

THE PUBLIC DEFENDER SERVICE

for the District of Columbia



CHAMPIONS OF LIBERTY

Fiscal Year 2016

Congressional Budget Justification

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**PUBLIC DEFENDER SERVICE
FISCAL YEAR 2016 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 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 2016 Summary of Changes

	FTE	FY 2016 PDS Request (\$ in 000s)
FY 2015 Enacted	224	41,231
Adjustments to Base:		
Less Non-Recurring Expense		
Moving Expenses	-	(1,150)
Add		
New positions	-	-
Personnel cost increases	-	374
General Pricing Level	-	434
Total, Adjustments		(342)
FY 2016 Base	224	40,889
Non-Recurring Expense	-	-
FY 2016 Request	224	40,889

FISCAL YEAR 2016 REQUIREMENTS

The Public Defender Service for the District of Columbia (PDS) requests a budget of \$40,889,000 for Fiscal Year (FY) 2016. This amount reflects a reduction of 0.8 percent, or \$342,000, from PDS’s FY 2015 appropriation of \$41,231,000,⁵ and an increase of only two percent, or \$808,000, from PDS’s FY 2015 enacted operating budget of \$40,081,000; the increase will provide for inflationary increases in compensation and other operating expenses. This request is consistent with PDS’s policy and funding priorities – providing representation to individuals who face serious charges and who cannot afford to hire an attorney – and directly supports the Congress’s overarching goal of supporting high performing programs.

A FY 2016 operating budget of less than PDS’s budget request of \$40,889,000 would adversely impact the services PDS provides and would shift the costs of providing these services to the District of Columbia Superior Court’s federally funded Criminal Justice Act program.

⁵ PDS requested and received \$1,150,000 in relocation expenses in three-year funding (FY 2015-FY 2017) for a total FY 2015 appropriation of \$41,231,000.

Summary of PDS's Impact on the Criminal Justice System

PDS is a small, single program; the only local institutional public defender in the District of Columbia; and the only local institutional public defender in the President's Budget. PDS's priority is ensuring that all persons receive due process in the District of Columbia when threatened with a loss of liberty. All PDS divisions and employees either support or provide representation in furtherance of this mission. The available evidence demonstrates that PDS effectively carries out its mission and continues to serve as a model public defender office.

PDS's Effectiveness

In FY 2014, PDS continued to be a well-functioning public defender office achieving results. PDS obtained its fourth exoneration in five years, influenced national criminal justice forensics, increased PDS's data gathering and analysis capacity, and obtained key case outcomes.

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 made additional strides toward more effectively incorporating evidence and evaluation in managing the organization and maintaining its reputation for high quality performance.

For FY 2014, PDS has evaluated its case performance through its growing capacity to generate outcome data and has evaluated its management of a culture of excellence and achievement through an employee survey;⁶ both data sets demonstrate that PDS is a high performing program. Specific to case outcomes:

- PDS's Trial Division won more than 40 percent of its trials.
- PDS's Appellate Division secures reversals at the appellate level at a rate seven times higher than that of the rest of the defense bar (32 percent versus four percent).⁷
- PDS's Mental Health Division won more than 30 percent of its contested probable cause hearings and more than 50 percent of its contested Mental Health Commission hearings.⁸ In comparison, the rest of the court-appointed mental health attorneys did not win a single contested probable cause hearing and were successful in only 19 percent of their contested Commission hearings.
- PDS's Parole Division won more than 25 percent of its contested hearings and mitigated the sentence in another 40 percent.

Specific to a culture of excellence and achievement:

- More than 75 percent of employee survey respondents strongly agreed with the statement, "I am proud to say that I work for PDS."

⁶ Detailed results are presented at 25-26.

⁷ These statistics reflect a multi-year period of performance.

⁸ At these contested hearings, the Commission decides whether the government has met its burden to prove that the respondent should be involuntarily civilly committed.

- More than 70 percent of respondents strongly agreed with the statement, “I am encouraged to do high quality work.”
- More than 65 percent of respondents strongly agreed with the statement, “I have enough discretion to perform my duties effectively.”
- More than 60 percent of respondents strongly agreed with the statement, “my work gives me a feeling of personal accomplishment.”

As it has in the past, PDS will continue to use surveys and other data sources to assess its performance, while also pressing the criminal justice system for electronic access to system data to gauge improvements in its case performance and the overall case performance of the District of Columbia indigent defense bar.

Benefits of a High Performing Public Defense System

A study of 83 wrongful convictions uncovered in Illinois determined that the cost to taxpayers was \$214 million or \$2.5 million per wrongful conviction.⁹ Incarceration in the federal system costs taxpayers \$29,000 per year per detained person.¹⁰ Involuntary inpatient psychiatric hospitalization costs \$783 per day per patient in the District of Columbia.¹¹ 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.¹²

⁹ See <http://www.forbes.com/sites/erikkain/2011/06/29/the-high-cost-of-wrongful-convictions/>, detailing a study by the Better Government Association and the Center on Wrongful Convictions.

¹⁰ 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>.

¹¹ 22A DCMR §§ 5501, 5502 (2010).

¹² 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* 117,118 (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.”); Lawrence D. Bobo and Victor Thompson, (2010). “Racialized Mass Incarceration: Poverty, Prejudice, and Punishment.” *Doing Race: 21 Essays for the 21st Century*, edited by Hazel R. Markus and Paula Moya, New York: Norton, 322-355, 349-50; (mass incarceration damages social networks, social norms and social citizenship); Melissa Kearney, et al., The Hamilton Project, *Ten Economic Facts about Crime and Incarceration in the United States* 6 (2014) (“Crime and high rates of incarceration impose tremendous costs on society, with lasting negative effects on individuals, families, and communities.”); 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 sentence yield general deterrent effects that are sufficiently large to justify their social and economic costs.”); *The Social and Moral Cost of Mass Incarceration in African American Communities*, Dorothy E. Roberts,

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 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, significantly reducing 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, or 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 five 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 evidenced-based programs that, cost effectively, improve the criminal justice system and reduce recidivism.

As detailed below, PDS's work 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 has already identified a fifth wrongful conviction, and the national review has just begun. In PDS's FY 2015 Budget Justification,¹³ PDS reported on three innovative programs that reduce periods of incarceration and improve public safety that are staffed by PDS lawyers: two U.S. Parole Commission programs, the Short-term Interventions for Success program and the Mental Health Sanctions Docket, and the District of Columbia Superior Court's revised Drug Court program. After review of the initial results, all three programs have been expanded in FY 2014 and continue to be staffed exclusively by PDS attorneys.

Resource Request

PDS requests a budget of \$40,889,000 for FY 2016, a reduction of 0.8 percent, or \$342,000, from PDS's FY 2015 appropriation of \$41,231,000, and an increase of \$808,000 from PDS's enacted FY 2015 operating budget of \$40,081,000. This increase, which would include \$374,000 for the increase in compensation expenses and \$434,000 for non-pay inflationary increases, will equip PDS to fully and successfully pursue its mission.

56 Stan. L. Rev. 1271, 1273 (2004) (“[T]he social effects of imprisonment are concentrated in their communities.”).

¹³ PDS FY 2015 Budget Justification at 28-29.

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),¹⁴ 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 they often form small teams to handle particularly challenging cases.

Using this team approach, PDS undertook more than 12,900 legal matters in FY 2014. 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, a class action suit on behalf of children in the custody of the District of Columbia, involuntary civil commitment proceedings, and groundbreaking appellate representation.

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 matters. 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.¹⁵

¹⁴ 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.

¹⁵ PDS was assigned to 75 percent of the Felony One cases and a majority of the serious felony cases in FY 2014. Felony One cases include all homicides, assault with the intent to kill and serious sexual assault cases; serious felony cases include “while armed” offenses and other offenses that carry sentences with mandatory periods of incarceration and are typically to be tried within 100 days after the initial court appearance.

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) and handle some general felony cases and a limited number of misdemeanor cases.¹⁶ 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.

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.¹⁷ 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

¹⁶ 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. 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). Sentences for most misdemeanors in the District of Columbia are for lesser terms.

¹⁷ This average is based on data collected from FY 2008 through FY 2014; the data reflect a downward trend in the annual percentage of cases PDS handles – in FY 2014, PDS's percentage of the total mental health cases dropped to 37 percent. At the same time, PDS has increased its absolute number of cases by 31 percent over what it accepted in FY 2008. The percentage decline is due to the combined effect of sequestration, 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 will be addressing its continuing ability to take more than 50 percent of the cases filed through hiring and staffing in FY 2015 and FY 2016.

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 rights of PDS clients, to ensure equal justice to all in the District of Columbia courts, and to change unfair systemic criminal justice practices. Examples of such cases are the *Jerry M.* lawsuit brought on behalf of the children committed to the care of the District of Columbia following delinquency proceedings and the *Brown v. District of Columbia, et al.* lawsuit filed in FY 2013 on behalf of all those who have had cars seized by the police forfeiture without being provided due process. SLD attorneys also support PDS trial lawyers in the litigation of systemic criminal justice issues, including eyewitness identification issues, forensic science issues, and issues pertaining to the suppression of exculpatory information by the government, as well as handle post-conviction innocence cases. SLD attorneys have appeared before all the major courts in the District of Columbia – the Superior Court and the Court of Appeals in the local system, and the District Court for the District of Columbia, the Court of Appeals for the District of Columbia Circuit, and the Supreme Court in the federal system.

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.

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, and law students from throughout the United States on parole and supervised release matters.

Civil Legal Services Division

The Civil Legal Services Division (CLS) provides services to address issues facing children in the delinquency system that often hinder their successful reintegration into the community. CLS has a team of special education attorneys expert in advocacy under the federal Individuals with Disabilities Education Improvement Act, which mandates special accommodations in public schools for children who cannot be adequately educated in a traditional classroom setting due to learning disabilities or other physical or intellectual challenges. In addition, CLS includes attorneys who address other rehabilitative needs of these children and the needs of adult clients by providing representation in civil matters arising out of their criminal charges – civil matters such as those related to housing, child support, and other family court matters. CLS also provides expert consultation for attorneys with clients in the criminal justice system who face immigration consequences as a result of their contact

with the criminal justice system.¹⁸

Community Defender Division

The Community Defender Division provides services to adults and children through three programs: 1) the Juvenile Services Program represents children at institutional disciplinary hearings at the District's youth detention centers and works with community organizations to develop reentry programs that address the special needs of children; 2) the Institutional Services Program serves as the PDS liaison to individuals convicted of District of Columbia Code offenses and serving sentences in Federal Bureau of Prisons facilities, to provide information to assist these individuals and monitor their conditions of incarceration; and 3) the Community Reentry Program responds to the legal and social services needs of people who need assistance in making a successful transition back into the community after being involved in the criminal justice system; the program gives special consideration to individuals returning from incarceration who are not served by the Court Services and Offender Supervision Agency.

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). Investigators ensure that each case is carefully investigated prior to a client's decision to accept a plea offer or proceed to trial.¹⁹ ORD's forensic social workers provide presentencing assistance to address mitigation issues and to provide program alternatives for appropriate clients.²⁰ 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.²¹

¹⁸ Locally in the District of Columbia, defense attorneys have long had an obligation to advise their clients of the possible immigration consequences of their decisions concerning plea offers. *See Goodall v. United States*, 759 A.2d 1077, 1083 (D.C. 2000). In 2010, the U.S. Supreme Court in *Padilla v. Kentucky*, 559 U.S. 356 (2010), applied for the first time the ineffective assistance of counsel standard in *Strickland v. Washington*, 466 U.S. 668 (1984), to a lawyer's failure to advise a client about a consequence of a conviction where the consequence is not part of the sentence imposed by the court. PDS's model approach to criminal defense and its previously developed expertise in collateral consequences of criminal convictions have made PDS staff much sought-after speakers, and PDS materials on this subject have been widely distributed.

¹⁹ *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).

²⁰ *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).

²¹ 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,

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, cellphone 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 investigation 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 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,²² 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.²³

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 in the District of Columbia 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.²⁴ 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.

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.

²² <http://www.pdsdc.org/Publications/Publications.aspx>. PDS’s website can be found at www.pdsdc.org.

²³ <http://www.cjccresourcelocator.net/ResourceLocator/ResourceLocatorHome.aspx>.

²⁴ This office is staffed with 12 professionals who in FY 2014, conducted eligibility interviews and assisted in the appointment process for more than 29,000 cases.

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.²⁵ 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,²⁶ 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.

In addition to the successful case outcomes described below, PDS had significant results in FY 2014, securing a fourth exoneration; having an unprecedented, positive impact on the local and national criminal justice systems; enhancing PDS's case data collection and analysis; and obtaining positive outcomes in cases. In achieving these accomplishments, PDS demonstrated that it is continuing to strive for excellence in representing clients.

PDS's Fourth Exoneration

PDS obtained its fourth exoneration on behalf of a client who had spent 28 years in prison after being convicted of felony murder and other charges. In FY 2014, a District of Columbia Superior Court judge vacated Mr. Cleveland Wright's convictions and dismissed the indictment with prejudice.²⁷ Mr. Wright's exoneration was built on PDS's FY 2012 exoneration of his co-defendant, Santae Tribble. After the court found by clear and convincing evidence that Mr. Tribble was actually innocent, PDS successfully argued that the same result must obtain for Mr. Wright since the same unreliable cooperating witnesses, the same discredited prosecution theory, and the same invalid hair evidence

²⁵ These four divisions are staffed with 27 professionals.

²⁶ 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.

²⁷ Spencer S. Hsu, *DNA exoneration of co-defendant lifts murder conviction of Cleveland Wright in 1978 killings*, The Washington Post (January 14, 2014), http://www.washingtonpost.com/local/crime/dna-exoneration-of-co-defendant-lifts-murder-conviction-of-cleveland-wright-in-1978-killings/2014/01/17/b6b64b30-7fb7-11e3-93c1-0e888170b723_story.html.

was used against him as was used against Mr. Tribble, albeit relating to a different murder. The United States Attorney's Office (USAO) did not oppose the motion PDS filed on behalf of Mr. Wright, and the court granted Mr. Wright's motion under the Innocence Protection Act. Mr. Wright now awaits the court's ruling on his motion to be declared actually innocent.

Previous Exonerations' Impact

PDS's first three exonerations yielded major results locally and nationally in FY 2014. 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."²⁸ The "direct triggering events" creating the impetus for this nationwide review were the exonerations of Donald Gates, Kirk Odom, and Santae Tribble by PDS.²⁹ The massive inquiry includes 2,600 convictions and 45 death-row cases from the 1980s and 90s. As of July 2014, the FBI and DOJ had reviewed 160 cases.³⁰

The United States Attorney's Office for the District of Columbia also launched a review of cases involving FBI microscopic hair analysis in response to PDS's repeated demands.³¹ In FY 2014, that review led to a fifth District of Columbia exoneration. Kevin Martin had entered an *Alford* plea – a plea in which he did not admit guilt, but acknowledged the strength of the government's case that included FBI microscopic hair analysis – in connection with a 1982 homicide, robbery, and rape incident. On July 21, 2014, Mr. Martin's conviction was vacated, and he was declared innocent after DNA testing conclusively proved that he was not the rapist and that, as with Mr. Gates, Mr. Odom, Mr. Tribble, and Mr. Wright, the hair analysis had misled.

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."³² "Shortly after media reporting about the exonerated defendants, Congressman Frank Wolf, Chairman of the Commerce, Justice, Science, and

²⁸ 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).

²⁹ *Id.*

³⁰ 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.

³¹ Keith L. Alexander, and Spencer S. Hsu, *Man exonerated in 1982 D.C. killing; DNA reveals FBI error in conviction*, The Washington Post (July 21, 2014), 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.

³² 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>.

Related Agencies Subcommittee of the U.S. House of Representatives Committee on Appropriations, requested that the OIG evaluate the work of the Task Force.³³ The result was a report that will serve as a guidepost for completing the Task Force’s review and for conducting future case reviews.³⁴

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. To engage in a robust empirical case analysis, PDS requires a modern case management system; electronic access to PDS case data and non-PDS case data; and, because many of the yearly data sets are small, several years of data. Detailed below are PDS’s efforts to upgrade its case management system and to secure the requisite data. PDS is making significant progress but continues to need access to additional data.

Enhancing Technology to Assess Performance

Implementation of PDS’s Upgraded Case Management System

The culmination of five years of work upgrading PDS’s case management system came in FY 2014: the system became operational in January 2014. In FY 2009, with supportive funding, PDS embarked on a complicated, multi-stage project to improve and update its case management system, Atticus, to provide greater utility to users, managers, and the executive staff. Working with an experienced outside consultant engaged by PDS from FY 2009 through FY 2013, an internal project management team at PDS:

- generated the set of requirements and the recommendation of an updated electronic operating platform;
- completed the design phase on schedule and converted the software platform on which the system operates from a no-longer-supported software product to the more current .Net platform;
- completed construction of the front-end software system;
- integrated the system with PDS’s document management system; and
- built the interfaces that allow PDS to access certain criminal justice data maintained by local and federal criminal agencies that is critical to PDS’s operations.

³³ *Id.* at 6.

³⁴ 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-irreversible-harm-when-fbi-didnt-reveal-flawed-lab-work-in-death-row-cases/2014/07/16/ebf9496e-0d29-11e4-8341-b8072b1e7348_story.html.

PDS continues to revise the system as its operation in a real-world environment reveals ways it can be improved even more. As part of its ongoing efforts to identify best practices, PDS expects to use aggregate outcome data from each of its practice areas to more accurately track PDS historical performance and to compare PDS's performance over time with that of other defender institutions and other defender systems that also generate outcome data.

Coupled with PDS's analysis of its own outcome data is PDS's belief that it is also important to obtain outcome data for the entire criminal defense function in the District of Columbia to effectively use outcome data to assess and improve performance in the District of Columbia. PDS has again in FY 2014 urged the District of Columbia Superior Court to provide PDS with electronic access to the court's public case data, which Atticus has been designed to accommodate. PDS would use the data for two purposes: so that PDS can analyze historical PDS case data that PDS's current case management system does contain to speed its ability to conduct longitudinal analysis³⁵ and so that PDS can evaluate the overall performance of the defense function by comparing case outcomes for specific cases by varying defense organizations (e.g. retained, court-appointed, pro bono, institutional). With this information, PDS can better identify effective approaches and support widespread improvements through targeted training, consultations, and staffing. While the court now provides PDS with data on PDS cases, it continues to resist making historical data available and resist making public, non-PDS case data electronically available.

Case Performance Data

Because of the former Atticus system's limitations, 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 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 charges in more than 40 percent of its cases that have proceeded to trial since October 1, 2012.³⁶ As stated above, PDS has not been given access to the court's data that would allow PDS to compare its performance against that of the rest of the defense bar. However, a recent study of a similarly situated defender office revealed that “[c]ompared to private appointed counsel, public defenders reduce the murder conviction rate by 19%.”³⁷ Of equal significance, the study

³⁵ PDS is seeking access to electronic PDS case-specific historical data back to 2006 that mirrors the data feed that PDS is now receiving from the court for its current cases.

³⁶ PDS is providing multiyear data for this performance metric because of the small size of a yearly data set. Over time and/or with electronic access to the 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.

³⁷ 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>.

revealed that the institutional defender “reduced overall expected time served in prison by 24%.”³⁸ 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 expected time served in prison by District of Columbia defendants, saving considerable taxpayer resources and easing overcrowding in the prisons. And it will 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 surveys and 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 has declined slightly during the last three fiscal years, PDS still strives to meet the goal of 100 percent and will be addressing this decline through direct communication with Trial Division staff and supervisors. PDS’s actual performance and fiscal year targets are as follows:

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

	Target	Actual
FY 2011	100%	96%
FY 2012	100%	94%
FY 2013	100%	94%
FY 2014	100%	93%
FY 2015	100%	N/A

After FY 2004, when PDS established a baseline for the pretrial restraint measure reflected in the chart below, the numbers of individuals represented by PDS who are charged with detainable offenses increased due to a change in the law;³⁹ many of those individuals are typically held in detention pending trial due to the seriousness of the charged offense. Notwithstanding that increase, PDS achieved a reduction in some form of pretrial restraint in 51 percent of its cases, an increase over FY 2013. Although PDS consistently misses its 99 percent target, with FY 2014 being no exception, the

³⁸ *Id.*

³⁹ The District of Columbia Council lowered the standard the government must meet to justify pretrial detention without bond of those charged with certain offenses (lowering it from substantial probability to probable cause – i.e., more likely than not – that the person has committed the charged offense), making it easier for prosecutors to persuade the court to order such detention. D.C. Code §23-1322(c) (2001).

goal nonetheless remains seeking release for any client who wants it. PDS’s actual performance and fiscal year targets are as follows:

Percentage of Cases in Which Reduction in Pretrial Restraint Was Obtained

	Target⁴⁰	Actual
FY 2011	99%	53% 60% within first 21 days after initial hearing
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%	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 the work of the Trial Division has led to systemic reform, exonerations, and legislative reform. An example from FY 2013 was a homicide case in which an eighteen-year-old PDS client was charged with second-degree murder. If not for PDS, the case would have proceeded to trial with a high probability of conviction because the government had multiple witnesses who identified PDS’s client as the perpetrator of the offense. Instead, after hours of investigation located critical videotapes, additional witnesses, and telling phone records and Instagram records, and after careful consultations with outside experts, PDS presented all the evidence its lawyers, experts, and investigators had uncovered to the government, which then dismissed the case. More recently, PDS shared the results of its investigation of an attempt second-degree sexual abuse of a minor case. In that case, several PDS staff investigators worked to identify, locate, and speak with independent witnesses whom the police had failed to interview. The information gathered by PDS investigators showed that PDS’s client was not the perpetrator and identified someone else as having committed the assault. After seeing the written statements secured by PDS investigators, the government dismissed the case. Although PDS and the United States Attorney’s Office for the District of Columbia (USAO) are usually vigorous opponents in the adversary system, these cases are examples of instances when the parties met and shared information, and PDS ultimately convinced the

⁴⁰ PDS chose 99% as performance targets for these measures to reflect 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.

USAO to dismiss the case, setting free an innocent man and saving taxpayers the cost of a lengthy trial and, potentially, from a wrongful conviction.⁴¹

Appellate Division

In past budget submissions, PDS has detailed countless reversals secured by PDS's Appellate Division that have established or clarified legal standards in criminal and juvenile delinquency cases or protected the integrity of the criminal justice system. Whether establishing that recent developments in the scientific community require more in-depth consideration of the factors affecting admissibility of eyewitness identification experts (*Russell v. United States*⁴²); or establishing that after a 14-year-old juvenile maintained his innocence 63 times that the police not only violated the rule of *Miranda v. Arizona* but also violated the due process clause by coercing the child into saying what they insisted he say (*In re J.F.*⁴³); or establishing that a new criminal statute making it a felony offense to merely be present in a car that contains a firearm is facially unconstitutional (*Conley v. United States*⁴⁴); or protecting the integrity of the criminal justice system by persuading the Court of Appeals to order the recusal of a Superior Court judge because of improper *ex parte* communications received by the judge (*In re M.C.*⁴⁵); or by persuading the Court of Appeals, without a single dissenting vote, to deny the government's petition for rehearing *en banc* in a case in which the government was chastised for failing to disclose pretrial exculpatory information of the very sort that can prevent a jury from convicting an innocent person (*Miller v. United States*⁴⁶), PDS's 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."⁴⁷

But most telling is the rate at which PDS secures reversals at the appellate level. PDS, based on a comparison of published opinions from calendar years 2005 through 2014, secures reversals at a rate seven times higher than that of the rest of the defense bar (32 percent versus 4.4 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 D.C. 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

⁴¹ 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.

⁴² 17 A.3d 581 (2011), http://www.dccourts.gov/internet/documents/07-CF-659_MTD.PDF.

⁴³ 987 A.2d 1168 (2010), http://www.dccourts.gov/internet/documents/06-FS-790_MTD.PDF.

⁴⁴ 79 A.3d 270 (2013), <http://www.dccourts.gov/internet/documents/11-CF-589.pdf>.

⁴⁵ 8 A.3d 1215 (2010), http://www.dccourts.gov/internet/documents/08-FS-132_MTD.PDF.

⁴⁶ 14 A.3d 1094 (2013), http://www.dccourts.gov/internet/documents/07-CF-1169_MTD.PDF.

⁴⁷ PDS 2013 Judicial Survey.

brief. Between FY 2010 and December 2014, PDS reduced the amount of time between the court's issuance of the notice to file and the filing of a brief by 40 percent. And between FY 2010 and December 2014, PDS has reduced the case backlog by 75 percent. PDS's goal, as stated in PDS's FY 2015 Congressional Budget Justification,⁴⁸ is to eliminate the backlog and reduce the time between the Court's issuance of the notice to file and the filing of a brief by more than half to just 40 days by FY 2019 without adversely impacting quality.⁴⁹

In response to the performance data, PDS is considering traditional and nontraditional means to reach out to and provide support for the CJA appellate bar to improve outcomes. Most recently, 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.⁵⁰ In its first year, the PDS blog has had more than 23,000 visits.

Mental Health Division

In FY 2014, PDS's Mental Health Division won more than 30 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, in FY 2014 the rest of the bar did not win a single hearing.⁵¹ These hearings are presided over by an 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. In FY 2014, PDS won 55 percent of its contested Commission hearings as compared to a 19 percent success rate for the rest of the bar. Even when it lost the hearing, PDS was far more successful at securing a recommendation for outpatient treatment over inpatient treatment than the rest of the bar (65 percent versus 31 percent). 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

⁴⁸ PDS FY 2015 Congressional Budget Justification at 24.

⁴⁹ 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 2018.

⁵⁰ <http://pdsdc.blogspot.com/>.

⁵¹ PDS does not have electronic access to this case data and therefore had to secure this data by hand and analyze more than 2,700 cases from October 1, 2013, through September 30, 2014. Because this is a short time period and the data set is relatively small, PDS expects the percentages will change over 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.

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, 2014,⁵² PDS won 18 percent of its recommitment hearings and mitigated the outcome in 66 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 materials⁵³ has demonstrated, far shorter sentences can be employed in the face of violations without impacting public safety and at considerable cost savings. PDS represents approximately 1,400 clients annually who are facing revocation. Of those clients, in FY 2014, approximately 40 percent proceeded to a final revocation hearing. The other 60 percent were offered and accepted either expedited plea offers or incarceration combined with drug treatment, were selected to participate in the SIS program, 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. In FY 2013 and 2014, PDS won reinstatement and release in more than 25 percent of these contested hearings and secured reduced sentences (sentences below the guidelines) in another 40 percent of these cases. Thus, PDS advocacy stemmed the over-incarceration of its clients in more than 65 percent of the contested hearings.⁵⁴

Case Accomplishments

The above performance data clearly demonstrates PDS success, but as stated above, the data alone give an incomplete picture of that success. PDS not only reduces the costs associated with inpatient versus outpatient treatment and with secure detention versus community supervision, PDS also makes a difference in individual lives. The case accomplishments below show some of the people behind the performance data – the reason PDS performs at all – and the results obtained for them. These cases

⁵² 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.

⁵³ PDS FY 2015 Budget Request at 32.

⁵⁴ This performance is based on case outcomes from October 1, 2012, through September 30, 2014. 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.

typify the collaboration that takes place between and among PDS divisions to provide the most effective support for clients.⁵⁵

False Criminal Charges Dismissed

The Trial Division and the Civil Legal Services Division (CLS) represented Ms. A.B., who was arrested and charged with assaulting her minor daughter based on an allegation made by the daughter's father. Ms. A.B. and the father were engaged in a bitter custody and child support battle. PDS's Trial Division lawyer was able to reveal the father's true motivation – child support – behind his criminal allegations and then secured the assistance of CLS. The CLS lawyer pursued both custody of the child and child support. After months of being denied the opportunity to even see her daughter, Ms. A.B. finally won custody of her daughter and financial support from the father. CLS was also successful in its administrative challenge of Ms. A.B.'s listing on the Child Abuse and Neglect Registry stemming from the allegations in the criminal case. As a result, she is now able to volunteer at her children's schools, her church, and any other organization serving children.

Improved Outcomes for Children in Delinquency Matters

C.D.

C.D., a 17-year-old special education student, was charged as an adult with armed robbery and then subjected to suspension proceedings at his high school. C.D.'s Trial Division attorney referred C.D. to CLS. The CLS attorney successfully blocked the suspension. The court ultimately placed C.D. on probation in the criminal cases and required as a condition of probation that C.D. attend and participate in all his classes. Unbeknownst to everyone, C.D. faced a tremendous barrier to participation – he was reading on only a pre-kindergarten level. The CLS attorney identified an excellent reading program and persuaded the program to do a free evaluation of C.D. to determine his needs. The evaluation found that C.D. had extremely severe reading deficits and needed significant intervention to remedy those deficits. The CLS attorney persuaded the District's public school system to approve C.D.'s participation in the program. After eight weeks of intensive instruction, C.D. is now reading at a fourth grade level and otherwise succeeding on probation.

Graduations

In FY 2014, CLS had five clients graduate from high school, two of whom have started college.

A College Career Saved

Mr. E.F. was sentenced to two years of supervision beginning in 2012. In early 2014, he had enrolled in college and was scheduled to begin the spring semester at a southern college on a sports scholarship. Unfortunately, he was arrested on a parole warrant and charged with unlawful entry for allegedly entering a dormitory room without permission and second-degree theft for allegedly taking a laptop from the library at a local university. The charges were dismissed in D.C. Superior Court based

⁵⁵ 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, and the initials used are not the actual initials of the clients.

on the fact that the identification in the case was faulty and there was no tangible evidence linking him to the theft. Despite the finding in Superior Court, the U.S. Parole Commission pursued the charges against Mr. E.F., detaining him until his final revocation hearing two months after his arrest and submitting as the only evidence at the revocation that Mr. E.F. had been walking down the library hallway in the area from which the laptop was taken. Working with a PDS investigator, the Parole Division attorney located and produced a witness who corroborated Mr. E.F.'s explanation that he had been in the building looking for a friend with whom he played sports. The Parole Division attorney and staff investigator also provided to the hearing examiner photographs and diagrams of the dormitory that corroborated Mr. E.F.'s explanation that he was following the signs and looking for the exit and not trying to enter a dorm room. This evidence led the hearing examiner to conclude that the Commission's evidence was insufficient and to order Mr. E.F.'s immediate release. Despite missing the start date for college, Mr. E.F., with support from PDS, has enrolled at a local college, completed his period of supervision, and begun his pursuit of a college degree.

A Wrongful Conviction Averted

In a criminal assault case in which PDS's client, Mr. G.H., was alleged to have repeatedly bitten the complaining witness, the D.C. Metropolitan Police Department took what were described by an expert and the court as blurred and "worthless" pictures of the alleged injuries. In contrast, PDS investigators located and interviewed the complaining witness and took pictures of the alleged bite marks before the marks could fade or heal. Armed with quality photographs, PDS was able to identify an expert to review the photographs. The result was unrebutted expert testimony at trial that the marks on the complaining witness's neck could not have been produced by teeth. Further investigation permitted the PDS trial attorney to present considerable evidence of the complaining witness's bias against Mr. G.H. The expert testimony and the bias evidence presented by PDS convinced the trial judge that Mr. G.H. had to be acquitted.

All of the above-described results demonstrate that PDS adds value where it provides representation to clients, and provide examples of how PDS collaborates across divisions to generate superior performance that produces better outcomes for clients. The data illustrate why PDS's performance is respected throughout the District of Columbia justice system – and nationally among public defender organizations.

Historical Performance

The above accomplishments in FY 2014 are 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. Over time, current and former staff have been recognized by:

- the seven awards PDS as an institution and its staff have received over the past 10 years from outside organizations;
- the nomination by the President and the confirmation by the U.S. Senate of a former PDS attorney to a seat on the U.S. Court of Appeals for the District of Columbia;
- the nominations by the President and the confirmation by the U.S. Senate of two former PDS attorneys to seats on the U.S. District Court for the District of Columbia; they are the third and fourth former PDS attorneys to be appointed to that court and include the first Asian-American judge to serve on that court;

- the nominations by the President and the confirmation by the U.S. Senate of two PDS attorneys to the District of Columbia Court of Appeals within the past four years;
- the nominations by the President and the confirmation by the U.S. Senate of eight former PDS attorneys to the Superior Court of the District of Columbia over the past eleven years;
- the appointment of an executive-level attorney at PDS to serve on the first-ever National Commission on Forensic Science; and
- the selection of a former PDS Trial Chief to head the National Basketball League Players Association – the first female ever to hold that position.

PDS’s skills have also been recognized over time by:

- 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;
- reliance of every court in the District of Columbia, including the U.S. Supreme Court, on PDS *amicus* filings;
- 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 gave PDS when surveyed about the quality of legal representation PDS provides; and
- requests from foreign attorneys and officials interested in the American criminal justice system or public defense in particular for opportunities to learn about PDS or to observe attorneys in court, including an FY 2014 request that a PDS attorney address a national public defender conference in Chile.

Training

In FY 2014, 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,⁵⁶ produced local training for certified CJA investigators, produced the 49th Annual Criminal Practice Institute Conference, and produced its 2014 Forensic Science Conference after a one-year hiatus.⁵⁷

⁵⁶ In FY 2014, the Summer Series received an overall average rating of 4.6 on a five-point scale. Comments on various sessions included, “Very intelligent speaker,” “Great program,” “Excellent speaker,” “Very useful,” “Very thorough,” “Terrific presentation,” and “Most thorough criminal immigration training I’ve attended.”

⁵⁷ The Forensic Science Conference received an average rating of 4.6 on a five-point scale, and two-thirds of the 287 ratings of the individual conference sessions were “5s.” Some of the written comments from attendees were: “Outstanding,” “Learned new ways to thoroughly examine forensic lab results,” “Great,” “Inspirational,” “Informative,” “Really made it understandable for a non-scientist,” and “Amazing.” Twenty-four of the commenters described the conference as “Excellent.”

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 assessing its training efforts in light of the performance data it has been able to access with the goal of improving cases outcomes for all indigent persons in the District of Columbia.

2014 PDS Employee Survey Results

No single metric and no single data source can provide a complete assessment of PDS's performance. PDS operates in an adversarial system. PDS cannot achieve its clients' goals in every case. But PDS is a critical player in making sure the criminal justice is fair, that individual rights are protected, that the government is put to its burden, and that case outcomes are not a function of the inability to pay for counsel. As a result, over the years PDS has relied on several metrics to assess its performance. These have included conducting surveys of judges, conducting surveys of the CJA bar, tracking the number of highly qualified candidates applying to work at PDS, and tracking the demand for PDS staff as trainers and for PDS materials by other public defender organizations. These measures along with case outcomes allow PDS to assess whether it is attracting the talent necessary to provide high quality representation, whether it is successfully training those individuals to provide high quality representation, and whether it is effectively managing PDS to sustain a culture of excellence and high quality representation in an environment in which losing a portion of the cases is inevitable.

While PDS has reported previously on some management outcomes – e.g., successful audit reports, increased capacity for performance data collection and analysis – this year, PDS is including management outcomes as measured by employees' perspectives. During FY 2014, PDS conducted its third PDS Employee Survey; the 55-question PDS survey, like the Office of Personnel Management's Federal Employee Viewpoint Survey (FEVS), sought employees' views on various aspects of the workplace environment, such as leadership and knowledge management, talent management, results-driven performance culture, and job satisfaction.

Fifty-three percent of the staff participated in the survey (a higher response rate than that of the FEVS for any of the last five years that survey has been administered), and the responding group was broadly representative in the areas of ethnicity, gender, job category, seniority, and age.⁵⁸

All of the survey responses were very positive: for any single statement, the percentage of respondents who agreed exceeded the percentage of respondents who disagreed.⁵⁹ The responses demonstrated consistently high opinions of PDS's effectiveness and reflected the strong commitment to clients that is evident in the PDS work force on any given day.

⁵⁸ Despite a higher than average response rate, the data set is still relatively small (114 employees responded); as a result, variances in scores from year to year are to be expected.

⁵⁹ Unlike in the FEVS, the survey responses did not include a "Neither Agree Nor Disagree" option. Also, the survey included two open-ended questions that solicited ideas on how PDS could improve and allowed employees to elaborate on any of their responses to the 53 statements, and unlike in the FEVS, the data were not weighted, and "Do Not Know" answers were not removed before calculating percentages.

A sampling of responses follows:

PDS FY 2010 and FY 2014 Employee Surveys

Statement	Percentage of Responding Employees Who Agree With Statement	
	FY 2010	FY 2014
The mission of PDS is clear to me.	99%	97%
PDS executive management’s priorities are consistent with the PDS mission.	94%	91%
PDS is accomplishing its mission	99%	98%
PDS satisfies the needs of its clients.	98%	97%
I am proud to say that I work for PDS.	99%	99%
I am encouraged to do high quality work.	96%	93%
PDS places a high priority on doing things right (2010) PDS places a high priority on doing things well. (2014)	96%	97%
Creativity and innovation are rewarded at PDS	83%	79%
Individual differences (for example, gender, race, national origin, religion, age, cultural background, sexual orientation, or disability) are respected at PDS.	96%	86%
Opportunities or employment are available to individuals regardless of gender, race, national origin, religion, age, cultural background, sexual orientation, or disability.	92%	90%
PDS executive management’s decisions take into account the needs of the clients.	92%	93%

While the results did include less favorable responses (e.g., 54% of respondents agreed with the statement, “I receive regular, comprehensive performance reviews or feedback from my direct supervisor”), PDS is using and will use such results to focus attention and effort on making improvements, with the goal of providing even better service to clients and raising these scores.⁶⁰ Overall, however, the survey results clearly demonstrate that the PDS staff consider PDS to be an effective organization.

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, and social workers, and other staff in thousands of matters. The systems for involuntary commitments, parole revocation

⁶⁰ For example, as part of PDS’s first-ever management training/coaching program for division managers, PDS will address the responses to this question.

proceedings, and criminal and juvenile delinquency proceedings 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 pivotal 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 2014, 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 and 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 2016 Summary of Changes

	<u>FTE</u>	<u>Amount</u> <u>(\$ in 000s)</u>
FY 2015 Enacted	224	41,231
Adjustments to Base:		
Less Non-Recurring Expense.....	-	-
Moving Expenses.....	-	(1,150)
Add – Personnel cost increases	-	374
General Pricing Level Adjustments.....	-	434
Total, Adjustments.....		<u>(342)</u>
FY 2016 BASE.....	224	40,889
PROGRAM CHANGES:		
Non-Recurring Expenses	-	-
TOTAL, Program Changes	<u>-</u>	<u>-</u>
FY 2016 REQUEST.....	224	40,889

FY 2016 Salaries and Expenses
Summary of Requirements by Grade and Object Class
(\$ in 000s)

Grades:	2014 Enacted		2015 Enacted		FY 2016 Budget Request	
	FTE	Amount	FTE	Amount	FTE	Amount
ES	3	473	3	473	3	478
AD-15	16	2,310	16	2,369	19	2,860
AD-14	75	9,291	67	8,342	64	7,513
AD-13	36	4,152	32	3,530	34	3,450
AD-12	27	2,198	27	2,504	23	2,080
AD-11	19	1,506	35	2,505	38	3,043
AD-10	2	120	1	59	1	72
AD-09	16	978	14	833	19	1,125
AD-08	4	211	4	194	3	149
AD-07	16	728	19	931	14	686
AD-06	2	91	3	131	4	179
AD-05	2	78	3	121	2	83
Total Appropriated Positions	218	22,136	224	21,992	224	21,718
EX/ES FTE		3		3		3
GS FTE		215		221		221
Average EX/ES Salary		158		158		159
Average AD Salary		100		97		96
Average AD Grade		13		13		13
Object Class						
11.1 Full Time Permanent	218	22,136	224	21,992	224	21,718
11.5 Other Pers.Comp.		270		280		210
11.8 Special Pers. Services		900		900		1,440
12.0 Benefits		6,339		6,993		7,171
13.0 Unemployment Comp.		100		100		100
Personnel Costs	218	29,745	224	30,265	224	30,639
21.0 Travel & Training		368		297		391
22.0 Transportation of Things		10		10		10
23.1 Rental Payments to GSA		2,773		3,576		3,628
23.2 Rental Pmts.to Others, & Misc.		917		230		237
23.3 Comm., Utilities & Misc.		468		480		436
24.0 Printing and Reproduction		102		98		101
25.1 Consulting Services		953		980		925
25.2 Other Services		1,476		1,528		1,652
25.3 Purch.from Gov't Accts.		1,075		1,099		1,013
25.4 Maintenance of Facilities		124		115		104
25.7 Maint. of Equipment		325		323		330
26.0 Supplies and Materials		533		548		477
31.0 Furniture and Equipment		588		532		946
Non-Personnel Costs		9,712		9,816		10,250
TOTAL	218	39,457	224	40,081	224	40,889
31.0 Non recurring Expense - Moving Expenses		1,150		1,150		-
Grand Total		40,607		41,231		40,889
OUTLAYS		36,546		37,108		36,800

APPROPRIATION LANGUAGE

Public Defender Service for the District of Columbia

Appropriation Language Fiscal Year 2016

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, [\$41,231,000 of which \$1,150,000, to remain available until September 30, 2017, is for relocation of satellite offices] **\$40,889,000: 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.

[Authority to Accept Voluntary and Uncompensated Services]

Provided further, That notwithstanding section 1342 of title 31, United States Code, and in addition to the authority provided by District of Columbia Code Section 2-1607(b) upon approval of the Board of Trustees, the District of Columbia Public Defender Service may accept and use voluntary and uncompensated services for the purpose of aiding or facilitating the work of the District of Columbia Public Defender Service.

[Board of Trustees Members Deemed to be Employees]

Provided further, That notwithstanding District of Columbia Code Section 2-1603(d), for the purposes of any action brought against the Board of Trustees of the District of Columbia Public Defender Service, the trustees shall be deemed to be employees of the **District of Columbia** Public Defender Service.

ORGANIZATION CHART

