

PUBLIC DEFENSE SERVICES COMMISSION Annual Performance Progress Report (APPR) for Fiscal Year 2005-06

2007-09 Budget Form 107BF04c

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Agency Mission

Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

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ABOUT THIS REPORT

Purpose of Report

The purpose of this report is to summarize the agency's performance for the reporting period, how performance data are used and to analyze agency performance for each key performance measure legislatively approved for the 2005-07 biennium. The intended audience includes agency managers, legislators, fiscal and budget analysts and interested citizens.

1. PART I: EXECUTIVE SUMMARY defines the scope of work addressed by this report and summarizes agency progress, challenges and resources used.
2. PART II: USING PERFORMANCE DATA identifies who was included in the agency's performance measure development process and how the agency is managing for results, training staff and communicating performance data.
3. PART III: KEY MEASURE ANALYSIS analyzes agency progress in achieving each performance measure target and any corrective action that will be taken. This section, the bulk of the report, shows performance data in table and chart form.

KPM = Key Performance Measure

The acronym "KPM" is used throughout to indicate **Key Performance Measures. Key performance measures are those highest-level, most outcome-oriented performance measures that are used to report externally to the legislature and interested citizens. Key performance measures communicate in quantitative terms how well the agency is achieving its mission and goals. Agencies may have additional, more detailed measures for internal management.**

Consistency of Measures and Methods

Unless noted otherwise, performance measures and their method of measurement are consistent for all time periods reported.

PUBLIC DEFENSE SERVICES COMMISSION

TABLE OF MEASURES

Agency Mission: Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

2005-07 KPM#	2005-07 Key Performance Measures (KPMs)	Page #
1	APPELLATE CASE BACKLOG - Number of cases in the Legal Services Division backlog	5
2	FEE STATEMENTS REDUCED - Percentage of fee statements reduced due to incorrect billing	7
3	PROCESSING FEE STATEMENTS - Percentage of fee statements processed within 10 business days	8
4	REVIEWING EXPENSE REQUESTS - Percentage of non-routine expense requests reviewed within 5 business days	9
5	EXPENSE COMPLAINTS – Percentage of complaints regarding payment of expenses determined to be founded	11
6	BEST PRACTICES - Percentage of contractors that have implemented best practices and resolved problems relating to the quality and cost-efficiency of their services, which are identified by PDSC’s site visit process and the process’s “360 degree” evaluations	13
7	ATTORNEY PERFORMANCE COMPLAINTS - Percentage of complaints regarding attorney performance determined to be founded.	15

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1. SCOPE OF REPORT

- Key performance measures address all agency programs.

2. THE OREGON CONTEXT

The Public Defense Services Commission is responsible for the provision of legal representation to financially eligible Oregonians who have a right to counsel under the US Constitution, Oregon’s Constitution and Oregon statutes. Legal representation is provided for individuals charged with a crime, for parents and children when the state has alleged abuse and neglect of children, and for people facing involuntary commitment due to mental health concerns. In addition, there is a right to counsel in a number of civil matters that could result in incarceration such as non-payment of child support, contempt of court, and violations of the Family Abuse Prevention Act. Finally, there is a statutory right to counsel for petitioners seeking post-conviction relief.

3. PERFORMANCE SUMMARY

KPM Progress Summary	Key Performance Measures (KPMs) with Page References	# of KPMs
KPMs MAKING PROGRESS at or trending toward target achievement	Fee Statements Reduced (page 7), Processing Fee Statements (page 8), Reviewing Expense Requests (page 9), Expense Complaints (page 11), Best Practices (page 13), Attorney Performance Complaints (page 15)	6
KPMs NOT MAKING PROGRESS not at or trending toward target achievement	Appellate Case Backlog (page 5)	1
KPMs - PROGRESS UNCLEAR target not yet set		0
Total Number of Key Performance Measures (KPMs)		7

4. CHALLENGES

The primary challenge for the agency is that public defense in Oregon has been chronically underfunded. The hourly rate for an attorney appointed on a non-Aggravated Murder case is \$40 per hour (the rate established in 1991). Over time, the skills, abilities, and experience-level of the attorneys willing and able to work at that rate have steadily declined. Contractors who are paid a flat rate under a contract are assigning excessively high caseloads to their attorneys in order to cover operating expenses. This combination of being either over-worked or under-paid, and in most cases both, prevents attorneys from being able to provide an acceptable level of representation.

Another challenge for the agency is that workload is driven by a variety of factors outside the agency’s control. The enactment of laws that create new crimes or increase penalties for existing crimes impact the agency’s expenditures and workload. Federal requirements have shortened the timelines and increased the complexity of cases involving abuse and neglect of children. In 2004, the United States Supreme Court issued two landmark decisions

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(Crawford v. Washington and Blakely v. Washington) that directly and dramatically impacted caseload. If additional funding is not provided to address such changes, the quality of representation is further eroded.

5. RESOURCES USED AND EFFICIENCY

The agency's 2005-07 Legislatively Adopted Budget is \$176,246,017.

Two of our performance measures (KPM#3 and KPM#4) essentially measure how quickly the agency processes expense requests and fee statements. The agency was able to exceed targets for each of those measures due to technological improvements. Within existing resources, the agency has converted to electronic storage and retrieval of documents; has automated document production with "one click" database features; uses email instead of regular mail for over 70% of the attorney providers; and has developed efficient procedures for review of fee statements by multiple employees.

AGENCY NAME

Agency Mission:

II. USING PERFORMANCE DATA

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The following questions indicate how performance measures and data are used for management and accountability purposes.	
<p>1 INCLUSIVITY Describe the involvement of the following groups in the development of the agency's performance measures.</p>	<ul style="list-style-type: none"> • Staff: The agency's Management Team drafted initial performance measures. • Elected Officials: The Joint Legislative Audit Committee and the interim Judiciary Committee assisted the agency in refining and finalizing its performance measures. • Stakeholders: Input was received from the agency's Contractor Advisory Group comprised of public defense service providers. • Citizens: The agency developed, discussed and revised its performance measures during two public meetings.
<p>2 MANAGING FOR RESULTS How are performance measures used for management of the agency? What changes have been made in the past year?</p>	<p>KPM#1, KPM#3 and KPM#4 are used to measure an individual employee's performance and indicate how workload should be redistributed.</p> <p>The agency's Management Team will consider re-allocation of resources based on the results.</p>
<p>3 STAFF TRAINING What training has staff had in the past year on the practical value and use of performance measures?</p>	<p>The agency has advised staff of the goals outlined in the performance measures and staff is directly involved in the data collection and/or direct daily implementation of the measures. The performance measures serve as important tools for the agency's managers as they identify and develop necessary staff skills as well as determine the best use of overall resources in order to attain the goals enumerated in the measures.</p>
<p>4 COMMUNICATING RESULTS How does the agency communicate performance results to each of the following audiences and for what purpose?</p>	<ul style="list-style-type: none"> • Staff: Graphs are posted on employee bulletin boards. • Elected Officials: The agency communicates results to the Legislature through the Progress Board reports and the Executive Director's biennial report to the Legislature. • Stakeholders: Performance results are communicated through the agency's website and the Progress Board's website as well as being provided in the materials distributed at public meetings. • Citizens: Performance results are communicated to the public through the agency's website and the Progress Board's website.

III. KEY MEASURE ANALYSIS

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KPM #1	APPELLATE CASE BACKLOG Number of cases in the Legal Services Division backlog	Measure since: 2004
Goal	GOAL 1: Reduce delay in processing appeals.	
Oregon Context	Mission Statement	
Data source	Case Management Database	
Owner	Legal Services Division, Peter Gartlan, (503) 378-2371	

1. **OUR STRATEGY**

Our goal is to reduce the delay in processing appeals. If we are able to eliminate the current backlog of cases, then we will have significantly reduced the average time to file the opening brief. In addition, by reducing the number of open and active cases that Legal Services Division attorneys are currently responsible for, attorneys will be able to devote more time to addressing and resolving cases, instead of merely “managing” cases at the cost of case resolution.

2. **ABOUT THE TARGETS**

The Legal Services Division wants to file its opening brief in most cases within 210 days of record settlement. The 210-day target reflects several considerations. First, the agency considers it intolerable that an incarcerated individual must wait more than seven months before an appellate attorney is in a position to properly advise a client regarding the viability of an appellate challenge to his conviction and/or sentence.

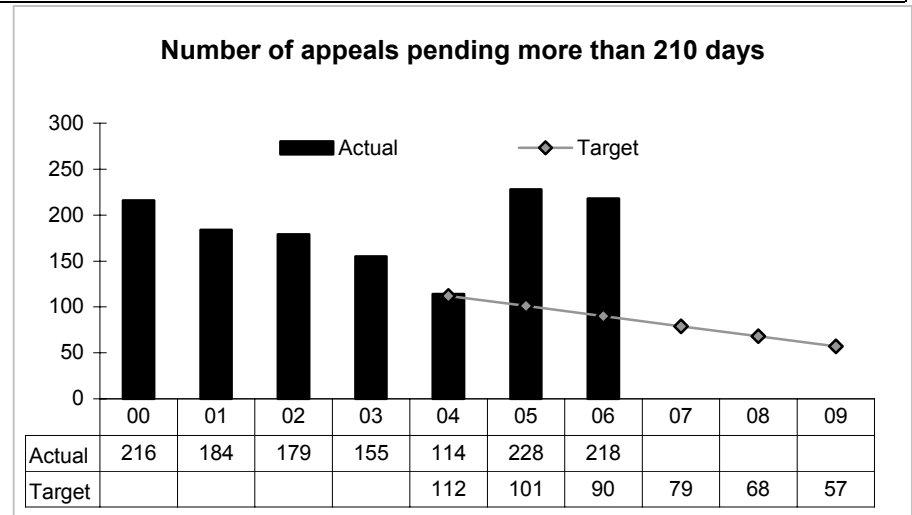
Second, budget reductions in the Attorney General’s Office have caused the Solicitor General to slow its briefing schedule in criminal cases. The Attorney General’s slowed pace means additional delay in the appellate process, which means additional delay for the client. Third, federal courts have intervened in state appellate systems when the state system routinely takes two years to process criminal appeals. The 210-day target represents a reasonable attempt to meet the varying considerations.

3. **HOW WE ARE DOING**

The agency significantly reduced case backlog from June 2000 through June 2004, but the case backlog increased from June 2004 through June 2005, and remained high through June 2006.

4. **HOW WE COMPARE**

Despite what may be one’s initial response to the backlog data for the last two years, the Legal Services Division compares extremely favorably with national standards for attorney productivity. In 2001, the US Department of Justice issued a report entitled “Keeping Defender Workloads Manageable” which contained national data indicating that an appellate attorney should be assigned a maximum number of 25 appeals per year. By contrast, an agency attorney resolves an average of 36 cases per year, or approximately 50% more than the national average.



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5. **FACTORS AFFECTING RESULTS**

The reason for the case backlog increase is directly attributable to discrete events beyond the agency’s control. In 2004, the United States Supreme Court issued two landmark decisions (*Crawford v. Washington* and *Blakely v. Washington*) that directly and dramatically impacted agency caseload. The *Blakely* decision rendered virtually every sentence imposed by state judges subject to challenge and dramatically increased the number of appeals statewide.

6. **WHAT NEEDS TO BE DONE**

The impact of the *Blakely* decision led to close cooperation among the Court of Appeals, the Attorney General, and the agency, resulting in the development of a streamlined appellate process for hundreds of cases. The parties identified “lead cases” whose resolution would control a category of cases, and developed a streamlined briefing format for the scores and hundreds of cases in each category. The same approach can be and has been used for similar issues.

The agency is developing an evaluation system and performance measures that more closely measure attorney capacity and promote individual responsibility for case production.

Unless the United States Supreme Court issues another landmark decision that produces a similar tidal wave of appellate workload, the agency believes it has weathered the worst of the *Blakely* storm and will soon be able to resume a desirable downward case backlog trend.

7. **ABOUT THE DATA**

The data is derived from the agency’s case database. The strength of the data comes from historical comparison. Its weakness is attributable to the inherent difficulty in quantifying appellate caseloads. For example, one appellate case may have a 30-page record, while another case may have a record of several thousand pages. Or, one case with a 300-page record may present one simple issue, while another case with a 300-page record may present five novel or complex issues. Apart from the conventional method of estimating production (based on raw case numbers), the agency is developing an additional method to measure appellate workload, based on case type, transcript length, and issues presented.

III. KEY MEASURE ANALYSIS

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KPM #2	FEE STATEMENTS REDUCED Percentage of fee statements reduced due to incorrect billing	Measure since: 2004
Goal	GOAL 2: Ensure cost-efficient service delivery	
Oregon Context	Mission Statement	
Data source	Accounts Payable Database	
Owner	Contract and Business Services Division, Kathryn Aylward, (503) 378-2481	

1. OUR STRATEGY

The agency carefully reviews all fee statements submitted to ensure that the correct amount is being paid for appropriate expenses.

2. ABOUT THE TARGETS

Because this is a new performance measure for which data had not previously been tracked, the agency estimated that 3% of the fee statements could be reduced through careful review. Reducing a higher percentage is better.

3. HOW WE ARE DOING

The agency exceeded the targets for both years for which data is available.

4. HOW WE COMPARE

The agency has no data with which to compare these results.

5. FACTORS AFFECTING RESULTS

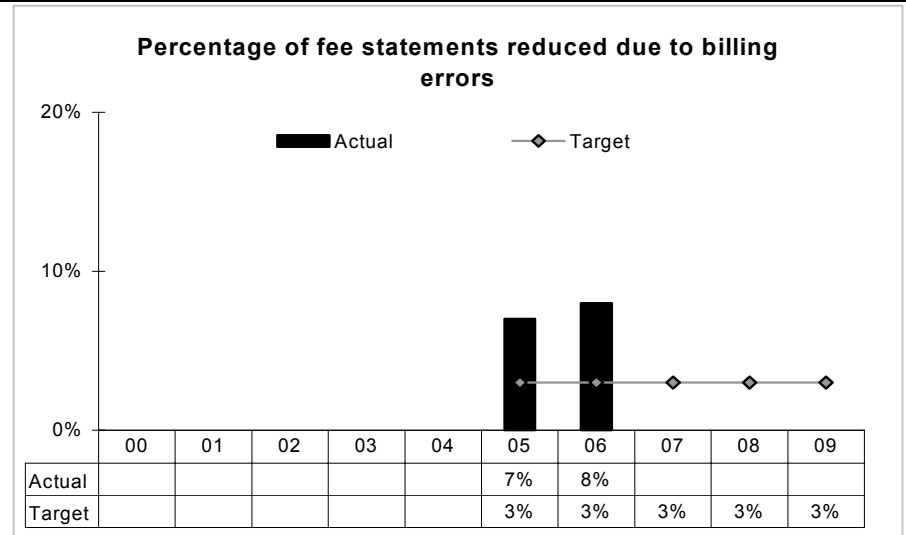
It appears that the initial targets are too low.

6. WHAT NEEDS TO BE DONE

Now that the agency has baseline data, the agency will monitor this measure for fluctuation. A drop in the percentage of fee statements reduced may indicate that more careful review of billings is necessary.

7. ABOUT THE DATA

The data is derived from the number of fee statements reduced as a percentage of the total number of fee statements received during the fiscal year (July 1 to June 30). Over time, the agency expects that the percentage will drop and then level off as service providers learn that the agency cannot pay for certain items or services and consequently know not to include such items in their fee statements.



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KPM #3	PROCESSING FEE STATEMENTS Percentage of fee statements processed within 10 business days	Measure since: 2004
Goal	GOAL 2: Ensure cost-efficient service delivery	
Oregon Context	Mission Statement	
Data source	Accounts Payable Database	
Owner	Contract and Business Services Division, Kathryn Aylward, (503) 378-2481	

1. OUR STRATEGY

The agency’s guideline rates paid to public defense providers are well below the rates many service providers normally charge. By assuring prompt and reliable payment, providers are more willing to work at reduced rates. This performance measure also sets an appropriate standard for employee performance as data is gathered for each employee as well as for the agency as a whole.

2. ABOUT THE TARGETS

The agency anticipated that as employees became more experienced and as the agency developed new procedures for processing fee statements, that there would be a gradual increase in processing speed.

3. HOW WE ARE DOING

The agency was at target for fiscal year 2004, and then far exceeded the targets for 2005 and 2006.

4. HOW WE COMPARE

The Oregon Department of Revenue averages 15 days to process an income tax refund which is comparable to the agency’s measure of 10 business days.

5. FACTORS AFFECTING RESULTS

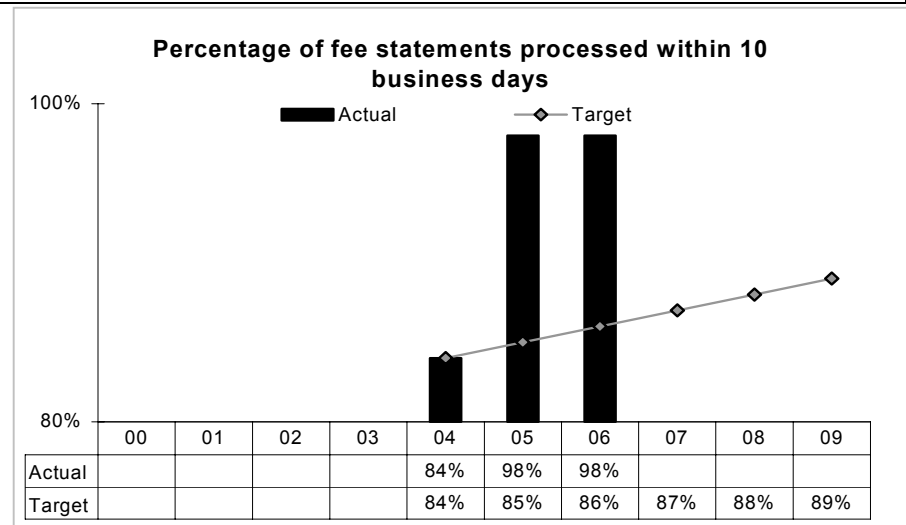
In late 2004, an agency employee developed a technological improvement that eliminated the need for duplicate data entry. Not only did this speed the processing of bills but it also eliminated the chance of error in the transfer of information between accounting systems.

6. WHAT NEEDS TO BE DONE

The agency will now consider diverting some resources away from bill processing so that the agency can reach other Performance Measure targets.

7. ABOUT THE DATA

The data measures the number of business days between the date a fee statement is received by the agency to the date the payment is issued by R*Stars (state accounting system).



III. KEY MEASURE ANALYSIS

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KPM #4	REVIEWING EXPENSE REQUESTS Percentage of non-routine expense requests reviewed within 5 business days	Measure since: 2004
Goal	GOAL 2: Ensure cost-efficient service delivery; GOAL 3: Improve the quality of representation	
Oregon Context	Mission Statement	
Data source	Non-Routine Expense Database	
Owner	Contract and Business Services Division, Kathryn Aylward, (503) 378-2481	

1. OUR STRATEGY

This performance measure is designed to help the agency meet two of its goals: ensure cost-efficient service delivery, and improve the quality of representation. When a case requires the assistance of an investigator, forensic expert, or other expert service, the appointed attorney must receive pre-authorization from the agency to incur such expenses. In many instances, work begun as soon as possible after the alleged incident is more productive than if there is a delay in the approval process. For those requests that are denied, the attorney will have more time to pursue alternatives.

2. ABOUT THE TARGETS

Because the data had not previously been tracked, the agency did not have baseline data from which targets could be set. The agency assumed that there would be a gradual increase in the percentage of non-routine expense requests reviewed within 5 business days as we refined our procedures and as staff gained experience.

3. HOW WE ARE DOING

The agency was at target for fiscal year 2004, and then far exceeded the targets for 2005 and 2006.

4. HOW WE COMPARE

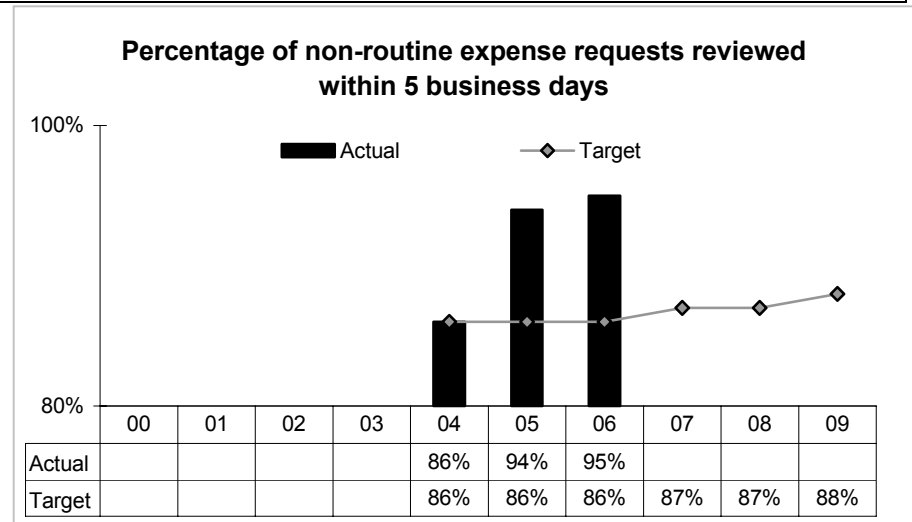
The agency is not aware of comparative data.

5. FACTORS AFFECTING RESULTS

The agency is fortunate to have dedicated employees, low absenteeism and a low turnover rate so that their expertise and familiarity with the process allows the agency to exceed targets.

6. WHAT NEEDS TO BE DONE

The agency will consider whether to set a “higher” goal, e.g. review 95% of the requests within *four* business days, or whether resources should be diverted to improve results in other areas.



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7. **ABOUT THE DATA**

The data measures the number of business days between the date a request is received by the agency to the date the response is issued (by email or regular mail).

III. KEY MEASURE ANALYSIS

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KPM #5	EXPENSE COMPLAINTS Percentage of complaints regarding payment of expenses determined to be founded	Measure since: 2004
Goal	GOAL 2: Ensure cost-efficient service delivery	
Oregon Context	Mission Statement	
Data source	Contact Database	
Owner	Contract and Business Services Division, Kathryn Aylward, (503) 378-2481	

1. OUR STRATEGY

The agency makes a determination as to whether an expense is “reasonable and necessary” for adequate legal representation of financially eligible Oregonians. The agency developed a complaint procedure and designed a database to track complaints from any source that questioned the agency’s decision to approve the expenditure.

2. ABOUT THE TARGETS

The assumption was that if a person made the effort to file a complaint, it was likely that the expenditure was of an unusual nature. Although the agency reviews and approves expenditure requests in advance, there may be times that in hindsight the agency would not have approved the expense. The agency hoped that fewer than 10% of the complaints would be founded.

3. HOW WE ARE DOING

Out of approximately 40,000 payments processed per year, the agency received one complaint regarding payment of expenses in fiscal year 2006. The complaint was determined to be unfounded.

4. HOW WE COMPARE

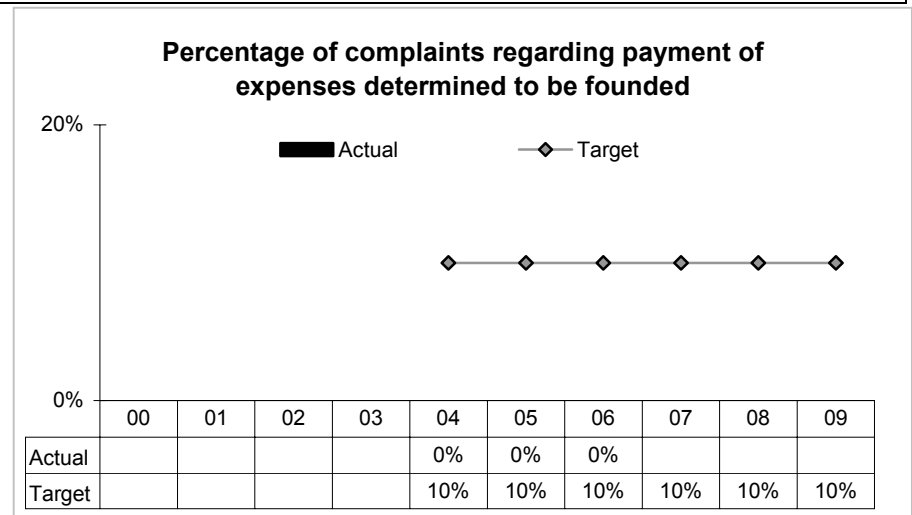
The agency is not aware of comparable data.

5. FACTORS AFFECTING RESULTS

Prior to July 1, 2003, expenditures were reviewed and processed by each circuit court. On July 1, 2003, the Public Defense Services Commission assumed responsibility for the entire public defense program. This centralization of expense approvals provides consistency and appropriate distribution of the agency’s limited resources, and likely accounts for the fact that no complaints have been received.

6. WHAT NEEDS TO BE DONE

The agency may request that this performance measure be eliminated entirely or combined with performance measure #7 which addresses complaints about attorney performance.



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7. ABOUT THE DATA

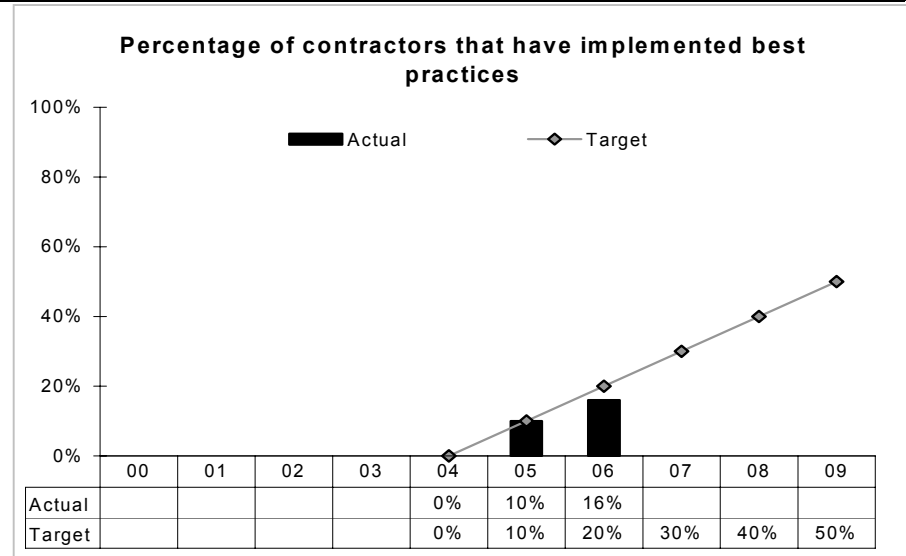
The data includes complaints received during the fiscal year (July 1 to June 30). The weakness of the data is that there will likely always be a very small number of complaints and therefore the percentage of founded complaints may fluctuate dramatically without giving a true indication of performance. For example, if we receive one complaint during the year and it is founded, then our percentage would be 100%.

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KPM #6	BEST PRACTICES Percentage of contractors that have implemented best practices and resolved problems relating to the quality and cost-efficiency of their service, which are identified by PDSC’s site visit process and the process’s “360 degree” evaluations	Measure since: 2004
Goal	GOAL 3: Improve the quality of representation	
Oregon Context	Mission Statement	
Data source	Site Visit Reports and Contractor Follow-up Reports	
Owner	Contract and Business Services Division, Kathryn Aylward, (503) 378-2481	

1. OUR STRATEGY

The agency formed a Quality Assurance Task Force to assist in the development of a systematic process to review the organization, management and quality of services delivered by the agency’s contractors. This “contractor site visit process” engages volunteer attorneys from across the state with expertise in public defense practice and management in a comprehensive statewide evaluation process. Teams of volunteer attorneys visit and evaluate the offices of the state’s public defense contractors, administer questionnaires and interview all relevant stakeholders in a contractor’s county, including the contractor’s staff, prosecutors, judges, other defense attorneys, court staff, corrections staff, and other criminal and juvenile justice officials regarding the contractor’s performance and operations. After a site visit and deliberations among the site visit team’s members, the team submits a report to the contractor and the agency outlining its observations and recommendations. In addition to improving the contractors subject to the site visits, the process is designed to improve the operations of public defense contractors in Oregon by identifying best practices for managing and delivering public defense services and by sharing that information with other contractors across the state.



2. ABOUT THE TARGETS

The targets were based on the agency conducting four site visits per year and on the assumption that most if not all contractors visited would adopt the recommended best practices.

3. HOW WE ARE DOING

Because the targets did not anticipate the time contractors would require for implementation, the straight-line projection over-simplifies what the agency would expect to see. Although we are not quite at target for 2006, the agency expects to meet or exceed targets in 2007 and 2008.

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4. HOW WE COMPARE

The agency is not aware of comparable data.

5. FACTORS AFFECTING RESULTS

In many cases, contractors are unable to adopt a recommendation that involves additional cost or staff time for the contractor because the rates currently paid to contractors are so low that attorneys are burdened with excessive caseloads.

6. WHAT NEEDS TO BE DONE

The agency will continue to conduct four site reviews per year. Although contractors are responding positively to the site review process, significant problems continue to exist; some have been addressed but many have not.

7. ABOUT THE DATA

The agency initially planned to conduct site visits for contractors with ten or more attorneys. After the first three site visits, the agency realized that in some cases it was more efficient to gather information about all contractors within the county during the single visit. Therefore, the agency now plans to conduct site visits for all contractors other than sole practitioners. Contractors are asked to submit a report to the agency detailing the steps they have taken to implement the recommendations. The figures indicate the number of contractors who, as of June 30th of each year, have reported adoption of recommendations as a percentage of the total number of contractors.

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KPM #7	ATTORNEY PERFORMANCE COMPLAINTS Percentage of complaints regarding attorney performance determined to be founded	Measure since: 2004
Goal	GOAL 3: Improve the quality of representation	
Oregon Context	Mission Statement	
Data source	Contact Database	
Owner	Contract and Business Services Division, Kathryn Aylward, (503) 378-2481	

1. OUR STRATEGY

The agency (through its small administrative office in Salem) funds the appointment of attorneys to over 170,000 cases per year all across Oregon. The information we receive through the complaint process allows the agency to know which attorneys may need additional training and/or resources, or whether to change the types of cases an attorney is allowed to accept, or to remove an attorney from court appointment lists altogether. As the agency works to improve the quality of representation through a variety of strategies, we would expect the number of founded complaints to decrease.

2. ABOUT THE TARGETS

Prior to July 1, 2003, no data was kept regarding complaints. The agency hoped that fewer than 10% of complaints regarding attorney performance would be founded.

3. HOW WE ARE DOING

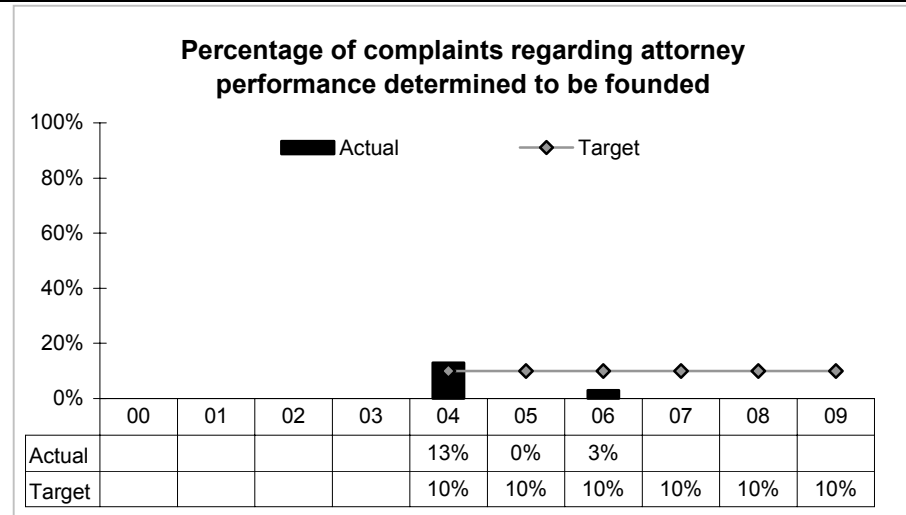
In fiscal year 2004 (the first year of operation for the agency), we did not meet the target; however, in 2005 and 2006, the agency exceeded expectations with fewer than 10% of the complaints received being founded.

4. HOW WE COMPARE

Most state agencies that receive complaints use a performance measure based on the average number of days to close a formal complaint and do not use the results of such investigations as a performance measure. Because our agency selects the attorneys who provide legal representation, the quality of their performance does provide feedback on our selection and oversight procedures.

5. FACTORS AFFECTING RESULTS

In 2004, the agency initiated a “site visit” process (see performance measure #6) in which volunteer teams of public defense attorneys and staff visit individual contractors to provide training, advice and management expertise. In early 2006, the agency required all public defense attorneys to re-apply for inclusion on hourly paid court appointment lists. Through that process, the agency attempted to select only the best-qualified attorneys.



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6. WHAT NEEDS TO BE DONE

The agency will continue to improve oversight and training of attorneys.

7. ABOUT THE DATA

The data includes complaints received during the fiscal year (July 1 to June 30). The weakness of the data is that the total number of complaints received is quite small (38 in 2006) and therefore the percentage of founded complaints may fluctuate dramatically without giving a true indication of performance.

Furthermore, the absence of complaints should not necessarily be seen as an indication that there are not problems with the quality of representation. In 2000, the Oregon State Bar Task Force on Indigent Defense concluded that representation in juvenile cases and post-conviction relief cases was inadequate. In 2005, the Secretary of State's Audits Division rated the quality of representation in those case types as "risk areas" for the agency.