

THE PUBLIC DEFENDER SERVICE

for the District of Columbia



CHAMPIONS OF LIBERTY

Fiscal Year 2021

Congressional Budget Justification

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**PUBLIC DEFENDER SERVICE
FISCAL YEAR 2021 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 justice 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 defendants in Superior Court requiring representation at Drug Court sanctions hearings. In addition, PDS provides technical assistance to the local criminal justice 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 justice 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 justice system for exceptional advocacy. The strength of PDS has always been the quality of the legal services that the organization delivers. Judges, panel attorneys, and prosecutors alike acknowledge and respect the excellent advocacy of PDS's attorneys,⁵ as do public defender agencies and criminal justice bars across the nation.

⁵ “You guys are truly the best. I have never met a PDS attorney who was not a super lawyer...”
From FY 2019 Criminal Justice Act Attorney Surveys, *see* below at 28-30.

BUDGET DISPLAYS

PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

FY 2021 Summary of Changes

	FY 2021 PDS Need	
	FTE	(\$ in 000s)
FY 2020 Enacted	205	44,011
Adjustments to Base		
Less Non-Recurring Expense (HQ Move)	-	(344)
Add Annualizations	5	197
Total, Adjustments	5	(147)
FY 2021 Base	210	43,864
Add Priority Programs	3	330
FY 2021 Request	213	44,194

FISCAL YEAR 2021 REQUIREMENTS

The Public Defender Service for the District of Columbia (PDS) requests an operating budget of \$44,194 thousand for Fiscal Year (FY) 2021. These funds would allow PDS to maintain operations and absorb inflationary increases in compensation and other operating expenses and includes additional funding of \$330 thousand for three positions to respond to additional demand for client representation in the District of Columbia.

These requests will allow PDS to begin its seventh decade the way PDS began its first—equipped to provide high-quality representation to individuals who face serious charges but who cannot afford to hire an attorney, to improve indigent defense representation in the District of Columbia, and to improve PDS’s administrative efficiency. The funding will also support the Administration’s goals of increased efficiency and effectiveness in federally funded programs.

SUMMARY OF PDS’S FY 2019 ACCOMPLISHMENTS

“You give me faith in humanity, in our legal justice system.”

“Please keep doing what you are doing –
so many people in our society need the help of people like you.”

These two quotes from jurors in two of PDS’s trial cases in FY 2019 are indicators of the value that PDS continued to bring to individual clients and to the District of Columbia’s justice system in FY 2019. As PDS approaches its 60th anniversary in 2020, the office preserves the old in maintaining the high quality operational standards—adopted at the time of PDS’s creation and adhered to since—and embraces the new in adapting to both advances in science and technology and evidence-based management.

At the close of its sixth decade, PDS continues to be a well-functioning public defender office, achieving excellent results. Consistent with previous years, PDS had many positive outcomes in trial, appellate, civil, mental health, and other cases.

Also, PDS continues to refine its capacity for outcome data collection and analysis, and to put PDS in a better position for effectively incorporating and evaluating data in managing the organization. PDS is improving its evaluation of PDS performance through the increasing ability to obtain and analyze outcome data⁶ and through surveys of various stakeholders.⁷ The results demonstrate that PDS continues to be a high-performing program. PDS receives high praise from judges on the quality of the representation provided by PDS lawyers and receives excellent scores from CJA lawyers on the quality of the training and support provided to them.

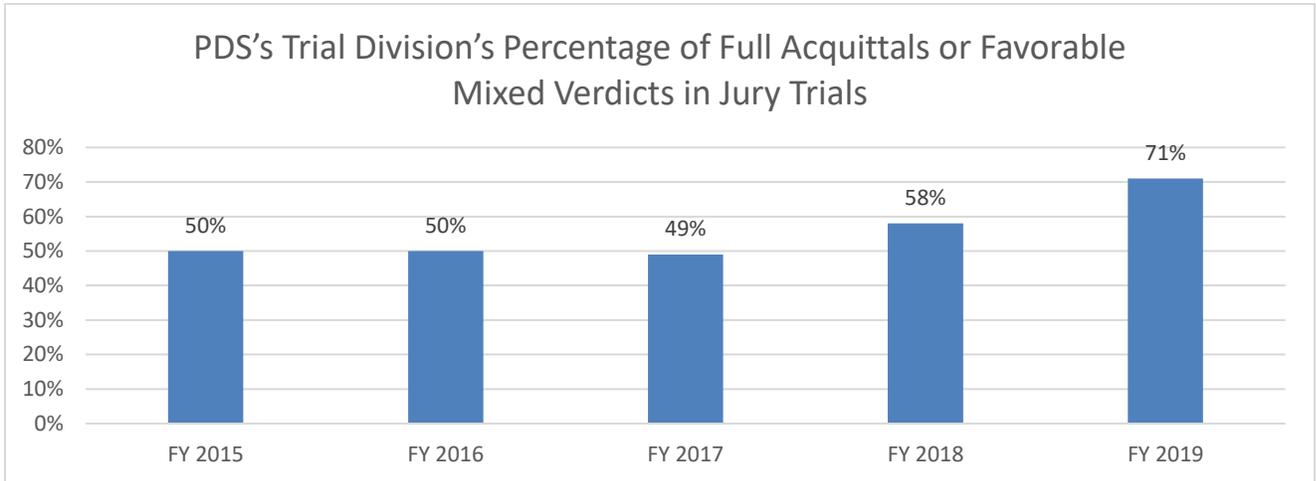
FY 2015	66%
FY 2016	70%
FY 2017	72%
FY 2018	72%
FY 2019	73%

⁶ With the new requirements of the Foundations for Evidence-Based Policymaking Act of 2018, (Pub. L. No. 115-435, 132 Stat 5529), PDS continues to refine the data collection and maintenance capacity provided by the 2015 upgrades to PDS’s case management system. PDS remains focused on honing its ability to track performance of its divisions, compare the performance of those divisions over time, compare PDS’s performance to that of the D.C. Courts’ Criminal Justice Act panels for trial and appellate attorneys, and identify ways of usefully comparing PDS’s performance over time with that of other defender institutions and systems that also generate outcome data.

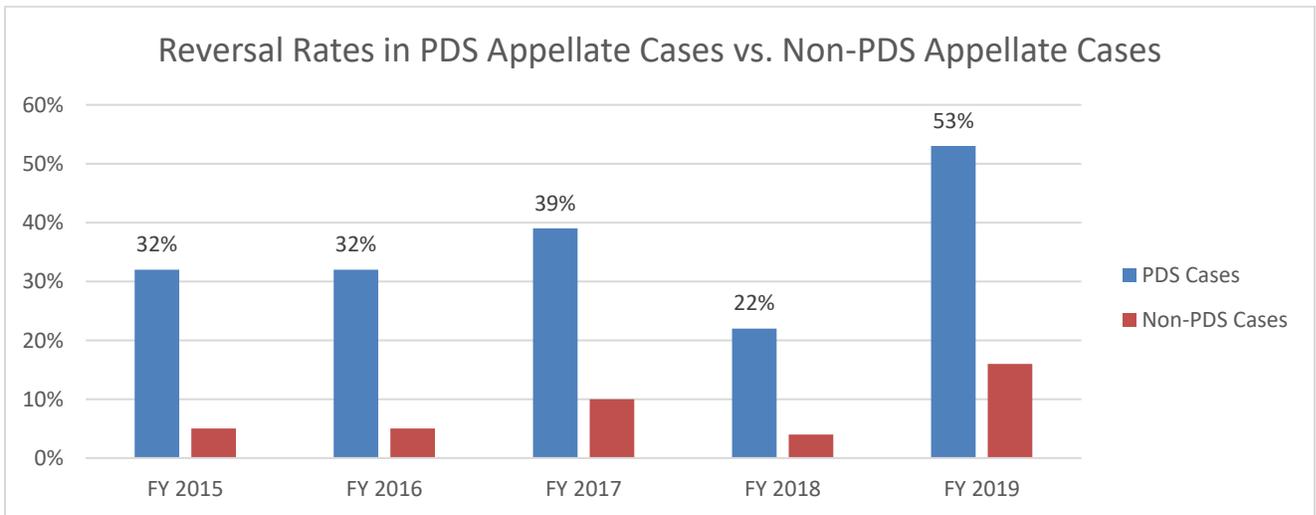
⁷ Examples are FY 2019 Criminal Justice Act Attorney Surveys, discussed below at 28-30.

In FY 2019:

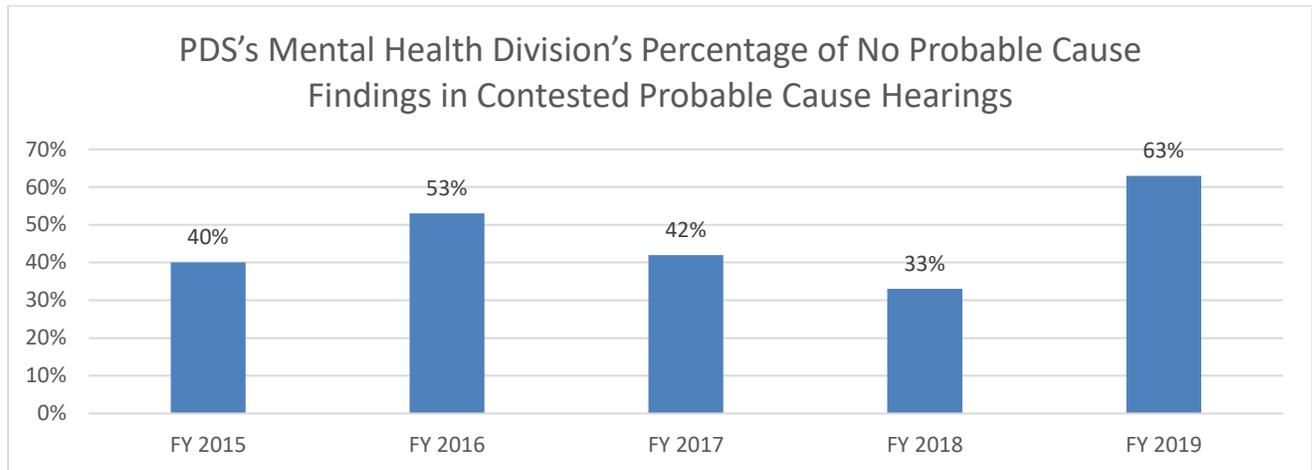
- PDS’s Trial Division won full acquittals or favorable mixed verdicts in 71 percent of its jury trials.



- PDS’s Appellate Division continued to secure reversals at the appellate level at a rate more than three times higher than that of the rest of the defense bar (53 percent versus 16 percent).



- PDS’s Mental Health Division won 63 percent of its contested probable cause hearings.



In FY 2019, PDS worked on 2,678 trial matters; 1,619 parole matters; 1,942 mental health matters; 205 appellate matters; 364 civil matters, including special education matters; 575 post-commitment (juvenile) and 1,549 post-conviction (adult) matters; 5,776 Drug Court matters; 113 Special Litigation Division matters; 1,998 adult Duty Day matters and 3,836 juvenile Duty Day matters. Also, with supportive funding provided in FY 2019 for three positions, PDS obtained release for clients in four of five rulings issued in resentencing petitions filed on behalf of PDS clients pursuant to the Incarceration Reduction Amendment Act (IRAA).⁸

⁸ Comprehensive Youth Justice Amendment Act of 2016, D.C. Law 21-238; specifically, Title III Incarceration Reduction Amendment Act of 2016 (IRAA). The FY 2019 Budget provided funding for the first iteration of this initiative. IRAA allowed individuals who have already served 20 years of incarceration for an offense committed prior to age 18 to petition the Superior Court for a lesser sentence. Each of these IRAA cases requires a tremendous amount of investigation of factual and mental health issues, mitigation work, and document retrieval. For each case, PDS must gather and review material covering at least a 15-year period in order to assist the client in taking advantage of this re-sentencing opportunity.

For IRAA case outcome descriptions, see below at 24-25.

Maintaining a History of Excellence

On November 16, 1960, PDS, then operating as the Legal Aid Agency, made the first three lawyers it hired available for assignment to criminal cases. PDS's very first client was a man charged with first degree murder.

PDS's founders established the office to be a model public defender from the earliest days—one that is equipped to provide the best legal representation possible and one that is prepared to handle the most serious cases in the District's criminal justice system. Those two elements have been hallmarks of PDS's operations ever since. Beyond data, PDS's history shows repeated demonstrations of its penchant for pursuing bold initiatives, its effectiveness in representing clients, and its fealty to holding to these original standards.

- In 1964, PDS became the first public defender office to hire social workers to serve on the defense team. Subsequently, this became a widely copied feature of public defender offices;
- In 1977, PDS established its Volunteer and Intern Program, now known as the Criminal Law Internship Program (CLIP). Since then, it has grown in scope and responsibility, becoming a very well-regarded internship. In 2003, the *Princeton Review* named CLIP as one of the best internships in the country. In addition to providing client support, this program inspires the students to seek careers in public service. Approximately 70 percent of interns report in surveys that their internship has influenced their future career goals. PDS has hired many of these former interns as investigative specialists.⁹

AWARDS IN RECOGNITION OF PDS'S RECORD OF EXCELLENCE

1965... Oliver Wendell Holmes Award: American Civil Liberties Union of the National Capital Area recognizes quality of Legal Aid Agency's legal representation of poor people in the District of Columbia.

1974... Exemplary Project Designation: Law Enforcement Assistance Administration at U.S. Department of Justice designates PDS as a model program for other jurisdictions, noting PDS's exceptional advocacy, its proven success, and its effective management and administrative systems.

2003... Servant of Justice Award: Legal Aid Society of the District of Columbia honors PDS for its faithful dedication and remarkable achievement in ensuring that all persons have equal and meaningful access to justice in the District of Columbia.

2010... Thurgood Marshall Award: Southern Center for Human Rights recognizes PDS's commitment to clients, respect for the dignity of every person, and dedication to quality representation and equal justice.

2011... Guardian of Liberty Award: Foundation for Criminal Justice gives its first-ever award to PDS for its promotion of law reform through vigorous defense in criminal cases and promotion of highest standards for representation of indigent clients.

⁹ PDS also instituted a law clerk program that has grown over the years. Law clerks are law students who support attorneys by performing legal research, drafting legal memoranda, and preparing draft motions and other legal documents, similar to the responsibilities of summer associates at law firms. PDS has also hired many former law clerks as staff attorneys.

- In 1986, PDS obtained a settlement to radically revise the District’s approach to secure detention of children in the juvenile justice system. The “*Jerry M.*” class action case ultimately led to the closing of the poorly maintained facilities and the opening in 2009 of state-of-the-art facilities that vastly improve upon the city’s rehabilitation efforts. As part of the 1986 consent decree that established PDS’s ability to conduct ongoing, extensive monitoring of the facilities, PDS became possibly the only public defender office to make legal services more accessible to children by having its own space in the facilities.
- In the early 2000s, PDS created and launched its case management system, Atticus, and ten years later added data collection, storage, and management capacity.
- In 2000, PDS persuaded the Superior Court to adopt screening and performance standards for the Court’s Criminal Justice Act Bar. Before this, any attorney who requested to be assigned to trial cases could be appointed to less serious cases, regardless of training, experience, or ability.
- In the early 2000s, PDS became the second public defender office to establish a forensic practice group, improving upon the model that inspired the group and becoming nationally known for its forensic expertise in criminal cases.
- PDS litigation filed in 2001 led to the adoption in 2002 by the U.S. Parole Commission of deadlines for resolving parole and supervised release revocation cases.¹⁰ Before the litigation, individuals accused of violating their parole or supervised release conditions could spend longer in pre-adjudication detention than the length of the maximum sentence they were facing.
- From 2009 through 2015, PDS obtained four exonerations for clients who had served decades in prison for murder or rape. PDS did this by using its expertise in forensics, specifically hair analysis, leading the Department of Justice to conduct a review of 30

PDS ALUMNI ACCOMPLISHMENTS

During the past 13 years, one PDS attorney alumnus has been appointed to a federal appellate court, three to the local federal trial court, two to the local appellate court, and eight to the local trial court.

In the last 10 years alone, 12 former PDS attorneys have become law professors or directors of law school clinical programs.

In 2014, a PDS attorney alumnus received a MacArthur Foundation “genius grant” for creating a program that, using PDS’s training principles, trains public defenders throughout the South. The attorney used his experience as PDS’s training director as a basis for the program.

In 2018, a PDS attorney alumnus received the Pulitzer Prize for general nonfiction for writing about criminal justice issues he observed as a PDS attorney representing juvenile and adult clients.

¹⁰ *Long v. Gaines*, 241 F.Supp. 2d 1 (D.D.C. 2002).

years of cases in which the FBI provided potentially flawed forensic testimony, as had been done in the four exoneration cases.¹¹

- In 2010 and 2011, PDS’s litigation in the Supreme Court and subsequently in the District of Columbia Court of Appeals led to the end of the U.S. Attorney’s Office ten-year practice of serving as private prosecutors pursuing criminal contempt charges in the name of and on behalf of private citizens rather than in the name of and on behalf of the federal government.
- From 2012 to 2014, PDS successfully challenged the constitutionality of the District of Columbia’s civil forfeiture practices and later helped to negotiate statutory protections for people whose property had been civilly forfeited, restricting the Metropolitan Police Department’s ability to arbitrarily seize and indefinitely hold property, including where the individual had not been charged or had had their case dismissed.
- In 2016, PDS developed and launched an electronic personnel on-boarding and off-boarding system, which produces reports that assist PDS with personnel tracking, data analysis, and audits.
- Throughout its existence, PDS has had a significant, positive impact on behalf of clients in legislative initiatives and on the law in the District of Columbia in appellate cases—including on issues of culpability for aiding and abetting, prosecutors’ compliance with their constitutional duty to provide exculpatory evidence to the defense, standards for pretrial detention, record sealing, and criminal code updates.

POLICY AND FUNDING PRIORITIES

Resource Request Summary

For FY 2021, PDS requests a total of \$44,194 thousand for FY 2021. This amount includes funding of \$330 thousand for two attorney positions and one professional support position to respond to increased demand for legal representation of indigent defendants in PDS’s Special Litigation Division. The funding will support representation pursuant to an expanded statutory re-sentencing right in the District of Columbia (IRAA).

PDS’s budget request is designed to enable PDS to remain a high-functioning public defender office, to increase PDS’s overall effectiveness, and to have the beginning of PDS’s seventh decade see the office fully equipped and staffed to maintain its reputation as the best public defender in the country. The PDS that took the ground-breaking step in the early 1960s of establishing a social worker position in a public defender office—something that subsequently became a common practice at public defender offices across the country—is the same PDS that today seeks to sustain the functions it performs well, improve in its use of technology, and take on new challenges, all in service to clients.

¹¹ https://www.washingtonpost.com/local/crime/dc-man-imprisoned-by-flawed-fbi-forensic-evidence-exonerated/2015/05/23/ed382f70-00c6-11e5-8b6c-0dcce21e223d_story.html.

Resource Request—Positions (\$330 thousand)

PDS's first priority is to achieve its mission to provide constitutionally required, first-rate quality representation for its clients. Seeking to maintain its excellence in advocacy requires that PDS be alert to changes in law, policy, science, and practices that affect PDS's clients' interests. Maintaining quality representation requires that PDS be prepared to respond to all of those changes, including more recently, the increased number of re-sentencing opportunities available to clients. For FY 2021, PDS needs \$330 thousand to support the three positions described below.

Special Litigation Division – Three positions: two attorney positions (\$220 thousand) and one mitigation specialist position (\$110 thousand)

PDS requests funds for two attorney positions and one mitigation specialist position to represent the increased number of individuals serving District of Columbia Code-based sentences who have a statutory right to seek re-sentencing pursuant to the Incarceration Reduction Amendment Act. The 2019 modification of the Act expands eligibility, which created an immediate increased need for PDS services. The requested positions will enable PDS to respond to this newly created demand for legal services and will help reduce incarceration in Federal Bureau of Prisons facilities.

The Incarceration Reduction Amendment Act of 2016 (IRAA),¹² went into effect in 2017. IRAA is the District of Columbia's response to a Supreme Court decision, *Miller v. Alabama*,¹³ prohibiting life sentences without the possibility of parole or release for juvenile defendants. The amendment expanding eligibility for IRAA was enacted on May 10, 2019, as part of the Omnibus Public Safety and Justice Amendment Act of 2018.¹⁴

IRAA provides an opportunity for an individual sentenced for an offense committed before their 18th birthday to petition the court for a lesser sentence, if the individual meets certain other criteria. The criteria—other than age at the time of the offense—changed between the original IRAA and the amended IRAA. Under the original IRAA, the individual was required to have served 20 years in prison and not yet have reached eligibility for parole. Under the amended IRAA, the individual must have served 15 years in prison and can be eligible for IRAA even if he or she is also eligible for parole. These changes dramatically increase the number of persons who are eligible to petition for re-sentencing. This had an immediate and significant impact on PDS's workload.

Once a petition is filed by an eligible defendant, the court must hold a hearing, consider certain factors, and issue a written ruling. The court must consider the safety of the community and the interests of justice.¹⁵ If, after considering the statutory factors, the petition is granted, the court

¹² D.C. Code § 24-403.03.

¹³ 567 U.S. 460 (2012).

¹⁴ D.C. Law 22-0313.

¹⁵ Specifically, according to D.C. Code § 24-403.03, the court must consider eleven factors:

(1) The defendant's age at the time of the offense;

must impose a reduced sentence. The court “may issue a sentence less than the minimum term otherwise required by law,” and “shall not impose a sentence of life without the possibility of parole or release.”¹⁶

In order to properly represent IRAA clients, PDS must take a number of steps. Initially, PDS conducts an in-depth investigation, including interviews with mitigation witnesses and witnesses to the offense. Furthermore, every case involves a substantial amount of records collection—all of the records related to the conviction itself as well as records relating to the individual’s social circumstances preceding or at the time of the offense. All of those records are necessarily 15 years old or older. The BOP’s files also contain an extensive number of relevant records, including records related to a client’s disciplinary history and participation in rehabilitative programming.

In addition to extensive investigation, some cases also require professional assessment of the individual’s current and former mental health issues. Each case requires extensive client communication, legal case management, and written and oral legal advocacy. The cases generally require an investigative specialist (investigation, records retrieval), a mitigation specialist (directing and conducting the mitigation investigation and preparing the mitigation report), a paralegal (records requests and records management), a social worker (reentry planning), and an attorney (advocacy). The cases also often require the assistance of a federal prison expert,¹⁷ and some cases require evaluations by psychologists or psychiatrists.

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- (2) The history and characteristics of the defendant;
 - (3) Whether the defendant has substantially complied with the rules of the institution to which he or she has been confined and whether the defendant has completed any educational, vocational, or other program, where available;
 - (4) Any report or recommendation received from the United States Attorney;
 - (5) Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction;
 - (6) Any statement, provided orally or in writing, provided pursuant to § 23-1904 or 18 U.S.C. § 3771 by a victim of the offense for which the defendant is imprisoned, or by a family member of the victim if the victim is deceased;
 - (7) Any reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed health care professionals;
 - (8) The defendant’s family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;
 - (9) The extent of the defendant’s role in the offense and whether and to what extent an adult was involved in the offense;
 - (10) The diminished culpability of juveniles as compared to that of adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, which counsel against sentencing them to lengthy terms in prison, despite the brutality or cold-blooded nature of any particular crime;
 - (11) Any other information the court deems relevant to its decision.

¹⁶ D.C. Code §§ 24-403.01 & -403.03.

¹⁷ A prison expert reviews the client’s prison records and explains the context and relevance of numerous aspects of a client’s years of imprisonment. For example, the prison expert might provide context about the limited program options that were available to a client in a particular facility or as a result of a certain classification the client had at that time. The expert might note

Next, PDS files a petition addressing the statutory factors and providing a comprehensive set of exhibits supporting the petition.¹⁸ PDS then files a written reply to any government response. Fourth, PDS advocates for the client at a court hearing or a series of hearings on the petition. In most cases, witnesses are presented. Victims or their family members, defendants, and the attorneys for the parties all have an opportunity to address the court. In many cases, the court initially rules on whether or not it is granting the petition and then, if it grants the petition, holds another hearing to determine the specific sentence. As required, the court issues a written order addressing the statutory factors.

Because the process is so labor-intensive, it can be quite lengthy, often taking more than a year from start to finish. Record gathering can take anywhere from three months to a year. Other investigation and motion preparation can take months. The government usually requires between two and four months to prepare the response. The hearing usually takes place a month or two after the government's response. Cases that result in multiple hearing dates or involve a relatively lengthy consideration from the judge may not be decided until months after the initial hearing. Once the hearing is concluded, and if the sentence is reduced, PDS has to continue to work to make sure that the BOP and the D.C. Department of Corrections correctly calculate and effectuate the new sentence, and has to continue to work to make sure the reentry plan goes into effect.

PDS's current goal is to represent all of its former clients as well as some individuals who are not former PDS clients but who were appointed PDS counsel for IRAA purposes. As a result of the amended IRAA, the number of PDS's IRAA clients increased to 42, a jump of 59 percent. This number will continue to go up as other individuals become eligible as they reach 15 years of incarceration.

As a result of this expanded caseload, PDS requests funding to support two additional attorneys to work on original IRAA cases and amended IRAA cases. Without additional attorneys, PDS's IRAA-eligible clients will have to wait a significant amount of time before their cases can be heard, possibly depriving the clients of the full benefit of a successful IRAA petition. In addition, the remaining work that SLD focuses on, including jail conditions, federal court transfers, and Title 16 cases (cases of children prosecuted as adults), currently do not receive the necessary levels of staffing, as the traditional work of SLD is at risk of becoming overwhelmed by the increased IRAA caseload.

With supportive funding provided in FY 2019, SLD hired an attorney and a mitigation specialist to meet the additional needs presented by IRAA. SLD—which collectively works on IRAA and on cases and projects that are part of its traditional mission—in FY 2019 filed ten petitions and six replies. Other divisions, including the Investigations, Community Defender, and Appellate Divisions, and the Office of Rehabilitation and Development, have assisted with these cases. In

that a client was assigned to a particular job and would be able to explain what the job indicates about the responsibility with which the client was entrusted by the prison authorities. The attorney or the mitigation specialist would then be able to use this specialized information to support arguments about the client's level of rehabilitation or job-readiness.

¹⁸ Petitions are usually 20 to 60 pages; the mitigation reports 40 to 100 pages; and exhibits are routinely hundreds of pages in length.

FY 2019, SLD internally prepared five mitigation reports. In FY 2019, SLD attorneys represented clients at six IRAA hearings and four re-sentencing hearings. Of the five cases that were decided in FY 2019, four were granted and resulted in newly reduced sentences of probation that avoided potential life sentences.¹⁹ For FY 2020, SLD has so far identified a need to prepare and file approximately twenty IRAA motions, internally prepare approximately six mitigation reports, and prepare and file approximately seventeen replies, as well as conduct approximately seventeen IRAA hearings. Many of the cases will likely also require additional pleadings and involve sentencing hearings. SLD is working on IRAA cases on top of its other current workload of approximately 20 traditional non-IRAA cases and 14 ongoing substantial litigation-related projects.

PDS also requests one additional mitigation specialist.²⁰ The mitigation specialist PDS hired with FY 2019 funding is doing faster and better work—and doing it more cost effectively—than most of the contract mitigation specialists. This is due to a number of factors, including the fact that the specialist is based in the office and can coordinate directly with investigators, interns, attorneys, social workers, and the paralegal. Furthermore, unlike the contract mitigation specialists who work all over the country and specialize in death penalty cases, the PDS specialist focuses on the IRAA-specific factors and better understands the importance to clients of producing the reports as quickly as possible.

As of the end of FY 2019, PDS had 20 cases without an assigned mitigation specialist. Contract mitigation specialists generally cost \$10,000 to \$20,000 per case. They often have other cases that they prioritize over PDS cases, causing delays and inefficiency. Also, most of the contract specialists' experience is in death penalty cases, which is different than IRAA in a number of ways, including that extremely lengthy mitigation investigations are often preferred in death penalty cases. PDS's mitigation specialist has consistently produced very high-quality reports more quickly than the outside experts have. This ability to work quickly has helped make PDS attorneys and investigators more efficient as well. Rather than hiring individual mitigation specialists for these cases, it would be more efficient and effective to hire one in-house mitigation specialist to help eliminate the backlog of IRAA cases.

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),²¹ 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

¹⁹ See below at 24-25.

²⁰ PDS expects to need this resource for no more than three years—until the initial surge of cases arising from the amendment expanding eligibility for IRAA has abated.

²¹ 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.

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.²² PDS staff attorneys are assigned to seven practice groups: the Trial Division, the Appellate Division, the Mental Health Division, the Special Litigation Division, the Parole Division, the Civil Legal Services Division, and the Community Defender Division. On a day-to-day basis, the attorneys in the various divisions provide advice and training to one another and often form small teams to handle particularly challenging cases.

Using this team approach, PDS undertook more than 20,000 legal matters in FY 2019. As described below, these matters encompassed a wide range 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

Staff attorneys in the Trial Division zealously represent adults in criminal proceedings in Superior Court or provide zealous legal representation 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.²³

Traditionally, less senior Trial Division staff attorneys handle the most difficult or resource-intensive delinquency cases (cases involving children with serious mental illnesses or learning disabilities or children facing serious charges), some general felony cases, and a limited number of misdemeanor cases.²⁴ Trial Division staff attorneys also provide representation in a variety of other legal matters through PDS's Duty Day program and Superior Court's Drug Court program.

²² As demonstrated in the Appendix, all PDS divisions work together in support of the single program. *See* Appendix.

²³ In FY 2019, PDS was appointed to 73 percent of all homicide cases, 90 percent of the first-degree sexual assault cases, and 64 percent of all assault with intent to kill cases. Subject to conflicts of interest and codefendant cases, PDS is traditionally assigned to the majority of offenses that have significant mandatory minimum sentences.

²⁴ 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 a case 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

Appellate Division

The attorneys in the Appellate Division are primarily responsible for handling direct appeals and other appellate litigation generated in PDS cases, providing legal advice to CJA attorneys in appellate matters, and responding to requests from the District of Columbia Court of Appeals for briefs in non-PDS cases involving novel or complex legal issues. Another important function of the Appellate Division is to provide a wide range of technical assistance and training to other PDS divisions. The Appellate Division attorneys' knowledge and experience allow them to assist in complicated cases without having to perform long hours of original research each time 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 mental hospital upon allegations that the person is a danger to himself 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 disorders; and in matters relating to persons found not guilty by reason of insanity in Superior Court or in United States District Court cases. The lawyers in this division also provide information to the District of Columbia Council on proposed mental health and intellectual disorders 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) represents clients eligible for sentence reduction pursuant to IRAA and handles a wide variety of litigation that seeks to vindicate the constitutional and statutory rights of PDS clients and to challenge pervasive unfair criminal justice 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 their achievements are the first IRAA petition for probation that was unopposed by the prosecution; the reform of civil forfeiture practice; and the exonerations of four men who spent a combined century in prison for convictions based in part on the invalid testimony of FBI hair analysts.

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. The attorneys represent clients at revocation hearings before the U.S. Parole Commission pursuant to local and federal laws. The majority of the revocation hearings

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.

are held at local detention facilities; however, through the development of diversion programs, 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 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 range of civil matters that are collateral or ancillary to the clients' involvement in the delinquency or criminal justice 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 (adverse immigration consequences,²⁵ loss of parental rights, loss of housing, seizure of property, loss of employment) and can arise even if the person is acquitted of the criminal charges or has been only arrested and never charged.

A major component of CLS's diverse civil practice is special education advocacy by CLS attorneys with expertise under the federal Individuals with Disabilities Education Improvement Act, which mandates special accommodations in public schools for children who cannot be adequately educated in a traditional classroom setting due to learning disabilities, such as dyslexia, or other physical or intellectual challenges. Special education advocacy is a cornerstone of CLS's civil practice because of the vital importance of education and the pressing special educational needs of many court-involved youth.

All of CLS's legal work is done in close collaboration with PDS's other divisions to identify clients' civil legal needs and to provide effective representation to address and resolve clients' civil legal problems.

Community Defender Division

As part of PDS's holistic approach to public defense, the Community Defender Division (CDD) provides services to adults and children, primarily those who are in the post-adjudication stage of a criminal or juvenile delinquency case in Superior Court. CDD provides its services through specialized programs for adult and juvenile clients.

²⁵ In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the United States Supreme Court found that advising clients about the possible immigration consequences of a guilty plea was a part of providing constitutionally required effective assistance of counsel.

For adult clients, CDD responds to the legal and social services needs of incarcerated persons and newly released individuals through its Prisoner & Reentry Legal Services Program (PRLS). PRLS serves individuals housed at institutions operated by the D.C. Department of Corrections as well as throughout the nation by the Federal Bureau of Prisons. Services include legal representation of clients in administrative hearings in D.C. Department of Corrections facilities and in parole grant hearings in Federal Bureau of Prisons facilities. The program also represents individuals in the community under the supervision of the U.S. Parole Commission seeking termination of parole or supervised release. CDD serves as the PDS liaison to individuals convicted of District of Columbia Code offenses who are serving sentences in the District of Columbia Department of Corrections and Federal Bureau of Prisons facilities. CDD works to monitor their conditions of incarceration and assist them on parole and other release-related matters.

As part of its reentry support, PRLS represents individuals in motions to seal eligible criminal records in the Superior Court of the District of Columbia and provides representation to those who are seeking employment and housing but are adversely affected by their criminal records. PRLS represents and advocates for individuals in other matters where the collateral consequences of prior arrests, convictions, and/or incarceration serve as barriers to success in the community. PRLS is also an active participant in community events geared toward returning citizens. Lastly, PRLS participates in a variety of formal and informal committees with other criminal justice stakeholders to work on systemic change and policy, and to advocate for the rights of justice-involved persons.

Through its Juvenile Services Program (JSP), CDD represents children 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 special needs of children. In addition to staffing legal rights offices inside the District's two secure juvenile facilities, JSP visits local group homes to offer legal assistance to committed youth. JSP also visits juvenile clients placed in long term residential facilities all over the United States. As these clients rarely, if ever, have legal visits from their appointed attorneys, maintaining this in-person contact with juveniles who are sent away from home and placed in these facilities 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.²⁶ ORD's forensic social workers provide presentencing assistance to address

²⁶ 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 in 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.

mitigation issues and to provide program alternatives for appropriate clients.²⁷ Other legal support services include a multi-lingual language specialist to facilitate communication with non-English 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 website PDS maintains for CJA attorneys, and two paralegals who work on cases and projects.²⁸

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, collecting and assessing digital evidence (e.g., security camera footage, cell phone records, body-worn camera video, "Shot Spotter" (gunshot detection) 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 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, among other services, provide the Superior Court with information about viable community-based alternatives to incarceration. Because the ORD staff 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 justice system. In addition, the staff of ORD prepare a comprehensive annual *Directory of Adult Services: Community and Confinement Access Guide* and a biennial *Directory of Youth & Families Resource Guide: Community and Confinement Access Guide* that list a wide range of services available to adults and children in the criminal justice system. These directories, available on PDS's website,²⁹ are used by the Court Services and Offender Supervision Agency, the Federal Bureau of Prisons and its contract prisons, Superior Court, and many other agencies and organizations working with clients in the criminal and juvenile justice systems. The District's Criminal Justice Coordinating Council (CJCC) has used the adult manual to create and post on the CJCC's website an

²⁷ See *Wiggins v. Smith*, 539 U.S. 510 (2003) (decision of counsel not to expand investigation of petitioner's life history for mitigating evidence beyond presentence investigation report and department of social services records fell short of prevailing professional standards).

²⁸ As stated above, PDS operates as a single program, allowing it to shift resources between specialties as needed. Currently, PDS has 12 forensic social workers, 30 investigative specialists, three paralegals, and one interpreter who support the lawyers in their casework. In addition, 14 administrative assistants support the 143 lawyers and professional staff who provide direct client services.

²⁹ http://www.pdsdc.org/ord/2016_Youth_Directory.html#p=1. PDS's website can be found at www.pdsdc.org.

interactive, electronic map with a “pop-up” feature that allows website visitors to see the location of all the services described in the manual.³⁰

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 CJA attorneys, law school clinic students, pro bono attorneys, and PDS attorneys for appointment to new cases on a daily basis.³¹ 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.

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 Office of Budget & Finance, Office of Human Resources, the Office of Information Technology, and Administrative Services.³² In concert with individual attorneys and the PDS executive staff, these divisions provide such services as procurement of expert services for individual cases, financial accountability,³³ strategies for developing PDS’s human capital, recruitment, 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 and each employee’s work are valued for the manner in which they enhance 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

PDS continues to maintain its longstanding tradition of providing exceptional representation to clients and helping to ensure that case outcomes are not driven by an individual’s ability to pay for an attorney.

Case Performance Data

As PDS continues to upgrade Atticus, PDS’s case management system and, more recently, PDS’s data warehouse, PDS has expanded the number and types of these performance measures for which data are collected. In addition, PDS is also using different surveys to measure

³⁰ <http://www.cjccresourcelocator.net/ResourceLocator/ResourceLocatorHome.aspx>.

³¹ This office is staffed with 11 professionals who, in FY 2019, conducted eligibility interviews and assisted in the appointment process for more than 29,000 cases.

³² These four divisions are staffed with 29 professionals.

³³ While a clean audit is an expectation and not an accomplishment for PDS’s Budget & Finance Office, it is worthy of note that PDS continues to receive clean financial audits.

outcomes specific to clients' needs and to client satisfaction. PDS reports the following outcomes³⁴ and performance data.³⁵

Trial Division

PDS was able to obtain complete acquittals, or favorable mixed verdicts, in 71 percent of the jury trials that occurred in FY 2019. This outstanding rate is due in large part to the extraordinary efforts of PDS investigative specialists, and lawyers from the Trial, Appellate, and Special Litigation Divisions.

In FY 2018, PDS received from the Superior Court aggregate data for all PDS and non-PDS criminal cases between CY 2008 and CY 2017. PDS plans to use this data to compare outcomes with non-PDS cases, evaluate its performance, focus on areas where improvements can be made, and assess and improve the performance of public defense in the District of Columbia overall. Prior to receiving this data, PDS was able to make some initial comparisons for FY 2007 through FY 2014, which will serve as a baseline once PDS obtains the capacity to evaluate the data that PDS receives from the court.³⁶

Appellate Division

PDS's Appellate Division continues to lead in the cause of criminal justice in the District of Columbia through its exemplary legal representation and amicus curiae assistance to the courts, frequently resulting in published opinions that establish or clarify legal standards that protect the integrity of criminal adjudication and foster public respect for the courts. In *Jeffers v. United States*, 208 A.3d 357 (D.C. 2019), PDS submitted an amicus brief leading to a ground-breaking published opinion holding that in order to establish a rebuttable presumption of dangerousness and potentially lengthy pre-trial detention in murder cases, the government must prove at the detention hearing by at least a preponderance of the evidence that the defendant will be found guilty beyond a reasonable doubt at trial. In *Coley v. United States*, 196 A.3d 414 (D.C. 2018), where PDS was amicus, and *Roberts v. United States*, 2019 WL 3720383 (D.C. August 8, 2019), the Appellate Division's advocacy led to a pair of reversals correcting an entrenched Superior Court practice of instructing juries in a potentially coercive manner that their notes incidentally revealing the numerical split in their vote are improper and cannot be answered, and the practice of not showing such notes to counsel in violation of the defendant's constitutional right to be present.

³⁴ The D.C. Rules of Professional Conduct prohibit PDS from identifying clients and revealing information about their cases outside of the public record. D.C. Rule of Professional Conduct 1.6.

³⁵ Because some of the yearly data sets are small, the aggregation includes several years of data.

³⁶ During that period, in all felony cases, PDS had a complete acquittal or a mixed verdict result in 77 percent of its cases that went to trial. In the most serious cases (e.g., sexual assaults and murder charges), PDS had a complete acquittal rate of 30 percent versus a non-PDS complete acquittal rate of 18 percent. During the same time period, in cases with other serious felony charges (e.g., armed offenses, burglaries, etc.), PDS had a complete acquittal rate of 36 percent versus 24 percent for non-PDS cases.

In *Haney v. United States*, 206 A.3d 854 (D.C. 2019), PDS obtained a reversal in an opinion holding that the defense had established a *prima facie* case of discriminatory prosecutorial exercise of peremptory challenges based on the large percentage of black jurors struck relative to their percentage share of the panel’s composition, and that outright reversal rather than remand was necessary where the prosecutor had not placed on the trial record a race-neutral reason for one juror and her reasons for others were demeanor-based and therefore could not meaningfully be tested after the passage of time. In *Jones v. United States*, 202 A.3d 1154 (D.C. 2019), the Court reversed an unjust decades-old armed robbery conviction where the government had adduced hair microscopy testimony purporting to prove a match of crime scene hairs to defendant’s hair based on a bogus statistical analysis. In *Posey v. United States*, 202 A.3d 1198 (D.C. 2019), the Court again reversed, clarifying important and recurring legal questions under the Fourth Amendment. In *R.O. v. Department of Youth Rehabilitative Services*, 199 A.3d 1161 (D.C. 2019), the Court reversed a Department of Youth Rehabilitation Services revocation of a child’s community placement, holding that basing revocation on the mere fact of re-arrest, in the absence of proof that the child had actually committed the crime, was unconstitutional. It also held, as a matter of first impression, that jurisdiction for initial review was in the Superior Court.

In *Sims v. United States*, 2019 WL 3819649 (D.C. August 15, 2019), PDS garnered another reversal in a case clarifying important principles under the hearsay rules. The Court held that an absent declarant’s on-scene statement accusing the defendant of the shooting was inadmissible as a present sense impression where the government had failed to establish that the declarant was an eyewitness. In a second holding on the parameters of the adoptive admissions hearsay exception, the Court determined that the defendant was unfairly tarnished by another person’s damaging hearsay statement made in his presence when the government did not demonstrate that he heard the statement or had the opportunity to deny it.

Despite the constraints due to staffing levels, the excellence of PDS’s appellate representation has not been compromised, resulting in a remarkable reversal rate of 53 percent for 2019. This excellence is also captured in a statistic that compares PDS’s reversal rate to that of the rest of the defense bar. In published opinions from calendar years 2005 through 2018, PDS’s reversal rate averaged five to six times the rate of the rest of the defense bar. In 2019, PDS’s reversal rate continued to be more than three times the rate of the remaining defense bar. As PDS has noted before, this statistic also correlates directly to excellence in trial-level lawyering: reversal on appeal is exceedingly difficult unless trial lawyers “make a record” in the court below, which means that they must fairly present the legal issue to trial judges to permit them to avert serious error in the first instance.

As reflected in the CJA Attorney Surveys discussed below,³⁷ the work of PDS’s Appellate Division continues to be held in high regard.

Mental Health Division

In FY 2019, PDS’s Mental Health Division won 63 percent of the cases that went forward with a contested probable cause hearing. These hearings are presided over by an associate judge of the Superior Court. These initial hearings simply determine whether the prosecution meets the low standard of probable cause before it can proceed to the next stage of the civil commitment

³⁷ See below at 28-30.

process. Of all of PDS's FY 2019 probable cause hearings (contested and non-contested), PDS was able to secure the release of 96 percent of clients. When PDS prevails at these hearings, clients who would otherwise be using hospital resources are released, saving taxpayer funds and making the 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 2019, PDS also prevailed in 66 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 inpatient treatment, which achieves less favorable outcomes for individuals

PDS also represents 74 individuals committed to the District's residential mental health treatment facility, St. Elizabeths Hospital, following a finding of not guilty by reason of insanity. The average length of commitment is 26 years. The oldest commitment dates back to 1966. In post-commitment NGI proceedings PDS made significant gains towards advancing clients' liberty interests as well as ensuring that scarce resources were not unduly burdened. PDS obtained the unconditional release of a client who had been court monitored since 1982—that is, for 37 years. The client continues to receive mental health services; however, the costly court oversight has been eliminated. Two additional clients are due to have their commitments terminated in early 2020. Three clients were released from inpatient hospitalization to community supervision, representing a combined total of approximately 50 years of hospitalization. Six clients were granted conditional release orders allowing them limited community outings; they continued to reside at the Hospital. Five clients secured reductions in their community supervision.

Parole Division

The Parole Division is the sole source of representation for more than 95 percent of the hundreds of parolees and supervised releasees facing revocation proceedings in the District of Columbia. The Division's lawyers practice before the U.S. Parole Commission (USPC), which uses federal regulations to govern the revocation process from warrant issuance through sentence imposition. The vast majority of persons whose parole or supervised release is revoked by the USPC are persons who have minor technical violations rather than arrests for new criminal offenses. PDS mitigates the outcomes of violation allegations and of re-incarceration through zealous advocacy, including by giving context to the violations and proposing alternatives to revocation.

PDS handles more than 1,600 matters annually for clients who are facing parole or supervised release revocation. In FY 2019, PDS represented 1,234 clients at probable cause hearings before the USPC. Of the cases in which probable cause was found, a large majority of clients chose to have PDS advocate for them to enter into one of the diversion programs USPC offered in 2019. For clients who chose to go to final revocation, in 44 percent of the cases, PDS was able to get the client's parole reinstated. In the vast majority of the remaining cases where reinstatement wasn't immediately ordered, PDS was still able to get sentencing decisions below the recommended sentencing guidelines.

Community Defender Division

In FY 2019, the Juvenile Supervision Program (JSP) has represented 23 children in the juvenile delinquency system equivalent of parole revocation hearings (called “Community Status Review Hearings”). In 11 of these hearings, the prosecution’s request to place the youth in a more restrictive setting was denied, so the youth remained in community placements. This is an especially impressive outcome given that youth are eligible to have their levels raised based on just two technical violations, hearsay is admissible at these administrative hearings, and the fact finders are employees of the same juvenile justice agency requesting the more restrictive setting.

JSP also represented securely detained youth in 289 institutional disciplinary hearings. The hearing officers (who are also agency employees) imposed additional sanctions in only 76 hearings, just 26 percent of all such hearings, even though multiple incident reports written by facilities staff are submitted to support each incident.

In its role as the legal ombudsman for detained youth, JSP also works to address systemic problems that PDS staff observe in the facilities. For example, in FY 2019, JSP was able to end the District’s practice of punishing detained youth by denying them the opportunity to exercise in the gym. JSP also helped the District prepare for the transfer of detained children charged as adults into custody of the juvenile justice agency. In November 2018, JSP arranged for management of the juvenile justice agency to present with JSP a joint training for the defense bar on implications of the transfer to the defense bar.

Additional Case Accomplishments

The above performance data demonstrate PDS’s achievements, but data alone give an incomplete picture of that success. PDS not only reduces the costs associated with inpatient versus outpatient treatment and with secure detention versus community supervision, PDS also makes a difference in individual lives by ensuring clients’ fair treatment in the criminal justice system. The cases described below illustrate the impact that PDS has as a well-functioning public defender office.³⁸

PDS continues to maintain its longstanding tradition of providing exceptional representation to clients and helping to ensure that case outcomes are not driven by an individual’s ability to pay for an attorney.

Incarceration Reduction Amendment Act Cases

Using funds provided in FY 2019 to support IRAA,³⁹ PDS obtained positive results five of six IRAA motions filed to date. An important component of the work that PDS does in IRAA cases is to create a re-entry plan that assists newly released clients with adjusting to life after incarceration. To that end, when one client who had been imprisoned for more than 27 years was released from the D.C. Jail, he reported directly to his new job as an office-building custodian. In another, PDS filed an IRAA petition on behalf of a client who started taking college classes for

³⁸ Pursuant to the requirements of the D.C. Rules of Professional Conduct, PDS obtains permission from clients to describe their cases and masks their identity.

³⁹ See PDS FY 2019 Budget Request at 10-12.

credit while incarcerated and has plans to continue taking college courses now that he has been ordered released.

Another of PDS's client victories is notable for being the only IRAA motion filed thus far—in PDS cases and non-PDS cases—that the prosecution did not oppose reducing the sentence to release the client, C.X., to probation immediately. C.X. was initially charged with two homicides but was acquitted of both at trial. C.X., who was 16 years old at the time of the crimes, was convicted of armed kidnapping, destruction of property, and firearms offenses. C.X. had been the youngest and by far the smallest physically of the group of people accused of the crimes. The prosecution's evidence at trial showed—and the jury's verdict reflected—that C.X. had not participated in the homicides, and had participated only minimally in the kidnapping of one of the victims in this case by pulling on the victim as they left an apartment building. C.X. had served more than 20 years in prison when PDS filed an IRAA motion on his behalf. Key to the success of the IRAA motion was the work of the mitigation specialist who was able to document and convey C.X.'s traumatic childhood, immaturity, and impulsiveness at the time of incident, and his maturation and rehabilitation while incarcerated. The many hours of work PDS devoted to this case included collecting all necessary records and traveling to different Bureau of Prison facilities around the country to speak with C.X. and with people related to his case. Although IRAA cases are time- and resource-intensive, this case in particular is a stellar example of how the IRAA funding is well-spent, resulting in a client's return to society.

Another IRAA victory demonstrates the amount of work and creativity necessary for a successful petition. In this case, the attorney reached out to a family member of the person killed by D.W., the PDS client, who was herself seriously injured during the incident. D.W. had been imprisoned on a manslaughter conviction after the jury found, according to a jury note, that he had used unreasonable and excessive force when defending himself in a fight with the decedent. The attorney worked with the family member to explain the purpose of IRAA and to build her trust in the process. The legal team shared with the family member, as they eventually shared with the court in their pleadings, the significant trauma D.W. had suffered as a very young child, and the substantial efforts D.W. made to self-improve while incarcerated. During his 22 years in prison, D.W. had completed a considerable amount of educational programming. He worked as a Suicide Watch Companion, helping to prevent suicide attempts by other inmates. D.W.'s self-improvement and good conduct were so commendable that an associate warden at the prison wrote a letter in support of D.W.'s IRAA motion. After many hours and much hard work by the PDS team, the family member decided to provide a statement to the court that she forgave D.W. and did not oppose his release.

Positive Case Outcomes due to Investigation Work

As demonstrated below, investigation is key to PDS's success. Investigating a case is required by the Constitution⁴⁰ and by the D.C. Bar Rules of Professional Conduct⁴¹ for good reason—because investigations serve clients and win cases. PDS uses staff investigators and its cadre of student interns (temporary employees who receive intensive training and who conduct

⁴⁰ See n. 26.

⁴¹ See D.C. Rule of Professional Conduct 1.1, Competence, comment [5]. “Competent handling of a particular matter includes inquiry into and analysis of the factual . . . elements of the problem It also includes adequate preparation and continuing attention to the needs of the representation”

investigations side-by-side with PDS’s full-time investigative specialists), to take witness statements, serve subpoenas, visit crime scenes, and obtain and review video and other electronic evidence. Results of these investigations have repeatedly led to early dismissals, acquittals, sentence reductions, and exonerations. The following are examples of such successes:

In FY 2019, PDS represented a client charged with murder but who the PDS attorney determined had acted in lawful self-defense. Self-defense cases are very difficult to win, and a thorough investigation is critical. Often the question of whether an accused engaged in lawful self-defense depends on whether the accused or the alleged victim provoked the altercation and started the violence. PDS investigators did not just investigate the crime scene and locate witnesses to the altercation that had resulted in the death of the decedent; they realized that the critical evidence might lie not in the present, but in the decedent’s past. Despite being told that the record of the decedent’s prior convictions had been destroyed in a flood, PDS investigators found transcripts from a murder the decedent had been involved in. Then they found an old friend of the decedent who described how he had helped the decedent commit that long-ago murder. The investigative team also found another friend of the decedent who had seen him immediately before the fight that led to his death. Called to the stand by PDS, the friend testified at trial that the decedent’s demeanor in the hours before his fatal altercation was combative and that it was clear he was looking for a fight. PDS trial attorneys used their legal expertise to get all of the evidence of the past murder and of the decedent’s demeanor the night of his death admitted into evidence. The jury was persuaded and the client was acquitted of all charges.

Investigations can win a case even before the case is indicted. In FY 2019, PDS represented F.T., a client who had been arrested for shooting at a special police officer. The police paperwork alleged that F.T. was involved in a shootout with another man. When a special police officer tried to intervene, F.T. allegedly tried to kill the officer to avoid arrest. While there is now an abundance of camera surveillance, including businesses and private homeowners’ videos, the videos are not necessarily retained for long periods of time. Knowing that time was of the essence, PDS investigators quickly went to the crime scene. Fortunately for F.T., who had never been arrested before, PDS investigators were able to secure video evidence that revealed that F.T. was innocent. The video showed that immediately before the shooting, F.T. had been walking down the sidewalk, talking with another man. A car drove by, reversed, and then a man jumped out of the passenger door, dressed in black and wearing a ski mask. The masked man began shooting. F.T. started running and never looked back, but the man to whom F.T. had been speaking pulled out a gun and fired back in self-defense. The recovered video made clear that F.T. did not have a gun and was not shooting. The evidence also showed that the special police officer, investigating the situation and dressed

POST-TRIAL NOTE FROM JUROR TO PDS TRIAL LAWYERS

“Ms. [PDS attorney] and Mr. [PDS attorney],

I was on the [client] jury. I simply wanted to thank you for the very important job that you do as public defenders. I’ve long heard harrowing stories about public defenders being overwhelmed, often unprepared, and generally being overmatched in court, to the detriment of their clients. But my encounter with you proved just the opposite. You were extremely prepared, highly professional and on top of your game at all times. The fact that people with such remarkable talent as yours devote themselves to helping those who are less fortunate and at risk is truly inspirational, and a credit to you. Please keep doing what you are doing—so many people in our society need the help of people like you.”

in all black like the original shooter, was mistakenly thought to be the initial shooter firing again and was shot at in self-defense. Without the video, the defense team may never have been able to show that F.T. was a victim of the shooting, and not a perpetrator of it. PDS investigators pieced together video from the scene as well as police body-worn camera footage for the trial lawyer to introduce at F.T.'s preliminary hearing, the first evidentiary hearing after arrest. The video was so conclusive that the prosecutor requested a copy—the police had not moved quickly enough to get their own copies of the private video. The prosecutor needed the video to show to the grand jury. Thanks to prompt and thorough investigation, PDS was able to get F.T.'s case dismissed before it was even indicted.

Other Case Outcomes

Frequently, a success on behalf of a client is helping the client get on track to living a life that will not lead to re-offending. To that end, the work of the forensic social workers in the Office of Rehabilitation and Development is invaluable.

PDS's client G.S.'s first contact with the criminal justice system was a case in which she was charged with having seriously injured her young teenage child. At the time of the incident, G.S. had been struggling for years with untreated schizoaffective disorder, the symptoms of which she tried self-medicating with drugs, including PCP. While G.S. was detained pending trial, the PDS forensic social worker began constructing a treatment plan. PDS connected G.S. with a community re-entry program, and she was able to start working with a case manager even while she was still detained. G.S. pled guilty in the case and showed extreme emotion and remorse when the prosecution recited the facts of the crime. Thanks to G.S.'s work towards rehabilitation while she was detained, the judge released her pending sentencing, citing the release plan submitted by the PDS forensic social worker. Upon release, G.S. immediately began outpatient mental health and addiction treatment and remained in full compliance with all release conditions. In the related Family Court child neglect case, the court told G.S. that she was already doing all the things the court would have required so G.S. only had to keep up her good work. At her sentencing for the criminal case, G.S. spoke eloquently about the substance abuse treatment groups she attended multiple times a week and about her continued work with her therapist and case manager, and she noted the presence in the courtroom of her mother and sibling, with whom she was able to reconnect now that she was getting treatment. The work of the forensic social worker, connecting G.S. to services and putting in place a plan that met her needs allowed G.S. to show that she could succeed in the community and reunite with her family, especially her child. Impressed with the amazing progress G.S. had made in the months since her release, the judge imposed a sentence of probation.

In another case, H.R. walked into PDS for assistance with a parole supervision matter. He had been doing well for the first three years of his five-year term of supervised release but was now being asked to comply with a new condition that he thought was particularly onerous and unfair in light of his record of compliance. PDS listened to H.R. describe his problem, and with a few probing questions was able to identify a greater injustice than a seemingly burdensome new condition. The sentencing judge had imposed a longer term of supervision than the law allowed. Based on the offense of conviction, the maximum period of supervised release possible was three years, not five. PDS notified the U.S. Parole Commission. Their review of the matter confirmed the PDS analysis. H.R., having already completed the three years of supervised release possible, was released from all supervision, and his case was closed.

Additional Accomplishments

Criminal Justice Act Attorney Surveys Results

As part of evaluating PDS's performance in providing service to the District's justice system's Criminal Justice Act Bars, in FY 2019, PDS sent an anonymous attorney satisfaction survey to attorneys who practice in either the District's appellate or trial courts. PDS believed it was important to understand the panel attorneys' experience with PDS in order to focus on areas of potential improvement and to help understand where PDS is doing well. The survey asked about the training and other services that PDS provides to the panel attorneys.

Of the surveys sent out, 41 percent of trial panel attorneys and 46 percent of appellate panel attorneys responded. Overall, the results serve as another indicator of the high quality of PDS's client-centered representation:⁴²

- 96 percent of the trial panel respondents agreed that PDS attorneys provide and promote quality legal representation to indigent adults and children facing a loss of liberty;
- 96 percent of the trial panel respondents agreed with the statement that the training provided by PDS, such as the CPI Training Program Series, the Forensic Science Conference, and the New CJA Bar Attorneys Training, is effective and relevant to defending their clients;
- 100 percent of the appellate panel respondents agreed that the PDS-CJA Appellate Training Program improved their legal practice;
- 100 percent of the appellate panel respondents agreed that the PDS-CJA Moot Court Program improved their legal practice.

COMMENTS FROM CJA ATTORNEY SURVEYS ABOUT PDS REPRESENTATION

"I believe PDS attorneys rank amongst the most skilled and highly trained attorneys in the criminal defense bar."

"PDS is doing a wonderful job supporting CJA attorneys and any state bar would be blessed to have the dedicated guidance PDS provides . . . for free!"

"I can't overstate how helpful it is to be able to call and speak to someone (ORD, Appeals, Trial, etc.) when I have an urgent issue in court, and the attorneys and staff at PDS are uniformly responsive. You raise the bar for defense lawyering here in D.C."

"Thank you for all the things [PDS] has done to teach and inspire me over the last [decades]. PDS helps society so much by teaching new court-appointed lawyers to fight so hard and skillfully."

⁴² While the majority of responses were favorable, PDS did note areas to target for improvement. The Superior Court panel attorneys reported a serious deficiency in the skill level of investigators available for court appointments. This will require PDS and the court to focus on recruitment, training, and compensation going forward. We have shared this survey result with the Superior Court. CJA attorneys also requested PDS trial training include topics that more frequently arise in a criminal misdemeanor practice.

Finally, even in areas where the results were favorable, PDS will still seek to improve, as anything less than 100 percent agreement leaves room for growth.

Training Program for New CJA Trial Attorneys

In FY 2019, PDS continued the extended trial skills training program for newly appointed CJA attorneys that it began in 2017. The two-week, full-time program, modeled after the skill-based portion of PDS's trial training program for its own new attorneys, was organized and implemented by PDS's Training Director. The program includes opportunities for a small group of CJA attorneys to participate in mock exercises to develop or improve specific skills, such as opening statements, cross-examinations, direct examinations of expert witnesses, and closing arguments, and to receive performance critiques. Working with the Superior Court, PDS has now created a training program designed specifically for CJA lawyers who wish to be appointed to serious felony cases. CJA attorneys have applied to attend the one-week training, and the Court will then consider the lawyer's success at the training when making case appointments.

COMMENTS ABOUT CJA TRIAL TRAINING PROGRAM

"PDS is doing a wonderful job supporting CJA attorneys and any state bar would be blessed to have the guidance PDS provides."

"The new CJA attorney training was excellent. [The Training Director] did an amazing job of putting together interesting and engaging presentations."

"Loved variety of speakers who were experts in the subjects they were talking about."

"I loved the exercises and feedback from instructors."

Training Program for CJA Appellate Attorneys

In FY 2019, PDS continued its commitment to assisting the CJA Appellate Panel by launching the PDS-CJA Appellate Consultation and Assistance Program. This program made the PDS Appellate Training Director available full-time to consult with members of the CJA Appellate Panel in order to offer intensive assistance with the writing of their briefs. The overarching objective of this program is to help CJA appellate practitioners at the beginning of the appellate representation, by creating a collaborative process for the identification of appealable issues and the framing of those issues in the appellate brief. Because these decisions often have a determinative influence on the outcome of the appeal, the PDS Appellate Division has long believed in the value of working with colleagues during this critical stage of the representation. By providing editorial assistance during the actual writing of an appellate brief, the program emulates the case-specific assistance the PDS Appellate Division offers its own appellate staff. This program was well received by the panel. For example, in the first two months of the program, 21 CJA

COMMENTS ABOUT CJA APPELLATE TRAINING PROGRAM

"[The training] taught me everything I know about how to write a brief, and the moot exercises helped me actually win my oral arguments. [The Appellate Training Director] is the best mentor anyone can ask for."

"The program provided keen insight on how to present the facts of a case and brought important precedent on standards of review to my attention. The moot argument component was critical to my ability to argue intelligently a recent case."

"The ability to brain-storm with a group was invaluable. It opened my eyes to ways of looking at the case which neither I nor the government had explored. The perspective gained at moot turned out, at argument, to be of concern to the court and I would have been totally blindsided by some of the questions if I had not done the moot."

appellate attorneys sought assistance on 34 different cases. In addition, PDS continued its moot court program and during FY 2019 conducted 13 moot courts for CJA practitioners.

Security for Client Files

PDS completed the migration of its electronic client files to a new system that incorporates the automated control of security permissions that are integrated into the case management system. This new centralized system enables PDS to refine its information governance strategy with client files throughout the life of the case as it moves from one division to another. This new system provides increased security controls and eliminates any burdens that may be imposed by ethical conflicts of interest or case transfers (when an attorney separates, when the Appellate Division assumes responsibility for post-conviction work, etc.). As the agencies in the criminal justice system rely increasingly on electronic records instead of paper files, the use of this drive will help staff increase their efficiency and allow for easier retrieval of client files.

Other Training

In FY 2019, PDS continued its commitment to advancing quality defense for those who cannot afford to hire their own attorneys.

As in the past, PDS also produced the following trainings: a Winter, Summer, and Fall training series on criminal law and procedure topics for local attorneys⁴³ and a local training for certified CJA investigative specialists. PDS also hosted its annual Forensic Science Conference. This year, 100 District of Columbia area attorneys attended an all-day DNA training to learn about issues in DNA transfer as well as new types of testing the local Department of Forensic Sciences (DFS) has begun implementing:

**CJA ATTORNEY SURVEY COMMENT
PDS FORENSIC SCIENCE CONFERENCE**

“The recent 15th Annual Forensic Science Conference, on Defending a “touch” DNA case . . . was fantastic. [The Special Counsel for Forensics] was especially helpful and effective. She used language in her presentations that ‘broke down’ the scientific terms into more easily understood terms and concepts.”

STRMix, a type of probabilistic genotyping. The attendees were trained by some of the leaders in the field of forensic DNA testing, national experts in these issues, and PDS attorneys in PDS’s Forensic Practice Group, who conducted “on-your-feet” exercises for the conference participants so they could practice arguing and cross-examining on these complicated forensic issues.

Annually, PDS lawyers from each of its legal divisions provide more than 50 hours of training for hundreds of non-PDS attorneys representing indigent clients in the District of Columbia. As described above, PDS has evaluated the effectiveness of the training efforts by surveying the attorneys. In addition, PDS will survey the judges and monitor outcomes in the attorneys’

⁴³ The series received an overall average rating for content and materials of 4.7 on a 5-point scale. Comments on various sessions included: “A great series!,” “Excellent presentation,” “Very interactive,” “Terrific, clear, concise, excellent!,” “Very comprehensive and well done,” “Really good mix of basic, comprehensive info,” “Inspirational,” “Crisp and informative in both content and style,” “Very good and current info given,” “Practical and helpful information presented in a logical manner,” “One of the best presentations - concise and to the point,” “Valuable presentation, great job!,” “Very informative,” “Extremely helpful!,” and “Easy to understand.”

cases with the goal of improving case outcomes for all indigent persons in the District of Columbia.

In addition, PDS responds to requests from legal organizations from around the country and around the world (Argentina, Armenia, China, Israel, Iran, and Kenya) for consultation about criminal law and the PDS model of public defense. In FY 2019, PDS assisted groups from Guyana, Nigeria, and Uzbekistan.

CONCLUSION

The core work of PDS is the representation of individual clients facing a loss of liberty. The examples above all flow from the work done every day by PDS lawyers, investigative specialists, social workers, and other staff 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 fair 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 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. As it has every year since its inception, in FY 2019, PDS has won many trials, fought a forceful fight in others, and found resolution prior to trial 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 his liberty.

APPENDIX

As noted throughout this Congressional Budget Justification, PDS is a holistic, single program with multiple divisions all focused on PDS's mission of providing quality legal representation to PDS clients. This mission is reflected in the work done every day on cases that come to PDS. As the example below illustrates, a typical PDS case involves many if not all of the divisions that make up PDS.

Day One:

A client is arrested by the Metropolitan Police Department and is hours later taken to Superior Court to be presented before a judge and assigned an attorney. The **Defender Services Office** interviews the client, assesses the charges, and runs a conflicts and eligibility check to determine whether the client is entitled to a PDS attorney.

An attorney from the **Trial Division** is assigned to the client. The lawyer meets the client in the cellblock and represents the client in presentment court. Within 48 hours of the lawyer being assigned the case, if the client is held pending trial, that lawyer goes to the D.C. Jail to have an in-depth conversation with the client to begin the representation.

Day Two:

An investigative specialist from the **Investigations Division** is assigned to the client and meets with the attorney and the client to begin investigating the case. The investigative specialist may involve other investigative specialists assigned to the **Investigation Technical Support Group** who can assist in the more technical aspects of investigation, such as recovering camera footage and analyzing cell location information.

Case Progression:

A forensic social worker from the **Office of Rehabilitation and Development** is assigned to assist the client and lawyer with potential mental health issues that may affect the client's competency to stand trial, the client's culpability due to potential serious mental health issues, or the lawyer's advice about plea negotiations and mitigation.

An attorney from the **Civil Legal Services Division** is assigned to assist the client's family, who is facing possible eviction due to the client's arrest, and to draft a custodial power of attorney to ensure the continuity of care of the client's child while the client is detained. The division may also assist the client with ensuring the suspension of Social Security Disability payments, which the client is not entitled to receive during periods of confinement and which if maintained could lead to issues of overpayment and even charges of criminal fraud.

The client alerts PDS that he is not getting the medical assistance he needs at the D.C. Jail and a lawyer from the **Community Defender Division** is assigned to address the client's issues with the jail and litigate them if necessary.

Because the court relied on an improper legal standard to order the client's detention at the jail, attorneys in the **Appellate Division** file an emergency appeal of the detention decision by the lower court and are consulted about legal motions and responses that may be filed in the case.

The trial attorney consults the **Forensic Scientist** to get assistance and advice about DNA or fingerprint evidence the prosecution may be intending to introduce and to evaluate whether re-testing is necessary or additional testing is warranted.

The **Information Technology Office** is consulted to assist with software that enables the investigative specialist and trial attorney to review audio and video evidence disclosed to the defense by the prosecution.

The trial attorney consults an attorney in the **Civil Legal Services Division** with immigration expertise to evaluate immigration consequences to a plea or trial conviction.

Through discovery and investigation, potential exculpatory evidence that the prosecutor was required to have disclosed to the defense is revealed, and the trial attorney consults lawyers working in the **Special Litigation Division** for assistance with litigating the issue.

It is determined that an expert in cell phone technology may be needed to assist the trial lawyer in understanding cell site reports so the staff of the **Budget & Finance Office** is consulted to approve an expert voucher.

Serious mental health issues are uncovered, and an attorney from the **Mental Health Division** is assigned to assist with potential *Jackson*⁴⁴ issues. In addition, an attorney in the **Trial Division** who is a member of the new **Mental Health Practice Group**⁴⁵ is assigned to co-counsel the case.

In preparation for trial, the trial lawyer anticipates needing to use a transcript from a prior hearing to potentially impeach a witness and asks a member of the **Administrative Staff** to facilitate acquiring the transcript.

An attorney in the **Parole Division** is consulted to determine the effect on the client's parole case and to prepare the client for his eventual parole hearing after his criminal case is resolved.

The progress and resolution of the case are tracked in **Atticus**, PDS's case management system designed by the **Information Technology Office** to help with client information management, attorney supervision, team assignments, and data reporting.

⁴⁴ Civil commitment cases that statutorily follow a finding where an individual, charged with a felony or misdemeanor is found incompetent to stand trial in a criminal case. *Jackson v. Indiana*, 406 U.S. 715 (1972).

⁴⁵ The MHPG is made up of a small group of attorneys in the Trial Division who specialize in mental health litigation. An MHPG member meets with a trial attorney who has asked for legal support in a criminal case where mental health issues are involved. The member works with the client, makes recommendations, serves as the point of contact for experts, attends hearings regarding mental health issues of the client, and co-counsels competency hearings and trials where an insanity defense is raised.

BUDGET DISPLAYS

PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

FY 2021 Summary of Changes

	<u>FTE</u>	<u>Amount (\$ in 000s)</u>
FY 2020 Enacted	205	44,011
Adjustments to Base		
Less Non-Recurring Expense (HQ Move)	-	(344)
Add Annualizations	<u>5</u>	<u>197</u>
Total, Adjustments	5	(147)
FY 2021 Base	<u>210</u>	<u>43,864</u>
PROGRAM CHANGES		
Priority Programs	<u>3</u>	<u>330</u>
FY 2021 REQUEST	<u>213</u>	<u>44,194</u>

**PUBLIC DEFENDER SERVICE
CONGRESSIONAL BUDGET JUSTIFICATION SUMMARY**

FY 2021 Summary of Changes

<u>Grades:</u>	FY 2019 Actual		FY 2020 Enacted		FY 2021 Budget Request	
	FTE	Amount	FTE	Amount	FTE	Amount
ES	3	493	3	511	3	521
AD-15	24	3,813	26	3,801	26	3,823
AD-14	66	8,995	64	8,050	65	8,329
AD-13	32	3,515	37	4,665	37	4,708
AD-12	30	2,677	20	2,561	22	2,833
AD-11	13	993	15	1,350	21	1,924
AD-10	-	-	-	-	-	-
AD-09	18	1,140	21	1,075	18	935
AD-08	2	122	2	135	2	130
AD-07	14	704	12	883	14	1045
AD-06	6	312	4	187	4	190
AD-05	2	88	1	81	1	83
Total Appropriated Positions	210	22,852	205	23,299	213	24,521
EX/ES FTE		3		3		3
GS FTE		207		202		210
Average EX/ES Salary		164		170		174
Average AD Salary		108		113		113
Average AD Grade		12		12		12
<u>Object Class</u>						
11.1 Full Time Permanent	210	22,852	205	23,299	213	24,521
11.5 Other Pers. Comp,		203		250		210
11.8 Special Pers. Services		706		650		650
12.0 Benefits		7,510		7,952		8,430
13.0 Unemployment Comp.		48		45		45
Personnel Costs	210	31,319	205	32,196	213	33,856
21.0 Travel & Training		358		385		360
22.0 Transportation of Things		8		10		8
23.1 Rental Payments to GSA		3,175		3,302		3,644
23.2 Rental Pmts.to Others,						

& Misc.	221	242	215
23.3 Comm., Utilities & Misc.	368	390	376
24.0 Printing and Reproduction	27	26	30
25.1 Consulting Services	1,243	1,050	1,155
25.2 Other Services	1,700	2,362	1,750
25.3 Purchases from Gov't Accts.	1,281	1,216	1,320
25.4 Maintenance of Facilities	6	15	5
25.7 Maintenance of Equipment	691	1,400	740
26.0 Supplies and Materials	380	463	435
31.0 Furniture and Equipment	300	610	300
Non-Personnel Costs	9,758	11,471	10,338
TOTAL	41,077	43,667	44,194
31.0 Non-recurring Expense			
Headquarters Relocation		344	
Grand Total	41,077	44,011	44,194
OUTLAYS	37,905		

APPROPRIATION LANGUAGE

Public Defender Service for the District of Columbia

Appropriation Language Fiscal Year 2021

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, [\$44,057,000] **\$44,194,000: 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 a program substantially similar to the program set forth in subchapter II of chapter 35 of title 5, United States Code, for employees of the District of Columbia Public Defender Service, 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 PDS may be deemed an “agency” for 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.

ORGANIZATION CHART

