

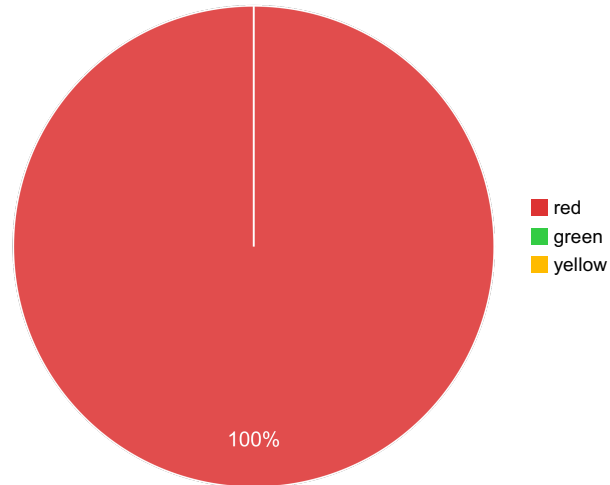
# Public Defense Services Commission

Annual Performance Progress Report

Reporting Year 2022

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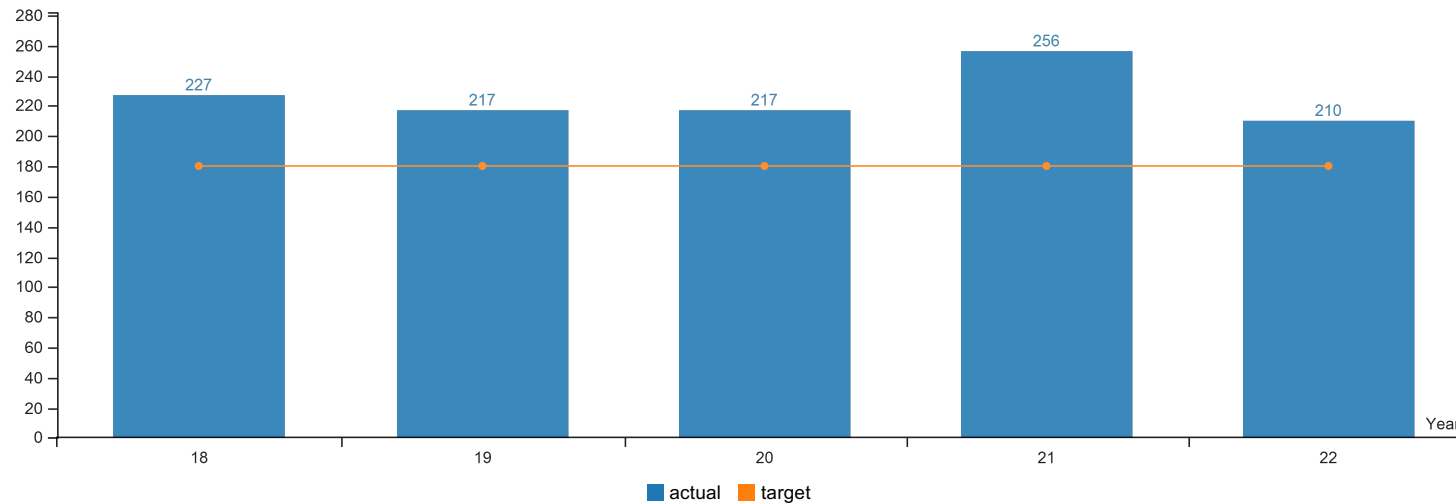
KPM #	Approved Key Performance Measures (KPMs)
1	APPELLATE CASE PROCESSING - Median number of days to file opening brief.
2	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.
3	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.
4	TRIAL LEVEL REPRESENTATION - During the term of the OPDS contract, percent of attorneys who obtain at least 12 hours per year of continuing legal education credit in the area(s) of law in which they provide public defense representation.[1] [1] Case types listed in the 2014-2015 Public Defense Legal Services Contract General Terms are: criminal cases, probation violations, contempt cases, civil commitment cases, juvenile cases, and other civil cases.
5	PARENT CHILD REPRESENTATION PROGRAM (PCRP) - Percent of PCRP attorneys who report spending approximately 1/3 of their time meeting with court appointed clients in cases which the attorney represents a parent or child with decision-making capacity.[1] [1] For a discussion on determining decision-making capacity, see The Obligations of the Lawyer for Children in Child Protection Proceedings with Action Items and Commentary, Oregon State Bar, Report of the Task Force on Standards of Representation in Juvenile Dependency Cases (2014).



Performance Summary	Green	Yellow	Red
	= Target to -5%	= Target -5% to -15%	= Target > -15%
Summary Stats:	0%	0%	100%

KPM #1	APPELLATE CASE PROCESSING - Median number of days to file opening brief.
	Data Collection Period: Jan 01 - Dec 31

\* Upward Trend = negative result



Report Year	2018	2019	2020	2021	2022
<b>Median Number of Days to File Opening Brief</b>					
Actual	227	217	217	256	210
Target	180	180	180	180	180

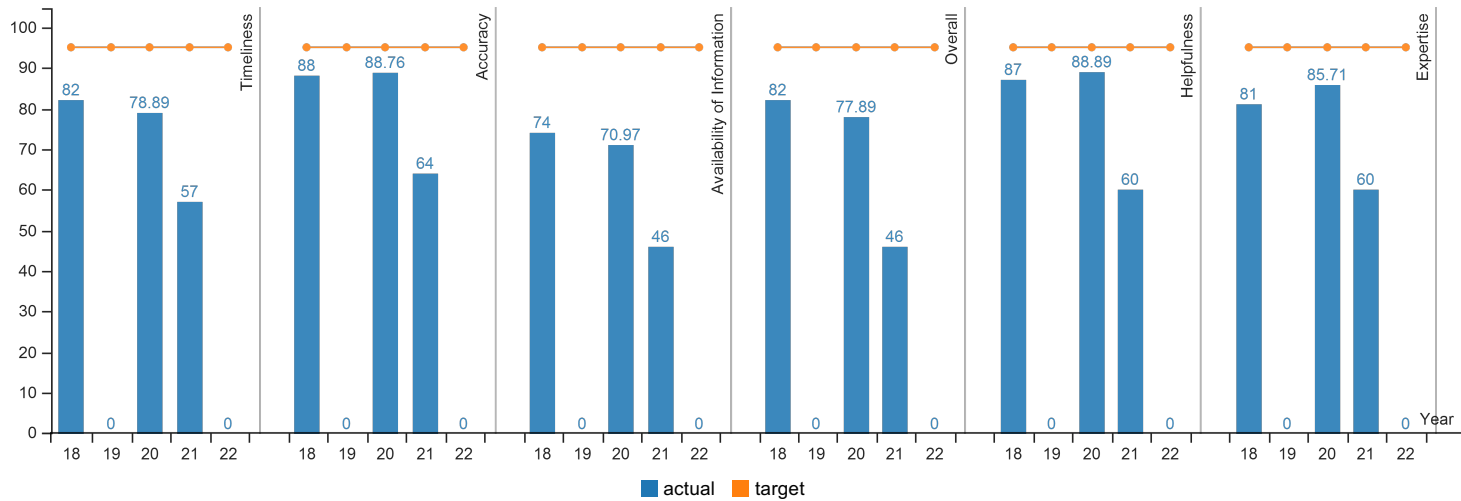
### How Are We Doing

The Appellate Division made significant gains toward its goal during the 2021-22 fiscal year. The median filing date rose sharply to 256 days during the 2020-21 fiscal year due to a confluence of events. A prolonged three-year period of increasing referrals without a corresponding increase in workforce capacity had accumulated an unprecedented number of open, unbriefed cases in the Criminal Appellate Section. Then, in early 2020, the COVID-19 pandemic presented complications: a significant number of attorneys and staff took leave and the division needed to adjust operations to primarily a remote work environment. Many attorneys needed to ask for extraordinary extensions to file a brief. After adjusting to new conditions, appellate division attorneys and staff focused on eliminating the backlog of cases, while pandemic-related conditions resulted in significantly fewer cases being resolved in the circuit court and referred for appeal. The elimination of the backlog and temporary reduction in case referrals has resulted in a median filing date of 210 days during the 2021-22 fiscal year.

### Factors Affecting Results

The ability to meet and exceed the goal correlates positively to the number of experienced attorneys and negatively to the number of cases and the complexity of cases referred. Attracting, training, and retaining competent attorneys affect progress toward the goal. The agency does not control the number or type of referred cases.

KPM #2 CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.  
 Data Collection Period: Jan 01 - Dec 31



Report Year	2018	2019	2020	2021	2022
<b>Timeliness</b>					
Actual	82%		78.89%	57%	
Target	95%	95%	95%	95%	95%
<b>Accuracy</b>					
Actual	88%		88.76%	64%	
Target	95%	95%	95%	95%	95%
<b>Availability of Information</b>					
Actual	74%		70.97%	46%	
Target	95%	95%	95%	95%	95%
<b>Overall</b>					
Actual	82%		77.89%	46%	
Target	95%	95%	95%	95%	95%
<b>Helpfulness</b>					
Actual	87%		88.89%	60%	
Target	95%	95%	95%	95%	95%
<b>Expertise</b>					
Actual	81%		85.71%	60%	
Target	95%	95%	95%	95%	95%

How Are We Doing

It was reported that the last survey was done in August of 2021, however those results are not available nor are they particularly relevant. The agency has been extensive change within the commission and the agency, and this key performance measure was not brought forward. The agency is currently in the process of creating a formalized plan for moving forward with agency restructuring and modernization which will influence KPMs including this one.

The agency hired consultant to work with the commission on strategic planning and did several surveys to create several insight reports that we shared with the Legislature and stakeholders. The surveys centered on four areas: (a) Internal Operations, which indicated that the agency faces several challenges implementing and overseeing its operations most acutely in the contracting and payment processes, procedures, and policies; (b) Quality Representation, which indicated that the current contracting model is insufficient to meet the Agency's mission of providing high-quality representation; (c) Stakeholder Relationships, which indicated that relationship building with public defense stakeholders is key to improving the public defense system; and (d) Internal Agency Culture, which indicated that although strengths were identified by Agency staff, the Agency needs to focus on key cultural issues to enable the Agency to achieve its mission.

#### **Factors Affecting Results**

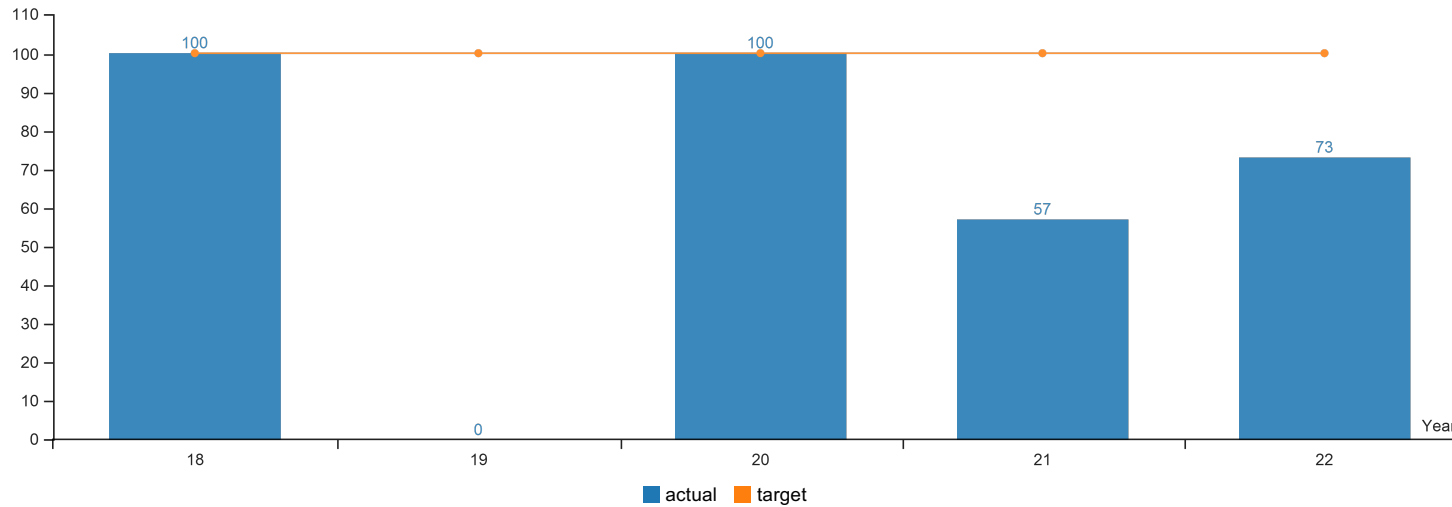
OPDS implemented a complete overhaul to its contracting model beginning January 1, 2020. The agency shifted from paying contract attorneys a flat fee per case rate to a full-time equivalent (FTE) contracting model in which the agency contracted for attorneys' time that they work on public defense cases. Under the new contract, attorneys receive a set monthly contract amount for appointments to public defense cases.

In July 2022, under a newly hired director, the agency again pivoted and changed the way contractors are compensated by also considering different pay levels depending on experience, and also chose to move away from a full-time equivalent model to maximum attorney capacity (MAC) model based on the results of the series of Sixth Amendment study on representation and the American Bar Association study on attorney capacity.

The combination of the internal agency changes and the large-scale change in the contracting model would indicate a continued downward trajectory towards lower numbers for the agency in all categories had a survey been initiated. While the consultant lead surveys did provide insight and direction, they were not designed to coincide with previous surveys for this KPM and do not provide the relevant information to update the actuals associated with the historical data.

KPM #3	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.
	Data Collection Period: Jan 01 - Dec 31

\* Upward Trend = positive result



Report Year	2018	2019	2020	2021	2022
<b>Percentage of total best practices met</b>					
Actual	100%		100%	57%	73%
Target	100%	100%	100%	100%	100%

### How Are We Doing

For the relevant period, OPDS evaluated the PDSC as it relates to [Best Practices for Boards and Commissions](#), as recommended by the Oregon Department of Administrative Services. It concluded that the PDSC satisfied 11 of the 15 criteria. Gaps for the PDSC were whether the Executive Director's performance expectations are met; whether the Board reviews the Annual Performance of Progress Report; whether the Board is appropriately involved in the review of the agency's key communications; and whether the board is appropriately involved in policy-making activities.

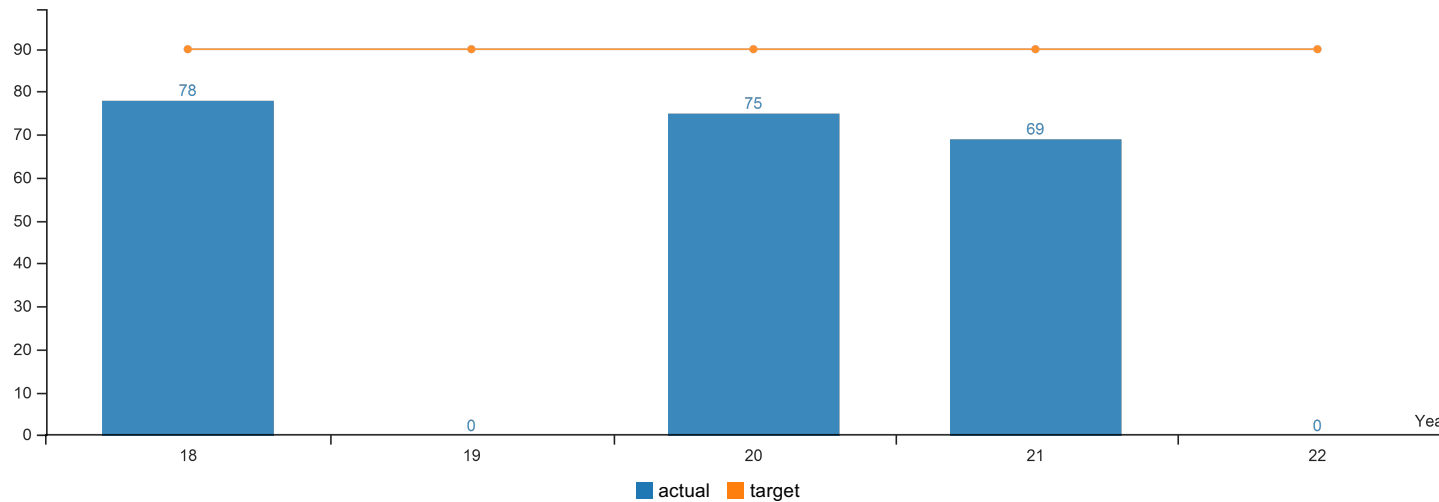
### Factors Affecting Results

The PDSC has shown improvements from the previous year's performance. The level of communication between the agency and members of the PDSC has increased since the last reporting cycle, with more frequent communication between the executive director and PDSC members, and regularly calendared touchpoints prior to PDSC meetings. The agency's leadership team organized a training retreat with PDSC members in the fall of 2021, which covered various areas of the PDSC's obligations. The agency also began a program for formally orienting new PDSC members soon after appointment.

There needs to be additional focus and training on the issue of governance, both amongst the PDSC itself and between agency staff and the PDSC. This is particularly important and urgent given that the PDSC was reconstituted by order of the Chief Justice in August 2022, with 5 departures and 5 new members.

KPM #4	TRIAL LEVEL REPRESENTATION - During the term of the OPDS contract, percent of attorneys who obtain at least 12 hours per year of continuing legal education credit in the area(s) of law in which they provide public defense representation.[1] [1] Case types listed in the 2014-2015 Public Defense Legal Services Contract General Terms are: criminal cases, probation violations, contempt cases, civil commitment cases, juvenile cases, and other civil cases.
	Data Collection Period: Jan 01 - Dec 31

\* Upward Trend = positive result



Report Year	2018	2019	2020	2021	2022
<b>Percent of Attorneys with 12 CLE Credits Annually</b>					
Actual	78%		75%	69%	
Target	90%	90%	90%	90%	90%

#### How Are We Doing

There was no survey conducted during this reporting period. There has been extensive change within the commission and the agency, and this key performance measure was not brought forward. The agency is currently in the process of creating a formalized plan for moving forward with agency restructuring and modernization which will influence KPMs including this one.

#### Factors Affecting Results

The agency is involved a very extensive planning exercise, to include how it fits within the overall statewide Public Safety conversation. The agency has had three directors over the last two years and will be hiring another new director in the coming months. The agency is amid a constitutional crisis concerning representation as part of the aftereffects of the recent pandemic and has thus been delayed in agency planning effort which includes examination of current KPMs. KPMs are very complex and difficult to craft. KPMs must meet the following criteria: (a) have a clear nexus with the agency's strategic mission and operational planning; (b) be under the primary influence or control of the agency; (c) be evaluative of the effectiveness of a program or activity and be meaningful and useful to the agency, the Legislature, and other stakeholders; (d) align with best practices and, if possible, peer states or institutions; (e) be objective and quantifiable and align with enterprise data management; (f) be stable and durable and consistently measured over an extended period of time rather than subject to frequent change; and (g) align with the agency's internal performance metrics and budget to provide information about outcomes.

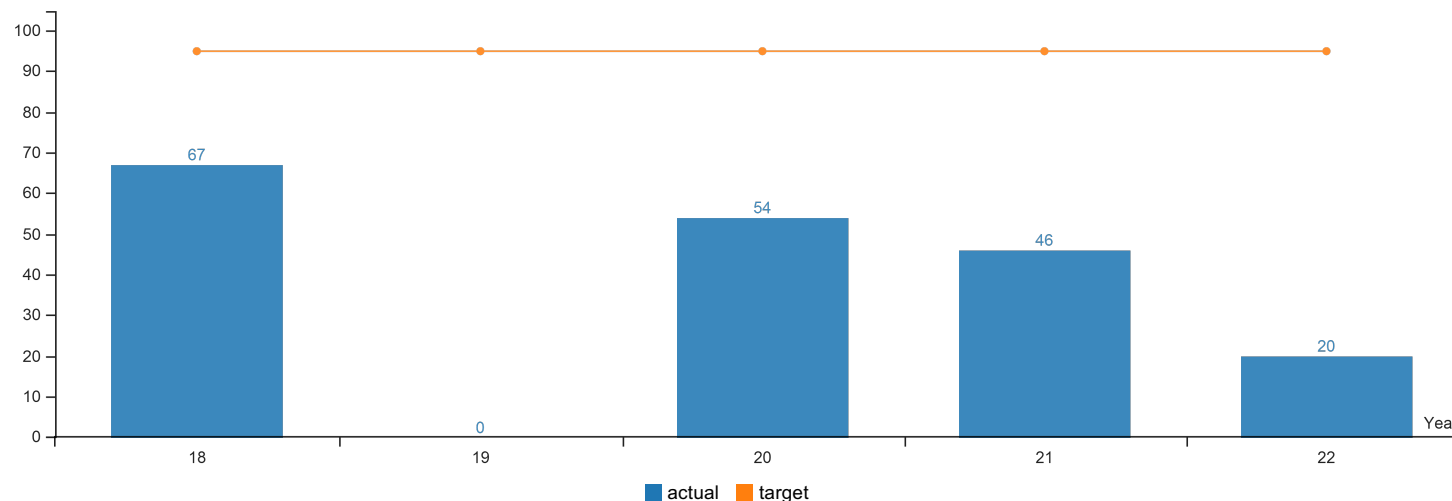
In the last reporting period, it appeared that the outcome actual had dropped because of the global pandemic, and improvement would be expected as the world came out of the circumstances, nonetheless a survey was not completed, and any contemplated results are mere speculation. In the coming months the agency hopes to reevaluate this KPM and possibly recommend change or

removal. In either case the agency will plan to get back on track with this measure until such time as it changes.



KPM #5	PARENT CHILD REPRESENTATION PROGRAM (PCRP) - Percent of PCRP attorneys who report spending approximately 1/3 of their time meeting with court appointed clients in cases which the attorney represents a parent or child with decision-making capacity.[1] [1] For a discussion on determining decision-making capacity, see The Obligations of the Lawyer for Children in Child Protection Proceedings with Action Items and Commentary, Oregon State Bar, Report of the Task Force on Standards of Representation in Juvenile Dependency Cases (2014).
	Data Collection Period: Jul 01 - Jun 30

\* Upward Trend = positive result



Report Year	2018	2019	2020	2021	2022
<b>Percent of PCRP Attorneys Spending 1/3 Time Meeting With Clients</b>					
Actual	67%		54%	46%	20%
Target	95%	95%	95%	95%	95%

#### How Are We Doing

This Key Performance Measure separates representation of clients with decision-making capacity from representation of clients with diminished capacity (typically young children). However, data gathered by the Parent Child Representation Program (PCRP) program does not distinguish based on decision-making capacity. Therefore, the data reported for this KPM includes time spent with all clients.

From July 2021 to June 2022, 20% of the PCRP attorneys report spending approximately one-third of their time meeting with clients. During this time period, PCRP attorneys spent an average of 23% of their time meeting with clients.

#### Factors Affecting Results

This measure analyzes attorney performance in the ten counties in which the PCRP has been implemented: Linn and Yamhill (2014), Columbia County (2016); Coos and Lincoln Counties (2018); Multnomah County (2020); and Benton, Clatsop, Douglas, and Polk Counties (2021).

As with earlier KPM reports, there has been a continued decline in this measure. The lower rate of attorneys who report meeting the one-third target may be related to the continued COVID pandemic and related restrictions, including, for example, court closures and lack of access to technology/communication tools by clients. In addition, the following factors may also be affecting this measure: an increase in the number of jurisdictions and attorneys participating in the PCRP; changes to how attorneys report the time spent on various aspects of representation that were implemented in January 2021; turnover in agency staff that support the PCRP; a lack of sufficient training on reporting; and a lack of clarity regarding the methodology used previously in reporting on this measure.

The Parent Child Representation Program case managers add to the client communication time with defense team. Case Managers are social service professionals and work as part of the legal representation team in 10-15% of the cases. Case managers work with attorneys to address non-legal barriers and help achieve timely and sensible case resolution is a best practice and a critical component of the success of the PCR. The PCR case managers are required to spend at least 85% of their time in direct service work, providing an additional investment in client contact by the defense team.

The agency needs to continue monitoring the quality of work provided by lawyers in the Parent Child Representation Program. Additional consideration should be given to the data collection and utilization process. There should be further examination of which metrics are most sensible to measure and which are indicative of standards-based legal representation associated with improving client engagement and court outcomes. Mixed-methods (quantitative and qualitative) data should also be used to establish benchmarks which are indicative of effective legal representation. OPDS continues its agency-wide restructuring and modernization, which will include refinement and improvement of PCR data collection, analysis, and application.