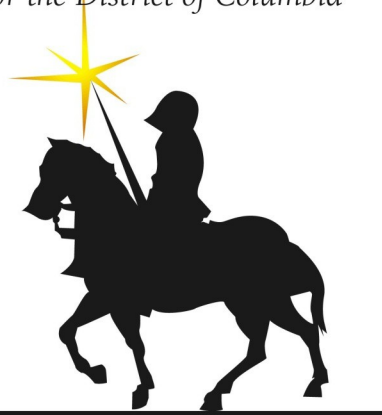


THE
PUBLIC
DEFENDER
SERVICE

for the District of Columbia



CHAMPIONS OF LIBERTY

Fiscal Year 2024

Congressional Budget Justification

Heather N. Pinckney, Director

March 9, 2023

**PUBLIC DEFENDER SERVICE
FOR THE DISTRICT OF COLUMBIA
FISCAL YEAR 2024 CONGRESSIONAL BUDGET JUSTIFICATION**

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LEGAL AUTHORITY AND MISSION

The Public Defender Service for the District of Columbia (PDS) is a federally funded, independent organization governed by an eleven-member Board of Trustees. Originally operating as the Legal Aid Agency from 1960 to 1970, PDS was created in 1970 by a federal statute¹ enacted to comply with the constitutional mandate to provide defense counsel for people who cannot afford an attorney.² The mission of PDS is to provide and promote quality legal representation for indigent adults and children facing a loss of liberty in the District of Columbia and thereby protect society's interest in the fair administration of justice.

A major portion of the work of the organization consists of representing individuals in the District of Columbia's local criminal legal system who are charged with committing serious criminal acts and who are eligible for court-appointed counsel. In the District of Columbia, public defense services are primarily provided by PDS (the "institutional defender") and a panel of private attorneys, known as Criminal Justice Act (CJA) attorneys, who are screened for membership on the panel and paid on a case-by-case basis by the District of Columbia courts.³ Because of its better resources, well-regarded training program, and overall higher skill level, PDS generally handles the more serious criminal cases, and CJA attorneys generally handle the less serious criminal cases. The federal public defender system is modeled in most respects on this structure.

PDS also provides legal representation to people facing involuntary civil commitment in the mental health system, as well as to many of the children in the most serious delinquency cases, including those children who have special education needs due to learning disabilities. Every year, PDS attorneys represent clients in the majority of the most serious adult felony cases filed in the District of Columbia Superior Court, clients pursuing or defending against criminal appeals, nearly all individuals facing supervised release or parole revocation under the District of Columbia Code, and all individuals in Superior Court requiring representation at Drug Court hearings. In addition, PDS provides assistance to the local criminal legal system, training for CJA and pro bono attorneys, and additional legal services to clients in accordance with PDS's enabling statute. On occasion and under special circumstances—e.g., pursuing impact litigation—PDS represents clients in cases related to the above matters in the District's federal courts.

In 1997, the Congress enacted the National Capital Revitalization and Self-Government Improvement Act of 1997 (the Revitalization Act),⁴ which relieved the District of Columbia of certain "state-level" financial responsibilities and restructured a number of criminal legal functions, including representation for indigent individuals. The Revitalization Act instituted a process by which PDS submitted its budget to the Congress and received its appropriation as an administrative transfer of federal funds through the Court Services and Offender Supervision Agency appropriation. With the enactment of the Fiscal Year 2007 Appropriation Act, PDS now receives a direct appropriation from the Congress. In accordance with its enabling statute and the

¹ Pub. L. No. 91-358, Title III, § 301 (1970); *see also* D.C. Code §§ 2-1601 to 1608.

² *Gideon v. Wainwright*, 372 U.S. 335 (1963).

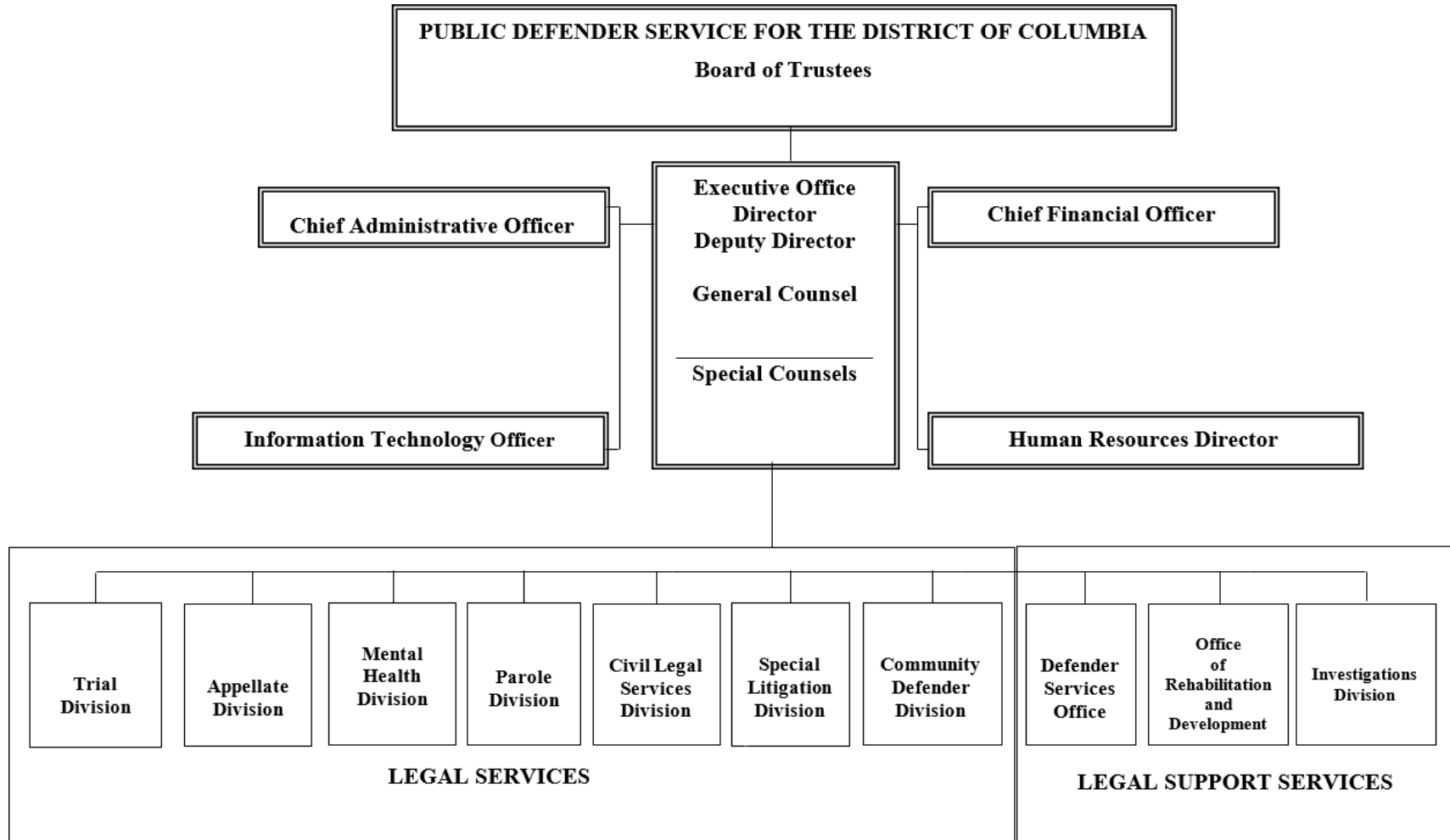
³ Plan for furnishing representation to indigents under the District of Columbia Criminal Justice Act. D.C. Code § 11-2601 *et seq.*

⁴ Pub. L. No. 105-33, Title XI (1997).

constitutional mandate it serves, PDS remains a fully independent organization and does not fall under the administrative, program, or budget authority of any federal or local executive branch agency.

Since its creation, PDS has maintained a reputation nationally and in the District of Columbia criminal legal system for exceptional advocacy. The strength of PDS has always been the quality of the legal services that the organization delivers. Judges, panel attorneys, prosecutors, and especially clients acknowledge and respect the excellent advocacy of PDS's attorneys, as do public defender agencies and criminal defense bars across the nation.

ORGANIZATION AND STRUCTURE⁵



⁵ For a description of PDS’s program and divisions, see pp. 22-28.

BUDGET REQUEST SUMMARY
PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA
FY 2024 Summary of Changes

	FTE	Amount (\$ in 000s)
FY 2023 Enacted Level	249	53,629
Adjustments to Base		
Add General Inflation Level Adjustments	-	1,156
FY 2024 Operating Budget	249	54,785
Add Additional Demand for Legal Representation and Assistance	4	450
Add Support Personnel	3	300
Add Expansion of the Intern Investigator Program	-	100
Add eTravel Systems Implementation and Sustainment	-	66
Add Acquisition Management Writing System	-	150
Add Budget Formulation & Execution Integration System	-	100
Add Cybersecurity Software and Personnel	-	600
Total, Adjustments	7	1,766
FY 2024 Base	256	56,551
PROGRAM CHANGES		
Add HQ Relocation Costs	-	3,000
FY 2024 REQUEST	256	59,551

FISCAL YEAR 2024 BUDGET REQUEST

The Public Defender Service for the District of Columbia (PDS) requests a total budget of \$59,551 thousand for Fiscal Year (FY) 2024. This will allow PDS to maintain operations and absorb inflationary increases in compensation and other operating expenses, and meet three areas of additional need.

First, PDS seeks a combined \$750 thousand for seven positions to respond to additional case and workload demands for PDS clients, including:

- meet the increased demand in case and workloads for trial attorneys and investigators due to the expansion of discovery practice;
- meet the increased demand for representation in disciplinary hearings at the D.C. Jail, as well as in early termination parole and supervised release hearings, and to increase representation at Federal Bureau of Prisons parole grant hearings;
- meet the transition needs of returning citizens who are released after spending decades in prison;
- respond to the increased demand for assistance in cases in which PDS juvenile and parole clients need social services and mental health supports;
- enhance PDS's data security.

Second, PDS seeks \$1,016 thousand in resources to, inter alia, move into greater alignment with the Federal Information Security Modernization Act (FISMA) standards and begin to implement Executive Order 14028 (Improving the Nation's Cybersecurity),⁶ increase investigation support through PDS's intern program, and improve the efficiency of PDS's budget operations.

Third, PDS seeks multi-year (three-year funding FY 2024 through FY 2026) of \$3,000 thousand for costs in support of the relocation of headquarters offices, field offices, and related facilities.

These requests, which total \$59,551 thousand, are consistent with PDS's policy and funding priorities—providing high quality representation to individuals who face serious charges but who cannot afford to hire an attorney, improving indigent defense representation in the District of Columbia, and improving PDS's administrative efficiency—and support the goals of increased efficiency and effectiveness in federally funded programs.

SUMMARY OF PDS'S FY 2022 ACCOMPLISHMENTS

FY 2022 saw PDS emerging, evolving, and moving—and at the same time, staying the course.

PDS is emerging. As restrictions from the pandemic loosen and the country learns to live with COVID-19, PDS and the District of Columbia's legal system agencies are adapting as well.

⁶ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/>; May 12, 2021.

Because speedy trial rights were suspended for over two years, PDS clients have spent an inordinate amount of time incarcerated at the D.C. Jail and the Correctional Treatment Facility awaiting their trials. While trials have slowly resumed (the Court had only three jury trials in FY 2021), the trial backlog for PDS clients remains high. PDS is working intently to protect clients' interests, whether that involves filing renewed bond motions to get clients released; taking advantage of remote hearings to move clients' cases forward; or exhorting prosecutors to discuss plea, trial, and sentencing options available to clients in long-delayed cases. PDS's Defender Services Office has fully resumed making eligibility determinations now that the Superior Court and the U.S. Marshals Service have returned to bringing arrestees from the District's Central Cellblock to the Court's cellblock where interviews can take place. And the U.S. Parole Commission (USPC) has finally moved from conducting hybrid parole and supervised release revocation hearings to fully in-person hearings. PDS parole attorneys no longer have to make difficult decisions about going forward with hearings where clients are required to appear in person while government witnesses testify remotely from the USPC's office.

PDS is evolving. With resources provided in FY 2022, PDS has been able to litigate more Incarceration Reduction Amendment Act (IRAA) and compassionate release cases. As PDS has had greater and greater success with these cases, the staff have learned more about the housing, employment, social services, and counseling support required by clients who are transitioning from spending decades in prison to living in a very unfamiliar world. The extent of the need is particularly striking in instances where clients' close relatives have died, old neighborhoods have changed radically, and cell phones and other technology have presented steep learning curves. This has led PDS to redouble its efforts to help position these clients for success, establishing an extensive network of resources to meet these needs.

PDS's experience with IRAA and compassionate release cases also alerted the staff to a problematic Federal Bureau of Prisons (BOP) practice that put prison residents sentenced by the D.C. Superior Court, most of whom are Black, at a disadvantage relative to the mostly white prison residents sentenced by the various federal courts. In FY 2022, PDS filed *Blades v. Garland*,⁷ challenging the BOP's use of a discriminatory and harsher system for scoring the criminal history of individuals sentenced by the D.C. Superior Court compared to the scoring system used for individuals sentenced in federal court. For federally-sentenced residents, the BOP uses the criminal history score calculated by the U.S. Probation Office using the U.S. Sentencing Guidelines, a score that is litigated by the prosecution and defense counsel and is confirmed by the sentencing judge. Because D.C. Superior Court-sentenced residents do not enter the BOP with a criminal history score calculated under the U.S. Sentencing Guidelines, the BOP uses its own overly simplified and stricter scoring system which results in categorically higher criminal history scores; for example, the BOP counts juvenile offenses, all petty offenses, and extremely outdated offenses, which the federal sentencing guidelines scoring system largely excludes. The result of that harsher scoring system is that people sentenced by D.C. Superior Court are more likely to have higher security classifications and be placed in higher security prisons, where they are subjected to more violence and less programming opportunities, as compared to federally-sentenced BOP residents with similar criminal histories. In addition, Superior Court-sentenced residents' arbitrarily higher criminal history scores make them less

⁷ *Blades v. Garland*, 22-cv-00279 (DDC).

likely to receive home confinement or earn compassionate release. The lawsuit seeks to put individuals sentenced by the D.C. Superior Court on equal footing with their federal counterparts with whom they share housing, programming, and opportunities for rehabilitation.

PDS is moving. In FY 2022, the General Services Administration (GSA) began taking steps to implement PDS's long-anticipated headquarters move from 633 Indiana Avenue, NW to 633 3rd Street, NW. The new location, while presenting some challenges, offers a number of benefits and conveniences to PDS, among them being occupancy of a superior physical plant and greater influence over how the building is managed.

PDS is also figuratively moving: it began a transition to new leadership at the end of FY 2022, when PDS's former director retired after 18 years in the position and her successor, a former PDS deputy trial chief and Board of Trustees chair, became the new director.

In the midst of significant change, PDS is staying on course. PDS continues its long tradition of pushing for systemic reforms and improvements on behalf of system-involved individuals. Three cases PDS litigated in FY 2022 demonstrate PDS's history of challenging criminal legal agency systemic practices.

In FY 2022, PDS settled its federal class action lawsuit, *Banks et al. v. Booth et al.*,⁸ against the D.C. Department of Corrections (DOC), in which PDS sued for better treatment of detained residents during the height of the COVID-19 pandemic. Through court-ordered inspections and negotiations with the District of Columbia, the case achieved improvements in sanitation practices, resident access to showers and cleaning supplies, and Covid-related health care.

In FY 2022, PDS filed *Lewis v. United States Parole Commission et al.*,⁹ on behalf of people who have been released on parole for D.C. Code offenses. District of Columbia Code § 24-404 requires that the USPC terminate parole after a person has been on release for five years unless the USPC finds, after a hearing, that the person presents a risk of committing crimes in the future. Investigation revealed that the USPC routinely flouts this legal requirement, keeping people on supervision for years beyond the five-year limit without ever holding parole termination hearings for them. Despite having requested the change in the law to give it the authority to terminate a person's parole early, the USPC is arguing that it is not bound by D.C. Code § 24-404.

Finally, in FY 2022, PDS filed a D.C. Freedom of Information Act (FOIA) lawsuit in D.C. Superior Court against the D.C. Metropolitan Police Department (MPD), which ultimately prompted them to release thousands of pages of records they had previously withheld related to MPD's creation and usage of a racially discriminatory gang database.

⁸ *Banks et al. v. Booth et al.*, 20-cv-849 (DDC).

⁹ *Lewis v. United States Parole Commission et al.*, 22-cv-2182 (DDC).

Due to the increase in serious crime in the District,¹⁰ PDS is inundated with cases but also—staying the course—focused on the many underlying issues that affect our clients in the city’s communities. PDS recognizes that poverty, racism, trauma, lack of quality education, lack of mental health supports, and insecure housing play a fundamental role in clients’ lives and rehabilitation efforts. Every PDS client has their own individual circumstances, and it is a tenet of PDS’s representation to recognize that any effort to stem violence in communities must include services and resources to address the social and mental health issues that community members confront regularly. This understanding informs the work that PDS performs across all of its divisions and helps PDS achieve success. PDS reports the following outcomes and performance data for FY 2022:

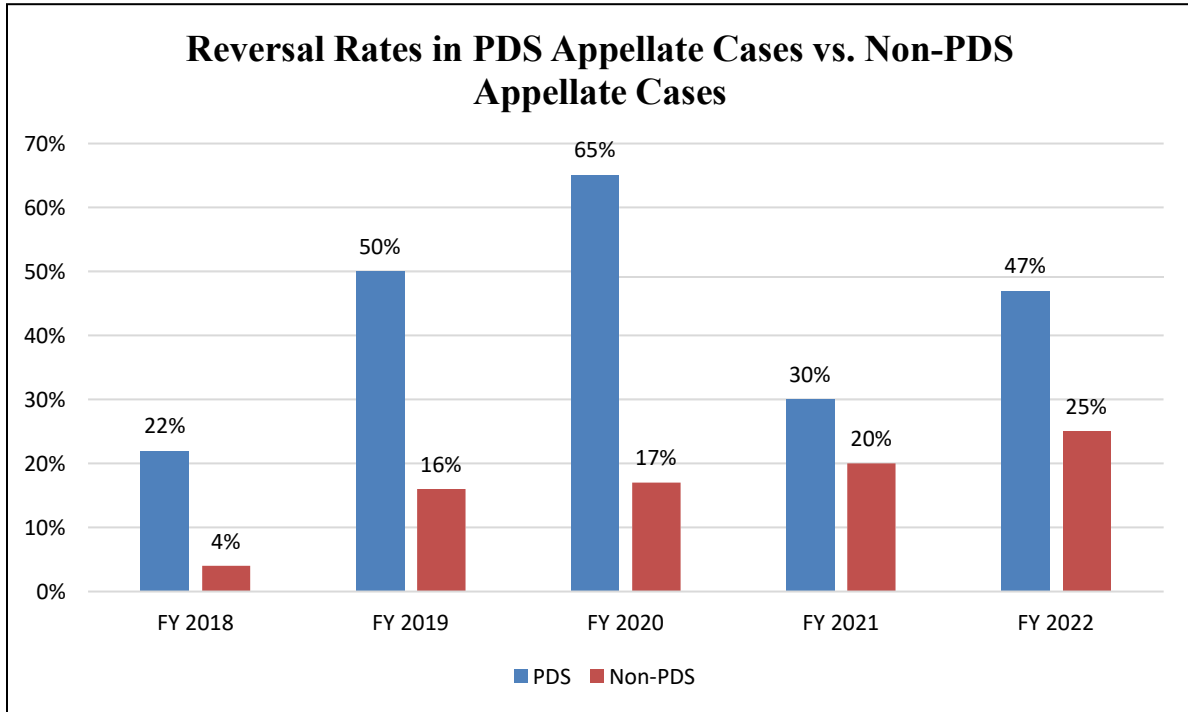
- PDS worked on 3,027 trial matters; 720 parole matters; 2,189 mental health matters; 219 appellate matters; 392 civil matters, including special education matters; 614 pre- and post-disposition institutional and community-based legal matters; 1,676 post-conviction (adult) matters; 1078 Drug Court matters; 242 Special Litigation Division matters; and 1,661 adult Duty Day¹¹ and 2,571 juvenile Duty Day matters.
- In hearings before the Commission on Mental Health, PDS prevailed in 75 percent of its cases, securing either complete dismissal or mitigation (securing outpatient commitment instead of inpatient commitment).
- PDS won reinstatement and release in 51 percent of the parole and supervised release revocation cases PDS defended in hearings before the U.S. Parole Commission.
- PDS won 43 percent of the community status review hearings¹² PDS conducted.
- PDS won 100 percent of the IRAA hearings PDS conducted.
- PDS won 90 percent of the compassionate release motions filed by the Special Litigation Division.

¹⁰ See PDS FY 2023 Congressional Budget Justification at 18 (describing the increase in the number of homicide cases in the District of Columbia).

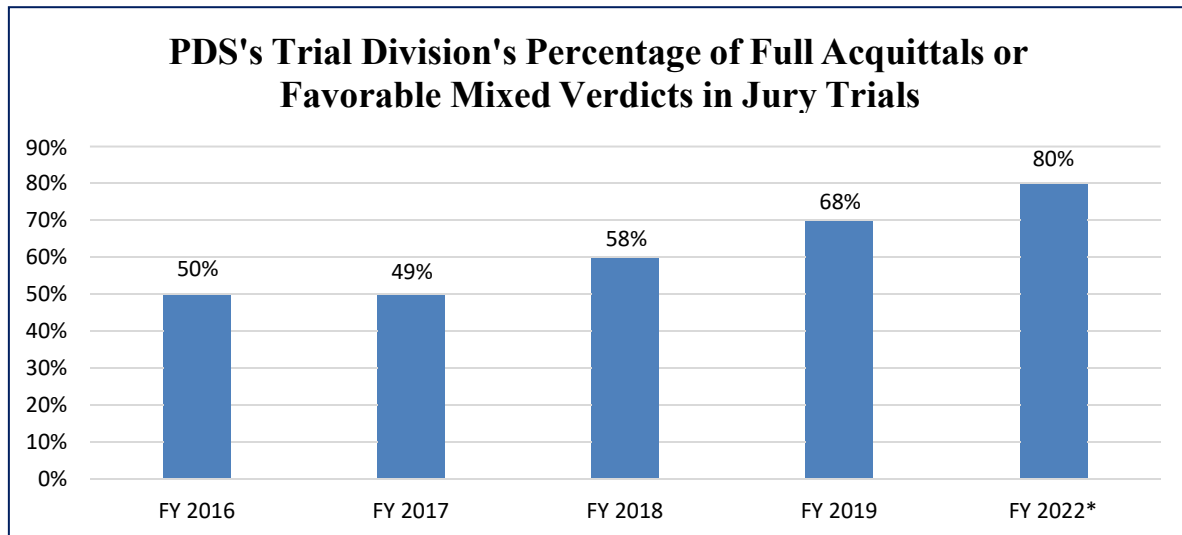
¹¹ This number represents clients who called or wrote to request assistance because PDS offices remained closed for Duty Day walk-in clients due to COVID-19 restrictions.

¹² Community status review hearings are the juvenile legal system’s equivalent of parole revocation hearings. PDS also focused on reducing the number of clients who proceeded to revocation hearings by engaging in advocacy that helped clients come into compliance before revocation could be considered.

- PDS’s reversal rate before the District of Columbia Court of Appeals was c. 90 percent higher than that of the rest of the defense bar (47 percent versus 25 percent).



- PDS’s Trial Division won full acquittals or favorable mixed verdicts in 80 percent of its jury trials.



* Because of COVID-19, jury trials were suspended in March of FY 2020 and only three trials occurred in FY 2021.

PDS'S FY 2024 RESOURCE NEEDS

Resource Request – Summary

For FY 2024, PDS seeks:

1. funding of **\$750** thousand for two paralegal positions, one attorney position, one reentry coordinator position, two forensic social worker positions, and one information technology security analyst position. The positions are listed below in priority order.
 - two paralegal positions (**\$150** thousand) to support attorneys in the Trial Division with their increased case and workloads;
 - one attorney position (**\$125** thousand) to meet the increased demand for representation in disciplinary hearings for clients held at the D.C. Jail and the Correctional Treatment Facility, as well as in early termination parole and supervised release hearings; and to increase representation at parole grant hearings in BOP facilities;
 - one reentry coordinator position (**\$75** thousand) to meet the transition needs of returning citizens released after serving decades-long sentences;
 - two forensic social worker positions (**\$250** thousand) to respond to the increased demand for assistance in cases in which PDS juvenile and parole clients need social services and mental health supports;
 - one information technology security analyst position (**\$150** thousand) to assist in the protection of client and employee data; and
2. funding of **\$1,016** thousand for software costs, contracting costs, and investigation costs. The costs are listed below in priority order.
 - to purchase software and the services of a security specialist (**\$600** thousand) to enhance PDS's data security;
 - to support and expand PDS's intern investigator program (**\$100** thousand);
 - to purchase budget formulation software, an electronic travel management system, and an acquisition management writing system (**\$316** thousand); and
3. one-time, multi-year funding (three years, FY 2024 through FY 2026) of **\$3,000** thousand for unanticipated costs resulting from the relocation of PDS's headquarters under a new GSA occupancy agreement.

Resource Request – Positions (**\$750** thousand)

Trial Division – Two paralegal positions (**\$150** thousand):

PDS requests funds for two paralegal positions to assist trial lawyers with their increased discovery practice due to the expansion of the use of forensic, video, cell site, and other electronic evidence in all cases.

As noted in PDS's FY 2023 Justification,¹³ trial attorneys' workloads have increased due to the upsurge in the number of homicides and serious felony cases filed in the Superior Court, the greater amount of work in all cases due to the impact of the expanded use of forensic science in cases, and the influx of vast amounts of video and digital evidence. As technology evolves, the sheer number of hours involved in evaluating the information continues to increase. Now that all discovery is stored electronically, the growth in this material can be seen in the 36-fold increase in PDS's data storage, which has gone from four terabytes in CY 2014 to 146.6 terabytes in 2022, the bulk of which is Trial Division discovery data.

As PDS reported in its FY 2020 Congressional Budget Justification,¹⁴ PDS has been experiencing a marked increase in the amount of electronic evidence provided by the United States Attorney's Office (USAO). Trial practice currently is significantly more discovery heavy than even five years ago and attorneys are spending a considerable amount of time organizing and reviewing the voluminous discovery that is now provided in every case. PDS's counterparts, Assistant United States Attorneys in the Superior Court Division of the USAO, have long had administrative support for their cases that includes both administrative assistants and paralegals. To continue to accommodate PDS's trial workloads, PDS is requesting funding for two paralegals who could assist attorneys and investigators with, inter alia:

- downloading and organizing discovery;
- downloading, organizing, and helping to review large records collected in cases (e.g., thousands of pages of medical records);
- formatting motions, especially those with multiple exhibits;
- downloading and distributing by email common filings (e.g., violation reports, court reports, DNA consumption letters, protective orders);
- subpoenaing records (e.g., hospital, school, mental health, probation, Department of Motor Vehicle (DMV) records) and tracking compliance;
- populating template letters to memorialize discovery that has been turned over by the government;
- proofreading letters, motions, and other filings;
- setting up virtual legal visits and legal calls with clients;
- setting up in-person legal visits with clients charged in juvenile court;
- setting up legal calls with clients in the BOP;
- responding to and sending legal mail to clients at the BOP and DOC;
- helping to create and distribute training materials;
- making clips of electronic discovery to use at hearings and in trial;
- preparing exhibits for trial;
- ordering transcripts;

¹³ See PDS FY 2023 Congressional Budget Justification at 18-20.

¹⁴ See PDS FY 2020 Congressional Budget Justification at 11-13.

- retrieving and reviewing media coverage related to cases; and
- scanning, organizing, and labeling files for new counsel, transfers, and archives.

Pursuant to the constitutional mandate imposed by the Supreme Court in *Brady v. Maryland*,¹⁵ the USAO is also now providing documentation concerning individual police officers' misconduct records, which often requires not only investigative specialists to review and analyze voluminous source documentation and interview witnesses to the alleged misconduct but requires that attorneys do so as well.¹⁶ Along with witness statements and police paperwork, discovery from the USAO in any one case now typically involves cell phone extractions that can be thousands of pages long, surveillance video evidence that can be hundreds of hours long, recordings of jail phone calls that can total hundreds of hours, and extensive cell site location data that can be used to incriminate or exculpate a defendant by showing his or her location and direction of travel during the course of a day. In addition, the prevalence of surveillance video from commercial entities and personal residences has also increased the amount of time attorneys must spend reviewing such material.

The District of Columbia Metropolitan Police Department's full implementation of body-worn cameras (BWC) in December of 2016 has also had a tremendous impact on the work of both attorneys and investigative specialists. Most cases now include hours of video footage from several officers at a scene. Review of BWC footage is particularly time-consuming because it typically shows multiple perspectives of a scene or an event. The footage includes audio as well as video and often must be synchronized across recordings in order to present a complete event to the jury. Organizing and reviewing all of this electronic evidence is immensely time consuming, and having paralegals assist with these tasks would allow attorneys more time for investigation, consulting, researching and writing motions, and hearing and trial preparation.

With the addition of two paralegals, PDS trial attorneys will have more ability to focus on critical legal matters encompassed in their cases.

Community Defender Division – one attorney position (\$125 thousand) and one reentry coordinator position (\$75 thousand) to support clients' needs as they are impacted by the criminal legal system:

PDS requests funds for one attorney position (\$125 thousand) to meet the increased demand for representing clients at a number of hearings including D.C. Department of Corrections disciplinary hearings, early termination hearings for parole and supervised release clients, and parole grant hearings.

The Prisoner and Reentry Legal Services Program (PRLS) of the Community Defender Division (CDD) currently has four staff attorneys who handle a myriad of pre- and post-trial issues on

¹⁵ *Brady v. Maryland*, 373 U.S. 83 (1963) (prosecutor withholding evidence that tends to negate guilt or mitigate the offense violates due process).

¹⁶ While almost all of the potential evidence, if not disclosed by the prosecution in discovery, is collected and analyzed by PDS investigative specialists, the attorney must still conduct their own review and analysis to make trial strategy decisions.

behalf of clients. Along with handling daily Duty Day requests that cover a variety of legal issues, lawyers in PRLS assist attorneys in sentencing matters, assist with BOP classification and designation recommendations, assist with emergency medical interventions for incarcerated clients, assist with sex and gun registration requirements for clients, work on issues surrounding detainers lodged against PDS clients, write up sentencing computations for clients including advocating for good time credit, file expungement motions on behalf of clients sentenced under the Youth Rehabilitation Act, and assist in any number of other general legal activities/issues.

In addition, PRLS attorneys handle disciplinary hearings at the D.C. Department of Corrections (DOC), early termination hearings for clients on parole and supervised release, and parole grant hearings held at BOP facilities across the country. In the past five years, the demand for this representation has exploded, which has resulted in a need to increase capacity.

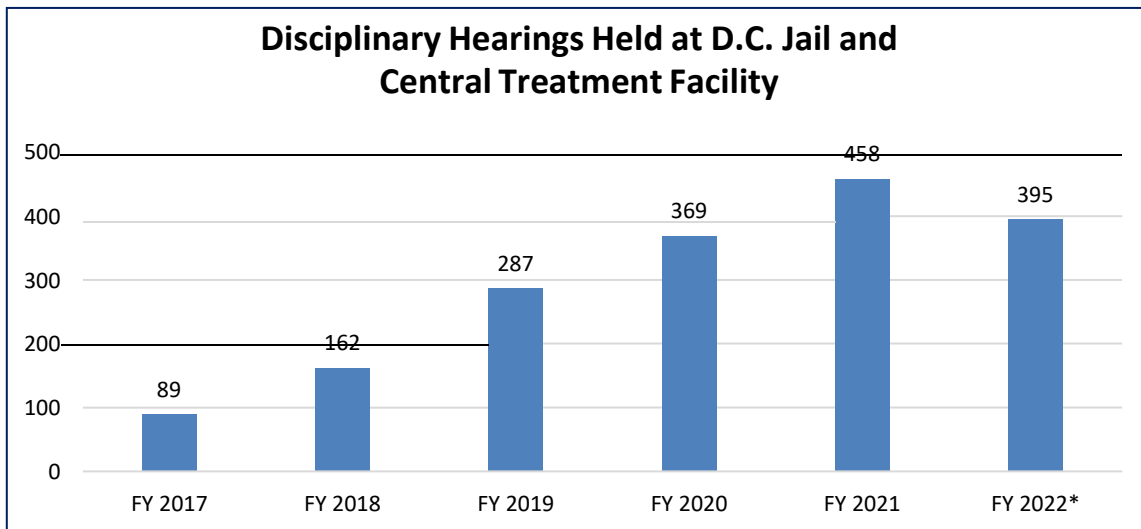
PRLS is authorized by statute¹⁷ to represent people who are accused of committing disciplinary infractions during their detention in DOC facilities. PDS represents clients at their disciplinary hearings before the DOC's Adjustment Board, the forum that decides the cases on the merits (i.e., dismiss, guilty, or not guilty) and issues sanctions. These hearings have a tremendous impact on clients who, if found guilty, can be placed in disciplinary housing akin to solitary confinement, denied family calls and visits, and precluded from involvement in any of the programming offered at the DOC.

Several times per week, the Adjustment Board provides notice to PRLS of requests for representation by DOC residents. The requests are often for representation on multiple serious disciplinary charges, many of which could result in separate criminal prosecutions. Because these are adversarial hearings, they proceed similarly to trials; therefore, representing clients requires considerable preparation, including:

- reviewing infraction reports and accompanying evidentiary documents, which are frequently voluminous;
- identifying factual and legal issues;
- conducting client interviews;
- preparing an investigative memo and conducting investigation;
- requesting and reviewing records;
- interviewing witnesses;
- reviewing supplemental documents;
- developing hearing and mitigation strategies;
- attending merits and penalty hearings; and
- pursuing any appeal.

As the chart below illustrates the number of hearings that CDD lawyers have participated in over the past five years has increased by more than 414 percent since FY 2017.

¹⁷ PDS's authorizing statute, D.C. Code § 2-1602(a)(1)(H), specifies that PDS may represent "persons incarcerated in District of Columbia corrections facilities . . . in administrative matters related to their incarceration before any court or administrative body."



* Hearings held through July 31, 2022

PDS is also the exclusive legal service provider for people seeking early termination of parole and supervised release. Through an agreement between the USPC and PDS, the USPC provides PDS with notice of all people scheduled for early termination of parole hearings and who seek legal representation at those proceedings. PDS also receives requests for representation for early termination of parole and early termination of supervised release directly from clients and advocates working with people on community supervision. Representation includes meetings with the clients and with community supervision officers (CSOs); making Freedom of Information Act (FOIA) requests for documents from CSOSA and the USPC; collecting original criminal case files from D.C. Superior Court and other relevant case documents; gathering letters of support; and preparing reentry plans. For early termination of parole hearings, representation also includes drafting and filing pre-hearing submissions to the USPC; preparing oral arguments; representing clients at their hearings; filing post-hearing submissions; and reviewing USPC decisions and advising clients. Individuals seeking early termination of supervised release are not afforded a hearing; therefore, PDS attorneys prepare and file a written submission to the USPC.

With resources provided in PDS's FY 2015 Appropriation,¹⁸ PDS expanded its legal representation to include clients who seek release from prison on parole. PDS is the principal D.C. legal services provider that represents people seeking release from the BOP¹⁹ from indeterminate (parole eligible) sentences.²⁰ The USPC typically schedules over 130 hearings each year for people eligible for parole at BOP facilities across the country. PDS receives numerous requests for representation from people in BOP institutions, family members, advocates, community organizations, and legal service providers, but is limited in the number of cases it can handle by the number of lawyers available to assist. On average, PDS receives 100

¹⁸ See PDS FY 2015 Congressional Budget Justification at 11-12.

¹⁹ See D.C. Code §§ 24-131, - 403, -408.

²⁰ People convicted of felony offenses that were committed before August 5, 2000, were sentenced to indeterminate, typically parole eligible sentences.

requests for representation in these matters annually but is only able to take approximately 20 such cases each year.

Representing clients at parole hearings is time-intensive. Because clients who received parole-eligible sentences were convicted of offenses that occurred before August 5, 2000, representing them in parole grant hearings necessitates, in almost all instances, examining decades of prison records as well as locating and reviewing historical case documents. The representation requires, among other things: scheduling legal calls with clients; developing investigation plans; requesting documents (including FOIA requests to the BOP and USPC), retrieving original criminal case files from D.C. Superior Court, and collecting other relevant case documents; gathering letters of support; preparing reentry plans; devising mitigation strategies; drafting and filing pre-hearing submissions to the USPC; preparing oral arguments; coordinating logistics for the hearings (which often take place in remote locations); visiting clients at BOP facilities for prehearing preparation; representing clients at their hearings; filing post-hearing submissions; and reviewing USPC decisions and advising clients.

With the addition of one CDD attorney, PDS will be able to increase representation for clients at BOP parole grant hearings across the country as well as respond effectively to the increase in requests for representation at DOC disciplinary hearings and early termination of parole and supervised release hearings.

PDS requests funds for a reentry coordinator position (\$75 thousand) to assist clients across divisions who are impacted by the criminal legal system as they transition back to the community.

PDS is requesting funds to hire a reentry coordinator to be based in the Community Defender Division. The coordinator would assist with reentry for clients who have been recently released from incarceration or who have recently interacted with the criminal legal system. The reentry specialist would serve as a point person for community-based service providers and would work with each client to support their individual reentry needs.

As a result of PDS's success in gaining release for its IRAA and compassionate release clients, there are a large number of individuals who are returning to D.C. after many years of incarceration. In addition to PDS's IRAA and compassionate release clients, there are a number of former PDS clients who have finished serving their sentences and are also returning from all over the country from a variety of BOP facilities. Many, if not all, of these clients need some level of assistance when they return. For example, clients may need to connect with community organizations that can supply the most basic necessities like clothing and toothpaste. Others may need lessons on how to use the internet or cellphones and how to get IDs and vouchers for services. Clients may need help connecting with community organizations that will offer emotional and spiritual support if they can no longer turn to their families for help, or if family members have died. Further, the majority of returning citizens need help with housing and with coordinating and managing mental and physical health appointments and entry into job programs. While PDS's forensic social workers help with these issues and work on reentry plans for many returning citizens, much of this work is time intensive – repeatedly calling a housing coordinator or reaching out to mental health facilities for appointments or prescriptions – and

does not require the level of education and additional areas of expertise that the forensic social workers have.

The reentry coordinator will provide guidance and support to PDS clients returning home from federal prison. This would include pre-release outreach to PDS clients, to establish a connection and provide information about the wrap-around support, services, and referrals that are available upon release. The coordinators duties would include:

- participating in staff meetings to coordinate information on clients' release dates, and outreach to them in advance to ensure they are connected with PRLS and aware of the scope of reentry services being offered;
- distributing and collecting (via mail) pre-release assessment forms, to determine services and programmatic needs;
- referring clients upon release to community resources including housing, employment services, wrap around services for mental health and substance abuse treatment, public benefits, and healthcare;
- assisting clients with obtaining vital documents necessary for a successful transition (i.e., birth certificates, DMV photo identification, social security cards);
- serving as a liaison between clients, community organizations (i.e., transitional living facilities, job training programs), probation and parole officers and family; and
- identifying and building partnerships, utilizing existing partnerships (for example the Reentry Action Network) and serving as a liaison to other organizations and employers working on reentry efforts.

Hiring a reentry coordinator will enable PDS to use its forensic social workers, lawyers and investigative specialists' time more effectively and will bring to PDS's staff an individual with specific expertise and community connections in all aspects of reentry.

Office of Rehabilitation and Development – two forensic social worker positions (\$250 thousand):

PDS requests funds for two forensic social worker positions to manage the increased demand for assistance in the Parole and Community Defender Divisions.

A large number of PDS clients suffer from mental health illnesses and struggle with the myriad of issues that can affect people growing up in poverty such as insecure housing, substance abuse issues, a lack of education, and a lack of access to medical care.²¹ PDS forensic social workers assist the legal team with clients who have a number of these issues. They identify client needs and resources to meet those needs. With that information, they can recommend to the sentencing judge programs or placement options that are alternatives to incarceration, alternatives that not only cost less than incarceration but have a greater chance of helping the client succeed in the community long-term without reoffending. On IRAA and compassionate release cases, forensic social workers develop comprehensive release plans. These plans provide judges with essential

²¹ For an example the work PDS forensic social workers do to assist clients, see MZ's story below at pages 31-32.

information about a client’s housing and reentry programming, and create a structure for release after decades of incarceration. For the successful IRAA and compassionate release motions, of which there are many, the forensic social workers implement their comprehensive release plans, assisting returning clients with all the necessary steps to community reintegration and to connecting with social services, including mental health supports as necessary.

The forensic social workers provide direct support to clients as well. Forensic social workers spend considerable time connecting people with Supplemental Security Income benefits, Supplemental Nutrition Assistance Program benefits, and D.C. Medicaid. They also assist clients with finding community resources for housing, mental health treatment, and substance use treatment. As getting these supports in place can be the reason a judge releases a client from detention or incarceration or imposes a probation sentence with conditions instead of a prison sentence, when ORD is understaffed, the attorney doing the sentencing advocacy will attempt to do the social work themselves.

The addition of two forensic social workers would allow PDS to assign them to divisions that currently do not have a dedicated social worker assisting them, namely the Juvenile Services Program (JSP) in the Community Defender Division and the Parole Division. This would increase the capacity of ORD to meet the expanding demand for their services in pre- and post-trial adult and juvenile cases and on IRAA and compassionate release cases.

JSP has offices in the District’s youth detention facilities and provides legal assistance to youth who are detained in the facilities or who, after being found “involved in” (or guilty of) a delinquency offense are committed to the custody of the Department of Youth Rehabilitation Services (DYRS). JSP has become the model program in the country particularly after the passage of the Detained Youth Access to the Juvenile Services Program Amendment Act of 2019.²² Because the juvenile system focuses on rehabilitation rather than punishment, JSP would utilize a social worker throughout the entire program – starting with focusing on the needs of detained youth and addressing those needs as they plan to reintegrate into the community. For example, reentry planning is a vital part of JSP’s post-disposition legal advocacy²³ necessary to ensuring clients and their families have meaningful access to education, medical, mental health, housing, and other services to promote success as the clients reintegrate into their communities. The Juvenile Justice Reform Act of 2018,²⁴ which amended the Juvenile Justice and Delinquency Prevention Act of 1974, specifically addressed the need for reentry plans for youth returning to the community. Jurisdictions are now required to create written reentry case plans

²² D.C. Law 23-66 is codified at D.C. Code § 2-1515.05a and requires the Department of Youth Rehabilitation Services to permit JSP confidential access to youth in its juvenile detention facilities for the purpose of providing legal services to the youth. JSP was also mentioned directly at a hearing in front of the House Judiciary Committee as the model for youth advocacy in detention and community. <https://www.youtube.com/watch?v=a8M0NiGsFjU> (beginning at 2:14:38).

²³ The D.C. Court of Appeals acknowledged the importance and legal right of youth to have post-disposition attorneys in *In re N.H.M.*, 224 A.3d 581 (D.C. 2020).

²⁴ Pub. L. 115–385, 132 Stat. 5123 (Dec. 21, 2018).

that address housing needs, pre- and post-release plans, and any other identified individualized needs for the youth. Reentry planning starts immediately once a youth is committed to DYRS. JSP attorneys work with the youth to identify short- and long-term goals, and the attorneys work with the youth and their family to ensure that every aspect of legal advocacy during the youth's commitment to DYRS supports the youth in achieving their goals. A forensic social worker will be able to identify resources and programs that will support the youth with reentry to the community.

A forensic social worker would provide a similarly essential service to Parole Division lawyers and clients. Currently parole attorneys bear the substantial burden of supporting their clients' mental health and social services needs—arranging for psychological evaluations, identifying drug treatment programs, preparing mitigation reports, etc. Supporting the Parole Division with a dedicated social worker would allow the attorneys to focus on the legal aspects of their clients' cases while still providing the assistance to clients that can allow them to be successful on parole or supervised release. Identifying client needs and matching clients to appropriate treatment programs can offer the USPC hearing examiner or the client's community supervision officer a viable alternative to revocation and reincarceration.

With the addition of two forensic social workers, PDS will be able to address the significant mental health and other needs of its juvenile and parole clients and free up the remaining social workers in ORD to assist with all of the remaining PDS clients.

Office of Information Technology – one security analyst position (\$150 thousand):

PDS requests funds for one security analyst position to manage all of PDS's data security functions.

PDS does not currently have any personnel dedicated to IT security. This position would be the first of its kind for PDS. The analyst would be responsible for managing every aspect of PDS's data security protection structure, including all software and systems related to security, vulnerability identification and management, insider threat, file access and permissions, and documentation of all PDS security controls. The analyst would work with senior management on all systems security policies and on risk management.

Resource Request – Consulting and Software Costs (\$600 thousand)

Information Technology Division – (\$600 thousand):

PDS requests funds to procure consulting services and security software necessary for compliance with the Federal Information Security Management Act (FISMA).

PDS is embarking on a multi-year effort to upgrade and implement new security provisions to comply with Executive Order 14028 (Improving the Nation's Cybersecurity) and Office of Management and Budget Memorandum M-22-09 (Moving the U.S. Government Toward Zero

Trust Cybersecurity Principles), to better ensure that PDS’s data is kept secure and to meet the tenets of the Cybersecurity and Infrastructure Security Agency’s zero trust model’s five pillars:²⁵

- Use of enterprise-managed identities
- Ability to prevent, detect, and respond to incident on PDS-operated devices
- Encryption of DNS requests and HTTP traffic
- Empirical vulnerability testing of all PDS applications
- Use cloud security services to monitor access to sensitive data; implement enterprise-wide logging and information sharing

Like many government agencies and companies around the country, PDS is regularly subject to hacking attempts. PDS’s current security protocols protect PDS’s sensitive data, but PDS’s goal is to adopt a more robust security structure to increase PDS’s capacity to resist more sophisticated system intrusion attempts. PDS intends to be guided in this effort by FISMA standards. To prepare PDS to take the next steps, PDS needs to engage a consultant to advise PDS concerning the creation and implementation of such a security program. In addition to enhancing internal IT security, PDS needs to purchase software that will allow it to control and monitor file and data access across the environment as well as implement products to stop potential breaches. The consultant will assist with implementation of software as well as provide analysis and direction for next steps. To ensure PDS makes informed, evidence-based decisions regarding data security, PDS intends to procure consulting services to guide the creation and implementation of security program enhancements – starting with FISMA compliance. In addition, PDS must procure the software that will enable monitoring of permissions and access across the environment, and a reduction in the risk of potential breaches.

Resource Request – Supplemental Cost for Intern Program (\$100 thousand)

Investigation Division – (\$100 thousand):

PDS requests additional funding for The Criminal Law Internship Program (CLIP).

The Criminal Law Internship Program (CLIP) is a one-of-a-kind investigative internship program for undergraduate and graduate students. PDS relies heavily on the work that the investigative interns do to support PDS’s investigative specialists in every legal division. The Princeton Review ranked the program as one of the most hands-on internship programs in the nation, stating that the program is “a criminal law internship at its in-your-face best.”²⁶ The program equips students with the fundamental investigative techniques and the relevant criminal law knowledge necessary to provide exceptional investigative support to PDS attorneys. Additionally, the program offers interns extensive field training; frequent direct interaction with PDS staff attorneys; hands-on, real-life work experience and responsibility; increased employability; and the ability to do rewarding work that makes a

²⁵ See M-22-09 (Jan. 26, 2022) at 4.

²⁶ Mark Oldman and Samer Hamadeh, *The Best 109 Internships* (9th Ed., 2003) at 263.

difference.²⁷ Most of all, interns get a behind-the-scenes look at the criminal legal system. Investigative interns spend at least 12 weeks partnering directly with staff attorneys and investigators to complete various investigative tasks and advocate for their clients.

Over the last decade, CLIP has become integral to PDS and the teams across all divisions that they support. As they have since the inception of the program, the interns collect statements from complainants and witnesses, measure and diagram crime scenes to check police reports and witness accounts, and occasionally testify to present their findings. But, as noted in PDS's FY 2023 Congressional Budget Justification²⁸ and the paralegal position request described above,²⁹ there is now an additional need for assistance in documenting and reviewing body worn camera video, cell phone forensics, GPS data, surveillance video, and other evidence that the USAO now routinely turns over as part of discovery. In addition, as PDS's IRAA and compassionate release practice has grown, so too has the need for investigative help as each such case requires tracking down and reviewing large amounts of historical documents and data. Investigator specialists and attorneys now increasingly rely on investigative interns to help with these tasks and others such as preparing mitigation videos.

Historically PDS hosts between 140 and 180 interns throughout the year and assigns the interns in pairs to a legal team to support the investigation in cases.³⁰ To continue this successful program, attract diverse, high-quality candidates, and follow the Fair Labor Standards Act, PDS interns are paid the District's minimum hourly wage, which has increased over the years. To continue to use this successful model, maintain the number of interns necessary for the work, and keep pace with the increasing minimum wage, PDS needs an increase in the CLIP budget.

Resource Request – Financial Management Support (\$316 thousand)

Office of Budget and Finance Division – (\$316 thousand):

PDS requests funding to improve efficiency and productivity by acquiring enterprise financial management systems upgrades offered by PDS's Shared Service Provider, the Interior Business Center.

Specifically, PDS is seeking to acquire:

- **Contract Lifecycle Management (\$150 thousand):** This upgrade to the Oracle Federal Financials system will provide enhanced functionality throughout the procure-to-pay

²⁷ See below at pages 37 for a description of CLIP participants' experiences.

²⁸ See n. 13.

²⁹ See above at 10-12.

³⁰ PDS had 182 interns in 2016 who were paid an average hourly rate of \$13 per hour. During the COVID-19 pandemic, when CLIP shifted to a remote program, PDS limited the number of interns to the number of secure laptops that could be lent to program participants. As the program gets rebuilt coming out of the pandemic, PDS anticipates hiring at least 140 investigative interns in FY 2024.

cycle. Features such as in-system creation of solicitations, automatic Federal Acquisition Regulation clause updates and fill-in, and the ability to use contract vehicles that can cite multiple vendors on a single agreement far exceed the capability of PDS's current basic procurement module. These enhancements are particularly important in the procurement of expert services which play a vital role in support of PDS attorneys.

- **Budget Formulation & Execution Integration (\$100 thousand):** This upgrade to the Oracle Federal Financials system will enable PDS to combine the ability to design multiple budget scenarios, conduct sensitivity/what-if analyses, select an optimized spend plan, and execute that plan – all from a single, unified system of record. This integrated tool streamlines the budget formulation process, bypasses the need to continually audit and backup multiple, linked-cell spreadsheets, and reduces the risk of data loss due to instability and file corruption.
- **E-Travel (\$66 thousand):** This upgrade will provide PDS with a modern, web-based automated travel planning, authorization, and reimbursement system that is integrated with Oracle Federal Financials. ConcurGov allows the traveler to make airline, lodging, and rental car reservations via the ConcurGov Solutions Web Portal. The system is paperless and allows for the electronic submission of documents (including trip receipts). Upon completing a trip, the traveler files a voucher that is electronically routed for approval and payment. The automated system simplifies the tracking, auditing, and reporting of PDS travel for case work, recruiting and training.

Resource Request – Additional Requirement for New Headquarters (\$3,000 thousand)

Administrative Services Division – (\$3,000 thousand):

PDS request funds for costs associated with relocation under a replacement lease for headquarters offices, field offices, and related facilities.

PDS is moving to a new headquarters located in the Judiciary Square Building at 633 3rd Street NW. PDS sought in its FY 2019 Budget Request \$4,815 thousand in three-year funding for the relocation. This amount represented the estimate of relocation costs provided by GSA, and it was appropriated over two budget cycles.³¹ In late FY 2021, PDS accepted GSA's offer of a small amount of additional space in the Judiciary Square Building, which was needed because PDS's initial plans for moving its headquarters had expanded to include a significantly larger number of staff.³² Also in late FY 2021, PDS supplemented the relocation funds with FY 2021 year-end

³¹ At OMB's direction, PDS requested \$4,471 thousand of that amount in FY 2019 and the remaining \$344 thousand in FY 2020. Both amounts were appropriated in those respective fiscal years.

³² The lease of one of PDS's satellite offices expires in 2024. The delay in the headquarters move gives PDS the opportunity to forgo seeking a new lease for another satellite office in favor of incorporating the satellite office personnel into the headquarters move. In addition, PDS needs

funds in the amount of \$748 thousand to account for the increase in space PDS would occupy. The total obligated with GSA for the move is now \$5,563 thousand. GSA has informed PDS, however, that \$5,563 thousand is inadequate for PDS's move. Several factors contribute to this inadequacy. Inflation and supply chain disruptions affecting global commerce are expected to significantly drive up costs for materials and building out the space. Another trigger for an increase in costs is PDS's plan to move a substantially higher number of staff to the new location than originally envisioned.

PDS is seeking \$3,000 thousand for additional anticipated costs related to the move including, inter alia, the cost of moving PDS's data center, cabling costs, cost for additional furniture expenses, the cost of physically moving from the two buildings that are the current PDS headquarters to the new office and the cost for implementing additional security measures not currently present at the new headquarters. As some of these expenses can be deferred until after the physical move is completed, multi-year funding would provide more flexibility to use the existing funds for design, construction, and the physical relocation.

The current design plan for the new headquarters includes 63 single offices, 44 double offices, 62 cubicles and 75 touchdown spaces. In addition, there will be a reception area and 8 conference rooms. PDS, as much as possible, will reuse its current complement of furniture in the new space (e.g., newer standing desks and conference room furniture) but has discovered that some of the older furniture will not fit in the smaller offices being designed that are anticipated to accommodate expanded telework, efficient storage, and additional staff.

PROGRAM DESCRIPTION

Legal Services

PDS and private attorneys, both appointed by the District of Columbia courts pursuant to the Plan for Furnishing Representation to Indigents under the District of Columbia Criminal Justice Act (CJA),³³ provide constitutionally mandated legal representation to indigent people facing a loss of liberty in the District of Columbia. PDS handles a majority of the most difficult, complex, time-consuming, and resource-intensive criminal cases, while private attorneys (CJA lawyers) handle the majority of the less serious felony, misdemeanor, and regulatory offenses. PDS is a model program applying a holistic approach to representation. PDS uses both general litigation skills and specialty practices to provide complete, quality representation in complicated cases. PDS is a single program that assigns its attorneys and professionals to specific, integrated functions to promote overall representation in individual cases. PDS staff attorneys are assigned to one of seven practice divisions: Trial, Appellate, Mental Health, Special Litigation, Parole, Civil Legal Services, and Community Defender. On a day-to-day basis, the attorneys in the

extra space to accommodate the increase in staffing due to the new positions funded in FY 2023 and possible positions in FY 2024.

³³ See D.C. Code § 11-2601 *et seq.* D.C. Code § 11-2601 mandates the creation of a plan to furnish representation to indigent defendants that includes provisions for private attorneys, attorneys furnished by PDS, and qualified students participating in clinical programs.

various divisions provide advice and training to each other and often form small teams to handle particularly challenging cases.

Using this team approach, PDS undertakes a wide array of legal representation, including homicide trials, special education proceedings, parole revocation hearings, disciplinary hearings for detained children and adults, challenges to the treatment of clients under supervision, collateral attacks on wrongful convictions, involuntary civil commitment proceedings, and groundbreaking appellate representation.

Trial Division

Attorneys in the Trial Division provide zealous legal representation to adults and youth charged as adults in criminal proceedings in Superior Court and to children in delinquency matters. Attorneys are assigned to specific levels of cases based on experience and performance. As a result of intensive supervision and ongoing training, attorneys generally transition over the course of five to six years from litigating juvenile delinquency matters to litigating the most serious adult offenses. The most seasoned attorneys in the Trial Division handle the most intricate and resource-intensive adult cases. For example, senior PDS attorneys routinely handle cases involving DNA evidence, expert testimony, multiple co-defendants, and novel or complex legal issues. This group of highly trained litigators provides representation in the majority of the most serious adult felony cases filed in Superior Court each year.

Traditionally, less senior Trial Division attorneys handle difficult or resource-intensive delinquency cases (for example, cases involving children with serious mental illness or learning disabilities, or children facing serious charges), some general felony cases, and a limited number of misdemeanor cases.³⁴ Trial Division attorneys also provide representation in a variety of other legal matters through PDS's Duty Day program.

The Trial Division also includes immigration attorneys, who are an integral part of effective representation for clients who are noncitizens. PDS's immigration attorneys ensure that these clients are properly advised on how decisions made in their criminal case can affect their immigration status.

Appellate Division

Attorneys in the Appellate Division are primarily responsible for handling direct appeals and other appellate litigation generated in PDS cases, providing legal advice and training to CJA attorneys in appellate matters, and responding to requests from the District of Columbia Court of

³⁴ General felony cases include weapons offenses, felony drug offenses, and serious assaults. PDS provides representation in misdemeanor cases on a limited basis, typically in instances involving sex offenses against minors, which have significant collateral consequences; through a specific request from the court when the matter involves a novel issue or a client with a significant mental illness; or in cases involving a systemic issue that PDS is uniquely suited to address. PDS's authorizing statute permits PDS to represent "[p]ersons charged with an offense punishable by imprisonment for a term of 6 months, or more." D.C. Code § 2-1602(a)(1)(A). Sentences for most misdemeanors in the District of Columbia are for lesser terms.

Appeals for amicus briefs in non-PDS cases involving novel or sophisticated legal issues. Another important function of the Appellate Division is to provide a wide range of advice and training to other PDS divisions. The Appellate Division attorneys' knowledge and experience allow them to assist other PDS lawyers in complicated cases when difficult legal issues arise.

Mental Health Division

Attorneys in the Mental Health Division (MHD) handle, on average, half of the involuntary civil commitment cases that arise in Superior Court. PDS is initially appointed when a person is detained in a psychiatric hospital upon an allegation that the person is likely to injure self or others as a result of mental illness. MHD lawyers also represent persons in post-commitment proceedings, including commitment reviews and outpatient revocation hearings; in involuntary commitment proceedings of persons found incompetent to stand trial because of mental illness or intellectual disorder; involuntary medication issues; and in matters relating to persons found not guilty by reason of insanity in Superior Court or in U.S. District Court cases. The lawyers in this division also provide mental health consultation and litigation assistance to Trial division attorneys confronted with complex pre- and post-trial mental health issues. MHD attorneys recently developed litigation strategies to bring home D.C. residents who languish indefinitely in the Bureau of Prisons under federal civil commitment, even after they have served their sentence. The lawyers in this division also provide information to the District of Columbia Council on proposed mental health and intellectual disorder legislation, conduct training sessions on the rights of persons with mental illness involved in civil commitment actions, and provide legal assistance to CJA lawyers appointed by the court to handle involuntary civil commitment cases.

Special Litigation Division

The Special Litigation Division (SLD) handles a wide variety of litigation that seeks to vindicate the constitutional and statutory rights of PDS clients and to challenge pervasive unfair criminal system practices. SLD attorneys practice across division lines, whether civil or criminal, juvenile or adult, pretrial or post-conviction. They collaborate with their PDS colleagues and with members of the broader legal community with whom they can make common cause. SLD attorneys practice before local and federal trial and appellate courts in the District of Columbia and as *amicus* in the United States Supreme Court. Among SLD's recent achievements include: the release of more than 30 people from life sentences through IRAA; a successful class action litigation that sought declaratory and injunctive relief to improve conditions at the D.C. Jail during the COVID-19 pandemic; litigation to end the illegal detention of individuals based on ICE requests; and a lawsuit suing for equitable treatment for people incarcerated in the BOP serving D.C. Superior Court sentences.

Parole Division

The Parole Division provides legal representation to individuals who are facing revocation of their parole or supervised release. PDS represents more than 95 percent of the individuals facing revocation proceedings. Attorneys represent clients at revocation hearings before the USPC pursuant to local and federal laws. The majority of the revocation hearings are held at local detention facilities; through the development of diversion programs, however, some of the hearings take place at locations within the community.

To leverage its capacity to assist clients, the Division also works in collaboration with community organizations; local, state, and federal paroling authorities; and experts who serve as advocates for incentive-based sanctions that are fair and designed to yield successful outcomes for individuals on parole and supervised release. In addition, the Division provides training to members of the District of Columbia Bar, members of the Federal Bar, attorneys in District of Columbia law firms providing pro bono services, CJA attorneys, students in District of Columbia law school clinics, and law students from throughout the United States clerking at PDS on parole and supervised release matters. This training educates criminal defense lawyers and students on the collateral impact criminal cases have on clients who are also on parole or supervised release, and expands the pool of attorneys available to handle parole and supervised release matters that PDS is not permitted to handle under the D.C. Rules of Professional Conduct as a result of conflicts of interest.

Civil Legal Services Division

The Civil Legal Services Division (CLS) provides legal representation to clients in a wide array of civil matters that are collateral or ancillary to the clients' involvement in the delinquency or criminal legal system, or that involve a restraint on liberty (e.g., certain contempt proceedings). The types of collateral and ancillary civil issues these clients face are complex and almost limitless in number (loss of parental rights, loss of housing, seizure of property, probate, civil tort defense, restitution proceedings, child custody, Supplemental Security Income benefit work, loss of employment) and can arise even if the person is acquitted of the criminal charges or has been only arrested and never charged.

An important component of CLS's diverse civil practice is special education advocacy by attorneys with expertise under the federal Individuals with Disabilities Education Act,³⁵ which mandates special accommodations in public schools for children who cannot be educated adequately in a traditional classroom setting due to learning disabilities or other physical or intellectual challenges. Special education advocacy is closely anchored to the Trial Division's representation of young people because of the vital importance of education and the pressing special educational needs of many court-involved youth.

Community Defender Division

As part of PDS's holistic approach to public defense, the Community Defender Division (CDD) provides services primarily to adults and children who are challenged by the consequences of criminal and juvenile legal system involvement. This includes people who have been arrested, people who are charged in the Superior Court of the District of Columbia, people who are currently incarcerated, as well as people who have been recently released from detention and incarceration.

For adult clients, CDD's Prisoner and Reentry Legal Services Program (PRLS) responds to the legal and social services needs of people whose lives have been affected by their interaction with the D.C. criminal legal system. PRLS serves individuals who are in the community or who are

³⁵ See 20 U.S.C. § 1400 *et. seq.*

housed either at institutions operated by the DOC or at those operated by the BOP throughout the nation. PRLS services include legal representation of clients in administrative hearings in DOC facilities and in parole grant hearings and other release-related matters in BOP facilities. PRLS also advises and advocates on behalf of people convicted of D.C. Code offenses serving sentences in the DOC and in BOP facilities to improve their conditions of incarceration.

The program also represents people in legal matters resulting from the myriad collateral consequences of criminal cases. This consists of the extensive work done to advocate and litigate on behalf of people as they reintegrate into the community including seeking to seal their criminal records; seeking to terminate parole or supervised release before the United States Parole Commission; seeking to remove legal barriers to occupational licensing, employment, education, and housing; and otherwise seeking to overcome other obstacles created by a criminal record or conviction. PRLS also works closely with and connects clients with community-based organizations to provide comprehensive reentry services.

For youth clients, CDD's Juvenile Services Program (JSP) serves young people who have had contact with the juvenile legal system and, for youth charged as adults, the criminal legal system. JSP represents youth at administrative due process hearings, provides in-person legal consultations for children at the District's youth detention centers, and works with community organizations to develop reentry programs that address the unique needs of children. In addition to staffing legal rights offices inside the District's two secure juvenile facilities, JSP visits local group homes and foster care homes to offer legal assistance to committed youth. JSP also visits young clients placed in long term residential facilities all over the United States. As these clients rarely, if ever, have post-adjudication legal visits from their appointed attorneys, maintaining this in-person contact with children who are placed in these facilities far from home ensures that their legal needs are addressed and that they are not subjected to improper treatment.

Legal Support Services

Legal Support Services is composed of various professionals within PDS who work closely with attorneys on individual cases: the Investigations Division, the Office of Rehabilitation and Development (ORD), and the Defender Services Office (DSO). Investigative specialists ensure that each case is carefully investigated prior to a client's decision to accept a plea offer or proceed to trial.³⁶ ORD's forensic social workers provide presentencing assistance to address mitigation issues and to provide client-tailored program alternatives.³⁷ Other legal support services include a multi-lingual language specialist to facilitate communication with non-English

³⁶ See e.g., *Kimmelman v. Morrison*, 477 U.S. 365 (1986) (failure to investigate and present Fourth Amendment claim was constitutionally ineffective assistance of counsel). Unlike many other jurisdictions, in the District of Columbia, the prosecution provides neither the names of its witnesses, nor their statements, before trial, thereby making the constitutionally required pretrial investigation of prosecution witnesses by defense counsel extraordinarily time consuming and complicated.

³⁷ See *Wiggins v. Smith*, 539 U.S. 510 (2003) (decision of counsel not to further investigate petitioner's life history for mitigating evidence beyond presentence investigation report and department of social services records fell short of prevailing professional standards).

speaking clients without the need to hire outside translators, a librarian to manage PDS's specialized collection and electronic access to research and to oversee the legal research section of the website PDS maintains for CJA attorneys, and three paralegals who work on cases and projects.

Investigations Division

The Investigations Division supports all the legal divisions of PDS, in particular the Trial Division, by providing thorough and professional investigative work, which includes locating witnesses, conducting field interviews, taking written statements, conducting mitigation investigation, collecting and assessing digital evidence (e.g., security camera footage, cell phone records, body-worn camera video, "Shot Spotter" (gunshot locations) technology, and Global Positioning System records), serving subpoenas, collecting police reports, copying court and administrative files, and preparing exhibits for trials and other hearings. In addition to producing exceptional investigative work in PDS cases, the staff conducts initial and ongoing training to defense investigators across the country and to court-certified CJA investigative specialists who provide investigation services to CJA attorneys.

Office of Rehabilitation and Development

The Office of Rehabilitation and Development (ORD) is composed of experienced licensed forensic social workers and professional counselors. The ORD staff are skilled mitigation specialists who as part of the defense team, among other services, provide the Superior Court with information about viable community-based alternatives to incarceration. Because they are well-versed in all of the District of Columbia-area rehabilitative programs (e.g., drug treatment, job training, education programs, and parenting classes), ORD staff members are frequently asked to provide consultation for judges, CJA lawyers, and others in the criminal legal system. ORD provided technical assistance in the development of the PDS D.C. Reentry Navigator (which has replaced the ORD Adult and Juvenile Resource Guides), a comprehensive community resource guide for persons seeking to regain their lives following arrest, conviction and/or incarceration. This guide provides information regarding a wide range of services available to individuals involved in the criminal legal system. The guide, available on PDS's website,³⁸ is used by the Court Services and Offender Supervision Agency, the BOP and its contract prisons, Superior Court, and many other agencies and organizations working with clients in the criminal legal system.

Defender Services Office

The Defender Services Office (DSO) supports the court appointment-of-counsel system by determining the eligibility for court-appointed counsel of every child and adult arrested and brought to Superior Court. DSO coordinates the availability of PDS attorneys, CJA attorneys, law school clinic students, and pro bono attorneys for appointment to new cases. DSO operates six days a week, including holidays. PDS attorneys work the same schedule to be available for client representation and other needs of the court system.

³⁸ PDS's website can be found at www.pdsdc.org.

Administrative Support

PDS has a number of divisions that provide technical assistance to PDS staff. Though small, these divisions support the overall effective functioning of PDS using both internal expertise and outside contracts for short-term selective expertise. These divisions include the Budget and Finance Office, the Human Resources Office, the Information Technology Office, and Administrative Services. In concert with individual attorneys and PDS executive staff, these divisions provide such services as procurement of expert services for individual cases, financial accountability,³⁹ recruitment and retention of PDS's human capital, development of an electronic case management system, maintenance of PDS's IT infrastructure, and copying and supply services.

Though PDS is made up of a number of divisions and legal practice groups, each group's and each employee's work is valued for the manner in which it enhances direct client representation. PDS's single-program approach allows PDS to manage and adjust its staffing to bring the ideal mix of general skills and specialized expertise to each case according to the client's needs.

PDS PERFORMANCE

Case Performance and Data⁴⁰

"I feel like my life was just a broken jigsaw puzzle, and you picked up the pieces and put it back together."⁴¹

While the number of cases won or the number of clients being released from jail or hospitalization is data that shows a certain type of result, PDS prides itself on its holistic approach to clients' representation and, as the above quote and the below performance descriptions illustrate, it is this comprehensive advocacy that makes a difference in clients' lives and upholds the constitutional values enshrined in the effective assistance of counsel.

The below examples illustrate the excellent client service provided across PDS divisions in FY 2022:

IRAA Performance

IRAA: FB was sentenced to life in prison for a crime he committed when he was 19 years old. PDS filed a motion on his behalf, describing his growth during his 28 years of incarceration: FB

³⁹ While a clean audit is an expectation and not an accomplishment for PDS's Budget and Finance Office, it is worthy of note that PDS continues to receive clean financial audits.

⁴⁰ Case descriptions are included with the clients' permission and with their identity masked. The D.C. Rules of Professional Conduct prohibit PDS from identifying clients and revealing information about their cases outside of the public record. *See* D.C. R. Prof. Conduct 1.6.

⁴¹ Quote from a client's letter.

earned his GED, worked as a clerk in the prison's education department, became a trusted mentor and leader for younger men, and developed a reputation for protecting the most vulnerable and maintaining peace in an otherwise chaotic prison environment. PDS interviewed close to 50 family members and friends and obtained 43 letters of support for FB, showing the court the many people whose lives were positively impacted by FB and the many people who were committed to his success. PDS also retained three experts whose reports were filed with FB's IRAA motion: a mitigation specialist who conducted a multi-generational history of FB's family and childhood, a clinical psychologist who evaluated FB's current lack of dangerousness and fitness to reenter society, and a prison expert who contextualized FB's record within the BOP. PDS also successfully connected with a victim in the case who supported FB's release. The motion included a reentry plan for FB that described among other supports, arrangements made for his housing and his employment. A few days after FB's 48th birthday, his sentence was reduced by a judge to effectuate his immediate release under IRAA. Today FB is reunited with his family and is thriving in the community.

IRAA: PW was serving a sentence of 45 years in prison for a murder and a carjacking he committed when he was 19. Prior to his incarceration, PW was a high school graduate with no criminal record; he had been working two jobs since the age of 16 to help support his single mother and seven younger siblings. During his 17 years of incarceration, PW maintained an exemplary record of good conduct, rehabilitative programming, and steady employment as a GED tutor, sports referee, captain's orderly, and suicide watch companion. When he became eligible for IRAA, the PDS legal team prepared an IRAA motion on his behalf. During this months-long process, the team obtained and reviewed thousands of pages of records; conducted numerous interviews with PW and dozens of his family members, friends, and incarcerated peers; and conducted extensive historical research on the neighborhood and prison environments that had shaped PW's life. A PDS-trained victim-outreach specialist reached out to the murder victim's mother and offered her information about the case and the opportunity to connect with PW, which she eagerly accepted. The restorative justice process began with an exchange of letters between PW and the victim's mother, and culminated after the IRAA motion was filed with a video meeting a few days before the IRAA hearing. During the meeting and at the IRAA hearing, PW expressed deep remorse for the pain he caused to the victim's family and the community, and the victim's mother expressed her forgiveness and her desire to keep in touch with PW upon his return to the community. In its order granting the IRAA motion, the court noted that the courage and sincerity evinced by PW and the victim's mother made a "tremendous impression" on the court. Today, just a few months after his release, PW is employed as a violence interrupter for Cure the Streets, a gun-violence reduction program run by the Office of the Attorney General for the District of Columbia.

IRAA: SK, who grew up witnessing the abuse of family members, was convicted of murder at a young age and spent the majority of his life in prison. A learning disability precluded him from participating in many of the BOP-offered programs or obtaining his GED—factors that prevented him from being paroled. PDS's team of attorneys, investigators and social workers, however, worked with SK and those with whom he had built relationships while in prison to develop a more complete picture of the remarkable person SK had become, and the way he spent his time productively while in prison. In particular, he was an avid painter and musician. He shared his gifts by giving his paintings to other residents and by teaching people incarcerated

with him to play the guitar. He had a de minimus disciplinary record in the BOP, and the co-residents who spent time with him all commented on his peaceful nature. His defense team also crafted a comprehensive reentry plan for him to provide the support he needs after so many decades of incarceration and for his serious health issues. After reviewing PDS's motion, the government did not oppose SK's release, and the court discharged him to unsupervised probation.

IRAA: PDS's involvement in this case started off with a referral from Georgetown University Law School's Criminal Justice Clinic to PDS's Appellate Division. Attorneys at Georgetown had represented PM in his compassionate release motion, where the judge found that the client was rehabilitated and not a danger (not only did PM earn his GED just a couple of years after his conviction, he completed over 50 courses while in the BOP, and served as a mentor to several other incarcerated people who had since been released). Despite that evidence of rehabilitation, the judge denied compassionate release based on her finding that client's COVID vulnerability was not "extraordinary and compelling." PDS took the case and appealed that decision. The Court of Appeals vacated the denial and remanded for further consideration of whether client's situation was "extraordinary and compelling." At the time, the client had a law firm handling his IRAA case pro bono—but after PDS filed his appeal, PM requested that PDS to take over his IRAA case as well. Because PM had impressed so many people with his work ethic while incarcerated, he had several employment offers waiting for him if he were to get released. He also had the support of many family members with whom he had stayed very close despite nearly 30 years of incarceration. Ultimately that support network, combined with PM's evidence of rehabilitation while in prison, led the government to concede that he should be released immediately under IRAA, and the judge granted the motion. After his release, PDS's forensic social worker was immediately available to advise PM on the first steps to getting reentry resources, health insurance, and making medical appointments. PM is now doing well and thrilled to be reunited with his family, including his three grandchildren whom he met for the first time after being released.

Additional Case Performance and Data

While winning trials is one clear example of effective advocacy,⁴² pointing out the factual or legal weaknesses in its cases to the government is also a critical aspect of effective defense practice. While this approach is useful in plea negotiations, PDS has also used this approach to achieve outright dismissal by the government in a substantial number of cases. In FY 2022, advocacy by PDS trial lawyers, investigative specialists and forensic social worker has resulted in the dismissal of 17 percent of PDS's serious cases. Dismissals have been created by the following advocacy:

⁴² As noted above at page 9, PDS's Trial Division won full acquittals or favorable mixed verdicts in 80 percent of its jury trials.

- Through investigation, PDS attorneys learned that the government had not disclosed essential *Brady*⁴³ evidence to the defense, and after filing motions and having hearings, PDS obtained dismissals by the government in those cases.
- Investigative specialists tracked down witnesses who gave PDS *Laumer*⁴⁴ statements (statements against their penal interests), which were then shared with the government, resulting in cases being dismissed.
- Forensic social workers presented mitigating information to the government resulting in deferred prosecution, meaning an agreement to dismiss the case in the future if the client meets conditions of release, or in the cases being dismissed entirely.

PDS advocacy across divisions has also resulted in clients being released from pretrial detention and benefiting from sentence mitigation.

Trial and Investigations Divisions: In FY 2022, a PDS investigator and trial attorney worked tirelessly to ensure that LK could be released to a substance abuse treatment program. LK was charged with the murder of his abusive parent. The PDS investigative specialist testified at LK’s initial detention hearing about the horrific abuse that LK and his siblings had suffered at the hands of this parent. This testimony, which painted the full picture and context of the homicide, led the court to release LK pending trial. However, LK was once again detained because his severe substance abuse issues caused him to fall out of compliance with his court-ordered conditions of release. While LK was detained at the DOC, he was further traumatized as he listened to a person in a nearby cell die of a fentanyl overdose. PDS was aware that LK needed and wanted to get help, and after much work the PDS team found an available inpatient substance abuse treatment program appropriate for LK. Again, the PDS team worked hard to provide the full context to the court, enabling the court to see the depth of LK’s substance abuse problem and his need for treatment. The team persuaded the court to place LK into the substance abuse program. Bureaucratic delays at the DOC, however, threatened to derail the placement. The PDS investigative specialist persisted, finding the individuals and information that were needed to facilitate release and culminating with the investigative specialist picking up LK from the jail and driving him to the substance abuse treatment program.

Trial and Office of Rehabilitation and Development Divisions: When his PDS attorney first met with him on his robbery case, MZ explained that he had been struggling with alcohol abuse and had been looking for ways to get help but did not know where to start. He shared that during the month of the incident, three of his family members had died in quick succession, and MZ had started abusing alcohol to deal with the grief. The PDS social worker assigned to his case connected MZ to an outpatient addiction program and to grief counseling. MZ responded positively to the support that the programs offered and maintained his sobriety. Because of his sustained sobriety, MZ was able to secure employment and marry his longtime partner; his family members were in awe of what a better and more present father, grandfather, and husband a sober MZ became.

During the pendency of the case, the social worker had been compiling updates on MZ which they would send to his PDS attorney. The summary memo was so compelling that to assist with

⁴³ See n. 15.

⁴⁴ *Laumer v. United States*, 409 A.2d 190 (D.C. 1979) (en banc).

plea negotiations, the attorney simply provided it to the prosecutor on the case who, after reviewing the document, extended a plea offer of one misdemeanor. While the prosecutor requested a relatively light sentence of 100 days imprisonment suspended and 12 months of supervised probation, the Court agreed with the PDS trial team's sentencing arguments and imposed a sentence of only 60 days' imprisonment suspended with five months of *unsupervised* probation. MZ later said that he felt strongly that every case should have a team like the one he had. MZ explained that often cases are really about personal struggles or mental health; if there is just a lawyer on the case, that person might not know all the resources available to address the root causes of the behavior, but with a team of people, the lawyer can focus on the case and the social worker can focus on all the many other needs.

Community Defender Division (Prisoner and Reentry and Legal Services Program

(PRLS)): In FY 2022, DM, a teacher, came to PRLS distraught and terrified after receiving a notice of intent to terminate her teaching license from the Office of the State Superintendent of Education (OSSE). DM had a criminal conviction on her record that occurred after her initial licensing. OSSE based the notice to terminate her license on its misunderstanding of a law that had been repealed and replaced. As a result, DM was in danger of being terminated by the school district. The PRLS began by educating OSSE about the new law and the applicable standards and then filed a 37-page motion explaining how under the application of the new law, DM's teaching license should not be revoked. The successful filing noted that DM's conviction was not "directly related" to the license she sought, provided evidence of her rehabilitation, and showed why allowing her to retain her license was in the interest of the school district. As a result of PDS's representation, DM was able to continue serving students as a teacher.

Community Defender Division (Juvenile Services Program (JSP)): In FY2022, JSP represented securely detained youth in 97 institutional disciplinary hearings. The hearing officers—employees of DYRS—imposed additional sanctions in only 44 hearings—just 45 percent of all such hearings—even though multiple incident reports written by facility staff are submitted to support each incident.

Community Defender Division (JSP): Over the course of a couple of years, a PDS attorney worked with KA, a minor charged in adult criminal court. KA was not represented by PDS in his criminal matter, but the PDS lawyer met KA when he was ordered detained at New Beginnings, the District's secure detention facility for committed children, where JSP maintains an office. The attorney quickly recognized that KA had significant challenges engaging with peers and adults. She learned shortly thereafter that he had an autism spectrum disorder. Eventually, KA asked the PDS attorney for help understanding aspects of his case and of the terms of his guilty plea which would have required the court to sentence him to six to eight years of imprisonment in an adult BOP facility. KA continually expressed basic misunderstandings about his plea and sentence, which caused the PDS attorney to dig deeper and inquire of KA's non-PDS trial attorney about KA's competency. After consulting with a number of clinicians, including one who opined that KA's capacities meant he "would not survive an adult prison sentence," the PDS attorney offered her assistance to KA and his attorney and ultimately challenged KA's competency to proceed with the sentencing in his case. After multiple evaluations, the government finally understood KA's significant limitations and, after multiple requests, the government ultimately agreed to transfer KA's case to juvenile court where his significant needs can be more appropriately addressed.

Mental Health Division: In FY 2022, Mental Health Division attorneys secured the release of 94 percent of clients who appeared at probable cause hearing (contested and non-contested). When PDS prevails at these hearings, clients who would otherwise be using hospital resources are released, saving taxpayer funds and making hospital resources available to those most in need (and, most importantly, permitting persons who should not be committed involuntarily to retain their liberty).

In FY 2022, PDS also prevailed in 40 percent of all the cases that went to a contested hearing before the Commission on Mental Health—a panel consisting of a magistrate judge of the Superior Court and two doctors employed by the court—by securing either complete dismissal or mitigation (securing outpatient commitment instead of inpatient commitment). Historically, PDS has been able to mitigate outcomes and secure outpatient treatment for the vast majority of its clients. The cost of treatment in the community is considerably less expensive than that of inpatient treatment and typically achieves much more favorable outcomes for clients.

In addition, after extensive pleadings and hearings, MHD was able to get unconditional release from further control by the Department of Behavioral Health for three clients who had been found not guilty by reason of insanity. All of the cases were over ten years old and one case was more than thirty years old. These clients are successfully continuing with mental health treatment without costly governmental and judicial oversight.

Appellate Division: In FY 2022, PDS’s Appellate Division continued to lead the D.C. criminal defense bar in identifying and litigating important legal questions arising from the District of Columbia’s compassionate release statute, D.C. Code § 24-403.04. In addition to winning compassionate release on remand from successful appeals for individual clients,⁴⁵ PDS continued to screen all compassionate release appeals in the D.C. Court of Appeals and participated as *amicus curiae* in cases raising important issues of first impression. In one such case, *Autrey v. United States*,⁴⁶ the Court of Appeals agreed with PDS that the availability of COVID-19 vaccines does not necessarily make prisoners ineligible for compassionate release based on their vulnerability to COVID-19; rather, trial courts must engage in “a fact-specific analysis of the prisoner’s condition(s) and the evolving scientific evidence regarding how effective vaccination is likely to be in the particular case.”⁴⁷ PDS’s work as *amicus* in this case ensured that compassionate release would remain available to vaccinated prisoners whose age or medical conditions continue to make them acutely vulnerable to severe illness from COVID-19 during the ongoing and evolving pandemic. In addition to their regular appellate caseloads, PDS’s Appellate Division attorneys joined their Special Litigation Division colleagues in representing clients eligible for resentencing under IRAA.

⁴⁵ *Wynn v. United States*, 1978 FEL 002932 (Dec. 21, 2021); *Hill v. United States*, 1984 FEL 000758 (Jan. 14, 2022).

⁴⁶ 264 A.3d 653 (D.C. 2021).

⁴⁷ *Id.* at 656.

The PDS Appellate Division also secured important victories in traditional appellate cases. In *Harris v. United States*,⁴⁸ PDS won a victory for its client and secured an important precedent interpreting *Batson v. Kentucky*,⁴⁹ the Supreme Court case that held that a prosecutor may not use peremptory strikes to eliminate would-be members of the petit jury on the basis of their race. While the prosecutor in Mr. Harris’s case had urged the trial court to be “very careful in its findings” regarding the use of race, trying to focus the trial court on the potential professional implications for the prosecutors, the Court of Appeals emphasized that under *Batson*, the issue is not racial animus, but the defendant’s right to a fair trial. The Court endorsed the concern expressed by other jurists that trial judges hesitate to sustain *Batson* challenges based on a perception that such a ruling is tantamount to calling the prosecutor “racist,” noting that the perpetuation of this misconception allows improper race-based strikes to go unchecked. As to Mr. Harris’s case, the Court held that the trial court failed to properly scrutinize the purportedly race-neutral reasons proffered by the prosecutor for striking two Black jurors. The case established the important precedent that, particularly in racially charged cases, a trial court cannot defer to vague explanations by a prosecutor to justify racially imbalanced strikes, but rather must conduct a “rigorous evaluation” and “probing inquiry” of the prosecutor’s explanations.

In *Williams v. United States*,⁵⁰ PDS secured an opinion on the proper unit of prosecution in burglary cases. In an issue of first impression in the District of Columbia, the Court held that it was improper for the government to secure two separate convictions for burglary—one for entry into the dwelling and one for entry into the bedroom of the same dwelling—because there was no distinct possessory interest between the bedroom and the rest of the dwelling. Rejecting the government’s expansive interpretation of the burglary statute, the Court brought the District’s burglary jurisprudence in line with numerous other jurisdictions that had considered the issue.

In *Cardozo v. United States*,⁵¹ PDS, acting as *amicus*, helped secure *en banc* review in a case that will allow the Court of Appeals to revisit its outdated and overly expansive definition of the offense of kidnapping, which currently encompasses even momentary seizures that are incidental to other offenses such as robbery and assault. The District’s kidnapping statute has been in effect since 1932, and prior decisions of the Court of Appeals have construed its terms so broadly that the panel majority in *Cardozo* felt compelled to uphold a kidnapping conviction where the defendant had “bear hugged” a woman on the street for just a few seconds before she shrugged him off. After the panel’s decision, as *amicus* PDS persuaded the Court of Appeals to grant *en banc* review so that it could overturn its damaging precedent and adopt a more limited definition of kidnapping in line with the modern consensus that kidnapping requires more than a momentary seizure, or one incidental to another offense. PDS will continue its involvement as *amicus* while the case is litigated before the *en banc* court.

⁴⁸ 260 A.3d 663 (D.C. 2021).

⁴⁹ 476 U.S. 79 (1986).

⁵⁰ 268 A.3d 1265 (D.C. 2022).

⁵¹ *Cardozo v. United States*, 255 A.3d 979 (D.C. 2021), *vacated and reh’g en banc granted*, 268 A.3d 862 (D.C. 2022) (mem.).

The PDS Appellate Division also secured an important ruling by an associate judge of Superior Court upon review of a magistrate judge’s decision in a landlord-tenant case arising from PDS’s Civil Legal Services Division. In *Edgewood Mgmt. Corp. v. Bond*,⁵² the associate judge ruled for the PDS client and vacated a settlement agreement that she had signed at before she was able to obtain an attorney. To settle eviction proceedings, she had agreed to vacate her apartment. The judge agreed with PDS that the landlord’s attorney had induced her to sign the agreement by making a material misrepresentation of fact: when the client asked the lawyer what would happen if she did not sign the landlord-drafted settlement agreement, the lawyer gave her incomplete information. Concluding that the landlord’s attorney’s statement—a “half-truth”—was a material misrepresentation, and that the client reasonably relied on the statement to her detriment, the judge agreed with PDS and ruled for the client. This ruling—which the landlord ultimately decided not to appeal—constituted an important warning to landlord attorneys regarding the need to be accurate when negotiating agreements with unrepresented parties in landlord-tenant court.

Parole Division: The Parole Division typically handles more than 1,000 matters annually for clients who are facing parole or supervised release revocation. In FY 2022, PDS represented 440 clients at probable cause hearings before the USPC and was able to win release for 199 of them. Clients who were released at the probable cause hearing did not have final revocation hearings. Because of the pandemic, all alternative programs continued to be suspended, with the result that clients who were held after probable cause hearings had to have their matters resolved through agreements to revocation, revocation hearings, or written advocacy for release short of hearing, or they are still awaiting an opportunity to resolve their cases.

Civil Legal Services Division: PDS’s commitment to holistic defense, as evidenced by its special education advocacy, extends beyond the courtroom into the school house and the community, and can be instrumental to the long-term success of court-involved youth with disabilities. In FY 2022, ten court involved youth with disabilities, including youth in the community and youth confined at St. Elizabeths Hospital, the D.C. Jail, the Youth Services Center, and New Beginnings, earned their high school diplomas as a result of PDS’s Civil Division’s special education work.

In one case, a Civil Division special education lawyer filed an administrative state complaint for a court involved client relating to violations of the Individuals with Disabilities Education Act while he was detained at St. Elizabeths Hospital. That complaint, which ended in settlement, resulted in critical educational relief, including individual tutoring, comprehensive vocational assessments, life coaching services, tuition money for the client and other supports.

PDS Special Education attorneys also testified and submitted written comments to OSSE on changes to final Chapter 30 regulations that would be beneficial to PDS’s juvenile clients who are court involved. These improved regulations went into effect on July 1, 2022.

⁵² Case No. 2019 LTB 17056 (order dated March 7, 2022).

Other Accomplishments

Van Service for Those Released from Superior Court: In FY 2018, PDS alerted the D.C. Council to the problem of individuals being released from D.C. Superior Court following arrest being stranded in downtown D.C. without a means to get home. Every day except Sunday, dozens of people are released from D.C. Superior Court following an arrest. These individuals leave court sometimes just in a paper gown having had their clothes confiscated. Others leave without a wallet, keys, or a phone as those items remain in the possession of the Metropolitan Police Department or the agency that made the arrest.

After the Washington Metropolitan Area Transit Authority stopped allowing released individuals to use the transit system for free by showing the wristband used during their detention, people became stranded at D.C. Superior Court. As a result of PDS's advocacy, the D.C. Council eventually created a grant for addressing this need. In FY 2022, the District's Office of Victims Services and Justice Grants selected a local transportation provider owned by a returning citizen to drive individuals home from court. The service became available, providing transportation at all hours six days per week.

Time-Saving Technology: In FY 2022, PDS began a pilot program using "JusticeText," a web-based transcription software that permits staff to upload audio or video for transcription. Attorneys and investigative specialists can use the transcript with time-stamps keyed to the audio and can add subtitles to video for use by the judge or jury. Previously, investigative specialists would have to document their own timestamps and/or insert subtitles manually in clips. This saves the expense of contracting for transcription and the time of keying in text. It also makes creating video clips more efficient.

CJA Training: As part of its mission, PDS assists the Criminal Justice Act (CJA) bar by responding to duty day inquiries, assisting CJA lawyers with forensic and immigration questions as well as conducting trainings throughout the year. In FY 2022, PDS conducted trainings in these subject areas: DNA evidence; police misconduct; immigration practice; discovery; Fourth and Fifth Amendment suppression law; cross-examination trial skills; advanced defense investigation; sentencing; post-sentencing consequences; and, an annual review of U.S. Supreme Court and D.C. Court of Appeals cases.⁵³ The trainings are critical to keeping members of the CJA panel informed and up to date on current practices.

⁵³ In FY 2022 the trainings received an overall rating of 4.9 out of 5 and, as the following comments illustrate, were well received:

"Very helpful;" "clear explanations, very practical;" "The PowerPoint presentation was simple and effective, with wonderful practice tips;" "excellent, I wish I could have recorded it to listen to it more than once;" "presentation was awesome, looking forward to the next one;" "as always, the PowerPoint was tailored perfectly for the subject matter;" "grateful for the time the speakers/veteran lawyers gave of themselves to educate us;" "a valuable education, worth every minute;" "clear, on point, and good direction/instruction;" "so much information that was incredibly helpful;" "very informative and affirmed best practices with lots of great tips;" "all of the presenters were knowledgeable and clear in communication information;" and "excellent integration of attorney and two investigator speakers."

Law Clerks and Investigative Interns: Over the course of almost five years (pre-pandemic), from spring 2015 through fall 2019, PDS has had 540 interns participate in CLIP. In 2022, a survey was sent to those interns to see what they had gone on to do after their internship; 278 of the 540 interns responded. Of those who responded, 157 attended law school after their internship experience. Overall, thirty former interns have returned to PDS to work as investigative specialists, mitigation specialists, and paralegals; four have returned as PDS attorneys.

PDS's law clerk program similarly has produced a number of PDS attorneys. Between October of 2012 through 2022 PDS has hired 57 former law clerks as attorneys. Many other former law clerks were inspired by their clerkship experience to become public defenders in offices across the country, such as in New Hampshire, Colorado, Illinois, and California.

In addition to guiding interns and law clerks to advance client representation, PDS attempts to provide them with a meaningful experience. As the career choices of interns and law clerks and contractors show, PDS is working towards advancing the cause of public defense through its hiring and its work.⁵⁴

CONCLUSION

The core work of PDS is the representation of individual clients facing a loss of liberty. Every year, PDS lawyers, investigative specialists, forensic social workers, and other staff assist clients in thousands of matters. The proceedings for involuntary commitment, parole revocation, and criminal and juvenile delinquency cases are adversarial in nature, and PDS has able adversaries in the District's Office of the Attorney General and the U.S. Attorney's Office for the District of Columbia. A true *justice* system depends on having all components (judges, prosecution, and defense) fulfill their respective roles. PDS plays a central part in ensuring that all cases, whether they result in plea agreements or trials, involve comprehensive investigation and thorough

⁵⁴ The following are some sample quotes from a law clerk, two intern investigators and an IT contractor showing how their experience at PDS has impacted them: "I had an amazing experience and learned so much ... watching attorneys during their trials and hearings. I'm proud to live in a city with the caliber of service - and people - that PDS stands for." (FY 2022 Summer Law Clerk).

"This internship is one of the most impactful experiences I have had. My favorite part of it was being able to connect to clients and their families. I was lucky to have become part of their lives and to help tell their stories. There really is no better feeling than watching someone be released from the system after decades, and knowing you played a role in that." (FY 2022 Intern Investigator).

"As an intern at PDS my purpose and passion in life to do public defense work was confirmed. There are many fantastic people at PDS whose drive and love for this work motivated me more to continue my path to become a defense attorney." (FY 2022 Intern Investigator).

"Getting to watch, and getting to support an organization that is a literal representation of the Sixth Amendment in action is as meaningful to me as anything else that drives me to be successful, and has changed my perspective on how I might want my career to progress. Working at PDS has shown me the difference between doing work you're proud of, and doing work you're proud of that matters." (FY 2022 IT systems contractor).

consultation with the client. For those matters that proceed to trial or to an administrative hearing, PDS litigates each matter to the fullest, ensuring that the proceeding constitutes a full and fair airing of reliable evidence. In FY 2022, PDS, as it has every year since its inception, fought a forceful fight and found resolutions where possible for many clients. Whatever the outcome or type of case, PDS's goal for each client was competent, quality representation. Adequate financial support for PDS's services is essential to assist the District in meeting its constitutional obligation to provide criminal defense representation in the District's courts, to ensure the reliability of the results, to avoid costly wrongful convictions, and to ensure due process protections are in effect before anyone loses their liberty.

FY 2024 Summary of Changes

BUDGET REQUEST SUMMARY

PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

FY 2024 Summary of Changes

	<u>FTE</u>	<u>Amount (\$ in 000s)</u>
FY 2023 Enacted Level	249	53,629
Adjustments to Base		
Add General Inflation Level Adjustments	-	1,156
FY 2024 Operating Budget	249	54,785
Add Additional Demand for Legal Representation and Assistance	4	450
Add Support Personnel	3	300
Add Expansion of the Intern Investigator Program	-	100
Add eTravel Systems Implementation and Sustainment	-	66
Add Acquisition Management Writing System	-	150
Add Budget Formulation & Execution Integration System	-	100
Add Cybersecurity Software and Personnel	-	600
Total, Adjustments	<u>7</u>	<u>1,766</u>
FY 2024 Base	256	56,551
PROGRAM CHANGES		
Add HQ Relocation Costs	-	3,000
FY 2024 REQUEST	<u>256</u>	<u>59,551</u>

**PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA
CONGRESSIONAL BUDGET JUSTIFICATION SUMMARY**

FY 2024 Summary of Changes by Grade and Object Class

Grade/Object Class	FY 2022		FY 2023		FY 2024		Change	
	Actual		Enacted		Budget Request		FY 2024 - FY 2023	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
ES/EX	2	352	2	363	2	374	0	11
AD-15	27	4,650	27	4,775	27	4,918	0	143
AD-14	66	9,658	63	9,950	63	10,263	0	313
AD-13	30	3,554	38	4,722	37	4,744	-1	23
AD-12	23	2,283	28	2,637	29	2,826	1	189
AD-11	27	2,302	43	3,764	35	3,106	-8	-658
AD-10	-	-	1	67	0	0	-1	-67
AD-09	16	1,116	20	1,472	18	1,369	-2	-103
AD-08	3	192	3	199	3	205	0	6
AD-07	14	957	19	1,248	17	1,309	-2	61
AD-06	5	257	4	274	4	282	0	8
AD-05	1	51	1	52	1	54	0	2
Total Positions	214	25,373	249	29,523	236	29,450	-13	-73
ES/EX FTE		2		2		2		-
AD FTE		212		247		234		-13
Average EX/ES Salary		176		182		187		6
Average AD Salary		118		118		124		7
Average AD Grade		13		13		13		-
Object Class								
Annual Funding								
11.1 Full Time Permanent	212	25,128	229	27,811	236	29,207	7	1,396
11.5 Other Pers. Comp.		111		231		243		12
11.8 Special Pers. Services		503		650		750		100
12.0 Benefits		9,100		10,185		10,683		498
13.0 Unemployment Comp.		23		46		46		-
Personnel Costs	212	34,866	229	38,923	236	40,929	7	2,006

**PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA
CONGRESSIONAL BUDGET JUSTIFICATION SUMMARY**

FY 2024 Summary of Changes by Grade and Object Class

Grade/Object Class	FY 2022	FY 2023	FY 2024	Change
	Actual	Enacted	Budget Request	FY 2024 - FY 2023
	Amount	Amount	Amount	Amount
21.0 Travel & Training	204	252	253	1
22.0 Transportation of Things	10	11	11	-
23.1 Rental Payments to GSA	3,586	3,713	3,661	-52
23.2 Rental Pmts.to Others, & Misc.	261	364	364	0
23.3 Comm., Utilities & Misc.	467	381	509	128
24.0 Printing and Reproduction	31	46	46	0
25.1 Consulting Services	1,747	1,572	2,108	536
25.2 Other Services	3,182	3,963	6,211	2,248
25.3 Purchases from Gov't Accts.	1,345	2,451	3,274	823
25.4 Maintenance of Facilities	5	5	5	-
25.7 Maintenance of Equipment	826	1,280	1,287	7
26.0 Supplies and Materials	718	592	792	200
31.0 Furniture and Equipment	19	76	101	25
Non-Personnel Costs	12,400	14,706	18,622	3,916
TOTAL (ANNUAL)	47,266	53,629	59,551	5,922
Multi-Year Funding ^{1/}				
11.1 Full Time Temp	2 134	20 1,481	- -	-20 -1,481
12.0 Benefits	42	530	-	-530
21.0 Travel & Training	-	100	-	-100
25.1 Consulting Services	-	238	-	-238
25.2 Other Services	141	-	-	-
TOTAL (MULTI-YEAR)	316	2,349	-	-2,349
Grand Total	47,583	55,978	59,551	3,573
OUTLAYS	43,563	50,380	53,596	3,216

¹ PDS expects to obligate the remaining \$2.510M in multi-year funding in support of 20 term FTE during FY 2024.

APPROPRIATION LANGUAGE

Public Defender Service for the District of Columbia

Appropriation Language Fiscal Year 2024

For salaries and expenses, including the transfer and hire of motor vehicles, of the District of Columbia Public Defender Service, as authorized by the National Capital Revitalization and Self-Government Improvement Act of 1997, [\$53,629,000] **\$59,551,000**, of which \$3,000,000 shall remain available until September 30, 2026, for costs associated with relocation under a replacement lease for headquarters offices, field offices, and related facilities: **Provided**, That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of Federal agencies.

Provided further, That the District of Columbia Public Defender Service may establish for employees of the District of Columbia Public Defender Service a program substantially similar to the program set forth in subchapter II of chapter 35 of title 5, United States Code, except that the maximum amount of the payment made under the program to any individual may not exceed the amount referred to in section 3523(b)(3)(B) of title 5, United States Code.

Provided further, That for the purposes of engaging with, and receiving services from, Federal Franchise Fund Programs established in accordance with section 403 of the Government Management Reform Act of 1994, as amended, the District of Columbia Public Defender Service shall be considered an agency of the United States Government.

Provided further, That the District of Columbia Public Defender Service may enter into contracts for the procurement of severable services and multiyear contracts for the acquisition of property and services to the same extent and under the same conditions as an executive agency under sections 3902 and 3903 of title 41, United States Code.