

Public Defense Services Commission

Strategic Plan 2011 – 2013

June 2012

Background

The Public Defense Services Commission's strategic plan for the 2011-2013 biennium reflects the Commission's statutory responsibilities, and its vision, mission, values, policies, and standards.

Vision

The Public Defense Services Commission (PDSC) is responsible for creating a state public defense system that provides quality representation to eligible clients in trial and appellate court proceedings. The Commission is a leader in the delivery of a quality, cost-efficient legal services system that ensures the continuing availability of competent and dedicated public defense counsel. To that end, the PDSC is a

- visionary planner for the effective delivery of public defense services and administration of justice.
- responsive and cooperative policy maker in the state's justice system.
- responsible steward of taxpayer dollars devoted to public defense.
- vigilant guardian of the legal rights and interests of public defense clients and the public's interest in equal justice and due process of law.

Further, the PDSC ensures that the Office of Public Defense Services remains a model for other Oregon state agencies in terms of

- efficiency in the delivery of quality public services.
- effectiveness of financial management standards and practices.
- responsiveness to clients, customers and stakeholders.
- accountability to itself, PDSC, the Oregon Legislature, and the public through innovations in performance measurement and evaluation.

Mission

It is the mission of the PDSC to administer a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution, and Oregon and national standards of justice. See ORS 151.216.

Values & Policies

- **Quality** – PDSC is committed to providing quality public defense services consistent with the state and federal constitutions and with Oregon and national standards of justice, while seeking opportunities for its capable and diverse employees and contractors to experience fulfilling careers in public defense service.
- **Cost-Efficiency** - PDSC is a responsible steward of taxpayer dollars and constantly seeks the most cost-efficient methods of delivering and administering public defense services. PDSC’s commitment to providing quality public defense services also promotes cost-efficiency by reducing the chances of legal error and the need for appeals, post-conviction proceedings, retrials, and other costly remedial actions.
- **Leadership** – PDSC is a responsible leader and cooperative partner with other state and local agencies in the development of justice policy and the administration of justice in Oregon. PDSC is a vigorous advocate for adequate public funding to support Oregon’s public defense system. PDSC and the Office of Public Defense Services (OPDS) are credible sources of information and expertise about public defense and justice policies, practices and their implications, for the benefit of the public, the Oregon Legislature, the media and other justice agencies and professionals.
- **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.
- **Legislative Advocacy** – PDSC views its role in appearing before the Oregon Legislative Assembly and committees of the Assembly to be limited to:
 - providing information in response to requests from legislators or legislative staff;
 - advocating for a state budget sufficient to ensure (a) the delivery of quality public defense services in a manner consistent with the state and federal constitutions and state and national standards of justice, and (b) the continuing availability of competent and dedicated public defense counsel; and
 - 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.

As a general matter, PDSC does not view its role before the Legislative Assembly to include advocacy for changes in criminal, juvenile, mental health or other areas of substantive law or procedure. The Commission may decide to take a position before the Legislative Assembly with regard to particular legislation proposing changes in substantive law or procedure only if such legislation is likely to substantially affect the quality of public defense services in the state, the cost-efficient operation of the state's public defense system, the continuing availability of competent and dedicated public defense counsel, or the fundamental fairness of Oregon's justice system.

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.

Organization and Decision Making

PDSC serves as a governing body for the administration of Oregon's public defense system, providing policy direction, guidance, and oversight to its operating agency, OPDS. As chief executive officer of OPDS, its Executive Director reports to PDSC and serves at its pleasure.

OPDS is comprised of two divisions:

- (1) the Contract and Business Services Division (CBS), which administers the state's public defense contracting and payment systems and manages the operations of OPDS; and
- (2) the Appellate Division (AD), which provides (a) appellate legal services to financially eligible individuals on direct criminal appeal and parole and post prison supervision appeals, (b) appellate legal services in juvenile dependency and termination appeals, and (c) training and support to public defense attorneys at the trial level in criminal and juvenile matters.

Each division is headed by a chief operating officer – the Division Director within CBS, and the Chief Defender within AD – both of whom report to the Executive Director.

ORS 151.216 sets forth the policy and decision-making responsibilities of PDSC, including the responsibilities to:

- establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the state and federal constitutions and state and national standards of justice;
- establish OPDS and appoint its Executive Director, who serves at the pleasure of the PDSC;

- review and approve the Executive Director’s budget proposals, and submit the final budget proposal to the Legislature, with budget presentations by the Chief Justice and PDSC’s Chair;
- review and approve any public defense services contract negotiated by the Executive Director;
- adopt compensation and personnel plans and an employee classification system for OPDS that are commensurate with other state agencies; and
- adopt policies, procedures, standards, and guidelines regarding
 - determination of financial eligibility for public defense services,
 - appointment of legal counsel,
 - fair compensation for appointed counsel,
 - disputes over compensation for appointed counsel,
 - any other costs associated with public defense representation,
 - professional qualifications for appointed counsel,
 - performance of appointed counsel,
 - contracting of public defense services, and
 - any other matters necessary to carry out the duties of PDSC.

PDSC has approved the Executive Director’s delegation of authority to negotiate contracts to OPDS’s Director of Contract and Business Services. PDSC has delegated to the Executive Director its authority to execute public defense services contracts that it has reviewed and approved.

PDSC will continue to devote most of its time and energy to developing policies that will guide the shape and direction of the state’s public defense system and will improve the overall quality and cost-effectiveness of public defense services in Oregon, and to overseeing implementation of the strategies set forth in its Strategic Plan.

ORS 151.216 directs PDSC **not** to:

- make any decision regarding the handling of an individual public defense case;
- have access to any case file; or
- interfere with the Executive Director or staff in carrying out professional duties involving the legal representation of public defense clients.

Accordingly, public defense contractors under contract with PDSC act as independent contractors in the operation of their law offices and practices and in the representation of their public defense clients. However, contractors are subject to the terms and conditions of their contracts with PDSC, which include provisions regarding overall management, performance and quality assurance requirements, and standards designed to ensure the provision of high quality, cost-efficient public defense services.

PDSC has approved the Executive Director's delegation of authority to the Chief Defender to directly manage AD and directly supervise attorneys and staff.

Standards of Service

The statute establishing PDSC (ORS 151.216) and the state and federal constitutions require PDSC to serve the interests of public defense clients by ensuring the provision of constitutionally mandated legal services. In addition to public defense clients, PDSC serves

- the community of public defense contractors, attorneys, and allied professionals through its professional and contracting services, legislative advocacy, and policy making.
- the public and Oregon taxpayers, primarily through their elected representatives in the Oregon Legislature, and secondarily by responding to direct inquiries from the public and the media.
- criminal justice agencies and other justice stakeholders through interagency collaboration, planning, and policy making.

All of OPDS's employees will:

- 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.

Accomplishments Since 2003

Stabilization of public defense services in Oregon through a service delivery system that has become a national model for excellence.

PDSC oversight of the contracting process, including review and approval of the statewide service delivery plan for the state of Oregon, with a summary review and approval of each proposed contract.

Increased understanding within the public safety community, and with the Legislative Assembly and staff, regarding the increased costs and other risks associated with underfunding public defense services.

Advancement in compensation for public defense lawyers, with significant room left for continued improvement.

Service Delivery Reviews in every region of the state and in over half of the judicial districts, with additional reviews in three substantive areas of practice.

Peer reviews of 39 providers who handle a majority of public defense services across the state, with a review of death penalty providers underway.

Annual co-sponsorship of a Management Conference for public defense providers, at which contractors learn about effective business management, OPDS policies and procedures, legal ethics, and sharing of information about successful business strategies.

Creation and use of a secure and reliable method for sending non-routine expense authorizations and denials by email.

Adoption of PDSC policy governing the release of public records and recoupment of production costs.

PDSC review, revision, and adoption of standards and processes for determining the eligibility of attorneys for court-appointments.

Creation of policies, procedures, standards and guidelines that guide the Commission, courts, and providers in the provision of public defense services:

- “Best Practices” for public defense boards and commissions to use as a guide for establishing and maintaining a public defense practice;
- a “minimum qualifications” document outlining the experience an attorney must have before providing representation in various case types;
- “Performance Standards,” created and revised through continued collaboration with the Oregon State Bar, that incorporate Oregon and national standards of representation as well as lessons learned through the peer review process, and
- “Drug Court Guidelines” created after extensive informational hearings and final review by the Commission, and provided to contractors who have drug court responsibilities.

Creation of a formalized complaint policy and procedure, with a database specifically designed to store and search complaints related to a particular provider. OPDS works closely with the Oregon State Bar to ensure that the complaint process operates fairly and effectively, avoids duplication with the Bar’s processes, and protects confidential and privileged information from disclosure.

Annual survey sent to judges, district attorneys, and other juvenile and criminal justice system representatives to assess the quality of representation provided by public defense contractors and hourly rate attorneys. The Chief Justice has assisted OPDS by sending a letter urging judges to respond, which has generated a high response rate.

Biennial survey of public defense providers regarding their satisfaction with OPDS business practices and delivery of services, with consistently high levels of satisfaction reported, and annual opportunities for contractors to testify to the Commission regarding any concerns or issues they have regarding public defense services in Oregon.

Annual survey of OPDS staff to ensure that employees' needs are met and the office continues to improve the quality of its services and work environment.

Creation of an extensive training curriculum for Appellate Division attorneys, and annual review of an Appellate Division practice and procedures manual that sets forth detailed expectations for employees in that Division.

Annual performance reviews of all Appellate Division attorneys and management team members.

Reduction of the Appellate Division's median number of days to filing of the opening brief, from 330 days to 236 days.

Creation of a program connecting Appellate Division attorneys with particular regions across the state to provide guidance on substantive legal issues upon request, and regular advancement of legal issues through attorney participation in continuing legal education seminars and submission of articles for publication.

Creation of the Juvenile Attorney Section (JAS) within OPDS; the attorneys in this section have pursued cases that further develop and clarify juvenile law in Oregon, and are frequent presenters at continuing legal education seminars focusing on juvenile law.

Extensive review of District Attorney charging practices in the state of Oregon, and the costs associated with those charging decisions; development of information for legislators regarding the impact of decriminalization/charge reduction on costs of public defense.

Creation and circulation of a waiver of counsel colloquy to reduce the number of youth found within the jurisdiction of the juvenile court without having had the benefit of counsel, and without understanding the risks of proceeding without counsel.

Conversion to a paperless office model that includes electronic case files and an electronic business processes model, with electronic filing and receipt of case and business documents, and electronic signature capabilities.

2011-2013 Goals and Strategies

Goal I: Ensure the Provision of High Quality Public Defense Services

Challenges Addressed by Achieving this Goal: The PDSC has a statutory obligation to ensure the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution, and Oregon and national standards of justice. In order to fulfill its obligation, the PDSC must routinely examine Oregon's public defense system and the structure within each judicial district, and pursue quality improvement standards and measures that conform to standards adopted at state and national levels. By providing high quality public defense services, the PDSC serves as a prudent manager of state resources, ensuring that state funds are not spent on inferior providers. Quality representation at the trial court level reduces other costs to the public safety system, such as legal challenges and wrongful convictions in criminal cases, foster care costs in juvenile dependency cases, and unnecessary commitment of allegedly mentally ill individuals through the civil commitment process.

The PDSC faces many challenges in its efforts to provide quality public defense services, but the issue of under-compensation remains one of the largest hurdles. Public defense providers struggle to attract and retain quality candidates due to comparatively low pay for public defense work. This is particularly true in light of increasing student debt upon graduation.¹ 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. New graduates often take positions with public defense providers, but move on once they have gained some experience in order to avoid low pay and high caseloads. This leaves the provider in a constant cycle of hiring and training, without sufficient internal resources for recruitment and mentoring.

Adequate funding for the public defense system is also a critical component of the public safety system. In the 2001-2003 biennium, the Public Defense Services Account was reduced by \$27.6 million (17%) over the course of several special sessions. Though \$5 million was restored, the cuts were so late in the biennium that Oregon's public defense system was drastically underfunded, and the state was unable to appoint attorneys during the last four months of the biennium. Cases had to be dismissed or deferred to the following biennium, and the entire public safety system suffered. Crime rates increased and repeat

¹ "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.

property offenders could not be held. Fox Butterfield reported in the June 7, 2003, edition of the *New York Times* that “[b]ecause [there is] little money for public defenders, Mark Kroeker, the Portland police chief, said officers were now giving a new version of the Miranda warning when they arrested a suspect in a nonviolent crime. They effectively have to say, ‘If you can’t afford a lawyer, you will be set free. Enjoy.’ Chief Kroeker said. Noting a significant increase in shoplifts, car break ins, and other crimes, Kroeker said, ‘The scary thing is that the worst results are still six months down the road, as the bad guys realize nothing is going to happen to them....’”

Strategy 1: Build legislative support for adequate funding of public defense in a time of significant revenue shortfalls.

Strategy 2: Continue to pursue policy option packages to fund reduced caseloads and increased compensation for lawyers providing public defense services.

Strategy 3: Continue to work toward fair compensation for all publicly funded lawyers practicing in the area of criminal and juvenile law.

Strategy 4: Continue OPDS tradition of planning and coordinating legal education seminars, participating in committees and ad hoc work groups, and co-sponsoring an annual public defense management conference to promote good business practices that will assist public defense contractors in their efforts to provide quality representation.

Strategy 5: Continue to focus on quality improvements within juvenile dependency and delinquency representation, and begin assigning juvenile delinquency appeals to OPDS attorneys.

Strategy 6: Continue to develop quality assurance standards – including minimum attorney qualifications, standards of representation, and best practices - and programs to improve public defense services across the state.

Strategy 7: Continue to administer PDSC’s formal complaint process fairly and effectively without duplicating processes of the Oregon State Bar

Strategy 8: Continue annual surveys of judges, district attorneys, and other juvenile and criminal justice system representatives regarding the quality of representation provided by public defense contractors and hourly rate attorneys.

Strategy 9: Encourage the adoption of best practices for public defense contract providers as identified by the Quality Assurance Task Force, including the regular evaluation of attorneys, a plan for recruiting new attorneys, and a system

for training and mentoring new attorneys and experienced attorneys found to be in need of such training or mentoring.

Strategy 10: Expand AD's capacity to offer training and support for public defense contract and hourly attorneys.

Strategy 11: Continue efforts to improve the quality of AD's legal services and reduce the median number of days to file the opening brief.

Goal II: Assure Continued Availability of Qualified and Culturally Competent Public Defense Providers in Every Judicial District

Challenges Addressed by Achieving this Goal: As described above, public defense providers, particularly those in rural areas, struggle to attract and retain lawyers. The challenge is increasing as experienced lawyers, who were drawn to public defense by a desire to perform public service, retire, and new lawyers, burdened with significant law school debt, are unable to meet their financial obligations while working as public defenders. New attorneys often leave once they have enough experience to be successful in the private sector, and the number of experienced public defense attorneys who are prepared and interested in becoming the next generation of public defense providers remains inadequate. Additionally, Oregon public defense lawyers provide representation to an increasingly diverse client population, and need to have a strong understanding of different cultures and the challenges faced by individuals in culturally diverse communities. Ensuring diversity within the public defense bar contributes to positive communication and increased trust in attorney-client relationships, and with the culturally diverse populations in Oregon's jurisdictions.

Strategy 1: Continue recruitment efforts by fostering positive relationships with law schools in Oregon and by participating in job fairs and recruitment programs.

Strategy 2: Promote the diversity and cultural competence of Oregon's public defense provider community through recruitment efforts and by offering regular diversity training for OPDS employees and the public defense community.

Strategy 3: Continue the role of PDSC in oversight of the contracting process.

Strategy 4: Continue to encourage the creation and existence of boards of directors or advisory boards for public defenders and consortia that include outside members in order to (a) broaden the support and understanding of public defense in local communities, (b) strengthen the management of contractors, (c) ensure that adequate quality assurance and monitoring systems are in place, (d)

facilitate communication with PDSC and OPDS, and (e) increase the number of advocates for adequate state funding for public defense.

Strategy 5: Refine and continue PDSC's service delivery planning and peer review processes to ensure availability of qualified providers in every judicial district in the state and in all substantive areas of public defense practice.

Goal III: Continue to Strengthen the Efficiency and Management of OPDS and the Contracting System

Challenges Addressed by Achieving this Goal: OPDS manages over 100 contracts within Oregon's 27 judicial districts. In order for the public defense system to operate smoothly, OPDS must be able to execute contracts and reimburse providers through a predictable, reliable, systematic, and efficient process.

Strategy 1: Maintain positive working relationships with public defense contractors.

Strategy 2: Continue to improve the effectiveness and cost-efficiency of OPDS's administration of the contracting system.

Strategy 3: Create centralized documentation of management roles and responsibilities.

Strategy 4: Ensure that PDSC and OPDS adhere to strategic plan goals and objectives.