

THE PUBLIC DEFENDER SERVICE

for the District of Columbia



CHAMPIONS OF LIBERTY

Fiscal Year 2017

Congressional Budget Justification

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**PUBLIC DEFENDER SERVICE
FISCAL YEAR 2017 CONGRESSIONAL BUDGET JUSTIFICATION**

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LEGAL AUTHORITY AND MISSION

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

A major portion of the work of the organization consists of representing individuals in the District of Columbia's local criminal justice system who are charged with committing serious criminal acts and who are eligible for court-appointed counsel. In the District of Columbia, public defense services are primarily provided by PDS, the "institutional defender," and a panel of private attorneys, known as Criminal Justice Act (CJA) attorneys, who are screened for membership on the panel and paid on a case-by-case basis by the District of Columbia courts.³ Because of its better resources, well-regarded training program, and overall higher skill level, PDS generally handles the more serious criminal cases, and the 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 indigent children in the most serious delinquency cases, including those who have special education needs due to learning disabilities. PDS attorneys represent indigent clients in the majority of the most serious adult felony cases filed in the District of Columbia Superior Court every year, 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 the District of Columbia Superior Court requiring representation at Drug Court sanctions hearings. In addition, PDS provides technical assistance to the local criminal justice system, training for CJA and pro bono attorneys, and additional legal services to indigent clients in accordance with PDS's enabling statute.

In 1997, the Congress enacted the National Capital Revitalization and Self-Government Improvement Act of 1997 (the Revitalization Act),⁴ which relieved the District of Columbia of certain "state-level" financial responsibilities and restructured a number of criminal justice functions, including representation for indigent individuals. The Revitalization Act instituted a process by which PDS submitted its budget to the Congress and received its appropriation as an administrative transfer of federal funds through the Court Services and Offender Supervision Agency appropriation. With the enactment of the Fiscal Year 2007 Appropriation Act, PDS now receives a direct appropriation from the Congress. In accordance with its enabling statute and the constitutional mandate it serves, PDS remains a fully independent organization and does not fall under the administrative, program, or budget authority of any federal or local executive branch agency.

¹ Pub. L. No. 91-358, Title III, § 301 (1970); *see also* D.C. Code §§ 2-1601 – 1608 (2001).

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

³ Plan for Furnishing Representation to Indigents under the District of Columbia Criminal Justice Act. D.C. Code §§ 11-2601 – 2608 (2001).

⁴ Pub. L. No. 105-33, Title X (1997).

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

PUBLIC DEFENDER SERVICE BUDGET JUSTIFICATION SUMMARY

FY 2017 Summary of Changes

	FY 2017 PDS Need	
	FTE	(\$ in 000s)
FY2016 Enacted	224	40,889
 Adjustments to Base:		
Add		
New positions	-	-
Pay raises	-	319
General Pricing Level	-	312
Efficiency Savings	-	(791)
Total, Adjustments	-	(160)
FY 2017 Base	224	40,729
Non-Recurring Expense	-	-
Document Retention Project	-	1,100
FY 2017 Request	224	41,829

FISCAL YEAR 2017 REQUIREMENTS

The Public Defender Service for the District of Columbia (PDS) requests an operating budget of \$40,729,000 for Fiscal Year (FY) 2017. These funds will allow PDS to maintain operations and absorb inflationary increases in compensation and other operating expenses. PDS also requests one-time funding of \$1,100,000 for a document retention project that will allow PDS to continue making progress on its goal of converting its archived and current case files to electronic form to achieve cost avoidance and more efficient file retrieval.

PDS's operating budget request reflects a **decrease** of \$160,000, from the FY 2016 enacted budget of \$40,889,000.

This request is consistent with PDS's policy and funding priorities – providing high quality representation to individuals who face serious charges but who cannot afford to hire an attorney and improving administrative efficiency.

Summary of PDS's FY 2015 Accomplishments

PDS's Effectiveness

With the funding provided in FY 2015, PDS continues to be a well-functioning public defender office, achieving results and further refining its data-gathering and analysis capacity. In addition, PDS's four exonerations in the last six years continued to influence national criminal justice forensics.

Despite not having a research division and despite being denied access to certain electronic criminal justice system data controlled by District of Columbia law enforcement agencies and courts, PDS continues to make steady progress toward more effectively incorporating evidence and evaluation in managing the organization to ensure that PDS maintains its high quality performance. PDS continues to evaluate its performance through its growing capacity to generate outcome data⁵ and through surveys of stakeholders.⁶ The results demonstrate that PDS is a high performing program. PDS continues to receive scores of over 90 percent from judges and CJA attorneys assessing the quality of the representation provided by PDS lawyers and the quality of the training provided to the CJA lawyers respectively. More specific to case outcomes:

- PDS's Trial Division won more than 50 percent of its trials.⁷
- PDS's Appellate Division secures reversals at the appellate level at a rate more than six times higher than that of the rest of the defense bar (32 percent versus 4.7 percent).⁸
- PDS's Mental Health Division won more than 40 percent of its contested probable cause hearings and more than 60 percent of its contested Mental Health Commission hearings.⁹ In comparison, the rest of the court-appointed mental health attorneys won eight percent of their contested probable cause hearings and were successful in only 18 percent of their contested Commission hearings.¹⁰

⁵ PDS's five-year multi-stage project of upgrading PDS's case management system, completed with supportive funding, continues to produce outcome data that PDS expects to use to more accurately track the historical performance of each of PDS's practice areas and, ultimately, to compare PDS's performance over time with that of other defender institutions and systems that also generate outcome data.

As reported in PDS's FY 2016 Budget Justification, PDS's goal is to obtain public, outcome data from the District of Columbia Superior Court for the entire criminal defense function in the District of Columbia to assess and improve performance in the District of Columbia, although the court remains resistant to making this public historical data available electronically. *See* PDS FY 2016 Budget Justification at 15-16.

⁶ An example is PDS's 2014 Employee Survey, the detailed results of which were presented in PDS's FY 2016 Budget Justification at 25-26.

⁷ These statistics reflect a multi-year period of performance because the data sets are relatively small.

⁸ These statistics reflect a multi-year period of performance because the data sets are relatively small.

⁹ At these contested hearings, the Commission decides whether the government has met its burden to prove that the respondent should be involuntarily civilly committed.

¹⁰ These statistics reflect a multi-year period of performance because the data sets are relatively small.

- PDS’s Parole Division won 28 percent of its contested hearings.¹¹

PDS maintained this high level of performance through FY 2015 despite the increased number of homicide case filings in the District of Columbia Superior Court and the increased number of PDS appointments to those cases.

Benefits of a High Performing Public Defense System

A study of 85 wrongful convictions uncovered in Illinois determined that the cost to taxpayers was \$214 million or \$2.5 million per wrongful conviction.¹² In recent cases in the District of Columbia, two wrongfully convicted individuals were awarded \$9.2 million and \$16.65 million respectively.¹³ Incarceration in the federal system costs taxpayers \$29,000 per year per detained person.¹⁴ Involuntary inpatient psychiatric hospitalization costs \$783 per day per patient in the District of Columbia.¹⁵ And none of these figures captures the human and social costs that a growing body of research shows accompany over-incarceration, wrongful convictions, and over-institutionalization.¹⁶

As detailed herein and in past budget requests, PDS saves the criminal justice system from the economic and social costs that flow from wrongful convictions, over-incarceration, and over-institutionalization by providing effective representation. Every year, PDS’s Trial Division not only wins a significant fraction of the cases it tries but it also mitigates prison sentences in cases it loses and in cases in which pleas of guilty are entered, using forensic social workers and other experts to develop rehabilitation plans. PDS’s Mental Health Division reduces the District’s reliance on costly inpatient treatment by successfully challenging recommendations for commitment and by developing

¹¹ These statistics reflect a multi-year period of performance because the data sets are relatively small.

¹² See <http://www.bettergov.org/news/special-investigation-the-high-costs-of-wrongful-convictions>, detailing a study by the Better Government Association and the Center on Wrongful Convictions.

¹³ See https://www.washingtonpost.com/local/public-safety/district-to-pay-1665-million-to-wrongly-imprisoned-man-attorneys-say/2015/11/19/2f62fd58-8ecf-11e5-baf4-bdf37355da0c_story.html and https://www.washingtonpost.com/local/crime/judge-orders-dc-to-pay-record-91-million-in-wrongful-conviction-case/2015/02/27/f54edaa6-beea-11e4-8668-4e7ba8439ca6_story.html.

¹⁴ Nathan James, Congressional Research Service, “The Federal Prison Population Buildup: Overview, Policy Changes, Issues, And Options,” R42937 (January 22, 2013); <https://www.fas.org/sgp/crs/misc/R42937.pdf>.

¹⁵ 22A DCMR §§ 5501, 5502 (2010).

¹⁶ See, e.g., National Research Council. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, D.C.: The National Academies Press 340 (2014) (“Against weak evidence for large benefits, there is also the chance of significant social costs for individuals who are incarcerated, their families, and communities. The strong correlation of incarceration with unemployment, poverty, family disruption, poor health and drug addiction is very clear.”); Donald Braman, “Families and Incarceration,” *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, 118 (Marc Mauer and Meda Chesney-Lind, eds., 2002) (A study of males incarcerated in the District of Columbia found that families “lose income, assistance with child care, and bear expenses related to supporting and maintaining contact with incarcerated family members.”); Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 *Crime & Just.* 199, 201 (2013) (“[T]here is little evidence that increases in the length of already long prison sentences yield general deterrent effects that are sufficiently large to justify their social and economic costs.”).

less intrusive and less costly outpatient plans. PDS's Parole Division successfully challenges both the assumptions behind the U.S. Parole Commission's outdated scoring system used in its Guidelines For Decision Making and allegations of misconduct by persons on supervised release, helping reduce the amount of time persons on supervised release spend re-incarcerated. PDS's remaining legal divisions generate systemic change through targeted litigation, advance and clarify legal standards through appellate litigation, and address the collateral consequences of criminal convictions and attendant barriers to reentry through administrative and civil litigation.

Every legal division at PDS, often supported by PDS forensic social workers and investigators, plays a part in improving the effectiveness of the criminal justice system, case by case. But PDS goes even further. Using the information learned from the four wrongful convictions PDS uncovered and litigated in the District of Columbia in the last six years, as well as the information PDS learns at the trial level in case after case, PDS works with others to improve the reliability of the criminal justice system and collaborates with others in the criminal justice system to develop and support evidence-based programs that cost-effectively improve the criminal justice system and reduce recidivism.

PDS's work in recent years identifying wrongful convictions based on faulty hair analysis has led to both a local and national review of cases involving hair analysis. The local review identified a fifth (non-PDS) wrongful conviction in FY 2014,¹⁷ and in FY 2015, a national review revealed a shockingly high rate of misleading testimony by highly trained FBI experts.¹⁸

Resource Request

PDS requests an operating budget of \$40,729,000 – a decrease of \$160,000 from PDS's FY 2016 enacted operating budget of \$40,889,000. PDS also requests \$1,100,000 to support a document conversion, archiving, and retention project. PDS's budget request is designed to equip PDS to remain a high functioning public defender office and to increase PDS's overall effectiveness.

Document Conversion, Archiving, and Retention Project (\$1,100,000)

In addition to the requested operating budget amount, PDS seeks \$1,100,000 for a needed document conversion, archiving, and retention project. These funds will help PDS complete a critical phase of a project that will reduce administrative costs and increase efficiency. Without the requested additional funding, PDS will have to defer its progress toward becoming a more "paperless" environment.

PDS currently stores client case files and administrative files dating back to PDS's predecessor's (the Legal Aid Agency) creation in the 1960s. The case files include criminal, delinquency, mental health, parole, appellate, and other cases. These records were initially stored at no charge in the District of Columbia's document storage facilities; later, the federal records center in Suitland, Maryland, was added as a free storage site. After some years, the Suitland records center prohibited PDS from storing new files and eventually prohibited PDS from using the storage facility altogether, forcing PDS to transfer all of its archived files to a single commercial facility – the arrangement in place currently.

¹⁷ http://www.washingtonpost.com/local/crime/dc-man-exonerated-in-1982-rape-and-murder-dna-reveals-fbi-error-in-conviction/2014/07/21/ee7cc490-0ec8-11e4-8341-b8072b1e7348_story.html.

¹⁸ http://www.washingtonpost.com/local/crime/fbi-overstated-forensic-hair-matches-in-nearly-all-criminal-trials-for-decades/2015/04/18/39c8d8c6-e515-11e4-b510-962fcfab310_story.html.

The commercial facility now stores more than 28,000 boxes of PDS files in 30,000 cubic feet of space; PDS sends more than 200 new boxes for storage per month. Currently, PDS spends \$79,000 annually on storage and retrieval costs for this material. PDS must routinely retrieve case files as part of its representation of clients. For example, case files are retrieved if a former client is rearrested, if a former trial client faces a parole or probation revocation proceeding, or if a Mental Health Division client faces post-commitment proceedings. Because these files are not in electronic form, the entire file – which can often be more than 10 boxes – must be retrieved and reviewed to locate the documents needed for the subsequent proceeding – a costly and resource-wasting process.

PDS is reducing, and planning to reduce, archiving and retrieval costs in three ways: culling material that does not need to be maintained from already archived files, reducing the amount of material presently being archived, and converting as much future archived material as possible into searchable electronic form. This plan has been developed within the context that attorney ethical rules deem the client files to be the property of the client and impose certain conditions on attorneys for retaining and safe-guarding client files.

Several years ago, in response to the volume of files being stored and to the costs of storage and retrieval, PDS began reviewing and is continuing to review older materials to determine what can be destroyed consistent with the District of Columbia Rules of Professional Conduct. PDS is using periodic downtime of the PDS librarian and PDS interns to move this project forward. But, if it can secure the required funds, PDS is ready to complete this review and to convert materials that cannot be destroyed into electronic form. PDS has submitted this project for bids, and the bids are the basis of this \$1,100,000 request. Factors in the cost are the wide variety of materials that have to be converted, including trial exhibits, transcripts, photographs, handwritten notes, handwritten witness statements, cassette tapes of oral statements, video tapes of surveillance footage, and CDs with the raw data from DNA analysis, and the age of some of the materials.

The importance of careful preservation of client files cannot be overstated. PDS's work exonerating four men who had spent decades in prison relied both on the development of new technology and the ability to recreate the record of the investigation and the trial proceedings. In three of these cases, PDS's client files from the 1970s and 1980s provided critical documentation that was not available from either the court or the government. PDS's ongoing work on potential exoneration cases also relies heavily on materials for which the PDS client file is the only source. Because PDS has handled and continues to handle the majority of the serious offenses in the District, its client files are disproportionately made up of cases in which convicted clients received substantial sentences, and, thus, their files deserve extended retention and protection.

An investment in this project will result in avoiding significant future costs for physical document storage and will protect and make accessible materials that may, years from now, be central to undoing a wrongful conviction.

Reducing Fragmentation, Overlap, and Duplication, and Increasing Effectiveness

The General Accountability Office has not made recommendations for reducing fragmentation, overlap, and duplication and for increasing effectiveness that are specifically applicable to PDS. As a small organization that has a distinct mission, PDS has functions that are not fragmented or duplicative and do not overlap with or duplicate federal government activities, and PDS does not administer any programs jointly with any federal agencies.

PDS is part of a local network in the District of Columbia that allocates criminal cases in a manner that minimizes duplication and prevents conflicts of interest. PDS, the institutional defender, handles the more serious cases, and the CJA attorneys, who are selected and paid by the Court, generally handle the less serious cases. For those serious cases in which the District of Columbia Rules of Professional Conduct bar PDS's representation, the court appoints more experienced CJA attorneys or, if available, pro bono attorneys certified eligible to handle serious cases. The parallel federal system manages the corresponding caseload of the federal courts, avoiding any overlap with the work of PDS and the local CJA attorneys. This bifurcated structure is necessary because no institutional defender can handle all the cases that prosecutors pursue. Inevitably, some cases involve conflicts of interest, where professional ethics rules would bar representation from the institutional defender. For example, if more than one individual is charged in connection with the same alleged criminal incident (a frequent occurrence), the institutional defender can represent no more than one of them.

PDS avoids duplication and fragmentation also by implementing the "single representation" rule: where a defendant has multiple pending cases, the court, with support from PDS, assigns one attorney to manage all the cases (depending on the nature and seriousness of the charges). This practice avoids having attorneys perform otherwise unnecessary or overlapping work, such as having multiple communications about plea offers and other case matters. It also avoids the increased costs to the court that would result from having CJA attorneys paid for the additional work.

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),¹⁹ 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. While PDS is a single program, PDS divides its attorneys and professionals into specific functions to promote overall representation in individual cases. PDS staff attorneys are divided into 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 undertook more than 12,000 legal matters in FY 2015. As described below, these matters encompassed a wide range of legal representation, including in 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.

¹⁹ D.C. Code §§ 11-2601 – 2608 (2001). 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.

Trial Division

Staff attorneys in the Trial Division zealously represent adults in criminal proceedings in the District of Columbia Superior Court or provide zealous legal representation to children in delinquency matters. Attorneys are assigned to specific levels of cases based on experience and performance. As a result of intensive supervision and ongoing training, attorneys generally transition over the course of several 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-count indictments, 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 the District of Columbia Superior Court each year.²⁰

Less senior Trial Division staff attorneys handle the most difficult or resource-intensive delinquency cases (cases involving children with serious mental illnesses or learning disabilities or children facing serious charges), some general felony cases, and a limited number of misdemeanor cases.²¹ Trial Division staff attorneys also provide representation in a variety of other legal matters through PDS's Duty Day program and the District of Columbia Superior Court's Drug Court program.

Appellate Division

The attorneys in the Appellate Division are primarily responsible for handling the appellate litigation generated in PDS cases, providing legal advice to CJA attorneys in appellate matters, and responding to requests from the District of Columbia Court of Appeals for briefs in non-PDS cases involving novel or sophisticated legal issues. Another important function of the Appellate Division is to provide a wide range of technical assistance and training to other PDS divisions. The Appellate Division attorneys' knowledge and experience allow them to assist in complicated cases without having to perform long hours of original research each time difficult legal issues arise.

²⁰ PDS has historically been appointed in more than 70 percent of the Felony One cases (homicides, rapes, and assaults with the intent to kill) and in FY 2015 was appointed to 80 percent. PDS is also assigned to the majority of offenses that have significant mandatory sentences, including "while armed" offenses, kidnapping, and carjacking. The court's electronic data no longer distinguish between these offenses and other less serious offenses (e.g., unarmed drug distribution) where the defendant is detained pretrial. As a result, while PDS monitors daily the list of new cases and is appointed to the most of the serious cases, PDS can no longer report what percentage of those cases it takes.

²¹ 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 minor sex offenses that have significant collateral consequences; through a specific request from the court when the matter involves either a novel issue or a client with a significant mental health illness; and in cases involving some 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) (1981). Statutory penalties for most misdemeanors in the District of Columbia are for lesser terms.

Mental Health Division

Attorneys in the Mental Health Division (MHD) handle, on average, half of the involuntary civil commitment cases that arise in the District of Columbia Superior Court.²² PDS is initially appointed when a person is detained in a mental hospital upon allegations that the person is a danger to himself or others as a result of mental illness. MHD lawyers also represent persons in post-commitment proceedings, including commitment reviews and outpatient revocation hearings; in involuntary commitment proceedings of persons found incompetent to stand trial because of mental illness or mental retardation; and in matters relating to persons found not guilty by reason of insanity in District of Columbia Superior Court or in United States District Court cases. The lawyers in this division also provide information to the District of Columbia Council on proposed mental health and mental retardation legislation, conduct training sessions on the rights of persons with mental illness involved in civil commitment actions, and provide legal assistance to CJA lawyers appointed by the court to handle involuntary civil commitment cases.

Special Litigation Division

The Special Litigation Division (SLD) handles a wide variety of litigation that seeks to vindicate the constitutional and statutory rights of PDS clients and to challenge pervasive unfair criminal justice practices. SLD attorneys practice across division lines, whether civil or criminal, juvenile or adult, pretrial or post-conviction. They collaborate with their PDS colleagues and with members of the broader legal community with whom they can make common cause. SLD attorneys practice before local and federal trial and appellate courts in the District of Columbia and as *amicus* in the United States Supreme Court. Among their achievements has been the end of the indiscriminate shackling of juveniles in court, the reform of civil forfeiture practice, the successful challenge to the treatment of clients under sex offender supervision, and the exonerations of four men who collectively spent a 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 the revocation of their parole or supervised release. PDS represents more than 90 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.

²² This average is based on data collected from FY 2008 through FY 2015 and reflects a downward trend in the annual percentage of cases PDS handles – in FY 2015, PDS’s percentage of the total mental health cases dropped to 31 percent. At the same time, PDS is handling the same number of cases it handled in 2008. The percentage decline is due to the combined effect of a doubling in the number of cases being filed annually since FY 2008 and a change in FY 2012 in PDS’s practice that significantly improved case outcomes but requires significantly more resources early in the case. This change has led to both a higher percentage of successful outcomes at the initial hearing in these cases and a higher percentage of cases in which the government discharges the client prior to the hearing. To avoid any decline in performance, PDS is addressing its continuing ability to take more than 50 percent of the cases filed through hiring and staffing in FY 2015 and FY 2016, with the goal of once again handling 50 percent of the cases by FY 2017.

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, 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 exposes law students to the practice, generating future public defenders; sensitizes criminal defense lawyers to the collateral impact of criminal cases on clients who are also on parole or supervised release; and expands the pool of available attorneys to handle parole matters that PDS is not permitted to handle under the D.C. Rules of Professional Conduct as a result of conflicts.

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 Improvement Act, which mandates special accommodations in public schools for children who cannot be educated adequately in a traditional classroom setting due to learning disabilities or other physical or intellectual challenges. Special education advocacy is a cornerstone of CLS's civil practice because of the vital importance of education and the pressing special educational needs of many court-involved youth.

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

Community Defender Division

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

For adult clients, CDD responds to the legal and social services needs of newly released individuals and others with criminal records, assisting them in making a successful transition back into the community. Further, CDD serves as the PDS liaison to individuals convicted of District of Columbia Code offenses and serving sentences in the District of Columbia Department of Corrections, Central Treatment Facility, and Federal Bureau of Prisons facilities to provide information to assist these individuals, monitor their conditions of incarceration, and assist them on parole and other release-related matters. For juvenile clients, 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.

Legal Support Services

Legal Support Services is composed of various professionals within PDS who work closely with PDS attorneys on individual cases: the Investigations Division, the Office of Rehabilitation and Development (ORD), and the Defender Services Office (DSO). Investigators ensure that each case is carefully investigated prior to a client's decision to accept a plea offer or proceed to trial.²³ ORD's forensic social workers provide presentencing assistance to address mitigation issues and to provide program alternatives for appropriate clients.²⁴ 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, a forensic scientist whose work and expertise often allow PDS to avoid hiring expensive outside experts or reduce their cost by narrowing the scope of their work, and two paralegals who work on cases and projects.²⁵

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, "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 investigators who provide investigation services to the 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 who recommend appropriate sentences to the District of Columbia Superior Court. The ORD staff are skilled "mitigation specialists" who provide the 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), the forensic social workers are frequently asked to provide consultation for judges, CJA lawyers, and others in the criminal justice system. In addition, the staff of ORD prepare a comprehensive annual *Directory of Adult Services: Community and Confinement Access Guide* and a biennial *Directory of Youth & Families Resource Guide: Community*

²³ 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).

²⁴ See *Wiggins v. Smith*, 539 U.S. 510 (2003) (decision of counsel not to expand their 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).

²⁵ As stated above, PDS operates as a single program, allowing it to shift resources between specialties as needed. Currently, PDS has 11 forensic social workers, 32 investigators, two paralegals, one interpreter, one forensic scientist, and one library technician who support the lawyers in their casework. In addition, 15 administrative assistants support the 157 lawyers and professional staff who provide direct client services.

and Confinement Access Guide that list a wide range of services available to adults and children in the criminal justice system. These directories, available on the PDS website,²⁶ are used by the Court Services and Offender Supervision Agency, the Federal Bureau of Prisons and its contract prisons, the District of Columbia Superior Court, and many other agencies and organizations working with clients in the criminal justice 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.²⁷

Defender Services Office

The Defender Services Office (DSO) supports the court appointment of counsel system by determining the eligibility for court-appointed counsel of virtually every child and adult arrested and brought to the District of Columbia Superior Court and coordinating the availability of CJA attorneys, law school clinic students, pro bono attorneys, and PDS attorneys for appointment to new cases on a daily basis.²⁸ The DSO operates six days a week, including holidays. PDS attorneys work a similar 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 Budget and Finance, Human Resources, Information Technology, and Administrative Services.²⁹ 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,³⁰ strategies for developing PDS’s human capital, recruitment, development of an electronic case management system, maintenance of PDS’s IT infrastructure, and copying and supply services.

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

PDS PERFORMANCE

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

²⁶ <http://www.pdsdc.org/professional-resources/publications-legal-resources>. PDS’s website can be found at www.pdsdc.org.

²⁷ <http://www.cjccresourcelocator.net/ResourceLocator/ResourceLocatorHome.aspx>.

²⁸ This office is staffed with 12 professionals who in FY 2015, conducted eligibility interviews and assisted in the appointment process for more than 27,000 cases.

²⁹ These four divisions are staffed with 27 professionals.

³⁰ While a clean audit is an expectation and not an accomplishment for PDS’s Budget and Finance Division, it is worthy of note that PDS continues to receive clean financial audits.

The Impact of PDS's Forensic Work and its Four Exonerations

In FY 2014, PDS obtained its fourth exoneration stemming from faulty hair analysis on behalf of a client who had spent 28 years in prison after being convicted of felony murder and other charges.

In FY 2015, these four exonerations continued to produce results locally and nationally. In July 2013, the National Association of Criminal Defense Lawyers and the Innocence Project signed a “groundbreaking and historic agreement with the Federal Bureau of Investigation (FBI) and the U.S. Department of Justice (DOJ) to review thousands of criminal cases in which the FBI conducted microscopic hair analysis of crime scene evidence.”³¹ The “direct triggering events” creating the impetus for this nationwide review were the exonerations of Donald Gates, Kirk Odom, and Santae Tribble by PDS.³² The massive inquiry includes 2,600 convictions and 45 death-row cases from the 1980s and 90s. By July 2014, the FBI and DOJ had reviewed 160 cases.³³ In April 2015, the Department of Justice and the FBI, following a review of 200 convictions, formally acknowledged that nearly every hair examiner (46 of 48) in the FBI's forensic unit gave flawed testimony in almost all trials in which they offered evidence against defendants.³⁴ The cases include 32 defendants sentenced to death.³⁵

In July 2014, again sparked by PDS's first three exonerations, the DOJ Office of the Inspector General (OIG) issued a report of the work of the 1996 Department of Justice Task Force Review of the FBI Laboratory. As the OIG states, the exonerations of “three defendants, Donald E. Gates, Santae A. Tribble and Kirk L. Odom, [who] had served sentences in excess of 21 years based in part on FBI hair analyses” “drew public and congressional interest.”³⁶ “Shortly after media reporting about the exonerated defendants, Congressman Frank Wolf, Chairman of the Commerce, Justice, Science, and Related Agencies Subcommittee of the U.S. House of Representatives Committee on Appropriations, requested that the OIG evaluate the work of the Task Force.”³⁷ The result was a report that will serve as a guidepost for completing the Task Force's review and for conducting future case reviews.³⁸ The

³¹ Norman L. Reimer, “The Hair Microscopy Review Project: An Historic Breakthrough For Law Enforcement and A Daunting Challenge For the Defense Bar,” *The Champion* 16 (July 2013).

³² *Id.*

³³ Spencer S. Hsu, “Federal review stalled after finding forensic errors by FBI lab unit spanned two decades,” *The Washington Post* (July 29, 2014), http://www.washingtonpost.com/local/crime/federal-review-stalled-after-finding-forensic-errors-by-fbi-lab-unit-spanned-two-decades/2014/07/29/04ede880-11ee-11e4-9285-4243a40ddc97_story.html.

³⁴ Spenser S. Hsu, “FBI admits flaws in hair analysis over decades,” *The Washington Post* (April 18, 2015), http://www.washingtonpost.com/local/crime/fbi-overstated-forensic-hair-matches-in-nearly-all-criminal-trials-for-decades/2015/04/18/39c8d8c6-e515-11e4-b510-962fcfab310_story.html.

³⁵ *Id.*

³⁶ U.S. Department of Justice, Office of the Inspector General, “An Assessment of the 1996 Department of Justice Task Force Review of the FBI Laboratory” at 5 (July 2014), <http://www.justice.gov/oig/reports/2014/e1404.pdf>.

³⁷ *Id.* at 6.

³⁸ Spencer S. Hsu, *Report*, “‘Irreversible harm’ when FBI didn’t reveal flawed lab work in death-row cases,” *The Washington Post* (July 16, 2014), <http://www.washingtonpost.com/local/crime/report->

OIG's report, the review, and the recent admission about the extent to which FBI analysts gave misleading testimony highlight more than just the flaws inherent in microscopic hair analysis; this scandal "highlights the failure of the nation's courts for decades to keep bogus scientific information from juries."³⁹ PDS's Forensic Practice Group and its Special Litigation Division continue to work nationally, locally, and in each PDS case involving forensic evidence, to ensure that everyone working in the criminal justice system appreciates and learns from the lessons unfolding as the process of re-examining cases involving hair analysis continues.

One means of assessing and improving performance is, as the OIG has done in the example above, to undertake a case-by-case review after the case has concluded. With the belief that lessons can be learned from every case – whether a win or a loss – PDS Trial Division supervisors meet with their supervisees after every trial and conduct a thorough review of how the case unfolded and how the attorney performed. For cases where PDS loses, an additional level review occurs when the Appellate Division scours the record below, assessing the legal issues raised, the objections made, and the overall record produced. Since its inception, PDS has used this approach to systematically review its performance. More recently, PDS is increasing its ability to perform a systematic review by analyzing aggregate case data.

Case Performance Data

Because the former Atticus system was not a data warehouse, PDS has previously reported or tracked only certain metrics of the performance of its Trial, Appellate, Parole, and Mental Health Divisions, choosing metrics that inform PDS about key aspects of the divisions' performance. With the upgraded version of Atticus now available, PDS will be able to expand the number and type of these performance measures for which data will be collected. For now, PDS reports the following outcomes and performance data, which were generated by the upgraded Atticus system.

Trial Division

PDS won acquittals on all significant charges in more than 50 percent of its cases that have proceeded to trial since October 1, 2011.⁴⁰ As stated above, PDS has not been given direct electronic access to the court's data that would allow PDS to effectively compare its performance against that of the rest of the defense bar. However, a 2012 study of a similarly situated defender office revealed that "[c]ompared to private appointed counsel, public defenders reduce the murder conviction rate by

[irreversible-harm-when-fbi-didnt-reveal-flawed-lab-work-in-death-row-cases/2014/07/16/ebf9496e-0d29-11e4-8341-b8072b1e7348_story.html](http://www.justice.gov/irreversible-harm-when-fbi-didnt-reveal-flawed-lab-work-in-death-row-cases/2014/07/16/ebf9496e-0d29-11e4-8341-b8072b1e7348_story.html).

³⁹ *Id.*

⁴⁰ PDS is providing multi-year data for this performance metric because of the small size of a yearly data set. Over time and/or with electronic access to the District of Columbia Superior Court's historical data, PDS anticipates being able to provide an increasingly accurate picture of the Trial Division's outcomes in cases that proceed to trial, along with data on rates of trial, rates of dismissals, and other aspects of performance. This metric includes cases where a client was acquitted on all charges as well as cases where a client was acquitted on "significant charges" and convicted on lesser charges – for example, a drug distribution case where the client is convicted only of a misdemeanor possession or an armed carjacking case where the client is convicted only of unauthorized use of a motor vehicle.

19%.”⁴¹ Of equal significance, the study revealed that the institutional defender “reduced overall expected time served in prison by 24%.”⁴² PDS was the first institutional defender organization in the United States to employ full-time mitigation specialists. If and when it can secure access to the required data, PDS is confident it can demonstrate that the work of the Trial Division combined with the expertise of the forensic social workers in PDS’s Office of Rehabilitation and Development substantially reduces the time served in prison by District of Columbia defendants, saving considerable taxpayer resources and easing overcrowding in the prisons. Furthermore, PDS will then be in a position to develop targeted training, targeted consultations, and other resources for the CJA bar to assist the CJA attorneys in obtaining similar outcomes for their clients.

In addition to case outcome data, PDS has tracked an annual measure of the percentage of clients visited within 48 hours of appointment and the percentage of cases in which reduction in pretrial restraint is obtained. While there are no studies empirically tying these metrics to case outcomes, anecdotal evidence suggests that case outcomes are improved when lawyers are responsive and in early communication with their clients and when clients are in the community while their cases are pending. While PDS’s performance represents improvement over FY 2014, PDS still strives to meet the goal of 100 percent. PDS’s actual performance and fiscal year targets are as follows:

Percentage of Cases in Which Attorney Consulted with Client within 48 Hours

Year	Target	Actual
FY 2012	100%	94%
FY 2013	100%	94%
FY 2014	100%	93%
FY 2015	100%	97%
FY 2016	100%	N/A

The next chart shows that PDS achieved a reduction in some form of pretrial restraint in 52 percent of its cases, a slight increase over FY 2014. Although PDS consistently misses its 99 percent target, with FY 2015 being no exception, the goal nonetheless remains seeking release for any client who wants it. PDS’s actual performance and fiscal year targets are as follows:

⁴¹ See James M. Anderson and Paul Heaton, Measuring the Effect of Defense Counsel on Homicide Case Outcomes, Award number 2009-IJ-CX-0013 (December 2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/241158.pdf>.

⁴² *Id.*

Percentage of Cases in Which Reduction in Pretrial Restraint Was Obtained

Year	Target ⁴³	Actual
FY 2012	99%	53% 60% within first 21 days after initial hearing
FY 2013	99%	48% 59% within first 21 days after initial hearing
FY 2014	99%	51% 58% within first 21 days after initial hearing
FY 2015	99%	52% 61% within first 21 days after initial hearing
FY 2016	99%	N/A

While PDS is pleased to provide the above data to demonstrate the performance of the Trial Division, so many aspects of this division’s work cannot be fully captured by performance data alone. PDS has provided many examples over the years where work that began in the Trial Division has led to systemic or legislative reforms, producing a lasting impact on the fairness of the criminal justice system and providing examples of cases where unflagging investigative efforts have produced compelling evidence that the PDS client was wrongly charged leading to government dismissals. This work continued in FY 2015 and included cases in which a conviction would have exposed the client to a possible life sentence. While the D.C. Rules of Professional Conduct prohibit PDS from identifying clients and revealing information about their cases outside of the public record,⁴⁴ PDS can report that its investigative efforts in connection with two cases uncovered convincing evidence that in each instance the alleged victim made up the story about the crime. In one case, the evidence found included multiple surveillance videos showing the alleged victim happily walking around the neighborhood with the PDS client before and after the alleged assault, and, in the other case, the evidence included statements from uninvolved witnesses that revealed that the alleged victim was never kidnapped but had instead run away from home.⁴⁵

⁴³ PDS chose 100 percent and 99 percent as performance targets for the measures reported in the charts to reflect, respectively, that PDS’s goal is to visit all clients within 48 hours of appointment and that virtually all clients desire to be released. Achieving the first target is less susceptible to third-party influence, but the combination of prosecutorial charging decisions and release arguments, detention laws, and the disproportionate number of serious cases PDS handles makes the second target essentially unattainable. PDS’s ultimate goal in the release context is to seek its clients’ objectives, even when the likelihood of achieving them is small.

⁴⁴ D.C. Rule of Professional Conduct 1.6.

⁴⁵ More than a hundred PDS cases are dismissed by the government after arrest, and additional cases are dismissed even after indictment. Not all dismissals are the result of PDS advocacy, and it is not always possible to determine the role that advocacy played in a decision to dismiss, but PDS will be able to better assess and quantify this information in the future.

PDS's Trial Division maintained this high level of performance in FY 2015 while also increasing the number of clients receiving Trial Division representation. The decision OMB and the Congress made to fund five Trial Division positions at PDS for FY 2015, along with a slower attrition rate in the Trial Division, has allowed PDS to increase the number of serious adult and juvenile cases it handles. In FY 2015, PDS was appointed to every serious juvenile case, except those where the child already had CJA counsel as a result of a previous arrest; as a result, PDS increased its juvenile caseload by more than 20 percent from its FY 2013 levels. PDS also increased its Felony I caseload by 36 percent over its 2014 levels and increased the Trial Division's overall caseload by 25 percent. This capacity to handle additional cases has come at a critical time; as has been described in a constant flow of local media reports over the summer of 2015, the number of homicides in the District of Columbia has increased.

Appellate Division

PDS's Appellate Division has continued to secure significant reversals in cases that establish or clarify legal standards in criminal and juvenile delinquency cases and protect the integrity of the criminal justice system. For instance, in *Robinson v. United States*,⁴⁶ the Court of Appeals adopted PDS's argument that a person cannot be convicted of an armed offense as an aider or abettor unless she knew that a weapon would be involved in the offense. And in *In re Q.B.*,⁴⁷ the Court of Appeals held, as PDS had urged, that a juvenile could not be adjudicated in criminal contempt for the violation of a pretrial release order, as the only remedy authorized by the legislature is revocation of pretrial release. PDS also secured *en banc* review in *United States v. Lewis*,⁴⁸ which presents an important Fourth Amendment issue regarding the scope of the warrant exception for searches incident to a valid arrest. PDS has also had an active *amicus* practice, providing guidance to the Court of Appeals regarding important issues of first impression. In *In re Kline*,⁴⁹ the Court agreed with PDS's position that the local ethical rule requires a prosecutor to disclose to the defense all exculpatory information in his possession, regardless of predictions about whether such information will be material to the outcome of the trial. In *Motorola, Inc., et al. v. Murray, et al.*,⁵⁰ and *Carrell v. United States*,⁵¹ two cases the Court is hearing *en banc* due to their exceptional importance, PDS is participating as an *amicus* on the questions whether the District of Columbia should adopt the federal *Daubert* standard for admissibility of expert testimony, and what *mens rea* is required in a prosecution for threats, respectively. And in *United States v. Ingmar Guandique*, a first-degree murder conviction founded on the word of a career criminal who claimed that Mr. Guandique had confessed to him in prison, the Appellate Division forced a government concession that a new trial was warranted after more than two years of litigation in the District of Columbia Superior Court where the government was ordered to disclose exculpatory evidence in its possession showing that its star witness had lied at trial.⁵² Thus, PDS's

⁴⁶ 100 A.3d 95 (D.C. 2014).

⁴⁷ 116 A.3d 450 (D.C. 2015).

⁴⁸ No. 13-CO-1456, petition for rehearing *en banc* granted (January 23, 2015).

⁴⁹ 113 A.3d 202 (D.C. 2015).

⁵⁰ No. 14-CV-1350, petition for initial *en banc* review granted (December 10, 2014).

⁵¹ No. 12-CM-523, petition for rehearing *en banc* granted (July 15, 2015).

⁵² https://www.washingtonpost.com/local/crime/new-trial-likely-for-man-convicted-of-killing-intern-chandra-levy/2015/05/22/d5c5ac20-00c4-11e5-833c-a2de05b6b2a4_story.html.

Appellate Division well deserves the comment of one appellate judge that “the general quality of the PDS attorneys appearing before the Court of Appeals is very high indeed.”⁵³

But most telling is the rate at which PDS secures reversals at the appellate level. A comparison of published opinions from calendar years 2005 through 2014 shows that PDS secures reversals at a rate more than six times higher than that of the rest of the defense bar (32 percent versus 4.74 percent). This reversal rate is not only indicative of the Appellate Division’s performance but also of the Trial Division’s performance. In most cases, success on appeal requires that the trial lawyer have made an effective record in the trial court below. And as detailed above, PDS makes these records and secures reversals in cases that are disproportionately the most serious and most difficult cases in the District of Columbia Superior Court.

PDS has maintained this rate of reversal while also making significant strides in reducing the case backlog and the amount of time between the court’s issuance of the notice to file and the filing of a brief. Between FY 2010 and FY 2015, PDS reduced the amount of time between the court’s issuance of the notice to file and the filing of a brief from 13 months to nine months. PDS’s goal, as stated in PDS’s FY 2015 Congressional Budget Justification,⁵⁴ is to reduce the time between the Court’s issuance of the notice to file and the filing of a brief to just 40 days by FY 2019 without adversely impacting quality.⁵⁵

Additionally, in response to the performance data discussed above, PDS is considering traditional and nontraditional means to reach out to and provide support for the CJA appellate bar to improve outcomes for indigent defendants who are not PDS clients. In FY 2013, PDS created a criminal law blog dedicated to following and dissecting the criminal law decisions of the D.C. Court of Appeals that includes concrete examples of how a particular decision can be used effectively at either or both the appellate and trial levels.⁵⁶ In its first year, the PDS blog had more than 23,000 visits, and in its second year received more than 36,000. In addition, in FY 2016, with the full support of the D. C. Court of Appeals, PDS has begun a pilot mentoring and training program devoted to supporting the 100 CJA attorneys who serve on the panel from which appointments are made by the court for non-PDS appeals. PDS’s goal over the next two years is to narrow the gap in outcomes between cases handled by PDS and cases handled by CJA attorneys.

Mental Health Division

From October 1, 2013, through September 30, 2015, PDS’s Mental Health Division won more than 40 percent of its clients’ contested probable cause hearings, the first hearing in a proceeding to involuntarily commit a person to the District’s psychiatric hospital. In comparison, during the same time period, the rest of the bar won only eight percent.⁵⁷ These hearings are presided over by an

⁵³ PDS 2013 Judicial Survey.

⁵⁴ PDS FY 2015 Congressional Budget Justification, at 24.

⁵⁵ PDS’s progress on this goal was adversely impacted by its inability to back fill positions during the sequester, but PDS still expects to reach this goal by FY 2019.

⁵⁶ <http://pdsdc.blogspot.com/>.

⁵⁷ PDS does not have electronic access to this case data and therefore had to secure this data by hand and analyze almost 5,000 cases from October 1, 2013, through September 30, 2015. Because this is a short time period and the data set is relatively small, PDS expects the percentages will change over

associate judge of the District of Columbia Superior Court. These initial hearings simply determine whether the government meets the low standard of probable cause before it can proceed to the next stage of the civil commitment process. When PDS prevails at these hearings, clients who would otherwise be tying up hospital resources are released, saving taxpayer funds and making the hospital resources available to those most in need (and, most important, permitting persons who should not be committed involuntarily to retain their liberty).

For cases that proceed past the probable cause hearing, the hearing to determine whether a client is to be involuntarily committed is a Commission hearing. These hearings are presided over by the Mental Health Commission – a panel consisting of a magistrate judge of the District of Columbia Superior Court and two doctors employed by the court. From October 1, 2013, through September 30, 2015, PDS won 60 percent of its contested Commission hearings as compared to an 18 percent success rate for the rest of the bar. For those clients who are civilly committed, the presumptive release date is one year from the initial commitment. If the District of Columbia Department of Mental Health wants to continue the commitment for an additional year, it must prevail at a recommitment hearing. Like the Commission hearings, this hearing is presided over by a magistrate judge of the District of Columbia Superior Court and two doctors employed by the court. Between October 1, 2012, and September 30, 2015,⁵⁸ PDS won 29 percent of its recommitment hearings and mitigated the outcome in another 13 percent of these cases by securing outpatient status where the government was seeking inpatient status. The cost of treatment in the community is considerably less expensive than inpatient treatment.

Parole Division

The Parole Division is the sole source of representation for more than 90 percent of parolees and supervised releasees facing revocation proceedings. The division's lawyers practice before the U.S. Parole Commission (USPC), which continues to use guidelines to determine the period of incarceration in the event of a revocation – guidelines that its own experts have identified as outdated and likely to result in over-incarceration. As the Short-term Intervention for Success (SIS) pilot program described in PDS's FY 2015 budget materials⁵⁹ has demonstrated, far shorter sentences can be employed in the face of violations without impacting public safety and at considerable cost savings. PDS represents more than 1,000 clients annually who are facing revocation. Of those clients, approximately 40 percent proceeded to one of three types of revocation proceedings.⁶⁰ The other 60 percent were offered and accepted either expedited plea offers or incarceration combined with drug

time. As resources permit, PDS will continue to collect this data manually to provide more robust performance information, and PDS will be working with the CJA bar to secure better outcomes in all cases. Of note, the CJA bar did not win a single hearing in FY 2014, but appears to have improved in FY 2015. Anecdotal evidence suggests this is a result of some panel attorneys emulating new PDS practices.

⁵⁸ Because the yearly data set is small and because PDS did not have the resources to manually collect this data for non-PDS cases, PDS is reporting this outcome for a longer time period. Over time, PDS will have a data set of sufficient size and duration to identify its baseline performance for this event. PDS used a shorter time period for the other two measures so that a comparison could be made with the CJA bar.

⁵⁹ PDS FY 2015 Congressional Budget Justification, at 28.

⁶⁰ Final revocation hearings, Short Intervention for Success (SIS) hearings, and Notice to Appear (NTA) hearings.

treatment, or were convicted of a new offense and therefore were not eligible for a revocation hearing in this jurisdiction. Revocation hearings are conducted before hearing examiners employed by the USPC, and their decisions are reviewed by U.S. Parole Commissioners. From October 1, 2013, through September 30, 2015, PDS won reinstatement and release in 28 percent of these contested hearings and persuaded the Commission to impose sentences less than called for in the Commission's guidelines in another 36 percent of cases.⁶¹ Thus, PDS advocacy has led the Commission to reassess the need to spend the considerable resources involved in unnecessary re-incarceration as opposed to community supervision in more than a quarter of the cases it reviews.

Case Accomplishments

The above performance data demonstrates PDS's success, but data alone gives an incomplete picture of that success. PDS not only reduces the costs associated with inpatient versus outpatient treatment and with secure detention versus community supervision, but also makes a difference in individual lives by recognizing each client's humanity by demanding fair treatment within the criminal justice system. The four cases described below provide just a glimpse of the people behind the performance data – the reason PDS performs at all – and the results obtained for them.⁶²

First, children committed to the District's Department of Youth Rehabilitation Services can be subjected to decisions to remove them from a community placement back to secure detention with very limited process. The hearings are informal, involve non-lawyers, and can produce arbitrary decisions. Where appropriate, PDS began seeking judicial review of these administrative hearings in FY 2015. The very first challenge by PDS ended with the District's concession that a Community Status Review Hearing panel had erred in revoking the child's community placement, and the child was released back to his community placement. Such advocacy not only secures an appropriate placement for the child, but also demonstrates to the child that arbitrary – or in the child's words "stupid" – decisions can be addressed and a child's grievances can be heard within the juvenile delinquency system.

Second, once released from prison, most "returning citizens" go through a period of supervision during which they will be required to complete a variety of tasks (making appointments, completing drug treatment, seeking employment) or face being sent back to prison. Often, little is done to support returning citizens who have disabilities that make these tasks difficult or inaccessible. One PDS client, who is hearing impaired, was accused of not completing a treatment program assessment as required following his release. PDS challenged the view that this client was simply uncooperative and therefore not amenable to supervision and treatment. PDS demonstrated to a hearing examiner's satisfaction that the client had waited for hours for an interpreter for the assessment before finally leaving in frustration. PDS demonstrated that the client was amenable to treatment, but wanted treatment that was meaningful and included effective interpreter services. As a result, the client was reinstated to supervision.

Third, as a result of a technical error, the U.S. Parole Commission caused a client's supervised release period to be unlawfully increased by 66 percent. The error occurred over several years and through

⁶¹ As it has for other divisions, PDS is using multi-year data to assess performance because the size of yearly data sets is relatively small.

⁶² PDS masks the identity of its clients pursuant to the requirements of the D.C. Rules of Professional Conduct. Thus, the facts provided are general, not specific.

several actions by the Commission in which it used the wrong standard to assess the client's underlying conviction. Over the course of months, PDS untangled this error and convinced the Commission that it had erred. The end result was that the client was released with no additional period of supervision.

Fourth, in its most significant effort to impact fairness and encourage the criminal justice system to see the humanity and the vulnerability of its clients, in FY 2015, PDS brought to an end the District of Columbia Superior Court's practice of presumptively shackling all children at their court appearances.

For several years in the District's Family Court, the U.S. Marshals Service, with the support of the Superior Court, shackled all children in the custody of the city for all court appearances, regardless of mitigating circumstances – e.g., whether the child's case was going to be dismissed imminently, whether the child was calm, whether the child was very young or small in stature. The children's wrists were chained together, their ankles were chained together, and a chain around the children's waists connected the wrist and ankle chains. Defense requests for unshackling were routinely denied, irrespective of the merits of the request.

PDS's judicial challenge to this practice on behalf of an individual client was dismissed as moot by the D.C. Court of Appeals in FY 2014 because the child's case was completely over.⁶³ The appellate court deferred ruling on the practice itself, so PDS turned to policy makers and other stakeholders to urge a change. In FY 2015, after discussion with PDS and the various agencies involved in the delinquency case hearing process, the chief judge of the Superior Court issued an administrative order reversing the practice by providing for the presumptive unshackling of children attending their juvenile court hearings. Now, the court must make certain findings before it can order that a child be shackled, the court must justify that shackling decision in writing, and children have an appeal process available to them in the event such an order is issued.

Historical Performance

The above accomplishments in FY 2015 provide only a snapshot in a long history of high level performance, and the exceptional quality of the advocacy of PDS's staff is reflected beyond performance data and case outcomes. PDS's skills have been recognized over time by:

- the seven awards PDS, as an institution, and its staff have received from outside organizations over the past eleven years;
- the one federal appellate court judicial appointment, three federal trial court judicial appointments, two local appellate court judicial appointments, and eight local trial court judicial appointments of PDS attorneys or alumni over the past eleven years;
- the award of a MacArthur "genius grant" to a former PDS training director for demonstrating "extraordinary originality and dedication" in creating a training and support program for public defenders across the South – a program that is patterned directly after the PDS model;
- the requests from the public defender organizations across the country including in California, Florida, Georgia, Kentucky, Mississippi, Missouri, Virginia, and New York for PDS attorneys to present training involving trial advocacy skills, appellate practice, and forensic science;
- the reliance of every court in the District of Columbia, including the U.S. Supreme Court, on PDS *amicus* filings;

⁶³ *In re M.H.* 86 A.3d 553 (D.C. 2014).

- the requests from defender offices around the country for assistance and for pleadings, training guides, and other materials developed by PDS's specialty practice groups;
- the hundreds of applications PDS receives each year from talented individuals seeking to become PDS staff attorneys, law clerks, and interns;
- the consistently high ratings District of Columbia trial and appellate judges give PDS when surveyed about the quality of legal representation PDS provides; and
- the requests from foreign attorneys and officials interested in the American criminal justice system or public defense practice in particular for opportunities to learn about PDS or to observe attorneys in court, including a FY 2015 visit from the national public defender of Chile.

Training

In FY 2015, PDS continued its commitment to advancing quality defense for those who cannot afford to hire their own attorneys. As it has in the past, PDS produced a "Summer Series" on specialty topics over the course of two months for local attorneys,⁶⁴ produced local training for certified CJA investigators, produced the 50th Annual Criminal Practice Institute Conference, and produced the 2015 Forensic Science Conference.⁶⁵

Annually, PDS lawyers from each of its legal divisions provide more than fifty hours of training for hundreds of non-PDS attorneys representing indigent clients in the District of Columbia. As described above, PDS will be launching a new training initiative targeted at appellate CJA attorneys. PDS plans to evaluate the effectiveness of the training efforts by surveying the attorneys and monitoring outcomes in their appellate cases with the goal of improving case outcomes for all indigent persons in the District of Columbia.

CONCLUSION

The core work of PDS is the representation of individual clients facing a loss of liberty. The examples above all flow from the work done every day by PDS lawyers, investigators, social workers, and other staff in thousands of matters. The proceedings for involuntary commitment, parole revocation, and criminal and juvenile delinquency cases are adversarial in nature, and PDS has able adversaries in the District's Attorney General's Office and the United States Attorney's Office for the District of Columbia. A fair justice system depends on having all components (judges, prosecution, and defense) fulfill their respective roles. PDS plays a central part in ensuring that all cases, whether they result in plea agreements or trials, involve comprehensive investigation and thorough consultation with the client. For those matters that proceed to trial or to an administrative hearing, PDS litigates each matter

⁶⁴ In FY 2015, the Summer Series received an overall average rating of 4.8 on a 5-point scale, higher than the FY 2014 average of 4.6. Comments on various sessions included, "Excellent!!," "Literally could not be any better," "Comprehensive and very informative," "Clear and organized," and "Very helpful."

⁶⁵ The Forensic Science Conference received an average rating of 4.4 on a 5-point scale, slightly lower than the 4.6 average rating from FY 2014's conference because of the attendees' opinion of one speaker. However, two PDS presenters received all "5" ratings, while two more received all but one "5's." Some of the written comments from attendees were: "Excellent program," "Highly engaging," "OUTSTANDING," "The best!!!," "Great array of very helpful topics," "Terrific, organized, clear helpful information!," "Helpful for my practice," and "A+."

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 2015, PDS 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 her liberty.

BUDGET DISPLAYS

PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

FY 2017 Summary of Changes

	FTE	Amount (\$ in 000s)
FY 2016 Enacted	224	40,889
Adjustments to Base:		
Less Non-Recurring Expense	-	-
Add- New positions	-	-
Pay raises	-	319
General Pricing Level Adjustments	-	312
Efficiency savings	-	(791)
Total, Adjustments	-	(160)
FY 2017 Base	224	40,729
PROGRAM CHANGES:		
Non-Recurring Expenses		
Document Retention Project	-	1,100
TOTAL, Program Changes		
FY 2017 REQUEST	224	41,829

FY 2017 Salaries and Expenses
Summary of Requirements by Grade and Object Class
(\$ in 000s)

Grades:	2015 Enacted		2016 Enacted		FY 2017 Budget Request	
	FTE	Amount	FTE	Amount	FTE	Amount
ES	3	473	3	478	3	485
AD-15	16	2,369	19	2,860	18	2,508
AD-14	67	8,342	64	7,513	67	8,046
AD-13	32	3,530	34	3,450	32	3,100
AD-12	27	2,504	23	2,080	29	2,677
AD-11	35	2,505	38	3,043	30	2,387
AD-10	1	59	1	72	-	-
AD-09	14	833	19	1,125	20	1,231
AD-08	4	194	3	149	1	53
AD-07	19	931	14	686	20	859
AD-06	3	131	4	179	3	130
AD-05	3	121	2	83	1	37
Total Appropriated Positions	224	21,992	224	21,718	224	21,513
EX/ES FTE		3		3		3
GS FTE		221		221		221
Average EX/ES Salary		158		159		162
Average AD Salary		97		96		95
Average AD Grade		13		13		13
Object Class						
11.1 Full Time Permanent	224	21,992	224	21,718	224	21,513
11.5 Other Pers. Comp.		280		210		260
11.8 Special Pers. Services		900		1,440		1,256
12.0 Benefits		6,993		7,171		7,038
13.0 Unemployment Comp.		100		100		100
Personnel Costs	224	30,265	224	30,639	224	30,167
21.0 Travel & Training		297		391		388
22.0 Transportation of Things		10		10		10
23.1 Rental Payments to GSA		3,576		3,628		3,704
23.2 Rental Pmts.to Others, & Misc.		230		237		240
23.3 Comm., Utilities & Misc.		480		436		468
24.0 Printing and Reproduction		98		101		91
25.1 Consulting Services		980		925		1080
25.2 Other Services		1,528		1,652		2,029
25.3 Purchases from Gov't Accts.		1,099		1,013		1,113
25.4 Maintenance of Facilities		115		104		105
25.7 Maintenance of Equipment		323		330		323
26.0 Supplies and Materials		548		477		391
31.0 Furniture and Equipment		532		946		620
Non-Personnel Costs		9,816		10,250		10,562
TOTAL	224	40,081	224	40,889	224	40,729
31.0 Non recurring Expense - Moving Expenses Document Retention Project		1,150				1,100
Grand Total		41,231		40,889		41,829
OUTLAYS		37,108		36,800		37,600

APPROPRIATION LANGUAGE

Public Defender Service for the District of Columbia

Appropriation Language Fiscal Year 2017

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, [\$40,889,000] **\$41,829,000: Provided,** That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of Federal agencies.

ORGANIZATION CHART

