

PUBLIC SAFETY COORDINATING COUNCIL

MINUTES

TUESDAY,
June 26, 2018

11:31

JUSTICE BUILDING -
JURY ASSEMBLY ROOM, 2ND FLOOR

MEETING CALLED BY	Bob Kleker
ATTENDEES	Lee Ayers, Joe Charter, Marie Curren, Doug Engle, Joe Ferguson, Amber Freitas, Eric Guyer, Beth Heckert, Tommy Jones, Danny Jordan, Bob Kleker, Lee Tyler, Lorenzo Mejia, Tighe O'Meara, Tina Qualls, Robert Mountain, Jeff Proulx, Nate Sickler, Justin Sorensen, Aja Stoner

- Bob Kleker opened the meeting at 11:31
- Opening Remarks: Bob Kleker welcomed everyone to the June PSCC meeting and introduced Tina Qualls the new Court Administrator for Jackson County.

Agenda Topics

MINUTE ADOPTION – MAY

BOB KLEKER, CHAIR

DISCUSSION	
Tabled until next meeting due to there not being a quorum.	

ELECTION OF NEW PSCC VICE CHAIR

BOB KLEKER, CHAIR

DISCUSSION	
Eric Guyer was nominated as chair starting on July 1 2018 and a new Vice Chair needs to be elected. Tabled until next meeting due to there not being a quorum.	

JACKSON COUNTY DEADLY PHYSICAL FORCE PLAN

DISCUSSION	
<p><i>Beth Heckert – Jackson County District Attorney's Office</i></p> <p>The Jackson County Deadly Physical Force Plan is how the DA's office deals with officer involved incidents of deadly force. The plan had not been reviewed since 2008, so it was decided to reconvene a new group to overview it. A few minor adjustments were made.</p> <p>Changes have been made to the following:</p> <p>Page 7- Section 4: Immediate Aftermath of a Deadly Force; Subsection C. Assignment of Companion Officer Now states:</p> <ul style="list-style-type: none"> • 3. The companion officer should ensure the involved officer maintain his/her weapon in place, in the same condition as it was at the conclusion of the incident, until an ammunition count is conducted by an assigned MADIU investigator, and in appropriate circumstances surrendered to the MADIU investigator. <p>Page 10- Section 5: The Criminal Investigation; Subset C. Interviewing Officers</p> <ul style="list-style-type: none"> • Removed the part about requiring intoxicant testing. However, if it is believed that the officer was under the influence they would ask for consent and get a search warrant to do the intoxicant testing. Previously it was required to ask every time and most officers would decline because there was no basis to perform intoxicant testing. • Clarified that interviews should be recorded by stenographer, audio, OR video. Previous wording made it sound like all three would be conducted. <p>This policy will be taken to each of the cities that have a police department and will be presented to their governing agencies to approve and they agree they will follow the policy or procedure when it comes into effect.</p> <p>Danny Jordan asked Beth if it is required that each of the agencies unions be notified and have their right to demand to bargain. Beth said it has not been mentioned before. Beth clarified that the revision took things away and did not add anything. Danny recommends that Beth has all of the different agencies consult with their union representative to see if anything conflicts with the requirement of their collective bargaining, but to also let them know that the revisions to the policy make it less restrictive for officers. Danny further explained that the policy can still be implemented.</p>	

JACKSON COUNTY PUBLIC DEFENDERS

DISCUSSION

Doug Engle – Jackson County Public Defender's Office

The Due Process Clause of the U.S. Constitution is where the right to a lawyer originated from.

6th Amendment (1791)

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

Article I, Section 11, Oregon Constitution (1859) combines the 4th, 5th, and 6th amendments. It only states that you have a right to a lawyer and does not mention that this is at the public's expense.

"In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel...."

The following court cases set forth case law about who shall be able to retain a court-appointed lawyer:

1938—Johnson v. Zerbst, U.S. Supreme Court

- Federal counterfeiting case. Defendant Zerbst was denied a court-appointed lawyer and was convicted. He appealed denial of counsel to the U.S. Supreme Court, which ruled that the Sixth Amendment to the US Constitution required a court-appointed lawyer at public expense for indigent defendants.
- Decision only applied in Federal courts, not State courts.

1942 Betts v. Brady U.S. Supreme Court

- Maryland robbery case. Betts requested court-appointed lawyer and was denied. Betts was convicted and appealed the denial of counsel. U.S. Supreme Court ruled no right to court-appointed lawyer in the states, unless it was a capital offense. Court indicated that not everyone who did not have a lawyer would necessarily be mistreated, and Betts was not.
- Seemed to adopt a case-by case test. Defendant had to be illiterate, stupid, or a complicated case.

1963 Gideon v. Wainwright US Supreme Ct.

- Burglary/theft case out of Florida. Overruled Betts v. Brady (1942), holding that 14th Amendment to US Constitution, which applies the Bill of Rights to the states, required that all criminal defendants in state courts as well as federal courts were entitled to a court-appointed lawyer at public expense.
- Oregon had already come to the same conclusion years before.

ORS 135.320 and 135.330 (1955)

Oregon Circuit Courts were specifically authorized to appoint lawyers for indigent criminal defendants, at county expense. Prices were set:

- Misdemeanor guilty plea: \$5; Not guilty plea: \$10 per trial day, \$20 max.
- Felony guilty plea: \$15; Not guilty plea: \$15 per trial day, \$45 max.

Oregon counties did not enjoy having the statutory duty of paying for court-appointed lawyers and called the obligation a "crushing financial burden." The Association of Oregon Counties made it a priority to shift the responsibility for the costs of indigent defense away from the counties and onto the State of Oregon. Bills were introduced in the Oregon Legislature in 1969, 1977, and 1979, but all of them failed. In 1981, a bill finally passed shifting responsibility for indigent defense from the counties to the State of Oregon and in 1983 it was administered through the State Court Administrator.

In 1985 the indigent defense was placed under a new "State Indigent Defense Board", overseen by the State Court administrator. The State Indigent Defense Board, in its first two years (1985-1987) of administration, racked up a \$10 million deficit. In 1987 the Indigent defense was sent back to the State Court Administrator. Senate Bill 145 took public defense out of State Court Administrator's office and created a new state agency, Oregon Public Defense Services (OPDS) that was governed by a board called Public Defense Services Commission.

OPDS took over administration of indigent appeals work on 10/1/2001 and took over administration of indigent trial-level defense work on 10/1/2003. In the spring of 2003 there was a public defense crisis that happened the last three to four months of the 2001-2003 biennium. This was before OPDS took over administration of trial-level public defense and SCA/IDSD saw it would run out of money for public defense before July 1. The Emergency Board refused to authorize more money. The solution was a "soft landing" in which SCA paid for defense lawyers only for DUIIs, DCS, assaults, sex cases, and Measure 11s. However, all other cases were still filed, but then proceedings; along with payment were delayed until the start of the new biennium on 7/1/2003. Because of this the Public Defender offices had to lay off lawyers and staff. In Jackson County in August 2003 the court, DA's office, and defense lawyers conducted a mass "Arraign-O-Rama" to process backlogged cases and offered defendants that showed up "sweetheart deals" to resolve cases.

Oregon Public Defense Services (OPDS) operates a system of independent contractors to provide indigent defense to the state's 36 counties. The 2018-2019 budget was \$281 million (\$195 million for trial level lawyers over two years). OPDS mission (ORS 151.216) is to "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 US Constitution, and Oregon and national standards of

justice." OPDS contracts (using two-year contracts) with 92 different independent, non-governmental contractors: 10 Public Defender Offices, 36 lawyer consortiums, 18 law firms, 28 death penalty lawyers ,approx. 175,000 cases per year statewide.

Public Defenders in Oregon:

- Metropolitan Public Defender (Multnomah, Washington Counties; 56 lawyers;13,348 cases/year; \$10.8 million/year)
- Southern Oregon Public Defender (Jackson, Josephine Counties; 23 lawyers; 7436 cases/year; \$4.6 million/year)
- Multnomah Defenders, Inc. (Multnomah County; 25 lawyers; 6982 cases/year; \$4.7 million/year)
- Public Defense Services of Lane County (Lane County; 20 lawyers; 5754 cases/year; \$3.9 million/year)
- Crabtree & Rahmsdorf(Deschutes County; 15 lawyers; 4362 cases/year; \$2.9 million/year)
- Umpqua Valley Public Defender (Douglas County; 12 lawyers; 3728 cases/year; \$2.1 million/year)
- Southwest Oregon Public Defender Services (Coos County; 9 lawyers; 3174 cases/year; \$1.9 million/ year)
- Youth, Rights & Justice (Multnomah County; 14 lawyers; 2994 cases/year; 2.4 million/year)
- Intermountain Public Defender (Umatilla, Morrow Counties; 10 lawyers; 2746 cases/year; 1.5 million/year)
- Public Defender of Marion County (Marion County; 11 lawyers; 2733 cases/year; \$2.1 million/year)

Jackson County Defense Contractors:

- SOPD (17 lawyers; 5260 cases/year; adult criminal, juvenile delinquency, dependency)
- Jackson Juvenile Consortium (8 lawyers; 3052 cases/year; juvenile delinquency, dependency)
- Los Abogados (5 lawyers; 1708 cases/year; adult criminal conflicts and overflow, civil commitments)
- Rogue Valley Defenders (6 lawyers; 1600 cases/year; adult criminal conflicts and overflow)
- Yearly totals: 11,620 cases; \$6.6 million (\$568 per case)

The Circuit Courts determine a person's eligibility for a court-appointed lawyer and it must be criminal offense (or juvenile delinquency or dependency). The court uses a formula based on person's income and what the expected cost of a private lawyer would be for the particular crime charged. The defense lawyer/firm has no involvement in whether person is allowed a court-appointed lawyer. Oregon fulfills its constitutional requirement to provide court-appointed defense services for one-sixth of the cost it would pay on the open market. In 2017 SOPD's actual payment for cases defended was \$4,747,497. Theoretically, the payment for the same cases if they were paid under Circuit Court's 2011 Private Attorney Fee Schedule would have been \$28,538,363 (six times actual payment).

Over the years there have been studies and assessments of the Oregon public defense system and the conclusion has continuously been that there is inadequate State funding which is leading to higher lawyer caseloads. There have been calls to switch from the independent contractor model to a state-run public defender system, with State of Oregon employees. However, the State resists the change because of start-up costs, providing benefits, and PERS. The bottom line is that it is too expensive to change.

Southern Oregon Public Defender started July 1, 1985 as Jackson County Public Defender by three Medford lawyers: Bert Putney, Frank DeSimone, and Bob Warren. It is a private, non-governmental, non-profit, and tax-exempt corporation. It began with five lawyers and now has now 23 (includes Grants Pass). There is a total of 38 employees (28 Jackson County). Prior to 1985, Jackson County indigent criminal defense was handled by 50+ lawyer consortium and was made up of lawyers with wide range of level of interest and competence in criminal defense. The Grants Pass office opened in 1992 and the name changed to Southern Oregon Public Defender. In 2006 they added juvenile delinquency and dependency cases. Notable SOPD alumni: Honorable Lorenzo Mejia (SOPD 1988—2001), Honorable Lisa Greif (SOPD 1998—2008), Honorable Kelly Ravassipour (SOPD 2003—2013), Jackson Juvenile Consortium (6 of 8 lawyers), Los Abogados (4 of 5 lawyers), and Rogue Valley Defenders (6 of 6 lawyers).

Public Defenders are not elected, private, non-profit law firms, non-governmental, non-PERS employees, and funded by State of Oregon as independent contractors. District Attorney Offices are elected officials, governmental agency (County), employees are public employees, and funded by counties. The difference in sources of funding leads to differences in lawyer compensation. DA's compensation levels for lawyers is higher almost everywhere in Oregon, including Jackson County.

Criminal Defendants' Rights are provided through the US Constitutional rights, Oregon Constitutional rights, and Oregon Statutory rights. They are all defined, explained and interpreted by the US Supreme and Federal Courts, Oregon Supreme Court, Oregon Court of Appeals, Oregon Circuit Courts, and Administrative Law Judges. The job of a criminal defense lawyer is to protect a defendants' rights against the: legislature, law enforcement, DA, courts, probation, and citizen accusers. This is done through the use of trials and hearings; juries and judges.

In 2017 the number of cases and jury trials in Jackson County was:

- Felonies filed: 3566
- Felony jury trials: 34
- Percentage jury trials: 0.95% (1 out of 105 cases)
- Misdemeanors filed: 3621
- Misdemeanor jury trials 59
- Percentage jury trials: 1.6% (1 out of 62 cases)
- Total cases filed: 7187
- Total jury trials: 93
- Percentage jury trials: 1.3% (1 out of 77 cases)

Joe Charter asked what the length of time was for the longest serving employee. Doug said that in Grants Pass there three lawyers that have been there for more than 20 years.

40 YEARS OF SERVICE

DISCUSSION

Bob Kleker – Jackson County Court

The Jackson County Justice Building opened in December, 1978. A formal dedication ceremony to Otto J. Frohnmayer was held on Friday, December 15, 1978. Otto wrote *A Sketchy History of Courts in Jackson County; Volume One*. This covers from the beginning of Oregon statehood to 1978. Bob Kleker picked up where Otto left off and added to the document writing *Change at the Jackson County Courts: The Next Forty Years; Volume Two*. Volume Two is Bob's recollection and documentation of changes at the Jackson County Circuit Court, the Justice Building, and the Oregon Judicial Department over the course of his employment with the courts which ended on June 29, 2018.

In 1859 Jackson county included what is now Jackson, Klamath and Lake counties. Lake and Klamath counties were cut out of Jackson county in 1909. Josephine and Jackson counties have comprised the first judicial district from 1909 to 1994. Between 1859 and 1948 there was usually one circuit judge to serve the entire first judicial district. A sample of the cases were larceny of hogs, keeping a house of ill-fame, suffering minors to play billiards in a saloon, selling intoxicating liquors to minors, countless insanity hearings, burglary, buying deer and elk hides, obstructing migration of fish, polygamy, obstructing a public highway, larceny of a fiddle, and burglary in a railway car.

The first district court for Jackson county was established by the legislature in 1951. The legislature in 1967 provided that the District Court for Jackson county shall have two judges. One of whom will hold court in the city of Ashland no fewer than 2 days a week. In 1977 legislature provided for a third district judge. The Circuit Court had three judges in 1978. In 1988 the Legislator abolished District Courts and combined them all to be Circuit Courts. Paine Page Prim became the first circuit judge of Jackson county. He was a supreme court justice from 1859 to 1880 and chief justice in 1864-66, 1870-72 and 1876-78. In 1882 he became the state Senator. He was author of a manuscript entitled, *Prim's Judicial Anecdotes*, which vividly portrayed the manner of administering justice in the early mining camps and first organized courts.

The 1981 Legislative Assembly consolidated Oregon's district courts, circuit courts, tax court, and appellate courts into a unified state. At the time the state courts went through the unification process, record keeping and case management was all accomplished by hand writing in large docket books. All county court employees became state employees. ORS 1.185 sets forth that the county is responsible for providing a place for the court to conduct business and must pay for the normal operations of the building. In Jackson County, the court and the county have enjoyed a positive working relationship since the unification of the state court system in 1983.

The Jackson County Justice Building became the home of the courts and the county probation department, Project Misdemeanant, when the Justice Building opened in 1978. Project Misdemeanant was located on the first floor and the courts occupied the second and third floors. The court clerk's office was situated on the entire east side of the second floor. When the remodel happened in 2002 the Parole and Probation and County's Election Department was moved to 1101 W. Main. The clerk's office was moved to the first floor. One of the main reasons for this remodel was create a single point of entry into the building for security purposes. The Juvenile Services Building, located at 609 West 10th Street, Medford, OR, opened in late fall of 2004 however, the court did not conduct a hearing in the new Juvenile Building until January of 2005.

In the early years of the life of the Justice Building, smokers working in the clerk's office had ashtrays on their desks. A new rule was implemented that ended smoking at individual's desk, but allowed the supervisor to smoke in their office. Later, smoking was banned in the building, except in the break room. It did not take long for non-smoking employees to complain and smoking was banned in the entire building; around the same time that Jackson County eliminated smoking in all of their buildings.

Kleker told the PSCC members that it has been an honor to serve as the Trial Court Administrator.

Judge Mejia thanked Kleker for many years of service, from the grunt work to administration, but mostly for his dedication to the mission of the court.

ANNOUNCEMENTS/OTHER BUSINESS

BOB KLEKER, CHAIR

DISCUSSION

There were no announcements.

Next Scheduled PSCC Meeting: September 25, 2018

Meeting Adjourned: 12:49 pm