

THE  
PUBLIC  
DEFENDER  
SERVICE

*for the District of Columbia*



Fiscal Year 2022

Congressional Budget Justification

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**PUBLIC DEFENDER SERVICE  
FISCAL YEAR 2022 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 statute<sup>1</sup> enacted to comply with the constitutional mandate to provide defense counsel for people who cannot afford an attorney.<sup>2</sup> 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 criminal 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.<sup>3</sup> 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 court system, training for CJA and pro bono attorneys, and civil 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),<sup>4</sup> which relieved the District of Columbia of certain “state-level” financial responsibilities and restructured a number of criminal system 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 (CSOSA) 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 constitutional mandate it serves, PDS remains a fully independent organization

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

<sup>2</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

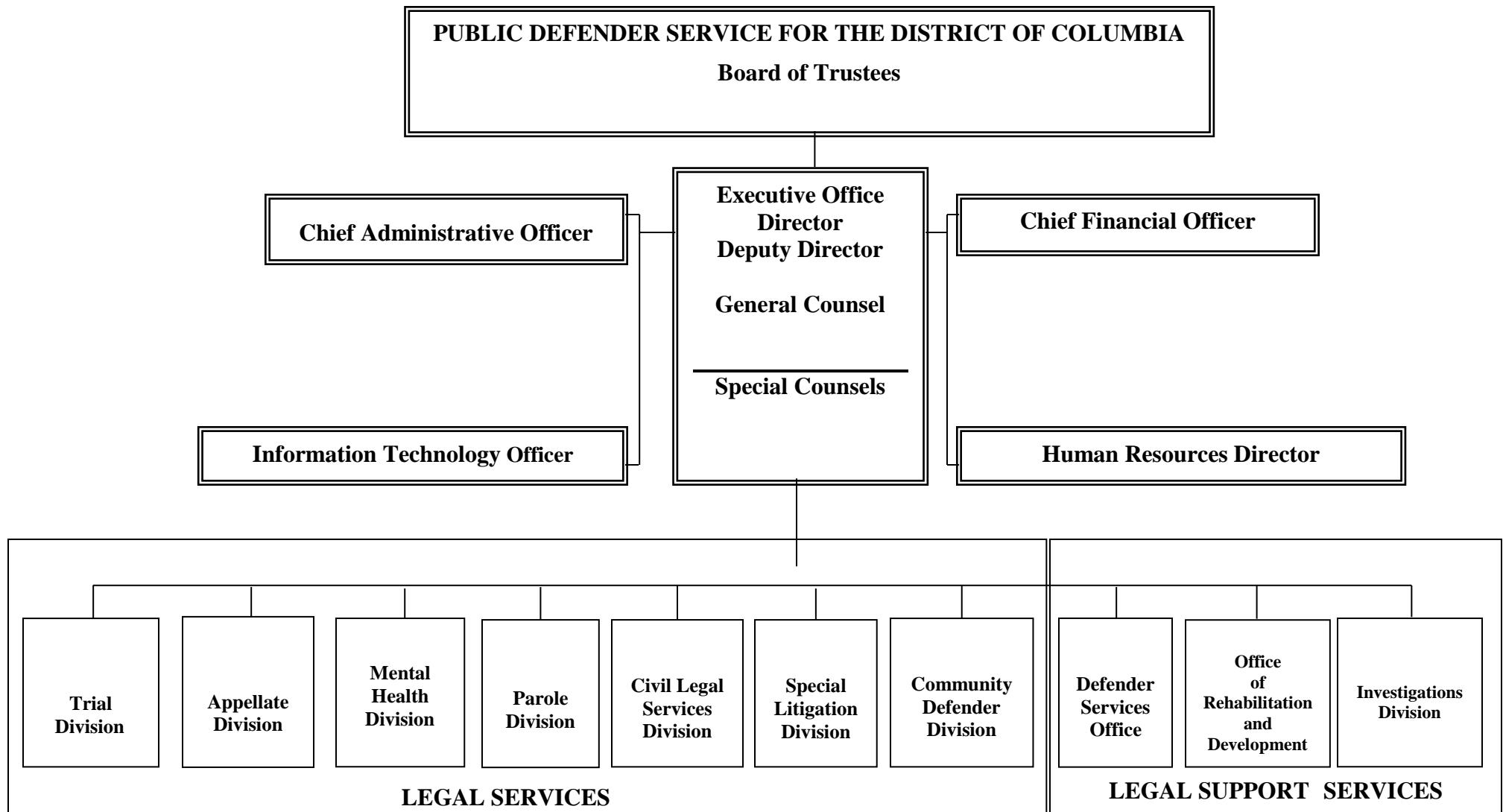
<sup>3</sup> Plan for furnishing representation to indigents under the District of Columbia Criminal Justice Act. D.C. Code § 11-2601 *et seq.*

<sup>4</sup> Pub. L. No. 105-33, Title XI (1997).

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 system for exceptional advocacy. The strength of PDS has always been the quality of the legal services that the organization delivers. Judges, panel attorneys, prosecutors, and especially clients acknowledge and respect the excellent advocacy of PDS's attorneys, as do public defender agencies and criminal legal system bar organizations across the nation.

## ORGANIZATION AND STRUCTURE<sup>5</sup>



<sup>5</sup> For a description of PDS's programs and divisions, see below at 22-27.

**BUDGET DISPLAYS**  
**PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA**

**FY 2022 Summary of Changes**

	<u>FTE</u>	<u>Amount (\$ in 000s)</u>
<b>FY 2021 Enacted</b>	<b>216</b>	<b>46,212</b>
<b>Adjustments to Base</b>		
Add General Inflation Level Adjustments	-	1,211
<b>Total, Adjustments</b>	<b>-</b>	<b>1,211</b>
<b>FY 2022 Base</b>	<b>216</b>	<b>47,423</b>
<b>PROGRAM CHANGES</b>		
Add IRAA and Compassionate Release	42	9,943
Add Record Sealing	2	310
<b>FY 2022 REQUEST</b>	<b><u>260</u></b>	<b><u>57,676</u></b>

## FISCAL YEAR 2022 BUDGET REQUEST

The Public Defender Service for the District of Columbia (PDS) requests a total budget of \$57,676 thousand for Fiscal Year (FY) 2022. This will allow PDS to

- meet the increased demand for client representation in the District of Columbia for clients pursuing their resentencing rights under the 2021 amendments to the District of Columbia's Incarceration Reduction Amendment Act;
- meet the increased demand for client representation in the District of Columbia for clients pursuing their rights under the compassionate release section of the Omnibus Public Safety and Justice Amendment Act of 2020;
- increase its capacity to meet demand for District of Columbia criminal record sealing services; and
- maintain operations and absorb pay and non-pay inflationary increases.

Of the requested \$57,676 thousand, PDS seeks authority to use \$8,107 thousand over three years for 26 temporary positions to support the Incarceration Reduction Amendment Act representation.

This funding level will ensure that PDS continues 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.

## PDS FISCAL YEAR 2020 ACCOMPLISHMENTS

*"I know this current situation is hard, but knowing you cared about what was happening in here [at the D.C. Jail] and [that the conditions] changed so quickly made me feel really good."*

-from a client in the *Banks v. Booth*<sup>6</sup> lawsuit

*"Thank you, Thank you and Thank you all over again. I never ever thought that I would ever have the chance to see a day like this. To [the Chief of PDS's Office of Rehabilitation and Development] and the whole legal team, everybody that took time out of they lives to come to my aid and support me on behalf of God, truth, realness which all has come from the heart just see a person someone such as myself to have that second chance on giving back and in hopes to make a change in someone else's life. And I really mean every word of statement that I read today that wasn't something just to get over, I really mean those words. Thanks again you guys you all are something special in my life and forever will be in my life. See you guys real soon, Love T...."*

-from an Incarceration Reduction Amendment Act<sup>7</sup> client released after serving 24 years in prison

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<sup>6</sup> See below at 8.

<sup>7</sup> See below at 13-16.

FY 2020 created a number of obstacles and pressures for PDS, including many related to the COVID-19 pandemic, which presented acute health risks to PDS's incarcerated clients. PDS needed to respond by identifying and using any and every available strategy for obtaining those clients' release, whether it was informal advocacy with system agencies; legislation; or litigation, including individual bond review motions and two class action lawsuits. As described in more detail in PDS's Resource Request,<sup>8</sup> much of the litigation consisted of post-conviction motions for release based on newly enacted and expanded sentencing statutes. As the quotes from the two clients above reflect, the work that PDS did in FY 2020 was critically necessary and life-altering for clients.

As with the country, a major part of PDS's FY 2020 experience is that of two very different roughly half-year periods: the almost six months of relatively normal operations before the coronavirus pandemic reached the District of Columbia and a little more than six months of operations disrupted by the pandemic. During the first half of FY 2020, PDS engaged in its typical client representation work while attempting to keep pace with demand for legal representation in Incarceration Reduction Amendment Act (IRAA) cases—demand that increased after that statute was amended in 2019 to expand clients' eligibility. The demand for this representation was far outpacing the increased capacity PDS obtained in FY 2019 as a result of having received supportive funding from the Congress for an attorney, a mitigation specialist, and an investigative specialist. Despite those challenges, PDS was developing a record of success in litigating these cases, winning 100 percent of IRAA hearings conducted in FY 2020.

PDS spent the second half of FY 2020 responding to and managing the challenges presented by the pandemic to staff and to clients. All of PDS's program and administrative functions were severely impacted, and PDS was suddenly called upon to engage in new advocacy efforts directed at protecting clients and staff from the ravages of the coronavirus and to continue previous advocacy efforts with a new sense of urgency. PDS lawyers, investigative specialists, social workers, and mitigation specialists filed dozens of motions seeking release from incarceration for elderly and medically vulnerable clients under the District of Columbia Council's newly enacted compassionate release statute.

PDS also filed two lawsuits that achieved the goal of reducing the numbers of persons detained in secure facilities during the pandemic. Releasing as many persons as possible from these facilities not only helped those individuals who could quarantine safely in the community, but by easing crowded conditions and freeing up resources, also helped facility staff and those who remained detained, and reduced the chance that the facility would become a "hot spot" for the spread of the coronavirus in the larger community. PDS filed *In re Sentenced Misdemeanants*,<sup>9</sup> seeking the release of individuals who were serving prison sentences in the custody of the District of Columbia Department of Corrections for misdemeanor convictions. In *In re Incompetent Misdemeanants*,<sup>10</sup> PDS sought the release of individuals facing misdemeanor charges who were detained at St. Elizabeths Hospital, the District's mental health hospital,

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<sup>8</sup> See below at 13-19.

<sup>9</sup> Super. No. 2020 CNC 120.

<sup>10</sup> Super. No. 2020 CNC 121.

pending competency determination or restoration but who had their trials suspended indefinitely. By the end of the fast-paced litigation, more than a hundred individuals had their cases individually reviewed and obtained release; the population in the Department of Corrections serving misdemeanor sentences decreased by 95 percent from 94 people to fewer than five, and the population of people incarcerated pretrial on misdemeanor charges who were involved in competency proceedings decreased by 89 percent, from more than 45 to fewer than five.

PDS currently represents 61 individuals who were committed to St. Elizabeths Hospital, following a finding of not guilty by reason of insanity (NGI). The average length of commitment is 26 years, with the oldest of PDS's NGI commitment cases dating back to 1966—more than 50 years. Many committed individuals are extremely vulnerable to death and complications from COVID-19 due to age and medical conditions. In the spring of 2020 when COVID-19 was widespread inside St. Elizabeths Hospital, PDS obtained unconditional release for five NGI clients who had been subject to monitoring by the court for a combined total of 202 years. The oldest commitment among these five was from 1973.

On behalf of residents at the District's Jail and Central Treatment Facility, PDS is lead counsel in *Banks v. Booth*, a class action suit against the District's Department of Corrections filed in U.S. District Court for the District of Columbia.<sup>11</sup> The suit challenges the conditions at the two detention facilities during the COVID-19 pandemic. Although the suit is ongoing, it has already borne fruit. Corrections officers have had better access to personal protective equipment and have been trained on its use. Residents have had improved access to legal calls and now have access to videoconferencing meetings with their lawyers,<sup>12</sup> communications that are required by the 6<sup>th</sup> Amendment.

PDS staff, despite the toll the pandemic was having on them personally and professionally, took on the above litigation and other litigation efforts to protect clients from the impact of the decisions by many of the District's legal system agencies to shut down or severely curtail their operations. As a result of court closures and the suspension of regular proceedings, only during the first half of the fiscal year did PDS engage in its usual level of client representation. PDS's usual client representation efforts (trials, motions, parole revocation hearings, etc.) were redirected to seek release on behalf of clients detained at the D.C. Jail, mental health facilities, Federal Bureau of Prison facilities (BOP), and juvenile detention facilities. PDS reports the following outcomes and performance data for FY 2020. (Trial Division data reflect, primarily, representation provided during the first half of the fiscal year.)

- PDS worked on 2,443 trial matters; 1,138 parole matters; 1,956 mental health matters; 208 appellate matters; 400 civil matters, including special education matters; 567 post-

<sup>11</sup> *Banks v. Booth*, No. 20-cv-849 (CKK), *temp. restraining order granted*, — F. Supp. 3d —, 2020 WL 1914896 (D.D.C. April 19, 2020), *preliminary injunction granted*, — F. Supp. 3d —, 2020 WL 3303006 (D.D.C. June 18, 2020). The suit is for injunctive and declaratory relief only, and not for compensatory or punitive damages.

<sup>12</sup> In addition to PDS attorneys, lawyers who now have videoconference access as a result of this lawsuit include panel attorneys in Superior Court, federal public defenders and panel attorneys in the District of Columbia and Maryland federal courts, and retained counsel in all these courts.

commitment (juvenile) and 1,548 post-conviction (adult) matters; 2,400 Drug Court matters;<sup>13</sup> 109 Special Litigation Division matters; and 2,764 adult Duty Day and 2,311 juvenile Duty Day matters.<sup>14</sup>

- In hearings before the Commission on Mental Health, PDS prevailed in 80 percent of its cases, securing either complete dismissal or mitigation (securing outpatient commitment instead of inpatient commitment).
- PDS won reinstatement and release in 61 percent of the parole revocation cases PDS defended in hearings before the U.S. Parole Commission (USPC).
- In cases where PDS did not win reinstatement, PDS convinced the USPC to impose sentences below the federal guidelines recommendation in more than 40 percent of cases.
- PDS was able to secure release for 65 percent of all parole clients facing probable cause hearings.
- PDS won 100 percent of the Incarceration Reduction Amendment Act (IRAA) hearings PDS conducted, resulting in the release of 16 individuals from BOP custody.
- PDS won 64 percent of the community status review hearings<sup>15</sup> PDS handled.

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<sup>13</sup> This figure is an estimate, as the court was unable to supply the data due to staff unavailability during the pandemic. Drug Court suspended operations in the middle of March 2020, so this number reflects cases handled from October 1, 2019, through March 18, 2020.

<sup>14</sup> For comparison, the following are the matters PDS handled in FY 2019: 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.

<sup>15</sup> Community status review hearings are the juvenile justice system's equivalent of a parole revocation hearing in the criminal justice system.

- PDS continued to take the majority of homicide cases and was able to obtain complete acquittals or favorable mixed verdicts, in 89 percent<sup>16</sup> of the criminal jury trials that occurred in FY 2020.

<b>PDS Percentage of Homicide Cases</b>		<b>PDS's Trial Division's Percentage of Full Acquittals or Favorable Mixed Verdicts</b>	
<b>FY 2016</b>	<b>70%</b>	<b>FY 2016</b>	<b>50%</b>
<b>FY 2017</b>	<b>72%</b>	<b>FY 2017</b>	<b>49%</b>
<b>FY 2018</b>	<b>72%</b>	<b>FY 2018</b>	<b>58%</b>
<b>FY 2019</b>	<b>72%</b>	<b>FY 2019</b>	<b>68%</b>
<b>FY 2020</b>	<b>67%</b>	<b>FY 2020</b>	<b>89%</b>

- PDS's reversal rate before the District of Columbia Court of Appeals was almost four times higher than that of the rest of the defense bar (65 percent versus 17 percent).

<b>Reversal Rates in PDS Appellate Cases vs. Non-PDS Appellate Cases</b>		
<b>Fiscal Year</b>	<b>PDS Cases</b>	<b>Non-PDS Cases</b>
<b>FY 2016</b>	<b>32%</b>	<b>5%</b>
<b>FY 2017</b>	<b>39%</b>	<b>10%</b>
<b>FY 2018</b>	<b>22%</b>	<b>4%</b>
<b>FY 2019</b>	<b>50%</b>	<b>16%</b>
<b>FY 2020</b>	<b>65%</b>	<b>17%</b>

PDS anticipates continuing to return to some degree of normal operations in FY 2022. This will involve reducing a severe and continually growing backlog of trial cases given the Superior Court's very slow resumption of jury trials after they were suspended for a full year. Returning

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<sup>16</sup> 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.

to normal operations will also involve handling a backlog of parole revocation cases and mental health cases, and handling two new types of cases grounded in two new District of Columbia resentencing statutes.

## PDS FY 2022 RESOURCE NEEDS

### Summary of PDS FY 2022 Resource Needs

For FY 2022, PDS requests a budget of \$57,676 thousand, which includes \$47,423 thousand for base operations and \$10,253 thousand in program changes to fund 18 permanent positions, 26 temporary positions, and related supporting costs. The additional \$10,253 thousand will fund program changes in three types of post-conviction representation: resentencing pursuant to a recent amendment of the Incarceration Reduction Amendment Act (permanent and temporary positions), resentencing pursuant to the recently enacted Compassionate Release statute, and record sealing. Of the \$10,253 thousand, PDS requests that \$8,107 thousand be made available for three years (FY 2022 - FY 2024). Multi-year availability will enable effective management of the 26 temporary staff and related support costs.

Specifically, PDS requests:

1. **IRAA Representation Permanent Positions:** funding of \$508 thousand for three attorney positions, two investigative specialist positions, and one forensic social worker position to support representation pursuant to a new statutory right in the District of Columbia for early release for eligible incarcerated clients;
2. **IRAA Representation Temporary Positions:** **three-year funding** of \$8,107 thousand for nine attorney positions, seven mitigation specialist positions, seven investigative specialist positions, one paralegal position, one forensic social worker position, and one human resources specialist position to support representation pursuant to a new statutory right in the District of Columbia for early release for eligible incarcerated clients;
3. **Compassionate Release Representation Positions:** funding of \$417 thousand for two attorney positions, two investigative specialist, and one forensic social worker position to support representation pursuant to a new statutory right in the District of Columbia for early release for eligible incarcerated clients;
4. **Criminal Record Sealing Representation Positions:** funding of \$310 thousand for two attorney positions to respond to increased demand for legal representation for criminal record sealing matters.
5. **Administrative Support Positions:** funding of \$506 thousand for one administrative assistant position, one human resources specialist position, one system administrator position, one hardware technician position, and one procurement specialist position to support the above positions.
6. **Administrative Costs:** funding of \$405 thousand for administrative costs (expert costs, travel, etc.) to support all the above positions.

**PDS FY 2022 BUDGET REQUEST**  
**IRAA, COMPASSIONATE RELEASE, AND RECORD SEALING**

<b><u>Cost Category</u></b>	<b>Personnel Count</b>	<b>Cost (\$ in 000)<sup>1/</sup></b>
<b>Incarceration Reduction Amendment Act (IRAA)</b>		
Attorneys	3	\$ 272
Investigative Specialists	2	\$ 157
Forensic Social Worker	1	\$ 79
<b>Subtotal (IRAA)</b>	<b>6</b>	<b>\$ 508</b>
<b>3-Year Term Employees</b>		
Attorneys	9	\$ 2,897
Mitigation Specialists	7	\$ 2,326
Investigative Specialists	7	\$ 1,946
Paralegal	1	\$ 231
Forensic Social Worker	1	\$ 278
Human Resources Specialist	1	\$ 429
<b>Subtotal (3-Year Term Employees)</b>	<b>26</b>	<b>\$ 8,107</b>
<b>Compassionate Release (CR)</b>		
Attorneys	2	\$ 181
Investigative Specialists	2	\$ 157
Forensic Social Worker	1	\$ 79
<b>Subtotal (CR)</b>	<b>5</b>	<b>\$ 417</b>
<b>Record Sealing</b>		
Attorneys <sup>2/</sup>	2	\$ 310
<b>Support Personnel</b>		
Administrative, Human Resource, Information Technology (2), and Procurement Specialists	5	\$ 506
<b>Subtotal (Record Sealing and Support)</b>	<b>7</b>	<b>\$ 816</b>
<b>Administrative Costs</b>		
Cell Phones, SmartBenefits, and Expert Services		\$ 405
<b>GRAND TOTAL</b>	<b>44</b>	<b>\$ 10,253</b>

<sup>1/</sup> Cost includes salary, benefits, IT and other equipment, licensing, and other essentials.

<sup>2/</sup> Record sealing attorneys' cost is impacted by the higher experience level needed for their responsibilities.

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 continue 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 able to respond changes in law, policy, and practices that affect PDS's clients' interests. Maintaining quality representation requires that

PDS be prepared to respond to all of those changes, including the increased number of resentencing cases.

## **Resource Request—Positions**

### **IRAA Permanent and Temporary Positions (\$8,615 thousand)**

PDS requests a total of \$8,615 thousand for permanent (\$508 thousand) and temporary (\$8107 thousand) positions to litigate IRAA cases.

#### **IRAA Permanent Positions (\$508 thousand)**

**Six positions: three attorney positions (\$272 thousand); two investigative specialist positions (\$157 thousand); and one forensic social worker position (\$79 thousand).**

#### **IRAA Three-Year Temporary Positions (\$8,107 thousand)**

**Twenty-six positions: nine attorney positions (\$2,897 thousand); seven mitigation specialist positions (\$2,326 thousand); seven investigative specialist positions (\$1,946 thousand); one paralegal position (\$231 thousand); one forensic social worker position (\$278 thousand) and one human resources specialist (\$429 thousand).**

**PDS requests resources to support PDS’s response to new District of Columbia legislation that became effective on April 27, 2021.<sup>17</sup> This legislation greatly increases the number of PDS clients eligible for judicial review of their long-term sentences. PDS herein describes its proposed service expansion, cites historic and current data, and includes projections for future demand associated with these sentencing review cases, known as IRAA cases.**

PDS is requesting a total of \$8,615 thousand to fund six permanent employees and 26 temporary employees to meet the demand for representation for IRAA clients. The recent enactment of an expansion of the Incarceration Reduction Amendment Act of 2016 (IRAA), D.C. Code § 24-403.03 as amended by D.C. Law 23-274, generated new demand for PDS’s services and created an immediate and significant backlog of cases. This request includes annual and multi-year funding for additional staff who will enable PDS to represent the greatly increased number of clients eligible to seek resentencing pursuant to the statute and provide the surge capacity via term appointments needed to manage and to substantially reduce the immediate case backlog. PDS requests that the funds for the temporary positions be made available for three years (FY 2022, FY 2023, and FY 2024) as PDS will need time to recruit and hire a substantial number of new staff. In addition, PDS will need to support this increased level of staffing for multiple years. Having the funds available for three years will give PDS greater capacity for planning, implementation, and stability as PDS provides this new service.

The expansion, originally introduced as the Second Look Amendment Act of 2019 (Second Look), which was later incorporated into an omnibus bill, amends a statute enacted in 2017, the

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<sup>17</sup> See D.C. Law 23-274, the Omnibus Public Safety and Justice Amendment Act of 2020 (previously known as the Second Look Amendment Act of 2019).

Incarceration Reduction Amendment Act of 2016 (IRAA).<sup>18</sup> IRAA is the District of Columbia's response to a Supreme Court decision, *Miller v. Alabama*,<sup>19</sup> prohibiting life sentences without the possibility of parole or release for juvenile defendants. The 2016 statute allows individuals who were under the age of 18 at the time of the commission of an offense to petition for a reduction in sentence based on numerous factors, including the individual's rehabilitation and personal circumstances. The statute provides the right to a hearing and the right to an attorney. It has been amended and eligibility expanded twice, first in 2019, in the Omnibus Public Safety and Criminal Justice Act of 2018,<sup>20</sup> and subsequently in 2021 with the Omnibus Public Safety and Justice Amendment Act of 2020, enacted on April 27, 2021.<sup>21</sup>

Second Look greatly expands the number of people eligible to petition the court for a sentence reduction under IRAA. Originally, a person was eligible to seek resentencing if they were younger than 18 at the time they committed the crime that is the basis of their conviction; Second Look now makes a person eligible if they committed the crime before age 25. Every person who has served at least 15 years in prison for a D.C. Code offense that occurred before their 25<sup>th</sup> birthday will now be eligible to petition for a sentence reduction. The petitions require extensive written and in-court advocacy as well as a comprehensive investigation of the individual's life and case-related circumstances. As of its effective date of April 27, 2021, approximately 500 people instantly became eligible to petition the court for a sentence reduction. Approximately 150 of those 500 eligible individuals are PDS clients.<sup>22</sup> This is having an immediate and significant impact on PDS's workload.<sup>23</sup>

Since the original enactment of IRAA, PDS has represented 46 eligible people. PDS has litigated 29 cases to their conclusion, winning the release of 28 clients by demonstrating, among other things, their rehabilitation during their incarceration.<sup>24</sup> All 28 clients were serving life sentences.<sup>25</sup> People released through IRAA have become productive members of their communities and great assets to their families. PDS currently has 24 clients who were under the

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<sup>18</sup> D.C. Code § 24-403.03.

<sup>19</sup> 567 U.S. 460 (2012).

<sup>20</sup> D.C. Law 22-313.

<sup>21</sup> See n. 17.

<sup>22</sup> The two main sources of attorneys for non-PDS clients are the Superior Court's Criminal Justice Act panel of court-appointed attorneys, which is federally funded, and volunteer attorneys.

<sup>23</sup> Even prior to the Second Look expansion, PDS's capacity to handle IRAA cases had already been significantly constrained because the 2019 amendments to IRAA increased the number of PDS clients eligible for relief by 68 percent.

<sup>24</sup> See below at 28-29 for a description of some of the outcomes in PDS's IRAA cases.

<sup>25</sup> Persons convicted of crimes that were committed prior to August 5, 2000, have indeterminate, typically parole eligible sentences. An indeterminate "life sentence" has a parole-eligibility date, but not a mandatory release date. If the parole authority never grants the person parole, the person will remain in prison for the rest of their life.

age of 18 at the time of the commission of their offenses and who are eligible to petition for release under IRAA. Of those 24 cases, due to staffing, PDS has not yet filed motions in 16 cases.

Now that the Second Look amendment is law, the number of PDS clients immediately eligible for IRAA—and who have yet to file motions—has increased from 16 to approximately 166, a 938% increase. Furthermore, approximately 12 to 15 more PDS clients will become eligible for relief under IRAA every year as they pass the requirement of having served at least 15 years of their sentence. Second Look therefore has two impacts on PDS's IRAA caseload. First, it creates a massive and immediate increase in the number of currently eligible IRAA cases. If those eligible individuals are able to work with legal teams to litigate their cases, that backlog should decrease in approximately three years. Second, PDS will experience a permanent increase in the flow of cases resulting in 12 to 15 former PDS clients becoming eligible to file IRAA petitions each year. Furthermore, any client who has been denied relief or denied full relief has the right to file a second motion three years after a denial, and can file as many as three motions in total. Although PDS has a 97 percent success rate to date, PDS anticipates that there will be some need to file second and third motions for the foreseeable future.

In the four years that PDS has represented IRAA clients, PDS has been able to determine the quality and the amount of work, and the staffing levels necessary to properly litigate these cases, resolution of which can take longer than a year.<sup>26</sup> PDS's goal is to represent all of its clients as well as individuals for whom the court specially appoints PDS as counsel for IRAA purposes but who were not PDS clients at trial or on direct appeal.

PDS received funding in FY 2019 for one attorney position, one mitigation specialist position, and one investigative specialist position to support PDS's IRAA representation. Currently, PDS is diverting some staff from their regular work to address the existing IRAA backlog (as well as other pandemic-related litigation). As PDS is moving to fully resume its regular work, such as jury trial representation, staff now available for permanent IRAA work, including that due to Second Look, consists of one attorney, two mitigation specialists, and two investigators. Without additional support this would mean that PDS would be able to handle only five IRAA cases per year or face the prospect of significant disruption to its other legal operations.

To enable PDS to handle the 12 to 15 clients who become newly eligible for IRAA every year as well as any re-filings that are necessary separate from the backlog of cases created by the Second Look expansion, PDS will need to add, on a permanent basis:

- 3 attorneys
- 2 investigative specialists
- 1 forensic social worker

To assist in eliminating the large backlog of cases created by Second Look, PDS will need to add the following positions on a temporary basis for approximately three years:

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<sup>26</sup> See FY 2021 Congressional Budget Justification at pp. 11-14.

- 9 attorneys
- 7 mitigation specialists<sup>27</sup>
- 7 investigative specialists
- 1 paralegal
- 1 forensic social worker
- 1 human resources specialist

With this full level of staffing, each of the 13 permanent and temporary attorneys working exclusively on IRAA would be able to file approximately five cases per year for three years, thus addressing the backlog and the additional cases of those who become eligible during that period.

### **Compassionate Release Positions (\$417 thousand)**

**Five compassionate release positions: two attorney positions (\$181 thousand); two investigative specialist positions (\$157 thousand); and one forensic social worker position (\$79 thousand).**

**PDS requests funds for two attorney positions, two investigative specialist positions, and one forensic social worker position to meet the new and immediate demand created by the District's recently expanded compassionate release statute.<sup>28</sup> PDS will represent individuals serving District of Columbia Code-based sentences who have a new statutory right to petition the Superior Court for early release from prison. 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.**

In response to the unprecedented public health crisis posed by COVID-19, the District of Columbia Council unanimously passed the COVID-19 Response Supplemental Emergency Amendment Act of 2020 (the COVID-19 Suppl. Emergency Act), which became effective on April 10, 2020.<sup>29</sup> Permanent compassionate release legislation was included in the Omnibus

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<sup>27</sup> PDS's experience with staff mitigation specialists versus contractors has demonstrated that the staff are overall more efficient, more effective, and less costly. PDS estimates that each mitigation specialist can carry a caseload of approximately eight active cases per year at a cost of \$118,000 annually. Without a staff mitigation specialist, PDS would need to contract for the services of an outside mitigation specialist at an annual cost of approximately \$20,000 per case or \$160,000 for eight cases. For every eight cases, PDS would spend \$42,000 more annually if required to contract for an outside mitigation specialist.

<sup>28</sup> D.C. Law 23-274, Title XII, § 1203; D.C. Code § 24-403.04. *See also* Super. Ct. Crim. R. 35(b).

<sup>29</sup> The D.C. Council passed compassionate release and good time reform in the COVID-19 Response Supplemental Emergency Amendment Act of 2020, D.C. Act 23-286 (April 10, 2020). The Council then passed the Coronavirus Support Emergency Amendment Act of 2020, D.C. Act 23-326. This bill was made retroactive, so its effective period was 90 days from March 11, 2020. It lapsed on June 9, 2020. The Council passed the Coronavirus Support Temporary Amendment Act of 2020 D.C. Act 23-334 (July 7, 2020). It was retroactive to June 9, 2020, and

Public Safety and Justice Amendment Act of 2020, codified as D.C. Code § 24-403.04, which, like Second Look, became effective on April 27, 2021.

Compassionate release, like IRAA, creates an opportunity for individuals serving sentences pursuant to the D.C. Code to petition the court for release upon proof of a number of factors. Originally passed as part of the District's emergency legislative response to the pandemic, Section 305 of COVID-19 Response Supplemental Emergency Amendment Act of 2020,<sup>30</sup> entitled "Good time credits and compassionate release," reflected the D.C. Council's intent to expeditiously and safely reduce the number of people in Federal Bureau of Prisons (BOP) custody by correcting "old inequities" in the calculation and award of "good time credit" between different groups of BOP prisoners,<sup>31</sup> and creating a new right, modeled on the compassionate release provision of the federal First Step Act,<sup>32</sup> that allows individuals to petition the court for compassionate release.

While the law was initially passed on an emergency basis to address issues caused by COVID-19, like the federal compassionate release law, the permanent law at D.C. Code § 24-403.04 permits sentence reductions for a broad range of reasons unrelated to COVID-19, including elderly age, health, and family care. Certain former clients meet the criteria for sentence reduction consideration, including those who are 60 years old or older and have served at least 20 years, or where other extraordinary and compelling reasons warrant a sentence reduction. The non-exhaustive list of circumstances that warrant a sentence reduction includes a debilitating injury from which the person will not recover, and the death or incapacitation of the family member caregiver of the defendant's children. It is important to note that the list of compelling reasons is illustrative rather than exclusive, such that a variety of health conditions and other circumstances may be grounds for compassionate release.

Compassionate release cases—like IRAA and other post-conviction matters—require attorneys capable of high-quality legal analysis and writing, investigative specialists versed in institutional and medical record compilation, social workers experienced in creating viable reentry plans, as well as advocates skilled in written and oral advocacy. In addition, because the compassionate release statute is new, advocates will need to engage in statutory interpretation and monitor the application of the similar provision of the First Step Act by the federal judiciary. Similarly, since the compassionate release statute in the District of Columbia has recently been enacted, PDS can

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expired on May 21, 2021. The Council also passed congressional review emergency legislation because the temporary legislation could last only 90 days and the temporary legislation required congressional review. All of the Acts were passed unanimously by the D.C. Council. The permanent compassionate release law is found in the Omnibus Public Safety and Justice Amendment Act of 2020, at section 1203 of D.C. Law 23-274.

<sup>30</sup> D.C. Act 23-286.

<sup>31</sup> D.C. Council, Twenty-Seventh Legislative Meeting, COVID-19 Response Supplemental Emergency Amendment Act of 2020, B23-0733 (Apr. 7, 2020), [http://video.oct.dc.gov/VOD/DCC/2020\\_04/04\\_07\\_20\\_COW.html](http://video.oct.dc.gov/VOD/DCC/2020_04/04_07_20_COW.html) (Statement of Councilmember Allen).

<sup>32</sup> The First Step Act of 2018, P.L. 115-391 (2018).

reasonably expect that the District of Columbia Court of Appeals will request that PDS participate as a “friend of the court” in a case of first impression for any appeal from a denial of compassionate release where PDS is not already representing the petitioner.

In order to properly represent clients seeking compassionate release, the defense must take a number of steps including:

- in-depth interviews with the client, BOP counselors, and family members;
- the compilation of a substantial amount of documentation, including 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; BOP’s extensive number of relevant records, including records related to a client’s disciplinary history and participation in rehabilitative programming;
- expert assessment of the individual’s federal prison record by a federal prison expert;<sup>33</sup>
- expert assessment of the individual’s medical history and prognosis;
- expert assessment of the individual’s current and former mental health issues, if any;
- establishment by a social worker of a reentry plan that includes housing as well as continuing medical and psychological support; and
- case management, and written and oral legal advocacy

As noted above, this work requires attorneys who are skilled in written and oral advocacy and resources from the legal support services, particularly investigative specialists and social workers.

On March 18, 2020, when the Superior Court suspended regular operations, trial attorneys who, among other responsibilities, would traditionally have been conducting preliminary hearings, preparing plea negotiations and sentencing memoranda as well as participating in evidentiary hearings and trials, instead began preparing motions for compassionate release and for review of bond. When their own day-to-day work abruptly shifted as a result of the pandemic, lawyers from the Special Litigation Division (SLD), Parole, Appellate, and Trial Divisions filed more than 99 compassionate release motions in FY 2020, arguing novel legal issues related to the new law. In doing all of this work, they were ably assisted by PDS investigative specialists and social workers.<sup>34</sup> PDS, however, does not have this same capacity going forward, as trial lawyers, who were heavily involved in drafting and filing these motions, are now handling preliminary hearings and other matters for pretrial clients. Further, now that jury and juvenile trials have resumed, trial attorneys will have to turn their full focus to the significant backlog of clients

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<sup>33</sup> An expert on prisons reviews the client’s institutional records and explains the context and relevance of numerous aspects of a client’s years of imprisonment. For example, the 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 that a client was assigned to a particular job and 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.

<sup>34</sup> See below at 29-30 for a description of some of the outcomes in PDS’s compassionate release cases.

whose trials were placed on hold in March 2020. An increase in trials will correspond to an increase in direct appeals and will similarly require the resources of the Appellate Division. The resumption of court functions, and parole and supervised release revocation hearings will leave those divisions unable to meet this demand for compassionate release cases.

Approximately 3,000 individuals are currently incarcerated in BOP facilities across the country for D.C. Code offenses. More than 700 of those individuals have requested assistance with their petitions for compassionate release. A local non-profit legal services group, in collaboration with PDS, has set up a clearing house to track such requests. PDS will need to assign lawyers and investigative specialists to review the PDS cases and triage them. While the number of these old cases may decrease over time as the backlog of cases is resolved, there may always be a substantial number of new cases as PDS clients age, develop illnesses, or meet the “other extraordinary or compelling reason” section of the statute. PDS anticipates filing between 15 to 20 compassionate release cases every year for qualifying candidates.

PDS will also need to develop a database that will identify all of the clients PDS has ever represented who are incarcerated currently and that will track all future clients who receive sentences of incarceration, to determine which clients are eligible for relief and which will become eligible in the future. An attorney working with an investigative specialist and paralegal will use the dataset to evaluate which cases should be pursued, and to identify and evaluate potential issues.

### **Criminal Record Sealing Positions (\$310 thousand)**

**Two attorney positions.**

**PDS requests \$310 thousand for two attorney positions to increase capacity for providing criminal record sealing representation.**

PDS provides records sealing services through a “Duty Day” program. In the program, an attorney is “on duty” each day to answer questions, make referrals, give preliminary legal advice, and offer record sealing services to members of the public. Record sealing is by far the most requested service. Having an arrest record is a huge impediment to obtaining employment, housing, and other resources. In the District of Columbia, one in seven people has a criminal record, which underscores why record sealing services remain the most requested legal service from Duty Day clients. PDS staff are regarded as the experts in criminal record sealing by the legal services community, accepting referrals from them, and training and educating community members and attorneys.

Historically, PDS receives an average of 3,100 requests for the service per year, handled by the Trial Division and, to a much lesser extent, the much smaller Community Defender Division (CDD). Some requests require brief consultation, but many require in-depth investigation, multi-stepped records gathering, and several hours of drafting. Some cases, especially complex cases and cases in which clients must prove actual innocence, lead to hearings before the court. In FY 2019, because of a shortage of attorneys in the Trial Division, PDS reassigned all record sealing services to CDD, which had only four staff attorneys providing the service along with their other duties. This severely limited PDS’s capacity to provide criminal record sealing services. The

impact of the pandemic further restricted PDS's capacity and will create a backlog of cases once COVID-19 restrictions are lifted and PDS can again take sealing requests. The chart below reflects the service requests that the Trial Division and CDD received for assistance in sealing criminal records from FY 2017 to FY 2020.

#### **Trial Division and Community Defender Division Intake Data**

FY	Record Sealing Intake <b>TOTAL</b> (Trial/CDD)
FY 2017	<b>3273</b> (3000/273)
FY 2018	<b>3794</b> (3058/736)
FY 2019	<b>2939</b> (1698/1241)
FY 2020 <sup>35</sup>	<b>1774</b> (559/1215)

As the above data reflects, PDS experienced a progressively reduced capacity to handle record sealing cases beginning in July of FY 2019, when due to staffing constraints the Trial Division discontinued its full-time record sealing services. CDD, before the pandemic, was able to handle more than 1,200 record sealing intakes per year. With the addition of two attorneys dedicated to record sealing, PDS will be able to handle the more than 3,500 record sealing intakes PDS expects to receive annually under normal circumstances.

Because PDS closed its offices to the public in 2020 due to the pandemic, in-person record sealing consultations had to be suspended. In addition, PDS's need to assist incarcerated clients facing exposure to the coronavirus and the corresponding litigation concerning delayed trials, and compassionate release and bond review motions resulted in a decision by PDS to temporarily suspend all record sealing services. Simultaneously, other legal services organizations that provided record sealing services also either closed or limited intake. While these closures significantly drove down the numbers of requests for assistance (some continue to come via telephone), when PDS is able to return to regular practice, the demand for this service will return with an anticipated backlog.

In addition, PDS anticipates that the D.C. Council will likely expand eligibility for record sealing and may create a mechanism that allows individuals to petition the court to seal additional misdemeanor and felony convictions.<sup>36</sup> Because currently, only one felony offense is eligible for

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<sup>35</sup> Acceptance of in-person requests was suspended as of April 2020.

<sup>36</sup> Several record sealing bills are pending before the D.C. Council, including Bill 24-0209, The District of Columbia Clean Slate Amendment Act of 2021, Bill 24-0180, The Record Expungement Simplification to Offer Relief and Equity (RESTORE) Amendment Act of 2021, Bill 24-0110, The Criminal Record Expungement Amendment Act of 2021, and Bill 24-0063,

sealing, and individuals are allowed to seal only one eligible conviction,<sup>37</sup> the anticipated record sealing reform will likely create increased demand from clients for consultation and representation.

The D.C. Council also recently enacted legislation that prohibits licensing boards from inquiring into an applicant's criminal history until after they are found to be otherwise qualified.<sup>38</sup> Additionally, licensing boards cannot inquire into any convictions that have been sealed, expunged, vacated, or pardoned; a juvenile adjudication; or non-conviction information such as entry into deferred sentencing agreements, participation in a diversion program, or an arrest that did not result in a conviction. This enhanced benefit of record sealing will increase demand for PDS assistance.

With two attorneys working exclusively on record sealing, and CDD staff returning to their regular record sealing case loads, PDS will be able to meet the backlog and the continuing demand for criminal record sealing assistance for PDS's Duty Day clients.

### **Administrative Support Positions (\$506 thousand)**

**Five positions: one administrative assistant position (\$66 thousand); one human resources specialist (\$145 thousand); one system administrator position (\$123 thousand); one hardware technician (\$86 thousand); and one procurement specialist position (\$86 thousand).**

To provide administrative support for these new demands for representation, PDS will need funding for the above five support positions.

### **Resource Request—Administrative Support Costs**

#### **Administrative Support Costs (\$405 thousand)**

To support the above positions, PDS requests funding for cell phone equipment, SmartBenefits, and expert services.<sup>39</sup>

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The Second Chance Amendment Act of 2021. The D.C. Council's Committee on the Judiciary and Public Safety conducted a hearing on some of the bills on April 8, 2021.

<sup>37</sup> See D.C. Code § 16-801(8), defining “eligible felony” as failure to appear and D.C. Code § 16-801(9) providing a long list of “ineligible misdemeanors.”

<sup>38</sup> Removing Barriers to Occupational Licensing for Returning Citizens Act of 2020. D.C. Act 23-561, effective March 16, 2021.

<sup>39</sup> Typical IRAA cases often require expert services beyond those provided by a mitigation specialist, including hiring forensic psychologists and experts in prison evaluations. Compassionate release cases also often require prison experts and medical experts to review medical records and provide a report.

## **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),<sup>40</sup> provide constitutionally mandated legal representation to indigent people facing a loss of liberty in the District of Columbia. PDS handles a majority of the most difficult, complex, time-consuming, and resource-intensive criminal cases, while private attorneys (CJA lawyers) handle the majority of the less serious felony, misdemeanor, and regulatory offenses. PDS is a model program applying a holistic approach to representation. PDS uses both general litigation skills and specialty practices to provide complete, quality representation in complicated cases. PDS is a single program that assigns its attorneys and professionals to specific, integrated functions to promote overall representation in individual cases. PDS staff attorneys are assigned to 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 each other and often form small teams to handle particularly challenging cases.

Using this team approach, PDS undertakes 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**

Attorneys in the Trial Division provide zealous legal representation to adults in criminal proceedings in Superior Court and to children in delinquency matters. Attorneys are assigned to specific levels of cases based on experience and performance. As a result of intensive supervision and ongoing training, attorneys generally transition over the course of five to six years from litigating juvenile delinquency matters to litigating the most serious adult offenses. The most seasoned attorneys in the Trial Division handle the most intricate and resource-intensive adult cases. For example, senior PDS attorneys routinely handle cases involving DNA evidence, expert testimony, multiple codefendants, 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.<sup>41</sup>

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<sup>40</sup> 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.

<sup>41</sup> In FY 2020, PDS was appointed to 67 percent of all homicide cases, 77 percent of the first-degree sexual assault cases, and 61 percent of all assault with intent to kill cases. Subject to

Traditionally, less senior Trial Division attorneys handle 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.<sup>42</sup> Trial Division attorneys also provide representation in a variety of other legal matters through PDS's Duty Day program and Superior Court's Drug Court program.

### **Appellate Division**

Attorneys in the Appellate Division are primarily responsible for handling direct appeals and other appellate litigation generated in PDS cases, providing legal advice to CJA attorneys in appellate matters, and responding to requests from the D.C. Court of Appeals for *amicus* briefs in non-PDS cases involving novel or sophisticated legal issues. Another important function of the Appellate Division is to provide 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**

The Mental Health Division (MHD) represents individuals in civil commitment proceedings in the D.C. Superior Court who have been involuntarily hospitalized upon an allegation that they are likely to injure themselves or others as a result of mental illness or who have been found incompetent to stand trial either due to mental illness or intellectual disorder. They also represent individuals who have been found not guilty by reason of insanity (NGI). In addition, MHD attorneys regularly advise local and national advocacy groups, testify before the D.C. Council on legislative reforms, and frequently provide critical assistance to Trial Division attorneys and training for CJA attorneys appointed by the court to handle involuntary civil commitment cases.

### **Special Litigation Division**

The Special Litigation Division (SLD) handles a wide variety of litigation that seeks to vindicate the constitutional and statutory rights of PDS clients and to challenge pervasive unfair criminal system practices. SLD attorneys practice across division lines, whether civil or criminal, juvenile or adult, pretrial or post-conviction. They collaborate with their PDS colleagues and with members of the broader legal community with whom they can make common cause. SLD

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conflicts of interest and codefendant cases, PDS is traditionally assigned to the majority of offenses that have significant mandatory minimum sentences.

<sup>42</sup> 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 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.

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 end of indiscriminate shackling of juveniles in court, 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 98 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 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, 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 Act,<sup>43</sup> which mandates special accommodations in public schools for children who cannot be adequately educated in a traditional classroom setting due to learning disabilities 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.

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<sup>43</sup> See P.L. 101-476 (Oct 30, 1990); 20 U.S.C. § 1400 *et. seq.*

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.

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 also serves as the PDS liaison to individuals convicted of D.C. Code offenses and serving sentences in the D.C. Department of Corrections and Federal Bureau of Prisons facilities. CDD monitors their conditions of incarceration and assists 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 system stakeholders to work on systemic change and policy, and to advocate for the rights of system-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,<sup>44</sup> JSP visits local group homes and foster care 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 post-adjudication 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.

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<sup>44</sup> See D.C. Code § 2-1515.05a.

## **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.<sup>45</sup> ORD's forensic social workers provide presentencing assistance to address mitigation issues and to provide program alternatives for appropriate clients.<sup>46</sup> 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 legal research section of the website PDS maintains for CJA attorneys, and three paralegals who work on cases and projects.

### **Investigations Division**

The Investigations Division supports all the legal divisions of PDS, in particular the Trial Division, by providing thorough and professional investigative work, which includes locating witnesses, conducting field interviews, taking written statements, collecting and assessing digital evidence (e.g., security camera footage, cell phone records, body-worn camera video, "Shot Spotter" (gunshots) 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 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 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

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<sup>45</sup> 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).

<sup>46</sup> 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).

system. These directories, available on PDS's website,<sup>47</sup> 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 system. The District's Criminal Justice Coordinating Council (CJCC) has used the adult manual to create and post on the CJCC's website an interactive, electronic map with a “pop-up” feature that allows website visitors to see the location of all the services described in the manual.<sup>48</sup>

## **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. 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 Budget and Finance Office, Human Resources Office, the Information Technology Office, and Administrative Services. 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,<sup>49</sup> 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's and each employee's work is valued for the manner in which it enhances direct client representation. PDS's single-program approach allows PDS to manage and adjust its staffing to bring the ideal mix of general skills and specialized expertise to each case according to the client's needs.

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<sup>47</sup> [http://www.pdsdc.org/ord/2016\\_Youth\\_Directory.html#p=1](http://www.pdsdc.org/ord/2016_Youth_Directory.html#p=1). PDS's website can be found at [www.pdsdc.org](http://www.pdsdc.org).

<sup>48</sup> <http://www.cjccresourcelocator.net/ResourceLocator/ResourceLocatorHome.aspx>.

<sup>49</sup> While a clean audit is an expectation and not an accomplishment for PDS's Budget & Finance Office, it is worthy to note that PDS continues to receive clean financial audits.

## PDS PERFORMANCE

### Case Performance<sup>50</sup> and Data

#### IRAA and Compassionate Release Case Performance

**IRAA:** As noted above, PDS has developed a practice focusing on clients who are now eligible for resentencing pursuant to IRAA. Attorneys in the Special Litigation Division have become experts in investigating, researching, writing, filing, and arguing IRAA cases in court. Below are two examples of the many PDS IRAA clients who were released from incarceration early due to the work of PDS lawyers, investigative specialists, social workers, and mitigation specialists.

**M.G.:** In FY 2020, a motion for release pursuant to IRAA filed by PDS on behalf of M.G. was granted; the court released M.G. and placed him on probation. M.G. had been serving a 41-years-to-life sentence for an offense that he committed when he was 16. M.G. had an exemplary record during his 24 years in prison: he earned his GED, engaged in hundreds of hours of rehabilitative programming, and worked in multiple prison vocational programs. The D.C. Department of Corrections chose M.G. to serve as a founding mentor of the Young Men Emerging unit at the D.C. Jail. PDS crafted a comprehensive IRAA motion and reply, presented argument and witnesses at the IRAA hearing, and then submitted supplemental filings after the hearing. Ultimately, the court was convinced that M.G. had “demonstrated maturity, rehabilitation, and a readiness to re-enter society” and that “the interests of justice warrant[ed] a sentence modification.” M.G. and his team prepared a comprehensive reentry plan that included the support of his two adult sisters, his wife, and his family and friends. Despite being released just a month before the COVID-19 pandemic, M.G. did not waver from his release plan, he earned his driver’s license, and he soon found part-time employment in retail stores and at a delivery services company. M.G. has been living with his wife, who was a childhood friend, and has two stepchildren, whom he has been helping with pandemic-related home-schooling. M.G.’s primary goal was to find meaningful full-time employment, and he was selected for Georgetown University’s PIVOT program, which prepares returning citizens for successful employment or entrepreneurship upon reentry. He completed the academic portion of the program and started his dream job working full-time as a “Credible Messenger,” mentoring children in the juvenile legal system.

**L.D.:** L.D. was 17 at the time of the offense for which he received a sentence of 60 years to life. During more than 22 years in prison, L.D. demonstrated remarkable rehabilitation: he earned his GED, engaged in almost 1,500 hours of rehabilitative and educational programming, enrolled in college courses, and earned praise from BOP staff for his exceptional character and the positive example he set for younger residents. The court initially denied L.D.’s IRAA motion, which was prepared and argued by a non-PDS lawyer. PDS assumed representation for the purposes of an appeal and a potential motion for reconsideration. SLD and the Appellate

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<sup>50</sup> Case descriptions are included with the clients’ permission but with their identities masked. 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.

Division worked together on the case, and the D.C. Court of Appeals remanded it for reconsideration. The SLD attorneys and the SLD mitigation specialist then supplemented the IRAA motion, providing the court with far more mitigating information and evidence of rehabilitation than had previously been presented, and explained how the law—properly applied—should result in relief. The court reconsidered its earlier denial and granted the IRAA motion, resulting in L.D.’s freedom. Following his release, L.D. first worked for the National Reentry Network for Returning Citizens. He now works for the District of Columbia government and counsels a small group of adolescents involved in the legal system.

**Compassionate Release:** As noted above, once the Superior Court suspended regular hearings and trials, much of PDS turned its focus to working on seeking clients’ release from incarceration, and staff immediately began researching and filing motions pursuant to the emergency COVID-19 compassionate release statute now made permanent in the Omnibus Public Safety and Justice Amendment Act of 2020. Below are highlights from just some of the many cases where PDS was able to obtain clients’ freedom on compassionate release grounds.

**H.L.:** PDS filed a successful compassionate release motion on behalf of H.L., who had served almost 40 years in prison. PDS sorted through the more than 2,000 pages of medical records to write a motion arguing that H.L.’s precarious medical condition and lack of dangerousness made him a perfect candidate for compassionate release. After the court granted the motion and ordered H.L.’s release, BOP, without notifying PDS until H.L. was mid-flight, put the extremely medically vulnerable client on a commercial flight from Boston to Atlanta with “money for a cab” to get him (and his wheelchair) to his mother’s house almost an hour away from the airport. PDS worked frantically and found an advocate for H.L. who could meet him at the airport in Atlanta and drive him to his mother’s house, where he was reunited with his mother and sister.

**S.K.:** S.K. was able to go home at the age of 77 after serving 45 years for a sentence he received when he was in his early 30s. PDS demonstrated to the court that he was no longer the person who had been involved in criminal activities when he was young. PDS reviewed hundreds of pages of institutional records and interviewed staff and residents who had gotten to know S.K. One correctional officer (CO) at Leavenworth described how S.K. had saved his life on more than one occasion and wrote a letter to the court to that effect. S.K. had also prevented two riots on his unit by calming down angry residents. S.K.’s children, grandchildren, and great-grandchildren wrote letters explaining how he had parented all of them from prison, including by sending them some of his prison wages to help them financially. A steady stream of young men leaving prison would contact S.K.’s wife and pay their respects because he had been such an influential part of their getting out of Leavenworth alive. When he left prison, the COs assembled in the hall as he walked by, and they, along with all the other residents in their cells, gave him a standing ovation. Because of S.K.’s excellent rehabilitation and PDS’s ability to gather all the pertinent information and present it to the court, S.K. will spend his remaining years not incarcerated but rather with his family, continuing to mentor young men so that they will avoid the same mistakes that S.K. made in his youth.

**J.M.:** PDS represented a 75-year-old client, J.M., who had received a sentence of 30 years to life in 1996 after being convicted of armed burglary, armed robbery, and other charges. While incarcerated, J.M. had had a very difficult transition and had been moved throughout the country multiple times, ending up in Florence ADMAX, a BOP “supermax” prison. Due to his difficult

transition, BOP had assessed his recidivism risk as “high.” PDS challenged that assessment and worked with PDS’s IT staff to compile the rearrest statistics that convinced the court that the assessment was not dispositive of dangerousness and that continued incarceration would be unfair. A PDS social worker created a detailed reentry plan, which the court referenced in the order granting compassionate release. Despite PDS’s extensive groundwork, the housing placement collapsed just as J.M. was released. The Civil Legal Services, Trial, and Special Litigation Divisions, and ORD quickly found resources and worked with CSOSA to find an acceptable housing placement. When J.M.’s plane landed from Colorado at 11:30 p.m., a former PDS client released earlier pursuant to IRAA picked J.M. up at the airport, and he is now experiencing culture shock, but also the comfort of his room in the housing program that PDS was able to secure for him.

## **Additional Case Performance and Data**

As PDS continues to upgrade Atticus, PDS’s case management system, and more recently, PDS’s data warehouse, PDS continues to expand the number and types of performance measures for which data is collected. In addition, PDS is also using surveys to measure outcomes specific to clients’ needs and to client satisfaction. PDS reports the following outcomes and performance data for FY 2020.

### **Trial Division**

FY 2020 verdicts were limited to cases that were tried prior to the Superior Court’s suspension of jury trials in March 2020. In the jury trials that did occur before the suspension, PDS was able to obtain complete acquittals or favorable mixed verdicts in 89 percent of the cases. 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. But winning at trial is not the only way that the Trial Division succeeds. The following two cases demonstrate how PDS obtains outright dismissals of cases, avoiding trial altogether.

**T.R.:** T.R. was charged with the armed carjacking with a knife of a city bus, a crime that carries a mandatory 15-year prison sentence. According to the prosecution, T.R. commandeered a bus he was riding in by threatening the driver with a knife. The prosecution asked for T.R. to be detained, and he was held without bond at the D.C. Jail. While on its face this seemed like a terrifying event and a very violent crime, as PDS began to investigate the case, a much more sympathetic reality emerged. PDS obtained video and audio of the entire bus ride and was able to see what actually occurred. The video showed T.R. getting on the bus and being heckled by a couple of young men about his very noticeable skin condition. After an argument ensued, the young men assaulted T.R., who only at that time, pulled out a knife in self-defense. Although the young men eventually got off the bus, T.R. stayed on the bus, visibly upset and agitated. While still holding the knife in his hand, T.R. kept pleading with the bus driver to take him home. The driver, however, continued driving his route, making stops, letting passengers board and disembark. In addition to getting the audio and video from the bus, PDS interviewed the bus driver, who denied ever feeling threatened and who denied veering at all from his regular route. PDS compiled all the sympathetic evidence that demonstrated T.R.’s innocence and made a presentation to the prosecutor who, two days later, dismissed the case against T.R.

**G.V.: In FY 2020, PDS also represented G.V., who was arrested and charged with a brazen daytime fatal shooting of a man who was sitting in a parked car. Using surveillance footage taken from merchants in the surrounding area, the police had acted quickly and identified who they believed to be the shooter. On some of the footage, the person who the police believed to be the shooter appeared to be wearing black pants and a white shirt and carrying a black bag strapped across his chest. Using the limited footage they viewed, the police identified G.V. as the shooter, and he was arrested within hours of the shooting and held at the D.C. Jail. Upon entering the case, PDS immediately went to work, gathering surveillance footage from all over the area and for hours before and after the shooting. Through meticulous analysis and frame-by-frame viewing they identified G.V.—wearing black pants and a white shirt and with a black bag strapped across his chest—in the area around the time of the shooting and were able to follow his movements throughout. PDS also saw something the police had missed in their haste to make an arrest. The actual shooter was wearing black pants and a white shirt *but was not carrying a bag*. And the shooter had gotten into a car and driven off—an event caught by only some of the cameras because of a passing bus. PDS shared the footage with the prosecutor, who then dismissed the case. G.V. was freed after spending 13 days in jail.**

## **Appellate Division**

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 65 percent for FY 2020. This excellence is also captured in a statistic that compares PDS’s reversal rate to that of the rest of the defense bar. In FY 2020, PDS’s reversal rate was almost four times higher than that of the rest of the defense bar (65 percent versus 17 percent). 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 the judges the opportunity to avert serious error in the first instance.

PDS’s Appellate Division continues to lead in the cause of criminal justice in the District of Columbia through 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 trust of the courts. FY 2020 proved to be a particularly challenging year because of the dangers to health and life and related strains COVID-19 placed on incarcerated clients and the criminal system. The Appellate Division rose to that challenge as well, partnering with other PDS divisions to secure the release of large numbers of incarcerated persons through various legal mechanisms, including the newly enacted COVID-19 Response Supplemental Emergency Amendment Act of 2020. These efforts succeeded in protecting incarcerated defendants and reducing jail and prison populations to help stem the spread of the disease among inmates, correctional staff, and the community at large.

In *United States v. Bumphus*,<sup>51</sup> the court, in another opinion addressing a Fourth Amendment issue of first impression, held that the police’s needless delay of four days after seizing the PDS client’s family car to search it was unreasonable under the Fourth Amendment. In *Aguilar-*

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<sup>51</sup> *United States v. Bumphus*, 227 A.3d 559 (D.C. 2020).

*Gamez v. United States*,<sup>52</sup> the court reversed and ordered a new trial, agreeing with the PDS client’s argument that two jurors had been struck for cause from service in violation of the Sixth Amendment for voicing during the jury selection process their views about distrust of the police’s treatment of minorities, views that reflected common experience rather than a disqualifying bias. In *Eiley Jordan v. United States*,<sup>53</sup> the court agreed with the PDS appellant that it was constitutionally impermissible to increase his sentence after it was imposed and executed where the government had slept on its rights to correct an illegal sentence for decades. In *Facebook v. Pepe*,<sup>54</sup> the Court held in one of the first comprehensive opinions on the issue by an appellate court that a service provider had no discretion pursuant to the federal Stored Communications Act to refuse to comply with a subpoena for information requested by an addressee or intended recipient of an electronic communication. In *Beasley v. United States*,<sup>55</sup> the Court reversed a murder conviction for discriminatory prosecutorial exercise of peremptory challenges to African-American potential jurors.

### **Mental Health Division**

In FY 2020, PDS’s Mental Health Division won 50 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 the case can proceed to the next stage of the civil commitment process. Of all of PDS’s FY 2020 probable cause hearing requests (contested and non-contested), PDS was able to secure the release of 93 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 2020, PDS also prevailed in 54 percent of all the cases that went to a contested hearing before the Commission on Mental Health—a panel consisting of a magistrate judge of the Superior Court and two doctors employed by the court—by securing either complete dismissal or mitigation (securing outpatient commitment instead of inpatient commitment). Historically, PDS has been able to mitigate outcomes and secure outpatient treatment for the vast majority of its clients. The cost of treatment in the community is considerably less expensive than that of inpatient treatment and typically achieves much more favorable outcomes for clients.

### **Parole Division**

The Parole Division is the sole source of representation for more than 98 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

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<sup>52</sup> *Aguilar-Gamez v. United States*, 17-CF-1147 (DCCA Order of March 27, 2020, indicating a published opinion will follow).

<sup>53</sup> *Eiley Jordan v. United States*, 235 A.3d 808 (D.C. 2020).

<sup>54</sup> *Facebook v. Pepe*, 2020 WL 1870591 (D.C. Jan. 14, 2020).

<sup>55</sup> *Beasley v. United States*, 219 A.3d 1011 (D.C. 2019).

regulations to govern the revocation process from warrant issuance through sentence imposition. The 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. In revocation cases involving new criminal arrests, the USPC pursues terms of incarceration for persons who are convicted of new criminal conduct but also for persons whose new cases resulted in dismissal or acquittal in court. PDS defends against any findings of violation and 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 typically handles more than 1,000 matters annually for clients who are facing parole or supervised release revocation. In FY 2020, PDS represented 930 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 FY 2020. For clients who chose to go to final revocation, in 61 percent of the cases, PDS was able to achieve parole or supervised release reinstatement for the client. In 40 percent of the remaining cases where reinstatement was not immediately ordered, PDS was still able to obtain sentencing decisions below the recommended sentencing guidelines. Due to the pandemic, after April 2, 2020, all final revocation hearings were suspended, and probable cause hearings were held via video conference. Despite not being able to advocate in person at a hearing, PDS was able to win release for 156 clients who were being held at the D.C. Jail pending their revocation hearing. PDS was also able to secure the release of another 348 clients who at their first appearance before the USPC were able to avoid the revocation process altogether.

## **Community Defender Division**

In FY 2020, the Juvenile Services Program (JSP) represented 17 children in the juvenile delinquency system equivalent of parole revocation hearings (called “community status review hearings”). In 10 of these hearings, the government’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 more restrictions imposed on them based on as few as 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 200 institutional disciplinary hearings. The hearing officers (who are also agency employees) imposed additional sanctions in only 70 hearings—just 35 percent of all such hearings—even though multiple incident reports written by facility 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 2020, JSP’s traditional in-facility operations were halted due to the COVID-19 pandemic. JSP instead instituted a confidential hotline where youth in detention were allowed to contact a staff person directly from a phone on their unit. Additionally, JSP worked with partners to provide donations of mp3 players, books, games, game consoles, journals, speakers, and other activities to the youth while

they were confined in their rooms for 23 hours a day in order to “slow the spread” of COVID-19. JSP also partnered with the D.C. Department of Youth Rehabilitation Services and the D.C. Department of Employment Services to provide “Know Your Rights” training to youth involved in a summer youth employment program. During FY 2020, recognizing JSP’s essential value, the D.C. Council passed the Detained Youth Access to the Juvenile Services Program Amendment Act of 2019,<sup>56</sup> which codified the right of JSP to maintain office space in all District juvenile facilities and the right of youth and JSP staff to have access to one another so that JSP can, among other things, help youth with the myriad issues that may occur during detention. At the time of the law’s passage, JSP was believed to be the only program in the country to have guaranteed, permanent, and facilities-based access to youth in detention through the co-location of a legal services office and staff.

## CONCLUSION

The core work of PDS is the representation of individual clients facing a loss of liberty. Every year PDS lawyers, investigative specialists, forensic social workers, and other staff assist clients in thousands of matters. The proceedings for criminal and juvenile delinquency, involuntary commitment, and parole revocation cases are adversarial in nature, and PDS has able adversaries in the U.S. Attorney’s Office for the District of Columbia and the District’s Office of the Attorney General. 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 2020, 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 their liberty.

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<sup>56</sup> D.C. Act 23-202, effective March 10, 2020.

**BUDGET DISPLAYS**  
**PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA**

**FY 2022 Summary of Changes**

	<u>FTE</u>	<u>Amount (\$ in 000s)</u>
<b>FY 2021 Enacted</b>	<b>216</b>	<b>46,212</b>
<b>Adjustments to Base</b>		
Add General Inflation Level Adjustments	-	1,211
<b>Total, Adjustments</b>	<b>-</b>	<b>1,211</b>
<b>FY 2022 Base</b>	<b>216</b>	<b>47,423</b>
<b>PROGRAM CHANGES</b>		
Add IRAA and Compassionate Release	42	9,943
Add Record Sealing	2	310
<b>FY 2022 REQUEST</b>	<b><u>260</u></b>	<b><u>57,676</u></b>

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

**FY 2022 Summary of Changes by Grade and Object Class**

<b><u>Grades:</u></b>	<b>FY 2020 Actual</b>		<b>FY 2021 Enacted</b>		<b>FY 2022 Budget Request</b>		<b>Change FY 2022 - FY 2021</b>	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
ES	3	506	3	513	3	527	0	14
AD-15	25	4,042	25	4,450	25	4,654	0	203
AD-14	62	8,685	62	9,504	62	9,790	0	287
AD-13	35	3,885	34	3,928	38	4,680	4	752
AD-12	16	1,568	28	2,855	36	4,712	8	1,857
AD-11	17	1,298	27	2,380	55	6,809	28	4,429
AD-10	-	-	-	-	-	-	-	-
AD-09	20	1,312	14	960	18	1,318	4	358
AD-08	3	202	4	283	4	291	0	8
AD-07	10	631	14	744	14	764	0	20
AD-06	3	145	4	245	4	251	0	7
AD-05	1	47	1	48	1	49	0	1
Total Positions	196	22,321	216	25,909	260	33,845	44	7,936
EX/ES FTE		3		3		3		0
GS FTE		193		213		257		44
Average EX/ES Salary		169		171		176		5
Average AD Salary		113		113		130		17
Average AD Grade		13		13		13		0
<b><u>Object Class</u></b>								
11.1 Full Time Permanent	196	22,198	216	25,659	260	33,795	44	8,136
11.5 Other Pers. Comp.		123		250		50		-200
11.8 Special Pers. Services		476		650		500		-150
12.0 Benefits		7,724		9,015		11,938		2,923
13.0 Unemployment Comp.		41		23		24		0
<b>Personnel Costs</b>	196	30,562	216	35,597		46,306		10,709
21.0 Travel & Training		148		202		206		4
22.0 Transportation of Things		9		0		0		0
23.1 Rental Payments to GSA		3,336		3,545		3,616		71
23.2 Rental Pmts.to Others, & Misc.		237		238		242		5
23.3 Comm., Utilities & Misc.		585		401		429		29
24.0 Printing and Reproduction		37		15		15		0
25.1 Consulting Services		1,039		1,288		1,625		337
25.2 Other Services		2,967		2,103		2,355		252
25.3 Purchases from Gov't Accts.		1,295		1,421		1,450		29
25.4 Maintenance of Facilities		3		2		2		0
25.7 Maintenance of Equipment		1,290		888		906		18
26.0 Supplies and Materials		448		405		413		8
31.0 Furniture and Equipment		1,285		107		109		2
<b>Non-Personnel Costs</b>	12,679		10,615		11,369		755	
<b>TOTAL</b>	43,241		46,212		57,676		11,464	
<b>Grand Total</b>	<b>43,241</b>		<b>46,212</b>		<b>57,676</b>		<b>11,464</b>	
<b>OUTLAYS</b>	<b>37,344</b>		<b>41,591</b>		<b>51,908</b>		<b>10,317</b>	

**APPROPRIATION LANGUAGE  
Public Defender Service  
for the District of Columbia**

**Appropriation Language Fiscal Year 2022**

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, [\$46,212,000] **\$57,676,000**, of which \$8,107,000 shall remain available until September 30, 2024, for salaries and expenses associated with providing representation pursuant to title III of the Comprehensive Youth Justice Amendment Act of 2016 (D.C. Law 21–238; D.C. Official Code, sec. 24–403.03), as amended by title VI of the Omnibus Public Safety and Justice Amendment Act of 2020 (D.C. Law 23–274): **Provided**, That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of Federal agencies.

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

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

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