

Public Defense Services Commission

Strategic Plan 2016 – 2021

August 2016

Background

The Public Defense Services Commission (PDSC) solicited input from over 17 separate stakeholder groups when preparing the 2016-2021 strategic plan¹ and dedicated significant time to public testimony regarding the future of public defense. Its October 2015 meeting was largely devoted to receiving input from public defense providers from around the state, and much of its December 2015 meeting was dedicated to the Commission's own discussion of the future of public defense in Oregon.

Several themes arose throughout the course of these discussions. One consistent theme revolved around the need for reduced caseloads among public defense providers so that clients get adequate time with their lawyers, and lawyers have sufficient time to prepare cases and meet performance standards. Also noted as a high priority was increased access to technology for improved data reporting and analysis, and effective case management (including the storage of increasing amounts of electronic discovery – particularly media files associated with body cameras and other video surveillance). Contractors, system partners, and Commission members also identified a need for better access to social services for clients, a greater percentage of whom seem to struggle with issues related to extreme poverty, mental health, and substance abuse. There was also discussion about the increasing need for expert services, particularly in the area of forensic science, in response to rapid advancements in brain science. With this and other advancements in data collection, science, and the law, many identified a need for more consistent training for public defense lawyers. There were multiple comments about the importance of improved representation and oversight at the trial level in all case types, but particularly in juvenile delinquency cases. Additionally, many commented on the continuing need to advocate for system efficiencies and improvements at state and local levels. As in past years, there was also an emphasis on the need for contract rates that allow contractors to meet rising costs of business, and improve their ability to attract and retain a diverse cadre of qualified lawyers. Finally, OPDS employees focused on the importance of maintaining excellence and

¹ The following entities were invited to provide feedback: public defense contract providers, Oregon Judicial Department, Supreme Court, Oregon Court of Appeals, trial Judges, legislators, Governor's policy advisors, Criminal Justice Commission, Department of Corrections, Department of Human Services - Child Welfare, Oregon Department of Justice, Oregon district attorneys, Oregon Youth Authority, Juvenile Directors, Community Corrections Directors, Public Defense Service Commission members, and Office of Public Defense staff.

competitive pay structures to attract and retain qualified lawyers, increasing its ability to provide statewide quality assurance, succession planning for experience support staff, alleviating crowded working conditions, and improved technology to support its contract and appellate functions.

The goals and strategies in this plan are informed by the input received, as well as the Commission's statutory responsibilities, and its vision, mission, values, policies, and standards. After discussion and consideration at the June 2016 PDSC meeting, the plan was adopted by the Commission at its [TBD] meeting.

Mission

The Commission ensures that eligible individuals have timely access to legal services, consistent with Oregon and national standards of justice.

Vision

The Public Defense Services Commission (PDSC) will maintain a sustainable statewide public defense system that provides quality representation to eligible clients in trial and appellate court proceedings. To that end, the PDSC is a

- guardian of the legal rights and interests of public defense clients and the public's interest in equal justice and due process of law.
- champion for the effective delivery of public defense services and administration of justice, and for funding that ensures the continuing availability of competent and dedicated public defense counsel.
- responsive and cooperative policy maker in the state's justice system.
- responsible steward of taxpayer dollars devoted to public defense.

Values

Leadership – PDSC is a responsible leader and partner with other state and local agencies and public defense practitioners in the provision of public defense services and the administration of justice in Oregon.

Accountability – PDSC is a results-based organization with employees and managers who hold themselves accountable by establishing performance standards and outcome-based benchmarks and who implement those measures through regular performance evaluations and day-to-day best practices. PDSC and OPDS award and administer public defense services contracts in an open, even-handed and business-like manner ensuring fair and rational treatment of all affected parties and interests. The PDSC is accountable to the Oregon Legislature, the public, and itself.

Cost-Efficiency - PDSC is a responsible steward of taxpayer dollars and consistently seeks to administer public defense services in a way that most effectively provides efficiencies and improved outcomes for public defense clients and within Oregon's public safety and child welfare systems. PDSC's commitment to providing quality public defense services also promotes cost-efficiency by reducing the chances of legal error and the costs associated with remanded proceedings following appeals, post-conviction relief, retrials, and other costly actions.

Legislative Advocacy

The PDSC views its role in appearing before the Oregon Legislative Assembly and committees of the Assembly to be primarily for the purpose of

- advocating for a state budget sufficient to ensure (a) the delivery of quality public defense services, and (b) the continuing availability of competent and dedicated public defense counsel.
- promoting legislative and policy changes that advance efficiencies, fairness, and compliance with Oregon and national standards of justice.
- providing information in response to requests from legislators or legislative staff.
- informing legislators of (a) the fiscal impact on the public defense system of proposed legislation or existing laws relevant to public defense, and (b) any potential constitutional or other problems that might occur as the result of the enactment, implementation, or amendment of legislation.

The PDSC does not intend this policy to affect the ability of OPDS's Appellate Division (AD) or its attorneys to advocate positions before the Legislative Assembly that are designed to protect or promote the legal rights and interests of AD's clients.

Standards of Service

The PDSC embraces the following standards for all OPDS employees:

- deliver directly or contract for professional services in a manner that meets the highest applicable legal and ethical standards;
- conduct all legal, contracting, and business services in a rational and fair manner;
- address all requests for information and inquiries in a timely, professional, and courteous manner;
- implement policies and best practices that serve as models for the cost-efficient delivery of public services and the effective administration of government;
- utilize results-based standards and performance measures that promote quality, cost-efficiency, and accountability;
- ensure the continued success of the OPDS Appellate Division by following practices that support excellence.

2016-2021 Goals and Strategies

Goal I: Provide competent, client-centered representation at all stages of a proceeding.

Challenges Addressed by Achieving this Goal: By providing quality public defense services, the PDSC fulfils its statutory mandate and serves as a prudent manager of state resources. Quality representation at the trial court level reduces other costs to the public safety system, such as reversals following appeals or post-conviction relief proceedings, wrongful convictions in criminal cases, excessive prison bed use in criminal cases, foster care costs in juvenile dependency cases, and unnecessary commitment of allegedly mentally ill individuals through the civil commitment process.² Quality representation is also critical to protecting the statutory and constitutional rights of all Oregonians.

Strategy 1: Build legislative support for public defense funding and programs that ensure representation in conformance with state and national standards.

Strategy 2: Improve monitoring of contractor performance through use of increased reporting requirements, including results of client satisfaction surveys, and through analysis of available data demonstrating contract lawyer case activities, case outcomes, and caseload information.

Strategy 3: Increase OPDS presence across the state to provide training, support, and monitoring of contract providers, better coordinate services between trial and appellate practitioners, and improve coordination with system stakeholders at local levels.

Strategy 4: Establish and enforce Oregon-specific caseload standards.

Strategy 5: Develop juvenile delinquency expertise within OPDS to better support delinquency practitioners around the state.

Strategy 6: Work with OCDLA and others to improve diversity and cultural competency within public defense, and public safety and child welfare systems.

Strategy 7: Preserve, enhance, and recognize excellence.

² PFAFFA, JOHN, *Mockery of Justice for the Poor*, The New York Times, April 29, 2016: http://www.nytimes.com/2016/04/30/opinion/a-mockery-of-justice-for-the-poor.html?smprod=nytcore-ipad&smid=nytcore-ipad-share&_r=0

Goal II: Maintain a sustainable, accountable, and integrated statewide public defense system.

Challenges Addressed by Achieving this Goal: The PDSC faces many challenges in its effort to provide quality public defense services, but creating a sustainable system remains one of the biggest. Low contract rates and correspondingly low rates of pay, high caseloads, court dockets that have multiple cases set at the same time, limitations on contacting in-custody clients, and lack of modernized computer systems create significant inefficiencies within Oregon’s public defense system. Providers struggle to attract and retain qualified lawyers due to comparatively low pay and increasing law student debt.³ Low rates of pay also make it difficult for providers to maintain manageable workloads that permit attorneys to discharge their ethical and constitutional obligations to clients.⁴ Especially in urban areas, new graduates take positions with public defense providers but leave once they have gained some experience in order to avoid low pay and high caseloads. Providers are in a constant cycle of hiring and training, without sufficient internal resources for mentoring. In rural areas, providers struggle to attract new lawyers, and experienced lawyers are retiring or relocating. These challenges are exacerbated by daily struggles with crowded court dockets and courthouses without dedicated space for public defense providers where failure to connect with a client can yield higher failure to appear rates and unnecessary delays. Lack of space for public defense lawyers also compromises confidential communications, and hampers lawyers’ efforts to be productive between court proceedings.

Strategy 1: Adopt competitive pay structures, clear contract provisions, standardized reporting requirements, and regular audit procedures that incentivize quality practices and prevent excessive caseloads.

Strategy 2: Advocate for dedicated public defender space in Oregon courthouses to increase regular client contact, protect confidential communications, and encourage efficient use of lawyers’ time between court proceedings.

³ “A legal education can cost upwards of \$150,000, and students, on average, graduate from law school with \$93,359 in debt...” Hopkins, Katy, *10 Law Degrees With Most Financial Value at Graduation*, U.S. News & World Report, March 29, 2011.

⁴ “In 2012, the average law graduate’s debt was \$140,000, 59 percent higher than eight years earlier.” New York Times Editorial Board, *The Law School Debt Crisis*, October 24, 2015

Strategy 3: Actively participate in the development of public policy at state and local levels by providing accurate and reliable information about Oregon's public safety and child welfare systems.

Strategy 4: Adopt attorney qualifications requirements that reflect the knowledge, skills, and abilities necessary to do the work.

Strategy 5: Support increased access to social work experts, who can efficiently address client needs, so that lawyers can focus on legal work.

Strategy 6: Secure adequate, qualified staffing, and modernized data systems to support OPDS programs and services.

Strategy 7: Maintain fiscal integrity and develop a long-term financial stability plan for PDSC programs.