

THE PUBLIC DEFENDER SERVICE

for the District of Columbia



CHAMPIONS OF LIBERTY

Fiscal Year 2014

Congressional Budget Justification

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PUBLIC DEFENDER SERVICE
Fiscal Year 2014 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 to indigent individuals.² The mission of PDS is to provide and promote quality legal representation to 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 criminal acts. Also, PDS 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 Superior Court every year, nearly all individuals facing parole revocation under the D.C. Code, and all D.C. defendants requiring "stand in" counsel representation at Drug Court sanctions hearings. In addition, PDS provides technical assistance to the local criminal justice system, training for panel 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),³ 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 (CSOSA) appropriation. With the enactment of the Fiscal Year (FY) 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.

Since its creation, PDS has maintained a reputation 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.

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

**PUBLIC DEFENDER SERVICE
BUDGET JUSTIFICATION SUMMARY**

FY 2014 Summary of Changes

	Permanent Positions	FTE	2014 PDS Request (\$ in 000s)
FY 2012 Budget Enacted	216	213	37,241
Adjustments to Base:			
New Positions	5	5	650
Pay Raises	0	0	1008
General Pricing Level	0	0	558
Total, Adjustments	0	0	2,216
FY 2014 Base	221	218	39,457
Non-Recurring Expense - Moving Expenses	0	0	1,150
FY 2014 Request	221	218	40,607

FISCAL YEAR 2014 REQUIREMENTS

The Public Defender Service for the District of Columbia requests an operating budget of \$39,457,000 for Fiscal Year 2014. This would allow PDS to fill existing but unfunded positions that are needed to adequately staff PDS's Trial Division and to provide representation to under-represented children in the juvenile delinquency system. PDS also requests one-time funding of \$1,150,000 for moving four program and administrative divisions from two satellite offices due to the expiration of the leases for these two locations.

PDS's operating budget request reflects only a 5.9 percent increase, or \$2,216,000, from PDS's FY 2012 operating budget. PDS has operated on an essentially flat budget of \$37,241,000 for the past four years;⁴ this has required that PDS reduce its staffing in each of those years and, therefore, the services it provides, to absorb increases in compensation and fixed costs. PDS requests funds for five authorized but unfunded positions: three Trial Division attorney positions and two Juvenile Services Program attorney positions. PDS requests this funding to recoup some of the decline in staffing that has occurred as a result of PDS's operating for four years on a flat budget. The Trial Division positions will allow PDS to represent individuals it has been

⁴ PDS's FY 2010 enacted budget was \$37,316,000; PDS had enacted budgets of \$37,241,000 for both FY 2011 and FY 2012; and PDS's annualized FY 2013 operating budget under the continuing resolution is \$37,469,000.

unable to represent because of staffing reductions. The Juvenile Services Program attorney positions will allow PDS to represent currently under-represented children. This request is consistent with PDS's policy and funding priorities – providing representation to indigent individuals facing serious charges.

POLICY AND FUNDING PRIORITIES

PDS is a small, single program; the only local institutional public defender in the District of Columbia; and the only local institutional public defender funded by the Congress. PDS's priority is ensuring that all persons in the District of Columbia receive due process 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 saves taxpayer funds.

PDS's Effectiveness

PDS, despite not having a research division and despite not being allowed access to certain electronic criminal justice system data controlled by District of Columbia law enforcement agencies and courts, continues to make strides toward more effectively incorporating evidence and evaluation in managing the organization and maintaining its reputation for high quality performance. PDS has evaluated its performance through its growing capacity to generate outcome data and through surveys of stakeholders. The results demonstrate that PDS is a high performing program. As reported in its earlier budget submissions, PDS receives scores of over 90 percent from judges and panel attorneys assessing the quality of the representation provided by PDS lawyers and the quality of the training provided to the panel lawyers. More specific to case outcomes, PDS's Parole Division data shows that the division is securing outcomes below the standard sanctions guidelines in 34 percent of the cases. PDS's Appellate Division secures reversals of criminal and delinquency convictions in more than 25 percent of its cases that result in a published opinion from the District of Columbia Court of Appeals, compared with a reversal rate of less than five percent for the panel system and private bar. By increasing the staffing level of the Appellate Division, PDS has maintained this performance level while also reducing the appellate backlog by 65 percent over the past three years. As explained below, however, this effort has come at a cost to the staffing of the Trial Division. Because the Trial Division is a critical part of the Appellate Division's success (by making the required arguments in the trial court to preserve issues for consideration on appeal) and a critical part of a high performing public defense system, PDS is seeking funding to more fully staff the Trial Division.

Reduction in Taxpayer Costs

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.⁵ As detailed in PDS's FY 2013 Budget Justification, PDS's Trial Division saves taxpayer funds by preventing wrongful convictions. Every year, PDS's Trial Division convinces the government to dismiss cases after

⁵ 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.

an arrest and even after the government has issued an indictment in the case. PDS accomplishes this through investigation, expert assessments, and litigation demonstrating that the wrong person was charged. This work is accomplished at a fraction of the cost of a wrongful conviction.⁶ However, because PDS has had to leave an increasing number of Trial Division positions unfilled, it has had to reduce the number of cases it can accept.

As detailed in PDS's Performance section below, every division at PDS plays a part in improving the effectiveness of the criminal justice system, case by case. But PDS goes even further. Using the information learned in the three wrongful convictions PDS uncovered and litigated in the District of Columbia in the last four years as well as the information PDS learns at the trial level in case after case, PDS 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. Three such programs are two U.S. Parole Commission programs, the Short-term Interventions for Success program and the Mental Health Sanctions Docket, and the D.C. Superior Court's revised Drug Court program discussed in the Accomplishments section below.

But absent an increase in funding to cover inflationary costs and allow PDS to more fully staff its Trial Division and to represent children who may otherwise forfeit their liberty, the Congress risks allowing justice in the District of Columbia to take a step backward.

Resource Request

One-year funding is needed to address the end of two satellite office leases. PDS cannot employ people if it does not have sufficient office space. PDS will have to continue to reduce the number of cases it handles if the authorized Trial Division positions cannot be filled. And PDS cannot represent the under-represented children without additional staff in the Juvenile Services Program. PDS's requests are limited to mission-critical needs.

Trial Division (\$390,000)

PDS seeks funding for three Trial Division attorney positions to restore capacity in the Trial Division to handle serious cases. Operating for four years with essentially flat budgets has forced PDS to leave positions unfilled in the Trial Division in order to meet other critical client and administrative needs and stay within funding limits. One of these critical needs was assisting the District of Columbia Court of Appeals in its efforts to reduce the backlog of appeals, which allowed PDS to reduce the amount of time clients waited to have their appeals resolved. PDS met this need by increasing the Appellate Division staff. Another critical need was replacing PDS's antiquated telephone system.

⁶ PDS estimated that the combined cost of securing dismissals in FY 2011 in two complex homicide cases involving extensive investigation and the use of experts was just under \$50,000. Many other dismissals are obtained for even less.

Increasing the staff of the Appellate Division for the last two years continues to bring down the backlog of appeals.⁷ Because the Trial Division is the largest division at PDS and has one of the higher staff turnover rates of the PDS divisions, it is the division that most easily allows PDS to absorb the financial impact of flat budgets. Thus, the costs associated with increasing the Appellate Division staff, replacing the telephone system,⁸ and absorbing inflationary increases in fixed costs and salaries over the past three years has meant that PDS continues to understaff the Trial Division. The size of PDS's Trial Division staff has been reduced by 20 percent. This has been accompanied by a comparable decline in PDS's trial caseload. But this decline comes at a significant cost to the criminal justice system in the District of Columbia.

The quality of representation PDS provides is the foundation from which almost all of PDS's accomplishments stem, irrespective of the type of case.⁹ PDS's Appellate Division averages a reversal rate of over 25 percent compared with the private bar's reversal rate of less than five percent. The success of the Appellate Division is not only a reflection of the quality of the work of this division but also the quality of the record developed at the trial level by the PDS trial lawyer. The three wrongful convictions identified and brought to light by PDS's Special Litigation Division during the last four years were grounded in the knowledge base within PDS's Trial Division about faulty forensic science and about new methods to test the reliability and accuracy of dated forensic methods. PDS cases that have been dismissed by the government after an arrest and indictment have often been dismissed because of the investigation and litigation done by the Trial Division. The work of the Trial Division is the front-line protection against wrongful convictions that cost the government millions of dollars and undermine confidence in the criminal justice system. PDS's request of \$390,000 will bring the Trial Division closer to full strength and will ensure PDS's ability to continue its vital role in the criminal justice system.

Juvenile Services Program (\$260,000)

PDS requests funding for two attorney positions to allow the Community Defender Division's Juvenile Services Program (JSP) to provide representation to certain children in the District's juvenile justice system who are currently unrepresented or under-represented and facing a loss of liberty.

⁷ From December 2010 through September 2012, PDS reduced the number of outstanding briefing orders in cases by 65 percent.

⁸ Because PDS's need for a new telephone system was critical, PDS reordered its priorities and included it as an item for FY 2012 spending rather than wait for the funds for the system to become available as requested in the FY 2013 Budget. If PDS receives the funds in FY 2013 for replacing the telephone system, the money will be reallocated toward FY 2013 needs such as preparation for the office relocations.

⁹ PDS Trial Division lawyers also provide hours of training through the Criminal Practice Institute Conference, the Forensic Science Conference, and the Summer Series, all of which are organized by PDS staff. These free conferences are well-attended by panel attorneys, receive high ratings in surveys, and improve the performance of the panel system.

With a small staff, JSP provides legal representation to youth committed to the custody of the District of Columbia through juvenile delinquency proceedings. With an office on the site of the city's secure commitment facility, New Beginnings, JSP represents the youth in their disciplinary hearings, provides advocacy for youth on institutional issues, provides daily legal rights orientation for newly committed youth, and serves as a local observer filing grievances on behalf of children and reports relating to abuse by facility staff.

In June 2009, the District's Department of Youth Rehabilitation Services (DYRS) eased the requirements for revoking a youth's community status and remanding a youth to a secure facility. The process is analogous to an adult parole revocation proceeding and involves a "community status review hearing." Just as adults have a right to counsel at parole revocation proceedings, children have a similar right to counsel at community status review hearings.¹⁰ The practice standards promulgated by the Superior Court of the District of Columbia and adopted by Administrative Order 04-13 for attorneys representing children charged with delinquency require attorneys to advocate zealously on behalf of clients at all post-disposition reviews, including these community status review hearings.¹¹

The hearings are held at DYRS's two secure facilities – one of which is 30 miles outside of the District – and the proceedings are presided over by a panel of DYRS employees. Typically, the process is initiated when DYRS takes a committed child who is currently in the community into custody based on allegations of problems with the child's placement in the community. A hearing is set to review the placement, and counsel is given notice. Usually, the lawyers receive less than 48 hours notice of the hearing. For most lawyers with a regular Superior Court caseload, these hearings will conflict with previously scheduled court proceedings.

For reasons of efficiency and effectiveness, PDS relies primarily on JSP attorneys present at the facilities and almost immediately accessible to the clients to handle these proceedings to avoid delays or conflicts with court cases for the youths' original trial attorneys. Currently, PDS can effectively represent more PDS clients at these hearings using this system, but PDS represents only about one quarter of the committed children at any one time (currently, approximately 250 children, not all of whom are subject to community status review hearings). For children with court-appointed counsel, there is no mechanism to ensure the appearance of counsel, and fewer than 10 percent of non-PDS clients have court-appointed counsel present at their hearings. PDS has tried to facilitate the process by assisting DYRS in notifying counsel of the impending hearing but, just as for PDS lawyers, the scheduling conflicts for court-appointed counsel are overwhelming. Where PDS has been able to reach assigned counsel, all have requested that PDS undertake representation for the hearing. To better implement this solution, PDS needs \$260,000 in funding for two additional lawyers.

In FY 2011, there were 245 community status review hearings; in FY 2012, there were 262 such hearings. Dividing this caseload between two lawyers creates a high but manageable caseload given advances in technology and access to relevant information about the youth through both the Superior Court of the District of Columbia's and DYRS's databases.

¹⁰ 29 D.C.M.R. § 1210.5.

¹¹ D.C. Superior Court Administrative Order 04-13 at 24-25.

With offices already located at the institutions and its history of working in the juvenile detention facilities, PDS is well-suited to provide this service to children who are currently unrepresented or under-represented in their community status review hearings. Furthermore, PDS can represent the youth more efficiently than the panel attorneys with their competing court obligations.

Funds to Move From Two Satellite Locations With Expiring Leases (\$1,150,000)

Two of PDS's satellite offices have leases that expire within the next year – one in September 2013 and the other in February 2014. Using GSA standards, PDS has determined that it needs total one-time funding of \$1,150,000 for these two relocations if PDS is unable to renew both leases.

PDS houses three divisions in one satellite office for which the lease expires in September 2013. PDS's Office of Rehabilitation and Development, Civil Legal Services Division, IT Division, and Moot Courtroom/training facility are located in this satellite office. PDS regularly uses the training facility for meetings, for staff training, and for training programs offered to the panel attorneys, who have continuing legal education requirements. Working with GSA, PDS has begun the process of identifying suitable office space, which may include renewing the current lease. In the event PDS is required to relocate, PDS will need one-time funding of \$800,000. Any relocation is expected to take place during FY 2014, as PDS expects to have a stay-in-place agreement with the building owner at the September 2013 termination of the existing lease if no new lease is in place at that time.

The Mental Health Division (MHD) of the Public Defender Service had been located on the campus of Saint Elizabeths Hospital for more than 40 years. During that entire period, the District of Columbia made space available to MHD at no cost. However, due to the District's decision to decommission almost all portions of the campus, the city notified PDS that it would no longer be able to provide essential services to the MHD offices. As a result, PDS requested and received funds to relocate. GSA secured space that MHD began to occupy in December 2012 in a building currently under a federal lease. Despite the fact that the lease expires in February 2014, PDS assumed responsibility for what was the balance of an existing lease because the space has several important advantages that will increase PDS's efficiency: it is convenient to PDS headquarters, it provides MHD attorneys ready access to the Mental Health and Habilitation Branch of the D.C. Superior Court, where they represent clients, and it provides easier overall access to clients placed at the various mental health care facilities located throughout the city. In addition, GSA is holding out the possibility of renewing the lease after the current lease expires. PDS requests \$350,000 for this office move should it become necessary.

Because it is not certain that PDS will relocate from either of these two locations at the expiration of their leases, PDS suggests that the funds be designated separately and specifically for these office moves in case one or both prove to be unnecessary.

In preparing for these relocations, PDS is not seeking to increase the amount of space used by the organization as a whole.

PROGRAM DESCRIPTIONS

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),¹² 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 complex 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 complex cases.

Using this team approach, PDS undertook more than 14,500 legal matters in FY 2012. 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. The level of performance achieved by PDS staff in FY 2012 was a continuing demonstration of what was reflected in the results from a survey of judges conducted in 2008 pursuant to PDS's Strategic Plan. As was the case with the 2004 judicial survey, 100 percent of those responding agreed that PDS staff "provide and promote quality legal representation to indigent children and adults facing a loss of liberty." In a slight improvement over the 2004 survey results, 100 percent of those responding agreed that PDS staff are "skillful in both oral and written advocacy."

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 complex and resource-intensive adult cases. For example, senior PDS attorneys routinely handle cases involving DNA evidence, expert testimony, multiple-count indictments,

¹² 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.

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 Superior Court each year.¹³

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.¹⁴ Trial Division staff attorneys also provide representation in a variety of other legal matters through PDS's Duty Day program and the 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 complex legal issues. Another important function of the Appellate Division is to provide a wide range of technical assistance and training to other PDS divisions. The Appellate Division attorneys' knowledge and experience allow them to assist in complex cases without having to perform long hours of original research each time difficult legal issues arise. The reliance on this division by the District of Columbia Court of Appeals is demonstrated by the Court's emphatic and repeated requests that PDS expand its staff of appellate specialists to assist the Court in reducing its backlog without compromising on quality.

Mental Health Division

Attorneys in the Mental Health Division (MHD), which was previously located on the grounds of St. Elizabeths Hospital¹⁵ in the District of Columbia, handle half of the involuntary civil commitment cases that arise in the Superior Court.¹⁶ 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,

¹³ PDS was assigned to 74 percent of the Felony One cases and to 50 percent of the Accelerated Felony Trial cases in FY 2012. Felony One cases include all homicides and first degree sex offenses, and Accelerated Felony Trial cases include all "while armed" offenses and are to be tried within 100 days after the initial court appearance.

¹⁴ PDS provides representation in misdemeanor cases on a limited basis. PDS's authorizing statute permits PDS to represent "Persons 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.

¹⁵ Using resources provided for the purpose in FY 2009, MHD moved into new space in October 2012; located at 600 E Street, N.W., Washington, D.C., the new space is within walking distance of PDS's headquarters.

¹⁶ In FY 2012, PDS was appointed to 50 percent of the involuntary commitment cases filed in the District of Columbia.

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 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 rights of PDS clients, to ensure equal justice to all in the D.C. courts, and to change unfair systemic criminal justice practices. An example of such litigation is the *Jerry M.* lawsuit brought on behalf of the children committed to the care of the District of Columbia following delinquency proceedings. 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. 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 D.C. Circuit, and the U.S. 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 community release. 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. Parole Division attorneys are available daily for in-person, telephone, or written inquiries, offering assistance and referrals when appropriate.

In addition, the division provides training to members of the District of Columbia Bar, members of the Federal Bar, and law students throughout the United States on parole and supervised release matters. 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.

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 (IDEIA), 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.¹⁷

Community Defender Division

The Community Defender Division provides services 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 D.C. Code offenses and held 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 newly released individuals, assisting them in making a successful transition back into the community; the program gives special consideration to returning individuals 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.¹⁸ ORD’s forensic social workers provide presentencing assistance to address mitigation issues and to provide program alternatives for appropriate clients.¹⁹ Other legal support services include a multi-lingual language specialist to facilitate communication with non-English

¹⁷ Locally in the District of Columbia, defense attorneys have 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, 130 S. Ct. 1473 (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.

¹⁸ *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).

¹⁹ *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).

speaking clients, a librarian to manage PDS's specialized collection and electronic access to research, and two paralegals who work on cases and projects.²⁰

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; serving subpoenas; collecting police reports; copying court and administrative files; analyzing and mapping digital data from cell phones, GPS monitors, and "Shot Spotter" (gunshots) technology; 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 panel 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 assist in recommending appropriate sentences to the Superior Court. The ORD staff are skilled "mitigation specialists" who often directly address the Court at sentencing to provide the Court with information about viable alternatives to incarceration such as community-based, rehabilitative treatment. Because the ORD staff are well-versed in all of the D.C. 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 to their invaluable advocacy work, 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,²¹ are used by CSOSA, Federal Bureau of Prisons and their contract prisons, the Superior Court, and many other agencies and organizations working with clients in the criminal justice system.

Defender Services Office

The Defender Services Office (DSO) supports the court appointment-of-counsel system by determining the eligibility for court-appointed counsel of virtually every child and adult arrested in the District of Columbia and coordinating the availability of CJA attorneys, law school students, pro bono attorneys, and PDS attorneys for appointment to new cases on a daily

²⁰ As explained above, PDS operates as a single program, allowing it to shift resources between specialties as needed. Currently, PDS has 13 forensic social workers, 33 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.

²¹ PDS's website can be found at www.pdsdc.org.

basis.²² 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.²³ 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,²⁴ strategies for developing PDS's human capital and wellness, 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 ACCOMPLISHMENTS

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. Most recently, the exceptional quality of the advocacy of PDS's staff was recognized in several instances:

- by requests from the public defender organizations in Mississippi, Missouri, Virginia, and New York for PDS attorneys to present training involving forensic science;
- by a request from the National Academy of Sciences Committee on Science, Technology and the Law that a PDS attorney present on "microbial forensics and what the courts need to know"; and
- by a request from the D.C. Superior Court judges to have PDS appellate lawyers train Superior Court judges on recent developments in the law.

PDS's skills have also been recognized over time

- by an unprecedented 12 former PDS attorneys who were confirmed by the U.S. Senate, nominated by the President, or selected as judicial officers during FY 2011.
- by reliance of every court in the District of Columbia, including the U.S. Supreme Court, on PDS *amicus* filings;

²² This office is currently staffed with 12 professionals who in FY 2012, conducted eligibility interviews and assisted in the appointment process for more than 29,000 cases.

²³ These four divisions are currently staffed with 28 professionals.

²⁴ 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.

- by a request from the U.S. Supreme Court for a PDS attorney to brief and argue one of its matters;
- by requests from defender offices around the country for assistance and for pleadings, training guides, and other materials developed by PDS's specialty practice groups;
- by the more than 1,000 applications PDS receives each year from talented individuals seeking to become PDS staff attorneys, law clerks, and interns;
- by awards received by both PDS and its staff from various bar and defense organizations; and
- by the consistently high ratings District of Columbia trial and appellate judges gave PDS when surveyed about the quality of legal representation PDS provides.

Performance

In an environment that requires PDS to do more with less, PDS maintains – and improves upon – its hard-earned reputation for providing quality criminal defense advocacy.²⁵ Improving what has been recognized as a model agency is accomplished by preserving what works and identifying new opportunities. As detailed below, this year PDS accomplished its goals by identifying and pursuing high impact litigation, leveraging technology, and collaborating with our traditional opposition to push for the use of evidence-based systems that reduce incarceration – and the associated costs – while also increasing public safety. But the foundation for these high impact efforts remains the lessons learned through rigorous representation on a case-by-case basis.

Over the years, PDS has reported on its efforts to master forensic science through the formation of the Forensic Practice Group and the expanded use of experts in clients' cases. PDS has reported in prior years on its success in using this knowledge base to improve case outcomes and to push for changes in local laboratory operations to improve the accuracy and reliability of forensic test results, but the results of two cases this fiscal year are the ultimate example of PDS's performance and the impact it can have pressing for improvements in the criminal justice system.

This year, PDS's Special Litigation Division (SLD) built on its December 2009 DNA exoneration of Donald Eugene Gates in an extraordinary fashion. In Mr. Gates's case, SLD not only proved to a scientific certainty that Mr. Gates was actually innocent of the 1981 rape and

²⁵ For example, the cover article of the September 2009 issue of *Washington Lawyer*, "Gideon: Right to Counsel," described PDS as the "gold standard" and as "one of the only offices in the United States that consistently meets nationally recognized standards for indigent defense." Bob Kemper, *Gideon: Right to Counsel?: Landmark Decision Falls Short of Promise*, *Washington Lawyer*, September 2009, at 26. Also, in 2010, the Southern Center for Human Rights declared that PDS "has demonstrated what it means to champion the rights of the underserved." www.schr.org/action/resources/save_the_date_schrs_14th_annual_frederick_douglass_awards_dinner_in_washington_dc. And in 2011, Attorney General Eric Holder, Jr. described PDS as the best public defender office in the country at a Harvard School of Public Health conference. www.hsph.harvard.edu/forum/childhood-and-youth-eric-holder.cfm, Segment 7, Programs That Work, (May 2011).

murder for which he spent 28 years in prison, it also exposed hair microscopic analysis as a “junk” science that contributed to his wrongful conviction.

In the wake of Mr. Gates’s exoneration, SLD called upon the United States Attorney’s Office for the District of Columbia (USAO) to identify all cases in which FBI hair analysis had been used to win convictions in serious cases to determine if others had suffered Mr. Gates’s fate. While the USAO continued to defend hair analysis and to oppose a review of its cases, SLD identified two former PDS clients – Kirk Odom and Santae Tribble – whose convictions had been based, in part, on hair analysis.

SLD proved that both Mr. Odom, who spent more than 22 years in prison for a violent rape, and Mr. Tribble, who spent more than 27 years in prison for murder, were wrongfully convicted. In Mr. Odom’s case, mitochondrial DNA testing excluded Mr. Odom as the source of the hair found on the victim’s nightgown to a scientific certainty. Nuclear DNA testing excluded Mr. Odom as the source of the semen and sperm left by the perpetrator on the victim’s robe and pillowcases to a scientific certainty. Instead, the semen has been traced to a convicted sex offender. On July 13, 2012, a Superior Court judge found that “Mr. Odom has been the victim of a grave miscarriage of justice. He is actually innocent of the crimes for which he was convicted.”

In Mr. Tribble’s case, the 1978 murder of a cab driver was committed by a man wearing a stocking mask. An FBI agent claimed that a hair in the stocking microscopically matched Mr. Tribble’s hair, a phenomenon said to be very rare. Notwithstanding compelling alibi evidence, Mr. Tribble, who was only 17 years old at the time of the crime, was convicted. Almost 34 years later, DNA testing obtained by SLD of the hairs in the stocking mask, proved to a scientific certainty that the hairs left by the murderer could not have come from Mr. Tribble. In April 2012, a judge of the Superior Court granted Mr. Tribble’s motion to vacate his convictions and dismiss the indictment with prejudice under the Innocence Protection Act,²⁶ and in December 2012, the judge issued a certificate of actual innocence – an extraordinarily rare occurrence.

Based on PDS’s exonerations of Mr. Odom and Mr. Tribble, the USAO has reversed itself and has now agreed to conduct an audit of all cases in which the flawed “science” of hair microscopy was used to win convictions. In addition, the Department of Justice and the FBI have agreed to embark on a nationwide review of all cases in which FBI hair analysis was used to convict, spurred on by PDS’s exonerations of Mr. Gates, Mr. Tribble, and Mr. Odom and by a *Washington Post* series highlighting the flaws in such evidence and profiling Mr. Tribble and Mr. Odom.²⁷

²⁶ D.C. Code §§ 22-4131 – 4135 (2001).

²⁷ http://www.washingtonpost.com/local/crime/kirk-l-odom-officially-exonerated-dna-retesting-cleared-him-in-dc-rape-robbery/2012/07/13/gJQAUH3piW_story.html;
http://www.washingtonpost.com/local/crime/santae-tribbles-1980-murder-conviction-overturned-by-dc-judge/2012/05/16/gIQApYMtTU_story.html;
http://www.washingtonpost.com/local/crime/convicted-defendants-left-uninformed-of-forensic-flaws-found-by-justice-dept/2012/04/16/gIQAWTcgMT_story.html.

These two cases have been handled by PDS from the very beginning to this ultimate conclusion. Valuable lessons have been learned. For PDS, the ultimate outcomes in these two unfortunate cases reinforce how PDS painstakingly handles individual cases at the trial level, and will lead to training and policy work to improve the criminal justice system going forward.

Performance Measures

PDS's ability to track performance measures (beyond specific case performance like that described above) is limited but improving. As detailed below, PDS is making strides to increase its capacity to gather and analyze data. In the meantime, PDS has used more readily available data to track the outcomes of appellate cases and the reduction in the backlog to ensure we are both reducing the time it takes to resolve an appeal and maintaining PDS's appellate litigation performance.²⁸ This year, PDS's Parole Division has begun to track its case outcomes, with initial results demonstrating PDS's effectiveness at securing below-guidelines results for clients in 34 percent of cases.

PDS began measuring the percentage of clients visited within 48 hours of appointment in FY 2006. While PDS's performance in FY 2012 declined slightly, it has improved overall since the establishment of a baseline in FY 2006. PDS's actual performance and fiscal year targets are as follows:

Percentage of Cases in Which Attorney Consulted With Client Within 48 Hours²⁹

	Target	Actual
FY 2009	92%	91.2%
FY 2010	93%	92.0%
FY 2011	100%	95.4%
FY 2012	100%	94.3%
FY 2013	100%	N/A

In FY 2012, PDS achieved a reduction in some form of pretrial restraint in 53 percent of its cases. A reduction of the client's statutory exposure to pretrial restraint on liberty was 60 percent more likely to occur within the first 21 days after the initial hearing as compared to a 49-percent chance of reduction more than 21 days after the initial hearing. PDS's actual performance and fiscal year targets are as follows.

²⁸ As reported above, PDS's Appellate Division has maintained its reversal rate of over 25 percent (compared to a less than five percent reversal rate for the panel lawyers and private bar), while reducing its backlog by 65 percent.

²⁹ PDS revised its FY 2011 and FY 2012 performance targets for both 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 subject 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.

Percentage of Cases in Which Reduction in Pretrial Restraint Was Obtained³⁰

	Target	Actual
FY 2009	70%	64.0%
FY 2010	67%	59.0% 66.5% within first 21 days after initial hearing
FY 2011	99%	53.8% 60.7% within first 21 days after initial hearing
FY 2012	99%	53.0% 60.0% within first 21 days after initial hearing
FY 2013	99%	N/A

Leveraging Technology

PDS’s Case Management System

Beginning in FY 2009, PDS embarked on a multi-year project to update its case management system, Atticus, to provide greater utility to users, managers, and the executive staff. An internal project management team and an experienced outside consultant engaged by PDS generated the data set of requirements and the recommendation of an updated operating platform; they were reviewed and approved by senior management and used for the contract award process in FY 2010. During FY 2011, PDS completed the design phase of the project on schedule and converted the software platform the system operates on from a no-longer-supported software product to the more current .Net platform. In FY 2012, PDS substantially completed construction of the software system; PDS expects the new case management system to be operational by the end of FY 2013.

When PDS embarked on Atticus’s creation twelve years ago, PDS did not have the resources to design Atticus to serve as a data warehouse. The upgrade of Atticus that is currently in progress, however, will when completed allow PDS to acquire, analyze, and evaluate division-specific information and use that information to identify the most effective practices and train and assign staff accordingly. PDS also expects to use aggregate outcome data from each of its practice areas to more accurately track performance and to compare PDS’s performance over time with that of other defender institutions and other defender systems to identify best practices.³¹

³⁰ See n. 28.

³¹ PDS’s ability to conduct these comparisons is dependent on the cooperation of others. For example, PDS cannot compare outcomes in its cases to those of the panel attorneys in Superior Court because the Court will not provide electronic access to its case processing data. PDS was able to compare outcomes in appellate cases because the cases are fewer in number, and all the Court of Appeals published decisions are made available through the Court’s website.

Electronic Requests

While work is underway to overhaul Atticus, PDS has improved the current system to reduce administrative paperwork internally and with external vendors. As part of its litigation practice, PDS regularly hires experts and orders transcripts for individual cases. These orders are necessarily decentralized. By creating systems for electronic requests, approval, transmittal, and receipt, PDS has reduced the need for paper work and has improved its ability to track expenses and de-obligate requests as circumstances change in individual cases, resulting in better service to lawyers on individual cases and better data from which PDS can manage the execution of its budget.

Using Outside Technology Support

While there is no commercially available case management system that fits PDS's needs, PDS, where it can, does use outside sources to cost-effectively improve its capacity to manage. For example, PDS uses the Department of Interior's National Business Center DataMart application to acquire, analyze, and evaluate data pertaining to personnel costs. DataMart, which provides an access layer to the NBC environment that gathers unit cost information on PDS's largest expense categories, is extremely helpful in providing real-time information to senior management in the formulation and execution of strategic decisions.

Collaborative Work

Although widely known for zealously participating in the adversarial process of the criminal justice system, PDS also works closely with criminal justice agencies and the courts to make the justice system function more efficiently and fairly. In addition, PDS is always seeking to engage new partners in programs to increase services to PDS clients and improve indigent defense.

Case Initiation Project

As a member of the District's Criminal Justice Coordinating Council (CJCC), PDS is a partner with the U.S. Attorney's Office (USAO), the D.C. Metropolitan Police Department, the Pretrial Services Agency (PSA), and the D.C. Superior Court in a project to change the charging process from a paper system to an electronic one. The new system is designed to reduce the need for in-person involvement by police officers in the USAO's charging process and streamline records-sharing and administrative processes for the criminal justice system as a whole. PDS, as the organization that assists the court with its appointment of counsel function, is an essential participant in the project. The case initiation project became operational in the fall of 2012. PDS, along with PSA, assisted the project by performing integration testing for the data; PDS was the first participating entity to receive electronic court case data directly as a result of the collaborative project. The CJCC, along with its partner agencies, including PDS, received the Excellence in Government Award under the category of Interagency Collaboration in FY 2012.

Drug Court Improvements

In FY 2012, PDS, PSA, the D.C. Superior Court, the USAO, and members of the CJA panel worked together to implement changes based on research to improve the D.C. Superior Court

Drug Intervention Program (SCDIP). Research has demonstrated that Drug Court programs can be effective in reducing criminal recidivism, improving the psycho-social functioning of offenders, and reducing taxpayer costs if the courts employ specific programs targeted at specific populations. An assessment of SCDIP was completed to determine whether or not the program was employing evidence-based practices. During the fall of 2011, representatives from all of the agencies attended a week of training assessing the current state of the research on Drug Courts. As a result, many changes to the District's program were approved.

A subcommittee that included PDS was formed to implement these changes. These changes are designed to target populations most likely to re-offend without intervention and implement a combination of treatment and sanctions that research has shown produces positive outcomes for this population. The result will be a smaller but more targeted group of participants in Drug Court in which all of the participating agencies will invest more time and resources. The changes will reduce the number of cases PDS handles in Drug Court but will increase the workload of each case. Once fully implemented, the Drug Court program will collect data for future research to determine the cost-effectiveness of the program as implemented in the District in the long- and short-term, but the available research suggests this targeted investment will produce both savings and improved results.

Short-term Interventions for Success

In January 2012, the U.S. Parole Commission (USPC) began a pilot project implementing the cost-effective approach to public safety identified in a 2007 report commissioned by the CJCC. A JFA Institute study assessed the current guidelines structure used by the USPC when determining the period of incarceration a person on parole or supervised release should receive if the person was determined to have violated the conditions of release. The study concluded that the guidelines being used by the USPC had not been validated for the target population and resulted in over-incarceration. The study also concluded that the USPC could use a three-month or shorter period of incarceration and achieve the same public safety benefits as a twelve-month period of incarceration. PDS's Parole Division has been at the forefront advocating that the USPC reform its guidelines consistent with the available research. This year, the USPC instituted the Short-term Intervention for Success (SIS) project, with PDS's Parole Division providing representation at these proceedings. PDS expects that the data generated from this pilot program will support expansion of the program, generating significant savings by reducing incarceration costs while still protecting the public.

Mental Health Sanctions Docket

In March 2012, the USPC began a pilot project for managing people on parole or supervised release who suffer from mental illness. Based on its experience with the Superior Court's Mental Health Court, PDS has advocated for a new approach to technical violations by individuals with mental illness. In response, the Commission created a docket for Mental Health Sanction Hearings (Mental Health Docket). PDS agreed to provide the legal representation at these hearings, CSOSA agreed to request that some of their supervisees be summoned to appear at these Mental Health Sanction Hearings rather than the more traditional revocation hearings at the D.C. Jail, and the District of Columbia Department of Mental Health (DMH) agreed to participate. The goal of the Mental Health Docket is to target a specific population whose conduct – failing to attend all of the required meetings, failing to attend mental health treatment,

and failing to attend drug treatment – is not indicative of a public safety threat but instead caused by difficulties faced by people with mental illness making and remembering appointments. Rather than issue an arrest warrant for a supervisee a supervision officer finds not to be in full compliance, the USPC summons the supervisee to a Mental Health Sanction Hearing in the community. At that hearing, all of the parties invested in keeping that individual in compliance with his or her supervision come together to create an individualized supervision plan. The pilot project is nearing its first anniversary, and the results thus far have demonstrated that the individuals targeted by this program can be successful in the community, saving taxpayers the costs associated with incarceration.

Compassionate Release

PDS assists inmates who are terminally ill but unable to apply to the Court for compassionate release. Most terminally ill D.C. offenders serving prison sentences can seek compassionate release from either the Court or the Federal Bureau of Prisons. No statute, however, allows a terminally ill D.C. Code offender serving a determinate misdemeanor sentence to apply for a reduction in sentence. PDS drafted language to close this gap in the law. PDS worked with the USAO and the D.C. Department of Corrections to refine the language of the bill to ensure that the interests and needs of all affected agencies were addressed. The D.C. Council unanimously approved the resulting bill, which was then signed by the Mayor. The Act is now pending Congressional review and is expected to become law in early April 2013. The bill will not only allow inmates to die with dignity and in the company of their families but will save taxpayers the unnecessary costs associated with guarding incapacitated inmates in hospital settings.

Community Partnerships Helping People with Reentry and Employment

In FY 2012, PDS held its eighth annual “Community Reentry and Expungement Summit” in the District of Columbia. As with each previous Summit, PDS served approximately 700 people in the community by providing free legal advice as well as direct access to valuable reentry resources. PDS recruited and trained nearly 40 pro bono attorneys from the D.C. Bar along with student law clerks to staff the Summit. PDS also brought together nearly 70 service providers for this year’s Summit.³² Attendees received assistance with job searches, interview skills, civil

³² The service providers included: Addiction Prevention and Recovery Administration; Adult Education Training Program; Bennett Career Institute; Bread for the City; Byte Back; Capital Area Asset Builders; Coalition for the Homeless; Center for Employment Training (SOME); Center for Leadership and Social Development, Inc.; Consumer Action Network; Community College of the District of Columbia; Coalition for the Homeless; Community Education Group; Court Services and Offender Supervision Agency Vocational Training & Education/Employment; D.C. Central Kitchen; D.C. Department of Disability Services; D.C. Department of Employment Services; D.C. Department of Human Services – Strong Families Program Division; D.C. Department of Mental Health; D.C. Family Court Self Help Center; D.C. Jail Advocacy Project; D.C. Office of the Attorney General – Child Support Services Division; D.C. Rehabilitation Services Administration; Employment for Former Offenders; Dress for Success D.C.; East of the River Family Strengthening Collaborative; Edgewood/Brookland Family Service Collaborative; EXCEL Institute; Far Southeast Family Strengthening Collaborative; FLAME Financial; Good Ground – Good Life, Inc; Greater Mt.

legal services, parole consultations, and referrals for reentry assistance, including the Work Opportunity Tax Credit, the Federal Bonding Program, disability benefits, and public housing opportunities.

Biennial Public Defender Advocacy, Training, and Hiring Conference

In FY 2008, PDS through its Human Resources Division, led a collaborative effort to develop the Public Defender Advocacy, Training, and Hiring Conference (PATH) dedicated to promoting indigent defense as a career opportunity among current law students and recent graduates. The conference assists PDS in its recruiting efforts by encouraging talented lawyers to consider careers in indigent defense. Along with six other defender offices from across the country, PDS presented the third biennial PATH Conference in FY 2012. More than 200 students and recent graduates attended the conference. A California law school official was so impressed with the program that she is working with PDS to replicate it on the West Coast in the alternate years.

Systemic Litigation

As a comparatively small institutional defender, PDS has traditionally handled those cases in which it can have the most impact. Historically, that has included the most serious and costly criminal and delinquency cases. But PDS also used those cases to help it identify litigation that can have a larger impact beyond cases handled by individual PDS lawyers. This year, PDS used highly skilled lawyers to target cases involving constitutional violations that affect large numbers of persons and cause both unfairness and inefficiencies in the criminal justice system

Sex Offender Treatment

In July 2012, PDS's Special Litigation Division won a resounding victory in federal court in *Wills v. U.S. Parole Commission, et al.*³³ Mr. Wills had been placed in sex offender treatment for misdemeanor drug offenses in 2009 and again in 2011 based on a 1984 unproved sex offense allegation. A U.S. District Court judge found that Mr. Wills had been denied his constitutional

Calvary – Cluster B Team; Green Pathway D.C. (Goodwill); Health Services for Children with Special Needs; Housing Counseling Services; Income Maintenance Administration; La Casa Multicultural Center; La Clinica Del Pueblo; Latin American Youth Center Youth Build; Lydia's House; Mayor's Office on Returning Citizen Affairs (formerly Office of Ex-Offender Affairs); Mayor's Office on Latino Affairs; Miller & Long Construction; N Street Village; Neighborhood Legal Services Program; Never Give Up Foundation; New Course Catering; New Endeavors by Women; Oxford Houses; Our Place, D.C.; Prince George's County, Maryland Economic Development Corp; Prince George's County, Maryland One-Stop Career Center; Returning Citizens United, Inc.; Samaritan Inns; Serenity, Inc.; Shirly Contracting; Strive, D.C.; Suited for Change; The Reentry Network for Returning Citizens; Transgender Health Empowerment, Inc.; Unity Health Care; U.S. Department of Veterans Affairs Incarcerated Veterans Reentry; U.S. Department of Veterans Affairs Veterans Justice Outreach Initiative; Welcome Home Program; Weatherization Training Program; Wider Opportunities for Women; and Women's P.U.R.P.O.S.E Empowerment Group.

³³ Case No. 11-cv-001464 (BH).

right to due process when he had been compelled to undergo sex offender treatment without any process at all.

The Court agreed with PDS that such treatment was not only violative of Mr. Wills's rights, it was also a needless waste of government resources. The court wrote:

In a time of fiscal austerity and strained resources, meaningful process to determine whether the plaintiff should have been subject to the SOA [sex offender aftercare] would not only have saved the plaintiff from this ordeal, but saved the Parole Commission precious resources expended on Mr. Wills' unnecessary treatment. Providing procedures in order to more carefully target resources on individuals who need them would be more practical.

Civil Forfeiture

In FY 2012, SLD also successfully challenged the constitutionality of the District of Columbia's civil forfeiture scheme in the U.S. District Court. PDS has represented four individuals whose cars were seized by the D.C. Metropolitan Police Department. In the first case, PDS filed suit alleging a due process violation in the failure to provide a prompt post-deprivation hearing before a neutral arbiter to determine whether probable cause existed to retain the car pending the libel proceedings and whether the equities favored the client's continued use of the car until such proceeding concluded. PDS won the preliminary injunction motion on this issue – the right to a prompt post-deprivation hearing – and the court issued an extensive order critical of the District's forfeiture scheme.

Three subsequent complaints were then filed on behalf of other indigent individuals whose cars had been seized for forfeiture by the D.C. Metropolitan Police Department without any process. In each case, the District returned the cars after the complaints and motions for preliminary injunctions were filed. In three additional cases, PDS obtained similar relief without filing suit.

PDS anticipates that, in time, the District will make changes to its forfeiture process, eliminating the need for continuing litigation and substantially improving the fairness of the process for every forfeiture case in the District of Columbia.³⁴

Advancing Criminal Law

Since even before the establishment of the District of Columbia court system in 1970, PDS's Appellate Division has been at the forefront of appellate litigation in criminal cases. PDS's appellate cases have had an impact on the District's criminal justice system, as the decisions that result often establish or clarify legal standards in criminal and juvenile delinquency cases. Most good appellate cases start with the trial attorney's creation of a carefully preserved record during the trial. The Trial Division and the Appellate Division interact on a regular basis to help trial lawyers correctly establish the case record in the event of an adverse trial ruling (or, in a few cases, a challenge from the prosecution). Evidence of the high quality of PDS's trial work,

³⁴ The D.C. Metropolitan Police Department seizes more than 1,400 vehicles a year.

informed by the Appellate Division's expertise, and of the high quality of the Appellate Division's briefs is its remarkable reversal rate of over 25 percent.³⁵

Court of Appeals Litigation

The Appellate Division continues at the vanguard of criminal justice in the District of Columbia by providing exemplary representation of individual clients, advancing the development of the law, and training the bench and bar.

Individual cases: During FY 2012, PDS appellate lawyers won reversals in a significant number of important cases. These victories not only vindicate the rights of deserving individuals under the United States Constitution and District of Columbia law, but because they tend to involve complex questions of law, the resulting published opinions serve as precedent and indispensable guidelines for Superior Court judges, advancing the rule of law in a far greater number of cases.

In *United States v. Woodard*,³⁶ PDS's appellate attorneys persuaded the D.C. Court of Appeals to reverse its own earlier decision and vacate Mr. Woodard's convictions in the face of conduct by the prosecutor in his rebuttal argument that was misleading to the jury. The conduct occurred during Mr. Woodard's retrial on charges of conspiracy to assault a person with a firearm and assault with a dangerous weapon;³⁷ the first trial involved a co-defendant. The prosecutor, with the intent of bolstering a key government witness's credibility, argued that the witness's testimony at Mr. Woodard's first trial that Mr. Woodard was not shooting was due to the witness's fear of identifying a shooter face-to-face. In fact, as the prosecutor knew but did not disclose to the jury, at the first trial, the witness had made just such a face-to-face identification of the other defendant as one of the shooters.

Amicus curiae work: An important function of PDS's Appellate Division is to aid the Court of Appeals as a "friend of the Court" by submitting briefs and presenting oral argument in non-PDS cases that raise novel and important questions of law. In FY 2012, PDS did important work in a number of such cases. The Appellate Division intervened as amicus curiae and filed briefs in two cases (*Antaun Conley v. United States* and *Christopher Barnes & Wilson Jones v. United States*³⁸) challenging the constitutionality of D.C. Code § 22-2511, a relatively new statute that makes it a felony merely to be present in a car and then to learn that the car contains an unlawful gun, without requiring any participation in the unlawful venture whatsoever. The appellate lawyer on these cases also testified before the Council of the District of Columbia regarding the constitutional infirmities of a statute that sweeps so broadly without regard to personal guilt. In addition, PDS was invited by the Court of Appeals to file amicus curiae briefs in cases dealing with domestic violence prosecutions in the Superior Court under a system subsequently determined to be unconstitutional. Under previous precedent (later overruled), judges believed that domestic violence complainants were authorized to privately criminally prosecute

³⁵ The reversal rate for criminal appeals handled by all other attorneys (pro bono, retained, and panel) is under five percent. This data is based on a review of criminal appeals cases since 2005.

³⁶ 56 A.3d 125 (D.C. 2012).

³⁷ PDS had won the client's first appeal, sending the case back to the trial court.

³⁸ Case Nos. 11-CF-589, 11-CF-1421 and 11-CF-1435.

defendants – without any check or interference by a government prosecutor acting in the public interest. PDS succeeded in defeating such a system by litigating the matter all the way up to the Supreme Court of the United States. The recent cases solicit PDS’s advice in how to fairly deal with such cases in the future and in *In re Jackson*³⁹ the Court of Appeals adopted PDS’s position that all criminal prosecution for violations of a civil protection order (CPO) must be prosecuted in the name of the United States by a disinterested.

Impact on Children’s Lives

Understanding the experiences of young people and devising child-specific treatment and opportunities can save taxpayer money in the long run and improve public safety.⁴⁰ PDS’s work with children in the delinquency system over the years has led to significant improvements in many of those children’s lives. A recent example is S.P., who went from being arrested for an assault against his mother to training to become a firefighter.

S.P., who was 17 when he was arrested, is represented by a panel attorney. PDS’s Office of Rehabilitation and Development (ORD) became involved in S.P.’s case at the request of his mother, who had decades earlier received services from ORD. Because S.P. had a history of assault offenses against his mother, the court confined him pending trial at a secure youth detention facility and ordered psychological and psychiatric evaluations for him. Although S.P. was a quiet, withdrawn young man who had witnessed his mother’s domestic abuse by a number of men, ORD’s experienced forensic social workers gained S.P.’s trust and, consequently, a greater understanding of his family history. ORD learned that S.P. acted non-violently and otherwise appropriately when not in his mother’s presence. This information led S.P.’s juvenile probation officer to recommend placement in the District’s Independent Living Program (ILP). Given S.P.’s model behavior in the secure detention facility and ORD’s promise of continued involvement in S.P.’s case, the court was willing to release S.P. and then order that S.P. participate in the ILP.

As a result of S.P.’s successful transition; his compliance upon his release; and the favorable impression he left on those involved in helping and supervising him (including the fact that he was considered the best employee at a summer job he held earlier), his probation officer and the ILP worked with ORD to build on S.P.’s success. The ILP waived its minimum age requirement for S.P. and found an apartment, which has 24-hour adult support, for him. The court ultimately placed S.P. on probation. He is currently in a leadership program at his high school, he is volunteering at a program that helps formerly homeless persons, and he is involved in a firefighter vocational program that could lead to full-time employment upon his graduation.

Without ORD’s involvement, S.P. might be either unnecessarily incarcerated or homeless and cycling through the delinquency and then the adult criminal system.

³⁹ 51 A.3d 529 (D.C. 2012)

⁴⁰ See Ted Gest, Oregon’s Experiments to Reduce Juvenile Crime, *Promising Approaches to Addressing Crime*, U. of Penn., Forum on Crime & Justice, (2002), http://www.sas.upenn.edu/jerrylee/programs/fjc/paper_oct02.pdf.

Training

In FY 2012, 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,⁴¹ hosted its ninth Forensic Science Conference, produced local training for certified panel investigators, and produced the 46th Annual Criminal Practice Institute Conference. 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.⁴²

Annual Forensic Practice Conference

PDS’s work securing Mr. Odom’s exoneration debunked the hair analysis used in his case, and it appears law enforcement will no longer rely on this type of evidence. But Mr. Odom’s case also involved an eyewitness who incorrectly identified him as her assailant. Because most criminal cases will continue to rely on eyewitness identification, in FY 2012, PDS devoted its annual forensic practice conference to educating practitioners about the scientific research on the fallibility of eyewitness identification and the presentation this information to judges and juries. In June 2012, more than 140 members of the defense bar attended sessions including: current state of eyewitness identification law; cross-examination of the eyewitness and the detective; selecting, preparing, and conducting a direct examination of an eyewitness and an identification expert witness; identifying issues that require expert testimony; finding a qualified expert; and crafting legal arguments in support of the admission of a defense expert’s testimony.⁴³

⁴¹ In FY 2012, the Summer Series received an average rating of 4.6 on a five-point scale. The lowest rating for a single session was 4.2 and the highest was 5.

⁴² In addition, PDS staff attorneys, forensic social workers, and investigators are routinely asked to be presenters at training sponsored by the District of Columbia courts, the D.C. Bar, and various defender organizations locally and nationally. Through these programs, PDS provides assistance to local counsel and to defender offices around the country, most recently in Mississippi, Missouri, Virginia, New York, and Florida.

⁴³ The overall rating of the Forensic Science Conference by the attendees was 4.62 on a five-point scale, with 94 percent of attendees giving the conference a rating of 4 or better. Comments from attendees included: “excellent presentation, extremely helpful,” “absolutely terrific,” “very useful, gave me tools to better represent my clients,” “everyone well prepared,” and “best ever!”

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 in thousands of matters. The systems for involuntary commitments, parole revocation 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 2012, PDS won many trials, fought a forceful fight in others, and found resolution prior to trial for many clients. Whatever the outcome, 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.

BUDGET DISPLAYS

PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

FY 2014 Summary of Changes

	Perm. Pos.	FTE	Amount (\$ in 000s)
FY 2012 Enacted	216	213	37,241
(Excluding non-recurring expenses)			
Adjustments to Base:			
New Positions (fund authorized positions)	5	5	650
Pay Raises.....	-	-	1,008
General Pricing Level Adjustments.....	-	-	558
Total, Adjustments	-	-	2,216
FY 2014 BASE	221	218	39,457
 PROGRAM CHANGES:			
Non-Recurring Expenses - Moving Expenses	-	-	1,150
TOTAL, Program Changes	-	-	1,150
 FY 2014 REQUEST	221	218	40,607

FY 2014 Salaries and Expenses
Summary of Requirements by Grade and Object Class
(\$ in 000s)

<u>Grades:</u>	2012 Enacted		Annualized 2013 CR		FY 2014 Budget Request	
	Pos	Amount	Pos	Amount	Pos	Amount
ES	3	466	3	466	3	473
AD-15	15	2,227	15	2,227	15	2,310
AD-14	74	8,702	74	8,702	77	9,291
AD-13	35	3,776	35	3,776	37	4,152
AD-12	27	2,117	27	2,117	27	2,198
AD-11	19	1,434	19	1,434	19	1,506
AD-10	2	119	2	119	2	120
AD-09	16	921	16	921	16	978
AD-08	4	208	4	208	4	211
AD-07	17	717	17	717	17	728
AD-06	2	90	2	90	2	91
AD-05	2	77	2	77	2	78
AD-04	-	-	-	-	-	-
Total Appropriated Positions	216	20,854	216	20,854	221	22,136
EX/ES FTE		3		3		3
GS FTE		210		210		215
Average EX/ES Salary		155		155		158
Average AD Salary		97		97		100
Average AD Grade		13		13		13
<u>Object Class</u>						
11.1 Full Time Permanent	216	20,854	216	20,854	221	22,136
11.3 Other Than FT Perm.		-		-		-
11.5 Other Pers.Comp.		290		290		270
11.8 Special Pers. Services		987		987		900
12.0 Benefits		5,856		5,856		6,339
13.0 Unemployment Comp.		100		100		100
Personnel Costs	216	28,087	216	28,087	221	29,745
21.0 Travel & Training		379		379		368
22.0 Transportation of Things		10		10		10
23.1 Rental Payments to GSA		2,425		2,425		3,470
23.2 Rental Pmts.to Others, & Misc.		812		812		220
23.3 Comm., Utilities & Misc.		380		380		468
24.0 Printing and Reproduction		79		79		102
25.1 Consulting Services		1,194		1,194		953
25.2 Other Services		1,737		1,680		1,476
25.3 Purch.from Gov't Accts.		499		499		1,075
25.4 Maintenance of Facilities		115		115		124
25.7 Maint. of Equipment		255		255		325
26.0 Supplies and Materials		516		516		533
31.0 Furniture and Equipment		753		753		588
32.0 Buildout		-		-		-
Non-Personnel Costs		9,154		9,097		9,712
TOTAL	216	37,241	216	37,184	221	39,457
31.0 Non recurring Expense - PDS New Telephone System Moving Expenses		-		285		-
		-		-		1,150
Grand Total		37,241		37,469		40,607
OUTLAYS		33,517		33,722		36,546

APPROPRIATION LANGUAGE

Public Defender Service for the District of Columbia

Appropriation Language Fiscal Year 2014

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, [\$37,241,000] **\$40,607,000: 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 (gratuitous) services for the purpose of aiding or facilitating the work of the District of Columbia Public Defender Service.

[Change Board of Trustees Members' Status to Employees]

Provided further, That notwithstanding D.C. 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 Public Defender Service.

ORGANIZATION CHART

