employee who has accrued 240 hours compensatory time must receive cash payment for additional further overtime work.
 - f. Compensatory time may be requested by the employee or required by the ED or the AA. The use of compensatory time shall be scheduled in advance with the employee's supervisor. The supervisor shall grant an employee's request to use accrued compensatory time unless doing so would unduly disrupt OPDS operations.
 - g. An employee shall be allowed to use accrued compensatory time for qualifying family leave purposes. The amount of compensatory time taken shall not be deducted from an employee's family leave entitlements under FMLA and/or OFLA.

- h. An employee who separates employment with OPDS shall be paid for accrued compensatory time at the employee's regular hourly rate at the time of separation.
- 7. Promotion.
 - a. Upon promotion, the employee shall be placed at a step in the new salary range, after completion of a pay equity analysis to determine appropriate placement within the range. The employee will receive no less than a full step increase.
 - b. A new SED is set for six months from the date of the promotion, unless otherwise outlined by the HR Manager or Collective Bargaining Agreement.
- 8. Reemployment. Upon reemployment, an employee's base rate of pay shall be determined by the HR Manager in accordance with section 4.
- 9. Special Salary Adjustment.
 - a. The ED may at such times he/she deems appropriate and subject to availability of resources, adjust the compensation plan. Adjustment will be made in each step of each salary range and will not result in employee movement from one step to another. Employees who receive a y-rate are eligible for these adjustments.
 - b. After successful completion of trial service, the ED may grant a salary increase within an employee's salary range if the increase would not cause the employee's salary to exceed the maximum rate of the range. The increase shall be effective the day following successful completion of trial service.
 - c. A salary adjustment to any non-temporary employee who has completed six months of non-temporary employment may be granted at the discretion of the ED or the PDSC for exemplary performance or for uniquely compelling circumstances.
 - i. An employee may receive no more than one recognition adjustment in any 12-month period.
 - ii. This does not affect the employee's SED.
- 10. Transfer. When an employee transfers from one position to another position in the same classification or classification having the same salary range, the employee's base rate of pay shall remain the same. The employee's SED shall not be affected.
- 11. Underfill. When OPDS fills a position in a higher classification as an underfill, OPDS shall reclassify the employee when the employee meets the minimum qualifications of the higher classification or as outlined in the employment agreement. The SED will be set to annually thereafter.

12. WOC. An employee assigned in writing to perform duties of an existing, higher-level classification for a period of 10 or more consecutively scheduled work days shall be compensated for the performance of such duties.
 - a. Generally:
 - i. Temporary five percent increase for the period during which the duties are performed; or
 - ii. The difference between the employee's base rate of pay and the first step of the higher classification salary range, whichever is greater.
 - iii. The pay rate shall not exceed the top step of the higher-level classification.
 - b. Duties should be assigned for a specific period not to exceed one year, unless extended by the ED or AA.

SECTION 11: Performance Assessment and Management

Policy

- I. OPDS maintains a performance management process to assist in managing the performance of its employees. This process shall promote employees understanding of successful job performance and encourage their commitment to OPDS's mission, goals, and objectives.¹¹
- II. OPDS provides training for its managers and supervisors in the administration of the performance management plan.

Procedure

OPDS performance management plan includes the following requirements:

1. An assessment and written formal feedback regarding the employee's performance at the conclusion of the initial or promotional trial service period.
2. Assessment and feedback from supervisors to promote professional development and assess training needs throughout the review period.
3. A written performance evaluation for each employee. The evaluation shall be based on the employee's position and duties and include:
 - a. a discussion of the employee's performance between the supervisor and employee;
 - b. documented performance achievements and/or deficiencies;
 - d. development of job-related performance measures in collaboration with the employee that are consistent with the employee's position description and relate to OPDS's mission, goals, and objectives for the next review period;
 - e. signatures of the employee and supervisor with a copy of the signed evaluation form provided to the employee.

¹¹ ORS 151.211 to 151.219

4. A copy of the performance evaluation will become a part of the employee's personnel file located in HR.
5. An employee may prepare written comments or rebuttal to their evaluation within 30 calendar days of receiving the signed evaluation, which shall be attached to the evaluation form and become part of the employee's personnel file.

SECTION 12: Personnel Records Retention

Policy

- I. Affirmative action plans. The agency shall maintain plans for three years after superseded or obsolete.
- II. Employee medical records.
 - A. The agency shall maintain medical records separate from the personnel file or any other employee record as required by the American with Disabilities Act, federal or state leave laws.
 - B. Medical records shall be maintained for three years.
- III. Employee personnel records. The agency shall maintain one official personnel file for each employee in paper and/or electronic format.
 - A. Employee records include:
 - i. Employee emergency contact information: Current only.
 - ii. Signed policy acknowledgements.
 - iii. Training records not retained on the State of Oregon's electronic training site: three years.
 - iv. Original application of employment and subsequent applications for promotions and transfer appointments.
 - v. Offer and acceptance letters for employment.
 - vi. Completed personnel actions, including supporting documentation.
 - vii. Signed performance evaluations and employee rebuttal response.
 - viii. Signed position descriptions.
 - ix. Transfer personnel records from receiving agency.
 - x. Signed disciplinary actions including employee appeal and response to appeal.
 - xi. Special achievements and awards.

- B. An employee may, upon request, inspect the contents of their official personnel file except for confidential reports from previous employers.
 - C. No information reflecting critically upon an employee shall be placed in the employee's personnel file that does not bear the signature of the employee.
 - D. Upon an employee's written request, material reflecting reprimand or other adverse action, excluding performance evaluations, shall be removed from the file after 36 months, unless the material is related to discipline for:
 - i. criminal activity,
 - ii. substance abuse,
 - iii. violence,
 - iv. harassment,
 - v. discrimination, or
 - vi. other such occurrence; or
 - vii. flagrant and repeated violations of the rules stated in the Attorney Manual or Personnel Policy.
 - E. Employee personnel records shall be maintained for the duration of employment, plus five years after separation, unless otherwise outlined in the foregoing policy.
- IV. Employment Eligibility.
- A. I-9 shall be kept separate from other personnel records.
 - B. Records shall be maintained for three years after hire or one year after separation.
- V. Layoffs. All records outlined in the Reassignments and Layoff policy shall be retained for three years.
- VI. Position classification studies and reclassifications. The agency shall maintain all classification records for three years from completion of study or reclassification.
- VII. Recruitments. The agency shall maintain recruiting records in paper or electronic format.
- A. Recruiting records include:
 - i. Job announcement, position descriptions, testing and rating.
 - ii. Applications and supplemental materials.

- iii. Interview panel notes and tests.
 - iv. All other materials or tools used in the recruitment process.
- B. All recruitment records shall be maintained for three years from the closing date of the recruitment.

VIII. Transferring records.

- A. Upon request from a receiving agency, OPDS will transfer all personnel and medical records to the receiving agency.
- B. OPDS will request personnel and medical records from a sending agency, upon start day of a new employee to OPDS.

SECTION 13: Political Activity

Policy

ORS 260.432 codifies the restrictions imposed by the law of the State of Oregon on political activities for public employees and provides:

“No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, this section does not restrict the right of a public employee to express personal political views.”

It is therefore the policy of OPDS that employees may engage in political activity except to the extent prohibited by state law when on the job during working hours. *See* Appendix B for Quick Reference Guide.

SECTION 14: Reassignments and Layoffs

Policy

- I. OPDS shall establish fair and rational procedures for reassigning or laying-off employees due to reorganization, reduced workloads or revenues, or to meet position reduction goals.
- II. An employee may be reassigned or laid off through a reduction in work force because of lack of work, funds curtailment, reorganization, or other non-disciplinary reasons consistent with the needs and mission of OPDS that do not reflect discredit on the employee.
- III. OPDS is committed to providing its employees with options to remain employed with OPDS in lieu of layoffs if possible.
 - A. All work force adjustments measures within OPDS shall be explored prior to implementing layoffs, including reassignment to existing vacancies, furloughs, voluntary terminations, or demotions.
 - B. Should such work force adjustments measures be unavailable or infeasible, OPDS shall make reasonable efforts to inform laid off employees of their options and the processes to be considered for other employment opportunities in state government and to minimize negative impacts on laid-off employees to the extent possible.
- IV. This policy does not authorize the displacement or “bumping” within OPDS by any OPDS employee.
- V. Employees laid off in accordance with this policy may request to be added to any applicable agency layoff list, valid for a period of one year, for the same, equal or lower positions or classification for which they are qualified.
- VI. An employee who is reassigned or laid off pursuant to this policy may appeal the action to the AA or the ED in accordance with the corresponding procedure.

Procedure

1. The PDSC shall determine the necessity to reduce OPDS's work force due to lack of work, funds curtailment, reorganization, or other valid reasons based upon the needs and mission of OPDS and establish time lines to accomplish such work force reductions.
2. The ED or AA shall determine the number of positions, classification or organizational units in OPDS affected by the pending work force reduction. In making this determination, the ED or the AA shall consider the needs and mission of OPDS, including:
 - a. the types of positions affected and remaining positions,
 - b. the special knowledge skills, and experience necessary to accomplish the mission and work of OPDS, and
 - c. the diversity of employees as this factor affects OPDS's ability to accomplish its mission.
3. The ED or AA shall identify the following:
 - a. Any vacant positions in OPDS and prepare a summary of the knowledge, skill and experience required of those vacant positions at the same or lower salary ranges of those positions affected by the pending work force reduction.
 - b. All employees by position or classification affected by the pending work force reduction and request updated information regarding their relevant knowledge, skills and experience.
 - c. The employees to be reassigned or laid off, taking into consideration the following factors in descending order of importance:
 - i. The relevant knowledge, skills and experience of each employee in the positions, classifications or organizational units affected by the pending work force reduction, the diversity of OPDS's work force as it relates to the ability of OPDS to accomplish its mission, and the transition time for a potentially qualified employee to be capable of performing the duties of a vacant or open position at OPDS.
 - ii. The quality of performance and relative merit of each employee in the positions, classifications, or organizational units affected by the pending work force reduction as determined by:
 - A. The employee's most recent performance evaluation, or

- B. A special performance evaluation for all employees in positions, classification or organizational unit affected by the pending work force reduction:
 - iii. The length of an affected employee's service with OPDS, the State Public Defender or the Indigent Defense Services Division; and
 - iv. The length of an affected employee's service with any other State of Oregon agency.
- 4. The ED or the AA shall consider reassignment options within OPDS for employees identified for layoff.
- 5. At least 30 calendar days prior to the effective date of layoff or reassignment, the ED or the AA shall provide written notice to the affected employees of the reason for the reassignment or layoff and the rights and options provided by the foregoing policy and procedure. In addition to the right to appeal, an employee who is laid off may request to be added to the agency layoff list for the same, equal, or lower positions or classification for which an employee is qualified.
- 6. The ED or the AA shall document the foregoing actions and submit this document to the PDSC.
- 7. The employee may appeal from the reassignment or lay off decision as following:
 - a. The appeal shall be in writing and mailed or hand-delivered to the ED not later than 15 calendar days after the effective date of the personnel action in question.
 - b. The AA shall rule in writing not later than 15 calendar days after receipt of the appeal. Failure of the AA to respond within 15 calendar days after receipt of the appeal shall constitute a denial of the appeal, unless the parties mutually agree in writing to extend the time limit.
- 8. Failure of the ED or the AA to comply with one or more provisions of the foregoing policy and procedure in taking any action with regard to an employee shall not invalidate the action unless the employee is deprived of a constitutionally protected right and there is no possibility of correcting or reversing the deprivation of the employee's constitutionally protected right. When the potential deprivation of the employee's rights is brought to the attention of OPDS, the ED or AA may rescind the action, may take a new action of the same or different nature, or may let the action taken stand.

SECTION 15: Recruiting and Hiring

Policy

- I. OPDS shall ensure that equal employment opportunities are afforded to all applicants and employees as defined by statute¹².
- II. OPDS's recruitment and hiring process shall be fair, impartial, and designed to ensure that positions are filled by the most qualified job applicants available and by individuals well-suited to perform the work required of the position.
- III. Hiring for vacant positions shall be based on merit as determined by a comparison of a job applicant's qualification with the requirement and duties of the vacant position. All individuals selected to fill a vacant position at OPDS must meet the minimum and special qualification defined for that position.
- IV. OPDS shall establish procedures for the recruitment, screening, selection, and hiring of job applicants and for the transfer and advancement of current OPDS employees in accordance with this policy.
- V. All employees serve a six-month trial service period following the date of hire or promotion during which they are expected to demonstrate, by conduct and actual performance of duties, the qualifications and fitness for the position.
- VI. Recruitment methods.
 - A. Competitive.
 - i. Open competitive recruitment. Any OPDS employee or member of the public may apply for the vacant position.
 - ii. Limited recruitment. Only permanent OPDS employees may apply for a promotional only vacant position.
 - B. Non-competitive.
 - i. Transfer. Any qualified OPDS employee may request a transfer, or be transferred, to a vacant position.
 - ii. Voluntary demotion. Any qualified OPDS employee may request a voluntary demotion to a vacant position.

¹² ORS Chapter 659A

- iii. Involuntary demotion. The ED or the AA may, for disciplinary reasons, demote an employee to a position with a lower salary range provided the employee is qualified to fill the lower range position.
- C. Reemployment.
- i. A former OPDS employee may request to be reemployed in a position for which the employee is qualified. Reemployment shall be subject to the discretion of the ED.
 - ii. Reemployment following retirement. An employee who wishes to retire may request to be reemployed in a position for which the employee is qualified.¹³ Reemployment following retirement shall be at the discretion of the ED but shall be authorized only when there is a documented business need for the employment, or reemployment is necessary to ensure adequate transfer of knowledge.
 - iii. An OPDS employee may be reemployed only once within the one-year period following resignation, voluntary demotion, layoff, downward reclassification or retirement.
- D. Vacant management positions. At the discretion of the ED, vacancies in management or supervisory responsibilities may be filled without resort to any of the foregoing recruitment methods.
- E. Underfill.
- i. Employee development. Subject to approval of the ED, a position may be under-filled for the purposes of providing an employee with the opportunity to develop the skills and qualification necessary to fill the position on a permanent basis. Recruitment for such an opportunity shall be conducted in accordance with the foregoing policy.
 - ii. The length of the underfill and requirements to satisfactorily complete the developmental experience shall be documented prior to the appointment but shall not exceed 24 months from the date of appointment.
 - iii. Upon satisfactorily meeting the underfill conditions, the employee shall be reclassified up to the level of the position.
 - iv. Subject to approval of the ED, a position may be under-filled if, due to organizational changes, the budgeted level of a position is higher than

¹³ ORS 238.082

OPDS's needs require. Recruitment for such an underfill appointment shall be conducted in accordance with the foregoing policy.

VII. Announcements.

- A. Announcements of job vacancies shall be posted on the State's electronic recruitment system and an email sent to all OPDS employees.
- B. Announcements of job vacancies to be filled shall be posted at least 10 calendar days before job applications are due.
- C. Announcements shall specify the class title, salary range, location, type of recruitment, nature of the assigned work qualifications, manner of making application, and notification that a criminal history check may be required. Other pertinent information about the position, such as work hours and special working conditions, may be included in job announcements.
- D. Notice of job transfer opportunities.
 - i. Notices of internal transfer opportunities shall be sent via email to all OPDS employees and issued at least seven calendar days before applications for job transfers are due.
 - ii. Such notices shall specify the class title, salary range, location, type of transfer, nature of the assigned work, qualifications, manner of making application, and notification that a criminal history check will be conducted (if applicable). Other pertinent information about the position, such as work hours and special working conditions, shall be included in the notice.

VIII. Application forms.

- A. Applications for open competitive recruitments shall be submitted electronically as outlined in the job announcement.
- B. Applications for internal recruitment or job transfer shall be submitted in the form prescribed by the hiring manager and as detailed in the email announcing the job opening.
- C. Subject to the discretion of the ED, all applications received in response to a job announcement or notice of job transfer opportunity may remain in effect for up to six months after the closing date in the announcement or notice. Application received in response to job announcements may be used to fill future vacancies in the same or lower class.

- IX. Requests for job transfers or voluntary demotions.
 - A. Job Transfers. An employee may submit a written request to the AA to transfer from the current position to a vacant position with the same class or salary range as the employee's current position. The requesting employee must meet the minimum qualifications and the established screening criteria to be interviewed for the vacancy. Requests for job transfers must be approved by the supervisor and ED.
 - B. Voluntary Demotions. An employee qualified to fill a vacant position with a lower classification or salary range may submit a written request to the AA for voluntary demotion. Requests for voluntary demotions must be approved by the supervisor and ED.
- X. Screening of job applications.
 - A. The process of screening applications for a vacant position shall be fair and impartial and shall relate to the duties and requirements of the vacant position.
 - B. Screening methods shall objectively measure the qualifications of applicants and may include skills testing, employment or personal reference, and internal or external evaluations of applicants' job qualifications, education, and employment history, and comply with controlling law regarding public employers.
- XI. Interview of job applicants.
 - A. The ED, AA, shall select qualified job applicants for an interview based upon the results of the foregoing screening process.
 - B. The ED, AA, and/or a panel of other OPDS employees may conduct the interviews of the qualified job applicants.
 - C. At the discretion of the ED, a qualified applicant may be selected to fill a vacant position without an interview.
- XII. Selection and notification of job applicants.
 - A. The final selection of a job applicant to fill a vacant position shall be approved by the ED or designated AA. OPDS shall notify in writing all job applicants who are not selected to fill a vacant position. In the event OPDS decides not to fill a vacant position, OPDS shall notify all applicants in writing of that decision.
 - B. OPDS shall document its job recruitment, screening, and evaluation of applicants.

- C. OPDS shall confirm its offer of employment to selected job applicants in writing and require those applicants to accept the terms and conditions of the offer of employment in writing. Selected applicants who fail to accept the offer of employment in writing shall be deemed to have declined the offer.

XIII. Criminal records check.

- A. External Applicants. All non-attorney final applicants shall complete a criminal records check prior to a formal offer of employment.
- B. Internal Applicants. All non-attorney employees applying for promotional opportunities shall complete a criminal records check prior to a formal offer for promotion.
- C. Method. Criminal records checks shall be conducted through Oregon State Police, as prescribed by a process established by Oregon State Police.

SECTION 16: Reporting Improper Governmental Conduct

Policy

- I. OPDS is committed to providing employees with an environment that encourages and enables all employees and members of the public to report any known or suspected improper governmental conduct:
 - A. the opportunity to report activities reasonably believed to be mismanagement, gross waste of funds or abuse of authority, substantial and specific danger to public health and safety, or a violation of state or federal law, rule or regulation;
 - B. reports of improper activities are investigated and action taken, if necessary; and
 - C. reporting employees are free from retaliation.
- II. This policy does not replace other opportunities for employees to bring complaints or grievances regarding their employment or work environment, such as rights that may be afforded under any collective bargaining agreement.
- III. This policy applies to all employees, temporary employees and volunteers exempt where collective bargaining language conflicts.
- IV. All employees, temporary employees and volunteers shall be given a copy or location electronically of this policy.

Definitions

Abuse of authority: means the deliberate, wrongful, and seriously improper use or diversion of public resources or the excessive or improper use of a state official's position.

Gross waste of funds: means a deliberate, wrongful, and seriously improper use of public funds for other than their lawful or designated use resulting in significant financial detriment to the state.

Improper governmental conduct: means conduct involving abuse of authority, gross waste of funds, mismanagement, specific danger to public health or safety, or violations of state or federal law, rule, or regulation.

Mismanagement: means serious misconduct having the effect of actually or potentially undermining the agency's ability to fulfill its public mission.

Reasonably believes is evidence: means, in addition to other circumstances bearing on the reasonableness of the belief, that the employee has personal knowledge of facts tending to

establish the violation of law, rule or regulation, or the existence of mismanagement, abuse of authority, gross waste of funds, or substantial and specific danger to public health or safety.

Substantial and specific danger: means a specified risk of serious injury, illness, peril or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.

Procedure

1. Reporting. If an employee, temporary employee or volunteer reasonably believes that they have evidence of improper governmental conduct (whether alleged behaviors of government official or specific practices) they shall report the violation immediately to a state regulatory agency, law enforcement personnel, a manager, HR Manager, or licensed attorney (when seeking legal advice on the alleged violation).
 - a. A complaint may be made orally or in writing.
 - b. Complaints may be submitted anonymously.
 - c. An oral or written complaint should contain the following:
 - i. the names of all parties involved, including witnesses;
 - ii. a specific and detailed description of the suspected or actual violation; and
 - iii. the date and time period in which the violation allegedly occurred.
2. Investigation. The Commission Chair, ED, or the HR Manager, as applicable, will coordinate and conduct or delegate responsibility for the investigations.
 - a. All complaints will be assessed and, if appropriate, a fair investigation will be initiated.
 - b. All parties are expected to cooperate with the investigation.
 - c. An employee who is the subject of an investigation of improper governmental conduct (who may be subject to discipline if the information is substantiated) may have rights under OPDS policy or applicable Collective Bargaining agreement. The investigator, as necessary, will confer with the OPDS HR Manager pertaining to those rights.
 - d. While an investigation of the information is pending, the name of the reporting employee will not be disclosed unless written consent is provided by the employee, unless otherwise required by law.

- e. Remedial action, if necessary, will be taken if improper governmental conduct is substantiated.
- 3. Retaliation. This policy prohibits retaliation against an employee who reports a violation in good faith.
 - a. State officials and employees are prohibited from retaliating, including imposing discipline, against any employee because he or she has, in good faith, reported improper governmental conduct. However, employees may be subject to discipline if the information disclosed by the employee is known by the employee to be false, if the employee discloses the information with reckless disregard for its truth or falsity, or if the information disclosed related to the employee's own improper governmental conduct.
 - b. An employee who believes he or she is the subject of retaliation for reporting improper governmental conduct shall advise their supervisor or the HR Manager. The party receiving the report shall take steps to investigate and address complaints of retaliation.
- 4. Penalties. Conduct in violation of this policy will be addressed.
 - a. Employees, temporary employees, or volunteers engaging in conduct in violation of this policy may be subject to disciplinary action up to and including dismissal.
 - b. Managers or supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including dismissal.
 - c. Any employee who is found to have retaliated against an employee for reporting, in good faith, improper governmental conduct may be subject to disciplinary action up to and including dismissal.
- 5. Specific Reporting Protections and Defenses provided under relevant law.
 - a. No employee shall be prohibited from discussing, in response to an official request, either specifically or generally with any member of the Legislative Assembly, legislative committee staff acting under direction of the Legislative Assembly, any member of the elected governing body of a political subdivision in the state, or any elected auditor of a city, county, or metropolitan service district, the activities of:
 - i. The state or any agency or political subdivision in the state; or
 - ii. Any person authorized to act on behalf of the state or any agency or political subdivision in the state.

- b. No employee shall be disciplined or threatened with discipline for disclosing any information that the employee reasonably believe is evidence of:
 - i. a violation of any federal or state law, rule or regulation by the state, agency or political subdivision;
 - ii. mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of the state, agency or political subdivision, or
 - iii. subject to ORS 659A.212(2), the fact that a person receiving services, benefits or assistance from the State or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest issued by the state of Oregon, any other state, the federal government, or any territory, commonwealth governmental instrumentality of the United States.
- c. No employee shall be required to give notice prior to making any disclosure under Sections (a) and (b). The remedies provided under Sections (a) and (b) are in addition to any remedy provided to an employee under other applicable laws.
- e. An employee's good faith and objectively reasonable belief of a violation of federal, state or local law, rule or regulation by the employer shall be an affirmative defense to a civil or criminal charge related to the disclosure by the employee of lawfully accessed information related to the violation, including information that is exempt from disclosure as provided in ORS 192.501 to 192.505 or by State policy, if the information is provided to:
 - i. a state or federal regulatory agency;
 - ii a law enforcement agency,
 - iii. a manager employed by the State;
 - iv. an attorney licensed to practice law in the state of Oregon if a confidential communication is made in connection with the alleged violation described in Section (e) and in furtherance of the rendition of legal services to the employee that are subject to ORS 40.225.
- f. An employee may not assert the affirmative defense described in Section (e) if the information:
 - i. is disclosed or re-disclosed by the employee or at the employee's direction to a party other than the parties listed in Section (e);

- ii. is stated in a commercial exclusive negotiating agreement with the State, provided that the agreement is not related to the employee's employment with the State, or
 - iii. is stated in a commercial nondisclosure agreement with the State, provided that the agreement is not related to the employee's employment with the State.
- g. The affirmative defense describe in Section (e) is available to an employee who discloses information related to an alleged violation by a coworker or supervisor described in Section (e) if the disclosure relates to the course and scope of employment of the coworker or the supervisor.
- h. The affirmative defense described in Section (e) may not be asserted by an employee who is an attorney or by an employee who is not an attorney but who is employed, retained, supervised or directed by an attorney if the information disclosed pursuant to Section (e) is related to the representation of a client.
- i. Disclosure made under Section (b), (c), and (e) herein are subject to the rules of professional conduct established pursuant to ORS 9.490.
- j. Subject to the rules of professional conduct established pursuant to ORS 9.490, a public employee who is an attorney may report to the Attorney General the employee's knowledge of a violation of federal, state or local law, rule or regulation.
- k. Disclosure of information pursuant to Section (e) does not waive the attorney-client privilege or affect the applicability of any exemption from disclosure of a public record under ORS 192.501 to 192.505.
- l. Notwithstanding Section (e), information protected from disclosure under federal law, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996, (P.L. 104-191), may be disclosed only in accordance with federal law.

APPENDICES

Appendix A

PUBLIC DEFENSE SERVICES COMMISSION OREGON REVISED STATUTES

151.211 Definitions for ORS 151.211 to 151.221. For purposes of ORS 151.211 to 151.221:

- (1) “Bar member” means an individual who is an active member of the Oregon State Bar.
- (2) “Chief Justice” means the Chief Justice of the Supreme Court.
- (3) “Commission” means the Public Defense Services Commission.
- (4) “Director” means the public defense services executive director appointed under ORS 151.216.
- (5) “Office of public defense services” means the office established by the commission under the director to handle the cases assigned and to carry out the administrative policies and procedures for the public defense system. [2001 c.962 §1; 2007 c.71 §43]

Note: 151.211 to 151.225 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 151 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

151.213 Public Defense Services Commission; membership; terms. (1) The Public Defense Services Commission is established in the judicial branch of state government. Except for the appointment or removal of commission members, the commission and Employees of the commission are not subject to the exercise of Administrative Authority and supervision by the Chief Justice of the Supreme Court as the administrative head of the Judicial Department.

(2) The commission consists of seven members appointed by order of the Chief Justice. In addition to the seven appointed members, the Chief Justice serves as a nonvoting, ex officio member. The Chief Justice shall appoint at least two persons who are not bar members, at least one person who is a bar member and who is engaged in criminal defense representation and at least one person who is a former Oregon state prosecutor. Except for the Chief Justice or a senior judge under ORS 1.300, a member may not serve concurrently as a judge, a prosecuting attorney or an Employee of a law enforcement agency. A person who is primarily engaged in providing public defense services may not serve as a member of the commission.

(3) The term of a member is four years beginning on the effective date of the order of the Chief Justice appointing the member. A member is eligible for reappointment if qualified for membership at the time of reappointment. A member may be removed from the commission by order of the Chief Justice. If a vacancy occurs for any cause before the expiration of the term of a

member, the Chief Justice shall make an appointment to become immediately effective for the unexpired term.

(4) A chairperson and a vice chairperson shall be appointed by order of the Chief Justice every two years with such functions as the commission may determine. A member is eligible for reappointment as chairperson or vice chairperson.

(5) A majority of the voting members constitutes a quorum for the transaction of business.

(6) A member of the commission is not entitled to compensation for services as a member, but is entitled to expenses as provided in ORS 292.495 (2). [2001 c.962 §2; 2003 c.449 §15]

Note: See note under 151.211.

151.216 Duties. (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.

(b) Establish an office of public defense services and appoint a public defense services executive director who serves at the pleasure of the commission.

(c) Submit the budget of the commission and the office of public defense services to the Legislative Assembly after the budget is submitted to the commission by the director and approved by the commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall present the budget to the Legislative Assembly.

(d) Review and approve any public defense services contract negotiated by the director before the contract can become effective.

(e) Adopt a compensation plan, classification system and personnel plan for the office of public defense services that are commensurate with other state agencies.

(f) Adopt policies, procedures, standards and guidelines regarding:

(A) The determination of financial eligibility of persons entitled to be represented by appointed counsel at state expense;

(B) The appointment of counsel;

(C) The fair compensation of counsel appointed to represent a person financially eligible for appointed counsel at state expense;

(D) Appointed counsel compensation disputes;

(E) Any other costs associated with the representation of a person by appointed counsel in the state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590, 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209, 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any other provision of law that expressly provides for payment of such compensation, costs or expenses by the commission;

(F) Professional qualifications for counsel appointed to represent public defense clients;

(G) Performance for legal representation;

(H) The contracting of public defense services;

(I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses only if in-state expert witnesses are not available or are more expensive than out-of-state expert witnesses; and

(J) Any other matters necessary to carry out the duties of the commission.

(g) Establish a peer review system for the approval of non-routine fees and expenses incurred in cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The review shall be conducted by a panel of attorneys who practice in the area of criminal defense.

(h) Establish a complaint process that allows district attorneys, criminal defense counsel and the public to file complaints concerning the payment from public funds of nonroutine fees and expenses incurred in cases.

(i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services Account established by ORS 151.225 for the costs of personnel and other costs associated with location of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court Administrator.

(2) Policies, procedures, standards and guidelines adopted by the commission supersede any conflicting rules, policies or procedures of the Public Defender Committee, State Court Administrator, circuit courts, the Court of Appeals, the Supreme Court, the Psychiatric Security Review Board and the Oregon Health Authority related to the exercise of the commission's administrative responsibilities under this section and transferred duties, functions and powers as they occur.

(3) The commission may accept gifts, grants or contributions from any source, whether public or private. However, the commission may not accept a gift, grant or contribution if acceptance would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the Public Defense Services Account established by ORS 151.225 and expended for the purposes for which given or granted.

(4) The commission may not:

(a) Make any decision regarding the handling of any individual case;

(b) Have access to any case file; or

(c) Interfere with the director or any member of the staff of the director in carrying out professional duties involving the legal representation of public defense clients. [2001 c.962 §§3,106; 2003 c.449 §§1,2,42; 2005 c.843 §23; 2011 c.708 §20; 2012 c.107 §42]

Note: See note under 151.211.

151.219 Public defense services executive director; duties. (1) The public defense services executive director shall:

(a) Recommend to the Public Defense Services Commission how to establish and maintain, in a cost-effective manner, the delivery of legal services to persons entitled to, and financially eligible for, appointed counsel at state expense under Oregon statutes, the Oregon Constitution, the United States Constitution and consistent with Oregon and national standards of justice.

(b) Implement and ensure compliance with contracts, policies, procedures, standards and guidelines adopted by the commission or required by statute.

(c) Prepare and submit to the commission for its approval the biennial budget of the commission and the office of public defense services.

(d) Negotiate contracts, as appropriate, for providing legal services to persons financially eligible for appointed counsel at state expense. No contract so negotiated is binding or enforceable until the contract has been reviewed and approved by the commission as provided in ORS 151.216.

(e) Employ personnel or contract for services as necessary to carry out the responsibilities of the director and the office of public defense services.

(f) Supervise the personnel, operation and activities of the office of public defense services.

(g) Provide services, facilities and materials necessary for the performance of the duties, functions and powers of the Public Defense Services Commission.

(h) Pay the expenses of the commission and the office of public defense services.

(i) Prepare and submit to the commission an annual report of the activities of the office of public defense services.

(j) Prepare and submit to the Legislative Assembly a biennial report on the activities of the office of public defense services.

(k) Provide for legal representation, advice and consultation for the commission, its members, the director and staff of the office of public defense services who require such services or who are named as defendants in lawsuits arising from their duties, functions and responsibilities. If requested by the director, the Attorney General may also provide for legal representation, advice and consultation for the commission, its members, the director and staff of the office of public defense services in litigation.

(2) The director may designate persons as representatives of the director for the purposes of determining and paying bills submitted to the office of public defense services and determining preauthorization for incurring fees and expenses under ORS 135.055. [2001 c.962 §§4,106a; 2003 c.449 §§3,4]

Note: See note under 151.211

Appendix B



ORS 260.432 Quick Reference— Restrictions on Political Campaigning for Public Employees

Generally, ORS 260.432 states that a public employee* may not, while on the job during working hours, promote or oppose election petitions, candidates, political committee or ballot measures. Additionally, no person (including elected officials) may require a public employee (at any time) to do so.

*A “public employee” includes public officials who are not elected, whether they are paid or unpaid (including appointed boards and commissions).

As used in this Quick Reference

We use the phrase “advocate(s) a political position” to mean—

promote or oppose an initiative, referendum or recall petition, candidate, political committee or ballot measure. The term “impartial” means equitable, fair, unbiased and dispassionate.

See the Secretary of State’s detailed manual on ORS 260.432 for specific factors to assist in ensuring impartiality in communications about ballot measures. It is posted on the website under Election Laws, Rules and Publications, Manuals and Tutorials.

For more detailed information about ORS 260.432 and information about other election laws, contact:

Elections Division	phone	503-986-1518
Secretary of State	fax	503-373-7414
255 Capitol St NE, Suite	tty	1-800-735-2900
Salem, OR 97310	web	www.oregonvotes.gov

Prohibited Activities

A public employee, while on the job during work hours may not:

- prepare or distribute written material, post website information, transmit emails or make a presentation that advocates a political position
- collect funds, prepare filing forms or correspondence on behalf of candidates or political committees
- produce or distribute a news release or letter announcing an elected official’s candidacy for re-election (except for an elections official doing so as an official duty) or presenting an elected official’s political position
- make outgoing calls to schedule or organize campaign events or other political activity on behalf of an elected official or political committee (however, a scheduler may, as part of official duties, take incoming calls about the official’s availability and add an event to the schedule)
- grant unequal access to public facilities to candidates or political committees
- direct other public employees to participate in political activities, when in the role of a supervisor
- draft, type, format or edit a governing body’s resolution that advocates a political position (except to conform the resolution to a standard format)
- prepare or give recommendations to the governing body urging which way to vote on such a resolution

- sign such a resolution, except if the signature is only ministerial and clearly included to attest the board took the vote
- announce the governing body's position on such a resolution to the media
- include the governing body's position or vote on such a resolution in a jurisdiction's newsletter or other publication

A public employee who provides voter registration assistance under the federal National Voter Registration Act (NVRA) must not, when performing voter registration services, influence a client's political choices. This means no display of political preferences, including a restriction that no political buttons may be worn. ORS 247.208(3)

Allowable Activities

A public employee, while on the job during working hours may:

- prepare and distribute impartial written material or make an impartial presentation that discusses election subjects (using the guidelines provided in the Secretary of State's detailed manual on ORS 260.432.)

The Secretary of State's Elections Division is also available for an advisory review of draft material about ballot measures produced by government agencies.

- perform standard job duties, such as taking minutes at a public meeting, maintaining public records, opening mail, inserting a proposed resolution into a board agenda packet, etc.
 - impartially advise employees about possible effects of a measure, but not threaten them with financial loss to vote a particular way
 - address election-related issues while on the job, in a factual and impartial manner, if such activity is legitimately within scope of employee's normal duties
 - as staff of an elected official, handle incoming calls about the official's availability for political events
 - prepare neutral, factual information for a governing body to use in determining what position to take on an issue (planning stage of a governing body's proposed issue before certified as a measure to a ballot is not subject to ORS 260.432)
 - in a clerical manner, incorporate amendments into a finalized version of a governing body's resolution on an issue respond to public records request for information, even if the material advocates a political position
 - wear political buttons subject to applicable employer policies unless the public employee is providing voter registration services under NVRA, where additional restrictions apply - see note on previous page about ORS 247.208(3)
- A public employee, on their own, off duty time, may send letters to the editor that advocate a political position and may participate in any other lawful political activity.

It is advised that a salaried public employee keep records when appropriate in order to verify any such political activity that occurs while off duty.

Prohibited and Allowable Activities for Elected Officials*

*includes a person appointed to fill a vacancy in an elective public office

Elected officials may:

- advocate a political position at any time. Elected officials are not considered a "public employee" for purposes of ORS 260.432. ORS 260.432(4)(a).
- vote with the other elected officials of a governing body (such as a school board, city council or county commission)

to support or oppose a measure, and publicly discuss such a vote—but must not use the public employee staff time to assist in this, except for ministerial functions

→ perform campaign activity at any time, however must take caution not to involve any public employee's work time to do so

Elected officials may not:

→ in the role of a supervisor, request a public employee—whether the public employee is on or off duty—to perform any political activity A request made by a person in a position of supervisor or superior is viewed as a command for purposes of this election law.

→ have an opinion piece or letter advocating a political position published in a jurisdiction's newsletter or other publication produced or distributed by public employees

Appendix C

OPDS Guide for Leave-Related Questions Regarding Temporary Interruption of Employment

The Office of Public Defense Services follows the Court of Appeals (COA) and Office of the State Court Administrator (OSCA) when deciding whether to close due to inclement weather. If the COA is opening late or closed altogether, you may assume that the same holds true for our office. OPDS will make reasonable efforts to notify employees of closures in a timely manner through email, Flash Alert, and the Court Administrator's recorded message. The final responsibility for determining whether or not the office is open or closed lies with each employee.

The Judicial Department has a dedicated telephone number for messages regarding closure of the COA and the State Court Administrators Office. The telephone number is: 503-986-0287. Closure information is usually posted between 6 and 6:30 am. The system can handle only about 12 calls at a time, so a caller may get a busy signal on the first try.

You may also find this information on the Court's main webpage ((<http://courts.oregon.gov/>) in a red box.

Court closure information is also posted at: <https://www.flashalert.net/>. (Click "Portland" area on the map or navigate through the "View Local News" drop down menu, - "Courts/District Attorneys," - "Ore. Appellate Cts., Tax Ct. & State Court Admin. Office").

Type of closure	Scenario	FLSA Exempt	FLSA Non-exempt
<p>Full Day</p> <p>COA & OSCA announce closure for the entire day.</p>	Employee does not report to work.	<ul style="list-style-type: none"> • If able to telecommute, continue to work regular schedule and record as regular time (RG). • If unable to telecommute, record time as miscellaneous paid leave (MPL). 	Record time as miscellaneous paid leave (MPL).
	Employee reports to work at the beginning of their work shift and works the entire day.	Record the entire day as regular time (RG).	Employee may work during closure only with supervisor approval. If approved, record the entire day as regular time (RG).
	Employee reports to work at the beginning of their work shift, works a few hours, and goes home.	<ul style="list-style-type: none"> • Record hours in the office as regular time (RG). • If able to telecommute, continue working at home and record as regular time (RG). • If unable to telecommute, record time as miscellaneous paid leave (MPL). 	Employee may only work during an office closure with supervisor approval. If approved, record hours worked as regular time (RG); remaining hours are recorded as miscellaneous paid leave (MPL).
	Employee is on sick leave or on a previously approved leave when office closure occurs.	Record accrued paid leave for entire day.	Record accrued paid leave for entire day.

Type of closure	Scenario	FLSA Exempt	FLSA Non-exempt
	Employee attends a business-related conference, training or other business-related event when an office closure occurs. The event is not at the location of the office closure.	Record hours worked as regular time (RG).	Record hours worked as regular time (RG).
Delayed Opening COA & OSCA announce that they will open at 10am	Employee reports to work at 10:00 a.m.	<ul style="list-style-type: none"> • Record hours in the office at regular time (RG). • If able to telecommute during closure, work and record as regular time (RG). • If unable to telecommute during closure, record time as miscellaneous paid leave (MPL). 	Record time between beginning of shift and office opening as miscellaneous paid leave (MPL).
	Employee reports to work at regular start time (8am or before).	Record time worked before opening as regular time (RG).	Record time worked before opening as regular time (RG).

Type of closure	Scenario	FLSA Exempt	FLSA Non-exempt
	Employee does not report to work the entire day	<ul style="list-style-type: none"> • If able to telecommute, work at home and record as regular time (RG). • If unable to telecommute during closure, record time before office opened as miscellaneous paid leave (MPL) and remaining time as accrued paid leave or leave without pay. 	Record time between beginning of shift and office opening as miscellaneous paid leave (MPL). Record remainder of time as accrued paid leave or leave without pay.
Early Closure	Employee leaves at the time of closure.	<ul style="list-style-type: none"> • Record time between beginning of shift and office closure as regular time (RG). • If able to telecommute during closure, work and record as regular time (RG). • If unable to telecommute during closure, record time during closure as miscellaneous paid leave (MPL). 	Record time between beginning of shift and office closure as regular time (RG). Record remaining time as miscellaneous paid leave (MPL).

Type of closure	Scenario	FLSA Exempt	FLSA Non-exempt
	Employee leaves prior to closure.	<ul style="list-style-type: none"> Record time between beginning of shift and closure as regular time (RG). If able to telecommute, work remaining hours from home and record as regular time (RG). If unable to telecommute, record hours of closure as miscellaneous paid leave (MPL), and for remaining time use accrued paid leave or leave without pay. 	Record time between start of shift and closure as accrued paid leave or leave without pay; record miscellaneous paid leave (MPL) for the time after closure.
	Employee does not report to work the entire day	<ul style="list-style-type: none"> If able to telecommute, work at home and record as regular time (RG). If unable to telecommute during closure, record time after office closed as miscellaneous paid leave (MPL) and remaining time as accrued paid leave or leave without pay. 	Record accrued paid leave or leave without pay for time prior to closure, and miscellaneous paid leave (MPL) for the time after closure.

Type of closure	Scenario	FLSA Exempt	FLSA Non-exempt
Rules that apply in any type of closure	Employee would normally be able to telecommute from home, but is unable to work from home due to conditions (e.g. power outage, child care or school closures) or is given supervisory approval to discontinue work.	<ul style="list-style-type: none"> Record time during closure as miscellaneous paid leave (MPL) Record time when office is open as accrued paid leave. 	Not applicable
	16 hours of Miscellaneous Paid Leave (MPL) has been exhausted.	Exempt employees are not required to charge to accrued paid leave or leave without pay for the time that is in excess of 16 hours, but less than one full work week. Employee records hours as regular (RG) time.	Employees will have the option of charging the time in excess of 16 hours to accrued paid leave or leave without pay.

Attachment 3



Oregon

Public Defense Services Commission

Office of Public Defense Services

1175 Court Street NE
Salem, Oregon 97301-4030
Telephone: (503) 378-2509
Fax: (503) 551-3722
www.oregon.gov/opds

Date: December 19, 2019

To: Public Defense Services Commission
Lane Borg, Director

From: Wendy Heckman, Human Resources Manager

RE: 2019-2021 Employee Compensation Plan Changes

Motion: Move to approve compensation and classification plan changes for the 2019-2021 biennium.

Overview of Issue:

The PDSC is required by ORS 151.216(1)(e) to establish a compensation plan that is commensurate with other state agencies. (1) Included below are summaries of compensation plan adjustments adopted by the Executive Branch and the Oregon Judicial Department, and a recommendation for 2019-2021 OPDS employee compensation plan adjustments. (2) OPDS is also requesting a modification in classifications maintained by the agency.

(1) Compensation Plan Changes:

Executive Branch

Employees represented by AFSCME and SEIU, as well as those in management service, executive service, and unrepresented employees, will receive the following adjustments to compensation for the 2019-2021 biennium:

- 2.15% cost of living increase on July 1, 2019
- New top step added to each classification on July 1, 2020
- 3% cost of living increase on October 1, 2020

Oregon Judicial Department

OJD is guided by statute to maintain an employee salary plan equitably applied and in "reasonable conformity" with the general salary structure of the executive branch. The following is a summary of the 2019-2021 compensation plan adjustments authorized by the Chief Justice for OJD employees.

- 2.6% cost of living increase on October 1, 2019*.
- New top step added to each classification on July 1, 2020.

- 2.6% cost of living increase on October 1, 2020*.

*The combination of the COLA adjustments is consistent with the COLA level amount the Governor announced for management and unrepresented employees and for SEIU/AFSME represented employees in executive branch. OJD staff will receive approximately the same level of COLA increases, just implemented in a slightly different way.

Office of Public Defense Services

Recommend attorneys represented by AFSCME, as well as employees in management service and unrepresented employees, receive the following adjustments to compensation for the 2019-2021 biennium.

- 2.15% cost of living increase on July 1, 2019
- New top step added to each classification on July 1, 2020
- 3% cost of living increase on October 1, 2020
- Adoption of the DOJ compensation plan for attorney salaries effective December 1, 2020.

As approved by the Commission on June 19, 2019, Management classifications will be adjusted for compression and parity effective December 1, 2020.

Legal Support bargaining is ongoing at this time. Implementation of salary increases for this group will be reported at a later date.

(2) Classification Changes:

After review and implementation of the agency's classifications, the agency has determined the following classifications are no longer applicable:

- Business Analyst 2-4 (This series is replaced with the Operations and Policy Analyst and the Program Analyst Series)
- Investigator
- Assistant Chief Defender

As a result of bargaining negotiations with AFSCME, to successfully implement the DOJ compensation plan to reach parity, OPDS will be retaining two of the three attorney classifications effective December 1, 2020, removing the following classification from the compensation plan:

- Deputy Defender 2

Funding:

During the 2019 Legislative Session, the Legislature passed Senate Bill 5050, which set

aside a Special Purpose Appropriation to the Emergency Board for state employee compensation changes. The distribution of these funds will be calculated at a later date by the Department of Administrative Services and then distributed to state agencies. If the amount distributed to the agency is less than the amount required to fund the COLA increases, the agency will need to fund the difference using existing operating funds. OPDS expects the recommended adjustments to be funded through its portion of the Special Purpose Appropriation.

Additionally, under SB 5532 the agency was provided \$603,237 for employee compensation adjustments in the Appellate Division. The aim of these funds was to move toward parity, specifically as it related to attorney compensation between the Public Defense Services Commission and the Department of Justice.

Recommendation:

OPDS recommends the PDSC approve a compensation and classification package with the following adjustments to employee compensation and classification:

Compensation:

- 2.15% cost of living increase on July 1, 2019
- New top step added to each classification on July 1, 2020
- 3% cost of living increase on October 1, 2020
- Adoption of the DOJ compensation plan for attorney salaries effective December 1, 2020.

Classification:

- Removal of the Business Analyst 2-4 classification
- Removal of the Investigator classification
- Removal of the Assistant Chief Defender classification
- Removal of the Deputy Defender 2 classification

Attachment 4



Oregon

Office of Public Defense Services

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www.oregon.gov/opds

To: Public Defense Services Commission

From: Stephanie Petersen, Chief Financial Officer

Date: December 12, 2019

Subject: Investigator Rate Inquiry

The Commission asked that OPDS report back with cost estimates on additional options for investigator compensation rates. The Commission specifically requested:

- 1.) Increase non-aggravated murder cases to \$40 per hour.
- 2.) Increase non-aggravated murder cases to \$45 per hour and aggravated murder cases to \$50 per hour.

Additionally, the investigators requested a third option to be costed:

- 3.) Leave misdemeanor cases at the current \$34 per hour rate, pay felony cases at \$45 per hour, and increase the bilingual differential from \$5 to \$10 per hour.

The biennial costs for each option is:

- 1.) \$1,707,889
- 2.) \$3,391,119
- 3.) \$2,690,353

Additional funding from the legislature would be required for any additional rate increases the Commission might consider.

Attachment 5a



Oregon

Office of Public Defense Services

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Salem, Oregon 97301

Telephone (503) 378-3349

Fax (503) 378-4462

www.oregon.gov/opds

To: Members, Public Defense Services Commission
Lane Borg, Executive Director

From: Eric Deitrick, General Counsel

Re: PDSC Attorney Qualification Standards

Date: December 19, 2019

Background: The PDSC has adopted qualification standards regarding eligibility to provide legal services in court appointed cases. Those standards rely primarily on experience, although some case types have requisites regarding training and/or professional recommendations.

In 2019, Oregon enacted SB 1008, which significantly impacts the intersection of juveniles and major felony charges. Currently, when a 15, 16, or 17 year old engages in behavior consistent with ORS 137.707, the state may file criminal charges directly in adult court. On January 1, 2020, those charges must now be filed in juvenile court and the state will have the burden of proof regarding the waiver of the case into adult court. For these cases, court-appointed counsel would need to be well-versed in both juvenile delinquency and adult criminal defense to provide their client with adequate counsel.

Additionally, the qualification standards to provide legal services in Termination of Parental Rights (“TPR”) cases need modification. In 2016, the standards had been modified to only allow representation if (1) the person has had juvenile dependency qualifications for at least six months and (2) the person is also qualified to handle major felony cases in adult or juvenile courts. This has presented qualification challenges, as many juvenile practitioners handle solely dependency cases. This is particularly true for attorneys in PCRP counties, which will be expanding into Multnomah County effective July 1, 2020.

This update was presented to the PDSC at the October 25, 2019 and November 14, 2019 PDSC meetings.

Agency Recommendation: OPDS proposes modifications to the existing qualification standards, in light of the policy changes stated above and comments from the PDSC and providers at the last two PDSC meetings.

The proposed changes establish three ways to become qualified for juvenile major felony cases in which waiver can be sought. First, an attorney qualifies if they are qualified to handle both juvenile and adult major felony cases. Second, an attorney qualifies if they are qualified for either juvenile or adult major felony cases, and they have co-counseled one juvenile major felony through an adjudicated waiver hearing. Third, an attorney can become qualified by satisfying a subjective standard that relies upon letters of recommendation from lawyers and judges. Additionally, the attorney must satisfy a factor relating to the unique nature of these case types. Qualifications for co-counsel are also discussed.

Additionally, the proposed changes amend the requirements for an attorney to become qualified to handle TPR cases. An attorney can qualify if they have six months of dependency experience and have co-counseled a TPR case. As with “waiver” cases, there is a subjective approach that relies upon letters of recommendation. The PDSC’s recommendation to remove language relating to criminal and juvenile delinquency qualifications was incorporated.

Proposed Motion: I move to adopt the suggested modifications to the PDSC’s qualification standards regarding eligibility to provide legal services in court appointed cases.

Attachment 5b

**PUBLIC DEFENSE SERVICES COMMISSION
QUALIFICATION STANDARDS
FOR COURT-APPOINTED COUNSEL TO REPRESENT
FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE**

Revised December 19, 2019

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EXHIBIT A: PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION

**PUBLIC DEFENSE SERVICES COMMISSION
QUALIFICATION STANDARDS FOR COURT-APPOINTED COUNSEL
TO REPRESENT FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE**

The following standards are adopted by the Public Defense Services Commission pursuant to ORS 151.216(1)(f)(F).

STANDARD I: OBJECTIVE

The objective of these standards is to ensure the provision of competent legal representation to all financially eligible persons entitled to court-appointed counsel by state or federal constitution or statute.

STANDARD II: ATTORNEY CASELOADS

Attorneys appointed to represent financially eligible persons at state expense must provide competent representation to each client. Neither defender organizations nor assigned counsel shall accept caseloads that, by reason of their size or complexity, interfere with providing competent representation to each client or lead to the breach of professional obligations.

STANDARD III: GENERAL QUALIFICATIONS TO SERVE AS APPOINTED COUNSEL FOR FINANCIALLY ELIGIBLE PERSONS

Subject to the provisions of Standard V, the appointing authority shall appoint only those attorneys who:

1. Are active members of the Oregon State Bar or are attorneys of the highest court of record in any other state or country who will appear under ORS 9.241;
2. Agree to adhere to Standard II;
3. Either:
 - A. Meet the minimum qualifications specified in Standard IV for the applicable case type; or
 - B. Possess significant experience and skill equivalent to or exceeding the minimum qualifications specified in Standard IV, and who demonstrate to the satisfaction of the Office of Public Defense Services that the attorney will provide competent representation; or
 - C. Work under the supervision of an attorney who does have the requisite qualifications and who describes to the satisfaction of the Office of Public Defense Services how they will provide oversight of attorney performance in order to ensure competent representation.

3. Have adequate support staff and regularly monitored email and telephone systems to ensure reasonable and timely personal contact between attorney and client, and between the attorney and others involved with the attorney's public defense work;
4. Have an office or other regularly available and accessible private meeting space other than at a courthouse suitable for confidential client conferences; and
5. Have read, understood and agree to observe applicable provisions of the current edition of the Oregon State Bar's Performance Standards for Counsel in Criminal, Delinquency, Dependency, Civil Commitment, and Post-Conviction Relief Cases, available at www.osbar.org.

STANDARD IV: MINIMUM QUALIFICATIONS BY CASE TYPE

1. Misdemeanor Cases, Contempt, and Misdemeanor Probation Violation Proceedings in Trial Courts

The minimum qualifications for appointment to misdemeanor and contempt cases and misdemeanor probation violation proceedings require that an attorney:

- A. Has reviewed and is familiar with the current version of the ABA Standards for Criminal Justice relating to representation in criminal cases; the Oregon Rules of Professional Conduct; the Criminal, Vehicle and Evidence Codes of Oregon; the criminal drug offenses, and other crimes outside the Criminal Code; the Uniform Trial Court Rules; and Oregon State Bar, Criminal Law (current version); and
- B. Satisfies at least one of the following:
 - a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of a public defender office, a district attorney office, or attorney in private practice in criminal cases; has undertaken such representation for at least six months; and can present a letter from the person's immediate supervisor certifying the person's knowledge of applicable criminal procedure and sentencing alternatives;
 - b. Has observed five complete trials of criminal cases that were tried to a jury;
 - c. Has served as counsel or co-counsel in at least two criminal cases that were tried to a jury;
 - d. Has served as co-counsel in at least five criminal cases. Such service shall have included attendance at court appearances and client interviews in each case; or
 - e. Has served as a judicial clerk for at least six months in a court that regularly conducts criminal trials;

2. Lesser Felony Cases and Felony Probation Violation Proceedings in Trial Courts

Lesser felony cases include all felony drug cases and all Class C felonies other than sexual offenses.

The minimum qualifications for appointment to lesser felony cases and felony probation violation proceedings require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 1;
- B. Has met the qualifications in Standard IV, section 1 for at least nine months;
- C. Has served as counsel or as co-counsel in two criminal cases that were tried to a jury; and
- D. In at least one felony case tried to a jury, has served as co-counsel with an attorney who has previously tried felony cases and is otherwise qualified to try felony cases under these standards.

3. Major Felony Cases in Trial Courts

Major felony cases include all A and B felonies other than drug cases, all felony sex offenses, and all homicides other than murder and capital murder cases.

The minimum qualifications for appointment to major felony cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 2; and
- B. Has met the qualifications in Standard IV, section 2 for at least nine months and has had at least nine months experience representing clients in lesser felony cases.

4. Murder Cases in Trial Courts

- A. *Lead Counsel.* The minimum qualifications for appointment as lead counsel in murder cases, not including capital murder, require that an attorney:
 - a. Meets the qualifications specified in Standard IV, section 3;
 - b. Has met the qualifications in Standard IV, section 3 for at least three years;
 - c. Has demonstrated to persons with direct knowledge of his or her practice a high level of learning, scholarship, training, experience, and ability to provide competent representation to defendants charged with a crime for which the most serious penalties can be imposed, including handling cases involving co-defendants, a significant number of witnesses, and cases involving suppression issues, expert witnesses, mental state issues, and scientific evidence; and
 - d. Has acted as lead counsel or co-counsel in at least five major felonies tried to a jury, which include at least one homicide case that was tried to a jury.

- B. *Co-counsel.* Co-counsel in murder cases must meet the qualifications in Standard IV, section 4.A, subparagraphs a, b, and c.

5. **Capital Murder Cases in Trial Courts**

- A. *Lead Counsel.* The minimum qualifications for appointment as lead counsel in capital murder cases require that an attorney:
- a. Has reviewed and agrees to fulfill the current version of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, and the Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases;
 - b. Meets the qualifications specified in Standard IV, section 4.A;
 - c. Has represented clients in major felony cases for at least five years;
 - d. Has acted as lead counsel or co-counsel in at least one murder case that was tried to a jury;
 - e. Has attended within the last two years at least 24 hours of specialized training on in the management, preparation, and presentation of capital cases through an established training program awarding CLE credits;
 - f. Has demonstrated to persons with direct knowledge of his or her practice:
 - (1) A commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases;
 - (2) Substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;
 - (3) Skill in the management and conduct of complex negotiations and litigation;
 - (4) Skill in legal research, analysis, and the drafting of litigation documents;
 - (5) Skill in oral advocacy;
 - (6) Skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
 - (7) Skill in the investigation, preparation, and presentation of evidence bearing upon mental status;
 - (8) Skill in the investigation, preparation, and presentation of mitigating evidence;

- (9) Skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements; and
- g. On request, can demonstrate all of the above by:
 - (1) A written statement by the attorney explaining why the attorney believes that he or she has the qualifications required to handle a capital murder case; and
 - (2) Written statements from those with direct knowledge of the attorney's practice, declaring that they believe that the attorney should be allowed to defend capital murder cases and explaining why the attorney has the qualities required. Written statements must include at least five letters from persons in at least two of the following three groups:
 - i. Judges before whom the attorney has appeared;
 - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; or
 - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
- B. *Co-counsel.* Co-counsel in capital murder cases must meet the qualifications in Standard IV, section 5.A, subparagraphs a, b, c, e, f, and g.
- C. *Procedure for Establishing Equivalent Skill And Experience In Capital Murder Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial experience or extensive civil litigation experience meets the minimum qualifications for appointment as lead or co-counsel, if the attorney clearly demonstrates that the attorney will provide competent representation in capital cases. For qualification under this paragraph, attorneys must have either:
 - a. Specialized training in the defense of persons accused of capital crimes; or
 - b. The availability of ongoing consultation support from other capital murder qualified attorney(s).
- D. *Case/load.* An attorney shall not handle more than two capital cases at the same time without prior authorization from the Office of Public Defense Services.

6. **Civil Commitment Proceedings Under ORS Chapters 426 and 427 in Trial Courts**

The minimum qualifications for appointment in civil commitment proceedings under ORS Chapters 426 and 427 require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 2;

- B. Has handled at least three civil, juvenile or criminal cases in which a psychiatric or psychological expert was consulted by the attorney and the use of psychiatric or psychological evidence was discussed with the client;
- C. Has knowledge of available alternatives to institutional commitment;
- D. Has knowledge of the statutes, case law, standards, and procedures relating to the involuntary commitment of the mentally ill and developmentally disabled; and,
- E. Satisfies one of the following:
 - a. Has served as co-counsel in two civil commitment cases that have been submitted to a judge for determination; or
 - b. Has observed five civil commitment hearings that have been submitted to a judge for determination.

7. **Juvenile Cases in Trial Courts, Including Delinquency, Waiver Proceedings, Neglect, Abuse, Other Dependency Cases, Status Offenses and Termination of Parental Rights**

The minimum qualifications for appointment to juvenile cases, under ORS Chapter 419, are as follows:

- A. Juvenile Delinquency Cases in Trial Courts including status offense cases and waiver proceedings
 - a. Misdemeanor, misdemeanor probation violation, and status offense cases; Meets the qualifications for appointment to misdemeanor cases as specified in Standard IV, section 1, and satisfies at least one of the following:
 - (1) Has served as counsel or co-counsel counsel in at least two juvenile delinquency cases adjudicated after a contested hearing before a judicial officer; or
 - (2) Has observed at least five juvenile delinquency cases adjudicated after a contested hearing before a judicial officer.
 - b. Lesser felony and lesser felony probation violation cases. Lesser felony cases are defined in Standard IV, section 2:
 - (1) Meets the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a);
 - (2) Has met the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a) for at least nine months;
 - (3) Has served as counsel, co-counsel, or associate counsel in two juvenile delinquency cases adjudicated after a contested hearing before a judicial

officer;

- (4) In at least one juvenile felony case adjudicated after a contested hearing before a judicial officer has served as co-counsel or associate counsel with an attorney who has previously tried juvenile felony cases; and
 - (5) On request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle lesser felony cases involving the potential for commitment to a youth correctional facility until age 25.
- c. Major felony and major felony probation violations. Major felony cases are defined in Standard IV, section 3:
 - (1) Meets the qualifications for appointment to juvenile delinquency lesser felony cases as specified in Standard IV, section 7A (b);
 - (2) Has met the qualifications for appointment to juvenile delinquency lesser felony cases as specified in Standard IV, section 7A (b) for at least nine months and has had at least nine months experience representing clients in lesser felony cases; and
 - (3) On request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle major felony cases involving the potential for commitment to a youth correctional facility until age 25.
- d. Murder cases:
 - (1) Meets the qualifications for appointment to murder cases in trial courts as specified in Standard IV, section 4(A); and
 - (2) Has met the qualifications for appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c) for at least three years.
- e. **Waiver proceedings (primary counsel):**
 - (1) **Meets the qualifications for appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c) and criminal major felony cases as specified by Standard IV, section 1(3). Where the underlying offense is murder the attorney must meet the qualifications for juvenile murder cases as specified in Standard IV, section 7A(d) and criminal murder cases as required by Standard IV, section 1(4); or**

- (2) Meets the qualifications for either (a) appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c), or criminal major felony cases as specified by Standard IV, section 1(3). Additionally, the attorney has served as co-counsel in one juvenile delinquency major felony case that included an adjudicated waiver hearing. Where the underlying offense is murder the attorney must meet the qualifications for either juvenile murder cases as specified in Standard IV, section 7A(d), or criminal murder cases as required by Standard IV, section 1(4); or**
- (3) Upon request, can present a showing of expertise and competence in the area of juvenile and criminal trial practice by submitting at least three letters of reference from other lawyers, one of which must be a judge the attorney has appeared before. The letters must explain why the attorney has the requisite experience and competence to handle major felony cases involving the potential for commitment to a youth correctional facility until age 25 as well as the potential for adult criminal court consequences.**
- (4) In addition to either subsection (1), (2), or (3), the attorney must also satisfy one of the following:**

 - i. Has demonstrated a skillful understanding of juvenile law, criminal law, the interplay between the two, and is able to advise the client of all outcomes and consequences of the waiver hearing;**
 - ii. Has demonstrated an understanding of child and adolescent brain development;**
 - iii. Has demonstrated an understanding of working with mitigators as part of the defense team; or**
 - iv. Can certify participation in OPDS approved training specifically related to juvenile waiver hearing preparation and litigation.**

f. Waiver proceedings (co-counsel):

- (1) Meets the qualifications for either (a) appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c), or criminal major felony cases as specified by Standard IV, section 1(3). Where the underlying offense is murder the attorney must meet the qualifications for either juvenile murder cases as specified in Standard IV, section 7A(d), or criminal murder cases as required by Standard IV, section 1(4); or**
- (2) Upon request, can present a showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle major felony cases involving the potential for commitment**

to a youth correctional facility until age 25 as well as the potential for adult criminal court consequences.

B. Juvenile Dependency Cases in Trial Courts

Meets the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a) or has had equivalent civil or criminal experience involving complicated child-custody issues and satisfies at least one of the following:

- a. Has served as counsel, co-counsel or associate counsel in at least two dependency cases adjudicated before a judge; or
- b. Has observed at least five dependency cases adjudicated before a judge.

C. Termination of Parental Rights Cases in Trial Courts

- a. Meets the qualifications for appointment to juvenile dependency cases as specified in Standard IV, section 7B for at least six months or has had equivalent experience, civil or criminal, involving complicated child-custody issues, and
 - (1) **Has served as co-counsel or associate counsel in at least one termination of parental rights trial that resulted in an adjudication; or**
 - (2) **Upon request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle trials resulting in the termination of parental rights.**

8. **Appeals in Misdemeanor Cases, Misdemeanor Probation Violations Proceedings, and Contempt Proceedings**

The minimum qualifications for appointment in appeals in misdemeanor cases, misdemeanor probation violation proceedings, and contempt proceedings require that an attorney:

A. Has reviewed and is familiar with:

- a. ORS 138.005 - 138.504, ORS 33.015 – 33.155, and ORS Chapter 19;
- b. Oregon State Bar, Criminal Law (current edition);
- c. The Oregon Rules of Appellate Procedure;
- d. Oregon State Bar, Appeal and Review (current edition); and

B. Meets at least one of the following criteria:

- a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of an attorney in public or private practice in appeals in criminal or juvenile delinquency cases; has undertaken such representation for at least 12 months; and can present a letter from the person's immediate supervisor certifying the person's knowledge of applicable appellate procedure and criminal law;
- b. Has served as counsel or co-counsel in at least two appellate cases which were briefed on the merits and argued to the court under the supervision of an attorney eligible for appointment to appellate cases under this standard;
- c. Has observed oral argument and reviewed the appellate record in at least five appeals in criminal cases;
- d. Has significant experience in written motion practice and arguments in state circuit court or federal district or appellate court; or
- e. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

9. Appeals in Lesser Felony Cases, Felony Probation Violation Proceedings, Judicial Review of Parole Cases, and Post-Conviction Relief Cases

Lesser felony cases include all felony drug cases and all Class C felonies other than sexual offenses.

The minimum qualifications for appointment in appeals in lesser felony cases, felony probation violation proceedings, judicial review of parole cases, and post-conviction relief cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 8;
- B. Has reviewed and is familiar with:
 - a. ORS Chapter 144;
 - b. The Oregon Felony Sentencing Guidelines (OAR Ch 213); and
 - c. The Rules of the Board of Parole and Post-Prison Supervision (OAR 255).
- C. Meets at least one of the following criteria:
 - a. Has served as counsel in at least five appeals in criminal cases which were briefed on the merits and argued to the court;
 - b. Has significant and extensive experience in written motion practice and arguments in state circuit court or federal district or appellate court; or
 - c. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

10. Appeals in Non-Capital Murder and Major Felony Cases

Major felony cases include all A and B felonies other than drug cases, all felony sex offenses, and all homicides other than capital murder cases.

The minimum qualifications for appointment in appeals in major felony cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 9;
- B. Has served as counsel in at least 10 appeals in criminal cases which were briefed on the merits and argued to the court; and
- C. Has demonstrated proficiency in appellate advocacy in felony defense.

11. Appeals in Capital Murder Cases

The minimum qualifications for appointment in appeals in capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 10;
- B. For appointment as lead counsel, is an experienced and active trial or appellate lawyer with at least three years' experience in criminal defense;
- C. Has demonstrated the proficiency and commitment necessary for high quality representation in capital murder cases.
- D. For lead counsel in capital murder appeals, within two years prior to the appointment has attended and completed a legal training or educational program on defending capital cases. A substantial portion of the program must have been directly relevant to appeals in capital cases; and
- E. For co-counsel in capital murder appeals, has attended and completed a legal training or education program on appellate advocacy in criminal cases within two years prior to the appointment.
- F. *Alternate Procedures for Establishing Equivalent Skill And Experience in Capital Appeals.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial or appellate experience, or both, or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel in appeals of capital cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital appeals. For qualification under this paragraph, attorneys must have either:
 - a. Specialized training in the defense of persons accused of capital crimes; or
 - b. The availability of ongoing consultation support from other capital murder qualified attorney(s).

12. Appeals in Juvenile Delinquency Proceedings – Misdemeanor Equivalency

The minimum qualifications for appointment in appeals in juvenile delinquency cases

adjudicating the equivalent of misdemeanor offenses require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 8;
- B. Has reviewed and is familiar with:
 - a. ORS 419A.200 - 419A.211; and
 - b. Oregon State Bar, Juvenile Law, (current edition).

13. Appeals in Juvenile Delinquency Proceedings – Felony Equivalency

The minimum qualifications for appointment in appeals in juvenile delinquency cases adjudicating the equivalent of felony offenses require that an attorney:

Meets the qualifications specified in Standard IV, sections 10 and 12.

14. Appeals in Juvenile Dependency and Termination of Parental Rights Proceedings

The minimum qualifications for appointment in appeals in juvenile dependency and termination of parental rights cases require that an attorney:

- A. Has reviewed and is familiar with:
 - a. ORS Chapter 419B;
 - b. ORS Chapter 419A;
 - c. ORS Chapter 19;
 - d. The Oregon Rules of Appellate Procedure;
 - e. Oregon State Bar, Juvenile Law (current edition);
 - f. Oregon State Bar, Appeal and Review (current edition); and
- B. Meets at least one of the following criteria:
 - a. Has served as counsel or co-counsel in at least five appeals in juvenile dependency or termination of parental rights proceedings including briefing the cases on the merits and arguing the cases to the court;
 - b. Has significant and extensive experience in written motion practice and arguments in state trial court and appellate court or in federal district court; or
 - c. Will be working under the supervision of an attorney who does have the requisite qualifications or experience and who will attest to the quality of the attorney's work by appearing as co-counsel on all filed briefs.

15. Post-Conviction Proceedings Other Than in Murder and Capital Murder Cases

The minimum qualifications for appointment in post-conviction proceedings in cases other than murder and capital murder cases require that an attorney:

- A. Meets the qualifications for appointment to an original proceeding involving the highest charge in the post-conviction proceeding;
- B. Has reviewed and is familiar with:
 - a. The Oregon Post-Conviction Hearing Act, ORS 138.510-138.686; and
 - b. The Oregon State Bar's performance standards for counsel representing petitioners in post-conviction relief proceedings, and the authorities cited therein.
- C. Has served as co-counsel or observed proceedings and reviewed the record in at least two post-conviction relief proceedings in which a trial court entered a judgment on the petition;
- D. Has attended and completed a legal education and training program on post-conviction relief proceedings within two years prior to appointment.

16. Post-Conviction Proceedings in Murder and Capital Murder Cases

The minimum qualifications for appointment in post-conviction proceedings in murder and capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 4;
- B. Meets the qualifications specified in Standard IV, section 15;
- C. For appointment as lead counsel, has prior experience as post-conviction counsel in at least three major felony cases; and
- D. For capital murder cases, meets the qualifications specified in Standard IV, section 5 for co-counsel in capital cases in the trial courts. If more than one attorney is appointed, only one of the attorneys must meet the qualifications specified in Standard IV, section 5.
- E. *Alternate Procedures Establishing Equivalent Skill And Experience in Post-Conviction Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial, appellate, or post-conviction experience or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel for post-conviction relief proceedings in capital murder cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital murder cases. For qualification under this paragraph, attorneys must either:
 - (1) Specialized training in the defense of persons accused of capital crimes; or
 - (2) The availability of ongoing consultation support from other capital murder

qualified attorney(s).

17. Habeas Corpus Proceedings

The minimum qualifications for appointment in habeas corpus proceedings require that an attorney meet the qualifications specified in Standard IV, section 2.

STANDARD V: QUALIFICATION CERTIFICATE AND APPOINTMENT OF COUNSEL

1. Certificate and Supplemental Questionnaire

In order to receive an appointment to represent a financially eligible person at state expense, an attorney must submit a certificate of qualification together with a completed supplemental questionnaire, and be approved by the Office of Public Defense Services for appointment to the case type for which the appointment will be made. The certificate and supplemental questionnaire must be in the form set out in Exhibit A to these standards, or as otherwise specified by the Office of Public Defense Services.

2. Submission Requirements

- A. *Contract Attorneys.* Contract attorneys must submit their certificates of qualification and completed supplemental questionnaires to the Office of Public Defense Services (OPDS) prior to the execution of the contract and thereafter as necessary to ensure that OPDS has current information for each attorney who performs services under the contract.
- B. *Assigned Counsel (for all Non-contract Appointments).* Certificates of qualification and completed supplemental questionnaires may be submitted to OPDS at any time. OPDS will periodically require re-submission of certificates of qualification and completed supplemental questionnaires as needed to document that an attorney continues to meet ongoing training requirements and other standards.

3. Supporting Documentation

- A. An attorney must submit supporting documentation in addition to the certificate and questionnaire:
 - a. At the request of OPDS; or
 - b. When the attorney seeks to qualify for appointments based on equivalent skill and experience.
- B. Supporting documentation requested by OPDS may include, but is not limited to:
 - a. A written statement explaining why the attorney believes that he or she has the qualifications required to handle the case type(s) selected by the attorney; and
 - b. Written statements from those with direct knowledge of the attorney's practice explaining why they believe that the attorney is qualified to handle the case type(s) selected by the attorney. Written statements may include those from persons in the following three groups:

- (1) Judges before whom the attorney has appeared;
 - (2) Defense attorneys who are recognized and respected by the local bar as experienced trial lawyers and who have knowledge of the attorney's practice; and
 - (3) District attorneys or deputies against whom or with whom the attorney has tried cases.
- C. Contract providers seeking to qualify attorneys pursuant to the Public Defense Organization provision of Standard III, section 3.C, shall submit prior to execution of its contract with OPDS and update as necessary:
- a. A description of the organization's management, supervision, evaluation and training procedures, along with an explanation of how these procedures will ensure adequate and competent representation by the organization's attorneys;
 - b. Certificates of Attorney Qualification, with supplemental questionnaire, from the organization's supervisory attorneys;
 - c. A Certificate of Attorney Qualification for each attorney qualifying pursuant to Standard III, section 3.C, signed by an authorized representative of the organization that states the type of cases for which the attorney is eligible to receive appointment; and
 - d. A supplemental questionnaire for each attorney qualifying pursuant to Standard III, section 3.C, completed and signed by each attorney.

4. Approval for Appointment

- A. *Review of Submitted Certificates.* OPDS will review the qualification certificates and may request supporting documentation as needed. Not all attorneys who meet the minimum qualifications for a case type will be approved for appointment to cases of that type. OPDS's goal is to select attorneys who:
- a. Are more than minimally qualified;
 - b. Have specialized skills needed in a particular community;
 - c. Are available to cover cases in the appropriate geographic area;
 - d. Are able to meet specific needs of the court such as availability at specific times;
 - e. Are able to effectively and efficiently manage a law practice, observing appropriate fiscal and organizational practices; and
 - f. Have other qualities that would benefit the court, the clients or OPDS.

At the completion of the review, OPDS shall notify the attorney of the case types for which the attorney has been approved for appointment and the reason for its decision not to approve the attorney for appointment in any case type for which certification

was submitted.

- B. *Request for Reconsideration.* An attorney who is not approved for appointment in case types for which the attorney has certified qualification may request reconsideration by submitting to OPDS, within 21 calendar days of the notice of approval/disapproval for appointment in particular case types, additional information, including supporting documents, if any, which the attorney believes demonstrates that the attorney meets the criteria for selection set forth in Paragraph 4.A.
- C. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. OPDS shall notify the attorney of its final determination.
- D. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.
- E. *Provision of Lists to the Courts.* OPDS will prepare a list of attorneys approved for appointment for counties that routinely appoint attorneys who do not provide public defense services pursuant to a contract with OPDS. Other courts should contact OPDS for assistance in identifying attorneys available for appointment.
- F. *Updating Lists.* OPDS will update lists as necessary.

5. Suspension from Appointment

- A. *Suspension from Future Appointments.* If OPDS obtains information that calls into question an attorney's ability to provide adequate assistance of counsel, OPDS shall notify the attorney of the information and shall perform such investigation as is necessary to determine whether the attorney is able to provide adequate assistance of counsel. After completing its investigation and reviewing any information provided by the attorney OPDS shall have authority to suspend the attorney from future appointments for any or all case types until OPDS is satisfied that the attorney is able to provide adequate assistance of counsel. When OPDS suspends an attorney from future appointments OPDS shall notify the attorney and the court of the suspension and the reason(s) for the suspension.
- B. *Suspension from Current Appointments.* The court, after reviewing the reason(s) for the suspension, shall consider whether the attorney should be relieved as counsel in any pending court-appointed cases. The court shall consider with respect to each open case: the reason for the suspension, the needs of the client, and the ability of the attorney to provide adequate assistance of counsel under all of the circumstances. The court shall comply with the Paragraph 1.7 of OPDS's Public Defense Payment Policies and Procedures relating to substitution of counsel.
- C. *Request for Reconsideration.* An attorney who is suspended from future appointments may request reconsideration by submitting to OPDS, within 21 calendar days of the notice of suspension, additional information, including supporting documents, if any, which the attorney believes establish the attorney's ability to provide adequate assistance of counsel.
- D. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt

of a request for reconsideration, the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. In reviewing the request, the executive director or the executive director's designee may select and empanel a group of public defense attorneys to advise the executive director about the attorney's ability to provide adequate assistance of counsel and whether the attorney should be suspended from future appointment for any or all case types. OPDS shall notify the attorney and the court of its final determination and the reasons for its final determination.

- E. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.

PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION FOR NON-CAPITAL CASE TYPES

Name: _____ Bar Number: _____

Address: _____ Vendor or Tax ID#: _____

_____ Email: _____

_____ Foreign language fluency in: _____

Phone Number: _____ Years of Experience: _____

Mobile Phone Number: _____ Practice of Law _____ Criminal _____

_____ Juvenile _____ Appellate _____

For appointments in the following county(ies): _____

TRIAL LEVEL

Murder	
Lead Counsel	G
Co-counsel	G
Major Felony	G
Lesser Felony	G
Misdemeanor	G
Juvenile Delinquency	
Major Felony	G
Lesser Felony	G
Misdemeanor	G
Juvenile Dependency	G
Juvenile Termination	G
Civil Commitment	G
Contempt	G
Habeas Corpus	G
Post-Conviction Relief	
Murder	G
Other Criminal	G

APPELLATE LEVEL

Murder	
Lead Counsel	G
Co-counsel	G
Major Felony	G
Lesser Felony	G
Misdemeanor	G
Juvenile Delinquency	
Major Felony	G
Lesser Felony	G
Misdemeanor	G
Juvenile Dependency	G
Juvenile Termination	G
Civil Commitment	G
Contempt	G
Habeas Corpus	G
Post-Conviction Relief	
Murder	G
Other Criminal	G

Please check only one box below:

G I certify that I have read the PDSC Qualification Standards for Court-Appointed Counsel (Rev. __) and that I meet the requirements of those standards and wish to be listed as available to accept appointment to the case types checked above. If I have checked any case types because I believe I possess equivalent skill and experience, pursuant to Standard III, section 3.B, I have submitted supporting documentation and explained how I am qualified for those case types.

or

G I certify that the above-named attorney will be working under the supervision of an attorney as described in Standard III.3.C, and have submitted a statement from the attorney or contract provider describing that supervision.

Signature _____

Date _____

Submit signed certificates together with the supplemental questionnaire
and any supporting documentation to: mail@opds.state.or.us

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

If this questionnaire does not address important aspects of your experience, please feel free to attach additional information. If more space is needed to answer any of the questions below, please do so on additional pages.

1. Name (please print):
2. Date admitted to Oregon State Bar:
3. Oregon State Bar number:
4. Number of years and location(s) of legal practice in Oregon:
5. Number of years and location(s) of legal practice outside Oregon:
6. What percentage of your present practice involves handling criminal cases? juvenile cases? (or other cases as appropriate, such as civil commitment, habeas corpus, post-conviction relief)
7. What percentage of your present practice involves handling public defense cases?
8. Do you meet the stated minimum qualifications for the case types selected on your certificate of attorney qualification? If you answer no here, proceed to Question 9. If you answer yes, describe in detail below and on additional pages if necessary, how you satisfy each of the minimum qualifications for the case type(s) that you have certified.
9. If you answered No to Question 8, are you certifying qualification on the basis of equivalent skill and experience? If no, proceed to Question 10. If yes, please separately attach the following: 1) A statement explaining why you believe equivalent skill and experience qualifies you to handle the case types you have certified; and 2) At least two letters or statements from persons familiar with you legal experience and skill that describe why they believe you are qualified to handle the case types you have certified.
10. If you answered No to Question 9, are you certifying qualification because you will be working under the supervision of an attorney who meets the qualifications for the case types that you have certified? If yes, attach a statement from the supervising attorney, pursuant to Standard III.3.C or Standard V.3.C, describing the supervision that the attorney will perform?
11. What has been the extent of your participation in the past two years with continuing legal education courses and/or organizations concerned with law related to the case types you have certified?

12. List at least three names and addresses of judges and/or attorneys who would be able to comment on your experience in handling the case types you have certified.
13. List the most recent two cases by county and case number that have been tried and submitted to a jury, or if the attorney is certifying qualification for juvenile delinquency or civil commitment cases, tried and submitted to a judge, in which you served as counsel or co-counsel.
14. Have you ever been convicted of a crime? If yes, please provide the crime(s) of conviction, date and jurisdiction. (Do not answer yes or provide information for convictions that have been expunged or sealed.)
15. Are there any criminal charges currently pending against you? If yes, please identify the charges, the jurisdiction and the status of the proceedings.
16. Is there any complaint concerning you now pending with disciplinary counsel of the Oregon State Bar, or otherwise pending formal charges, trial or decision in the bar disciplinary process?
17. Has the Oregon Supreme Court, Oregon State Bar or any other bar association ever found you in violation of a Disciplinary Rule or Rule of Professional Conduct? If yes, please describe the violation and provide the date of decision.
18. Has a former client ever successfully obtained post-conviction relief based on your representation? If yes, please describe and cite to opinion, if there is one.

I certify that the above information is true and complete.

SIGNATURE

DATE

Attachment 6a



Oregon

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To: Members, Public Defense Services Commission
Lane Borg, Executive Director

From: Erica Herb, Deputy General Counsel and Whitney Perez, Deputy General Counsel

Re: OPDS Complaint Policies

Date: December 4, 2019

Background: 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. Presently, there are several reasons to amend the complaint policy. It's 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 Paul Levy noted the need to update this policy in a previous memo to the agency.

Agency Recommendation: OPDS recommends the PDSC adopt the proposed OPDS complaint policy. On a practical level, the product 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 applicable public defense standards." "Public defense standards" is defined within the policy. 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.

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.

Proposed Motion: I move to adopt the proposed OPDS Complaint Policy.

Attachment 6b

Proposed OPDS Complaint Policy

The following OPDS Complaint Policy and Procedures is adopted by the Public Defense Service Commission (PDSC) pursuant to ORS 151.216(1)(f)(j) and (h), effective _____.

Policy

It is important for OPDS to be aware of complaints regarding the performance of public defense providers and the cost of public defense services, to have a policy regarding the process of such complaints, and to address such complaints in a manner that is consistent with its obligation to provide high quality, cost-efficient public defense services. OPDS has an independent duty to oversee quality and cost effectiveness.

This policy governs the procedure for receiving, investigating, and responding to complaints regarding (1) the quality of services provided by public defense attorneys, and (2) payment from public funds of attorney fees and non-routine fees and expenses incurred in cases.

To provide OPDS with specific guidelines for the handling of complaints, the PDSC adopts the following procedures.

Complaint Policy and Procedures Regarding Quality of Services of Public Defense Attorneys

I. Definitions and screening of complaints

- A. "Public defense attorney" means counsel appointed to perform legal services for financially eligible individuals as required by Oregon Revised Statute, the Oregon Constitution, or the United States Constitution.
- B. "Public defense standards" means state and national standards of performance, including those of the Oregon State Bar, American Bar Association, National Juvenile Defender Center, and National Legal Aid Defender Association, and the state and federal constitutional requirements for the provision of adequate and effective assistance of counsel as required in the General Terms of the Public Defense Legal Services Contract.
- C. All complaints about public defense attorneys shall be directed to the General Counsel division of OPDS. Complaints regarding the quality of services provided by a public defense attorney must be made in writing. Submissions to OPDS may be made in confidence or may include information submitted in confidence. OPDS will not disclose such information, except as required by law, without the consent of the person making the submission.
- D. After receiving a complaint, an attorney from the General Counsel Division will review the complaint to determine if it presents sufficient information that the

public defense attorney may have failed to satisfy applicable public defense standards.

- E. If the complaint does not present sufficient information to show that the public defense attorney may have failed to satisfy applicable public defense standards, the General Counsel Division will notify the public defense attorney by providing him or her with a copy of the complaint and close the matter. OPDS shall also notify the complainant that the matter has been closed.
- F. If the complaint does present sufficient information to show that the public defense attorney may have failed to satisfy applicable public defense standards, an attorney from the General Counsel Division will begin an investigation and notify the public defense attorney by providing him or her, and their supervisor or consortium administrator (if applicable) with a copy of the complaint.
- G. OPDS reserves the right to investigate any complaint even if it does not present sufficient information to show that the public defense attorney may have failed to satisfy applicable public defense standards.

II. Procedure for investigating complaints

- A. During the course of investigation, if more information is needed, OPDS may contact the complainant. Complaints will not be decided based solely on the assertions of the complainant. OPDS will investigate all complaints by contacting the public defense attorney and discussing the complaint with the public defense attorney and providing the public defense attorney with an opportunity to respond to the complaint. OPDS may gather information from any other source.
- B. When a complaint is received, OPDS will determine whether it is appropriate to refer the complainant to the Oregon State Bar (OSB) or the court. If the complainant has already initiated a complaint with OSB, OPDS will monitor OSB's resolution of the complaint. OPDS may still conduct its own independent investigation.

III. Resolution of complaints

- A. After conducting an investigation and considering the public defense attorney's response, OPDS shall determine whether the public defense attorney's representation failed to satisfy applicable public defense standards. If OPDS determines that the public defense attorney's representation failed to satisfy applicable public defense standards, OPDS may take any action needed including but not limited to the following:
 - 1. Discussion with the public defense attorney and supervisor or consortium administrator (if applicable), with agreement for an appropriate course of action;
 - 2. Written reprimand;

3. Mandatory training and/or attendance at a continuing legal education program;
 4. Require the public defense attorney to obtain a mentor;
 5. Modification of the public defense attorney's qualifications for case types;
 6. Suspension from representation in public defense cases; and,
 7. Take such additional measures as may be appropriate under the circumstances.
- B. OPDS shall notify the public defense attorney and the supervisor or consortium administrator (if applicable) in writing of its findings and of any action taken in response to a finding of unsatisfactory representation.
 - C. If the public defense attorney disagrees with OPDS's findings or actions, the public defense attorney may appeal the General Counsel Division's decision to the Executive Director of OPDS, within 30 days of receiving notification of the decision. The appeal must be made in writing.
 - D. The Executive Director of OPDS shall review the records of the complaint and the findings of the General Counsel Division and make a final decision as to the adequacy of the representation and any action taken within 30 days of receiving an appeal. The decision of the Executive Director shall be made in writing and is final.
 - E. OPDS shall notify the complainant in writing of any action taken as a result of their complaint following investigation.
 - F. OPDS shall maintain a record of each complaint filed under this section and of any action and appeal taken in response to the complaint.
 - G. Nothing in this policy prohibits OPDS from receiving information in any form from any source regarding the performance of public defense attorneys and taking such action as it deems appropriate.

Complaint Policy and Procedures Regarding Payment from Public Funds of Attorney Fees and Non-routine Fees and Expenses

I. Definitions and screening of complaints

- A. "Public defense attorney" means counsel appointed to perform legal services for financially eligible individuals as required by Oregon Revised Statute, the Oregon Constitution, or the United States Constitution.

- B. All complaints regarding payment from public funds of public defense attorney fees or non-routine fees and expenses shall be made in writing and directed to the General Counsel division of OPDS. Submissions to OPDS may be made in confidence or may include information submitted in confidence. OPDS will not disclose such information, except as required by law, without the consent of the person making the submission.
- C. After receiving a complaint, an attorney from the General Counsel Division will review the complaint to determine if it presents sufficient information that the payment from public funds of public defense attorney fees or non-routine fees and expenses was unreasonable.
- D. If the complaint does not present sufficient information that the payment from public funds of public defense attorney fees or non-routine fees and expenses was unreasonable, OPDS will notify the complainant and close the matter.
- E. If the complaint does present sufficient information that the payment from public funds of public defense attorney fees or non-routine fees and expenses was unreasonable, an attorney from the General Counsel Division will begin an investigation.
- F. OPDS reserves the right to investigate any complaint even if it does not present sufficient information to show that the payment from public funds of public defense attorney fees or non-routine fees and expenses was unreasonable.

II. Procedure for investigating complaints

- A. OPDS shall review records related to the public defense attorney fees or non-routine expense authorization or payment. If the matter complained of is not resolved by a review of the records, OPDS shall contact the attorney or provider for additional information. During the course of investigation, if more information is needed, OPDS may contact the complainant. OPDS may gather information from any other source.

III. Resolution of complaints

- A. After completing its investigation, OPDS shall determine whether all of the information available establishes or fails to establish that the fee or expenditure complained of was unreasonable. If the fee or expenditure was reasonable the matter shall be closed.
- B. If OPDS determines that the fee or expense was unreasonable, it may take any or all of the following actions, unless the fee or expense was specifically pre-authorized by OPDS and used for the purpose authorized:
 - 1. Decline payment for the goods or services in question;

2. Seek reimbursement for any funds determined to have been improperly obtained or used;
 3. Written reprimand;
 4. Modification of the public defense attorney's qualifications for case types;
 5. Suspend the public defense attorney's eligibility for appointment in public defense cases;
 6. Decline to authorize future fees or expenses for the provider; and
 7. Take such additional measures as may be appropriate under the circumstances.
- C. If a fee or expense determined to be unreasonable was specifically preauthorized by OPDS and used for the purposes authorized, OPDS shall review its policies and procedures and take such action as appears appropriate to avoid future preauthorization of unreasonable fees and expenses.
- D. OPDS shall notify the attorney, provider, and the complainant in writing of its findings and of any action taken.
- E. If the attorney or provider disagrees with OPDS's findings or actions, the attorney or provider may appeal the General Counsel Division's decision to the Executive Director of OPDS, within 30 days of receiving notification of the decision. The appeal must be made in writing.
- F. The Executive Director of OPDS shall review the records of the complaint and the findings of the General Counsel Division and make a final decision as to the reasonableness of the fee or expense and any action taken within 30 days of receiving an appeal. The decision of the Executive Director shall be made in writing and is final.
- G. OPDS shall maintain a record of each complaint filed under this section and of any action and appeal taken in response to the complaint.
- H. Nothing in this policy prohibits OPDS from receiving information in any form from any source regarding the cost of public defense services and taking such action as it deems appropriate.

Attachment 7



Oregon

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Date: December 13, 2019

To: Public Defense Services Commission
Lane Borg, Director

From: Amy Jackson, Contract Analyst
Heather Pate, Contracts Manager

RE: Public Defense Contract Extensions – January 1, 2020-December, 2020

Motion: Move to approve Public Defense Contract for Yamhill County for the term January 1, 2020 – December, 2020.

Public Defense Contract for Yamhill County recommended for Approval by the Public Defense Services Commission at its December 19, 2019 Meeting:

County	Proposed Contractor	Value
Yamhill	Yamhill Justice League	\$1,868,656