

EXECUTIVE DIRECTOR'S ANNUAL REPORT 2017



OFFICE OF PUBLIC
DEFENSE SERVICES

Public Defense Services Commission

Chief Justice Thomas A. Balmer

Ex-Officio Permanent Member

Appointing Authority

Janet C. Stevens

Co-editor, Bend Bulletin

Member since 2001

Per Ramfjord, Chair

Partner, Stoel Rives LLC

Member since 2012

Honorable Elizabeth Welch

Senior Judge

Member since 2007

John R. Potter, Vice Chair

Former Executive Director, OCDLA

Member since 2001

Michael De Muniz

De Muniz Law LLC

Member since 2016

Henry H. "Chip" Lazenby, Jr.

Lazenby & Associates

Member since 2001

Thomas M. Christ

Partner, Cosgrave Vergeer Kester LLP

Member since 2016

About the Commission:

The Public Defense Services Commission (PDSC) is an independent body that governs the Office of Public Defense Services (OPDS). The Chief Justice of the Oregon Supreme Court appoints the seven Commission members. The Commission's primary charge is 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 Oregon Constitution, the United States Constitution and Oregon and national standards of justice[.]" (ORS 151.216)

The PDSC appoints the Executive Director for OPDS. The Office of Public Defense Services has two divisions: Contract and Financial Services (CF) and the Appellate Division (AD).

Executive Summary

As is often the case in public defense, 2017 was a year of challenges and successes. The year began with preparations for legislative session and agency budget hearings. Held in March, the PDSC budget hearings spanned three days, and included testimony and letters of support from the Oregon League of Women Voters, the Oregon District Attorneys Association, judges, the Oregon State Bar, the Department of Human Services, the Oregon Youth Authority, and AFSCME. Clients and providers also offered compelling testimony about the need for public defense services, and the importance of adequate funding. While the budget was increased by 4% over last biennium and included funding for one policy option package to address rising caseloads across the state, it was not enough to provide rate increases for contract providers. This remains a significant concern and topic of discussion with legislators.

On the bright side, the agency continues to receive support for its work in several areas. The Parent Child Representation Program continues to deliver excellent results, and remains of interest to many legislators and stakeholders.



With the potential for study by a respected university, the agency is working to secure funding for new pilot counties in 2018.

Additionally, progress continues on two Public Defense Resource Center spaces – one in Multnomah and one in Lane County – as part of their courthouse replacement projects. Both the Criminal Appellate Section and the Juvenile Appellate Section continued to advance the law through frequent argument before the Oregon Supreme Court in addition to regular appearances before the Oregon Court of Appeals. Finally, the agency continues to work toward improved representation by planning and executing training opportunities and reviewing representation and system structures across the state.

The agency also continued important work in quality assurance by continued planning for a caseload study and an assessment of Oregon's public defense structure. David Carroll, Executive Director of the Sixth Amendment Center and a national expert in the provision of public defense services, presented information to providers and the Commission during the October Public Defense Management Conference. His expertise in evaluating systems and providing recommendations for improvement could be a critical step toward improvements in Oregon. And Oregon remains in the queue for an ABA-sponsored caseload study that will yield Oregon-specific caseload standards at the trial level. These two projects have the promise of effecting real change for those who rely upon Oregon's public defense system.

Executive Summary

Commission Meetings & Activities

The PDSC held eight meetings in 2017 – four meetings were held in Salem, one in Oregon City, one in Bend, and two on the Oregon coast. Five meetings included Executive Sessions. Three additional Executive Sessions were held in November for the purpose of interviewing and appointing a new Executive Director; one in Portland, and two via teleconference.

January

- 2017 Legislative Session Preparation
- 2016 PDSC Annual Report
- 2016 PCRP Annual Report
- Ranking of Policy Option Packages
- Certified Interpreter Hourly Rates
- Overview of the Appellate Process
- Update on the public meetings law litigation.

March

- Approval of Personnel Rules
- Review of Payment Policies and Procedures
- Approval of Requests for Proposal
- Delinquency Update: Waiver of Counsel
- Budget and Legislative Update

May

- Clackamas Service Delivery Review
- Legislative and Office Budget Update

June

- Clackamas Service Delivery Review Discussion
- Veteran's Resource Center
- A discussion on Innovative Approaches to PCS cases
- Legislative and Office Budget Update
- Pay Parity Priorities
- National Developments in Public Defense
- Immigration Consequences

August

- Budget overview
- Provider and stakeholder comment on PDSC 2018 contracting considerations
- Review of OPDS Personnel Policies
- Update on Commission Best Practices
- Approval of the Clackamas County Service Delivery Review Final Report

September

- Overview of Criminal Appellate Section outreach activities
- Annual Performance Progress Report
- 2018 Contracting Review

October

- The Sixth Amendment Center's Executive Director David Carroll presented Public Defense Structures and Evaluations
- Approval of Statewide Contracts
- Approval of Death Penalty Contracts
- HB 2005—Pay Equity Personnel Rule Updates
- Executive Director Recruitment Discussion with input from providers and staff

November

- Executive Director interviews

December

- Executive Director appointment
- Tillamook County Service Delivery Review
- POP Concept Discussion
- Multnomah County Courthouse Funding Agreement Review

Appellate Division

Criminal Appellate Section

The Criminal Appellate Section of OPDS is responsible for representing financially eligible individuals in criminal and parole appeals.

Juvenile Appellate Section

The Juvenile Appellate Section of OPDS was created in 2007 by the Legislative Assembly to provide representation for parents in juvenile dependency and termination of parental rights cases.

Makeup & Mission

The Appellate Division (AD) is comprised of the Criminal Appellate Section (CAS) and the Juvenile Appellate Section (JAS). The division provides legal representation in the state appellate courts on direct appeal in criminal cases, judicial review of parole decisions, juvenile dependency appeals, and appeals from the termination of parental rights. Ernest Lannet serves as Chief Defender of CAS; Shannon Story serves as Chief Defender of JAS.

The AD is the institutional presence in the state appellate system for court-appointed representation for eligible individuals, consistent with the principles governing the PDSC, and actively participates in the development of law and policy to protect individual rights within Oregon's criminal and juvenile justice systems.

Goals

- *Stand as the premier Oregon appellate law office.*
- *Serve as a valued criminal and juvenile law resource for the Oregon State Bar, the Oregon Legislative Assembly, and the public.*
- *Actively participate in the development of legal theories, strategies, and legislation that advance and preserve individual rights within the Oregon criminal and juvenile justice systems.*
- *Maintain an office culture that promotes professional achievement and employee satisfaction.*

A Critical Component of a Balanced Justice System

Appellate Division managers meet regularly with the Chief Judge of the Court of Appeals and the Solicitor General of the Department of Justice to advance and promote practices that improve the appellate process without prejudicing

the rights of clients. In addition, representatives from AD, the Attorney General's office, and appellate court operations meet to address operational issues that affect system efficiencies. Just as the Solicitor General and the other attorneys of the Appellate Division of the Oregon Department of



Justice step in to represent the state to defend criminal convictions, jurisdiction and permanency judgments, and termination of parental rights decisions prosecuted throughout the state, AD lawyers appear in front of the Oregon Court of Appeals, Oregon Supreme Court, and—occasionally—the United States Supreme Court to represent Oregonians and other individuals appealing adverse determinations by state circuit courts and the Board of Parole and Post-Prison Supervision. AD lawyers also support trial attorneys by fielding email and telephone inquiries from the juvenile and criminal defense attorneys on a daily basis, and by providing briefing and trial memoranda when possible.



Criminal Appellate Section

Team Structure

Three Chief Deputy Defenders support the Chief Defender in the management of the CAS. They meet weekly to assess and respond to the section's needs. They train, supervise, and evaluate the 34 non-management attorneys, set caseload expectations, and assign cases based on experience and complexity. Every CAS attorney is a member of one of six teams led by a senior attorney, which meet weekly to evaluate legal issues, discuss practices, and prepare for oral argument. A team leader or peer edits every brief. The lead attorney briefing and arguing a Supreme Court case has the support of the Chief Defender as lead editor and a moot team.

38: Appellate Attorneys
10: Support Staff

1825: Referrals
1271: Notices of Appeal
700: Briefs

109: Court of Appeals Arguments
23: Supreme Court Arguments

222: Median days to filing

180: Target days to filing

40% of Court of Appeals Caseload

CLE Activity

CAS attorneys are often asked to present appellate updates and focused presentations at OCDLA and OSB sponsored CLE seminars such as the OCDLA Annual and Winter Conferences, the OCDLA Search and Seizure CLE, and the OSB Criminal Law Section CLE. Additionally, some CAS attorneys regularly telework from local public defender offices and participate in their monthly appellate update meetings.

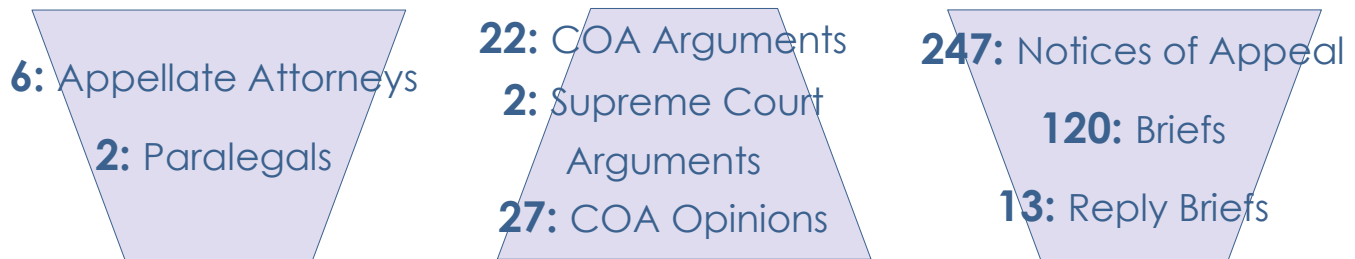
Outreach

CAS attorneys are encouraged to participate in the larger defense and legal communities. CAS attorneys submit articles for the *OCDLA Defense Attorney* and the *OSB Bulletin*, as well as contribute to podcasts on significant recent decisions or developments for criminal defense. CAS attorneys serve on the board and various committees of OCDLA, the OSB House of Delegates, and several OSB Section Committees. Managing attorneys regularly participate in the Northwest Minority Job Fair and the NW Public Service Career Fair.

Juvenile Appellate Section

Team Structure

The Juvenile Appellate Section (JAS) represents parents on direct appeal from juvenile court judgements that interfere with parents' liberty interest in the care, companionship, and control of his or her child. JAS consists of the JAS Chief Defender, five deputy defenders, and two paralegals. The team meets weekly to discuss and evaluate legal issues, manage workflow, and prepare for oral argument. The JAS Chief Defender trains, supervises, and regularly evaluates the JAS attorneys, allocates caseloads and sets expectations, and serves as the section's lead editor. Juvenile dependency and termination of parental rights appeals are expedited (the opening brief is due in the Court of Appeals 42 days after the transcript settles) and the record on appeal typically includes voluminous exhibits, frequently exceeding 1000 pages. In the face of these challenges, JAS has expanded the paralegals' roles to include identifying and compiling exhibits and organizing the record for the attorney in advance of briefing. The expansion of the paralegals' roles has been instrumental in enabling JAS to maintain its practice of efficient and effective management of a high-volume caseload.



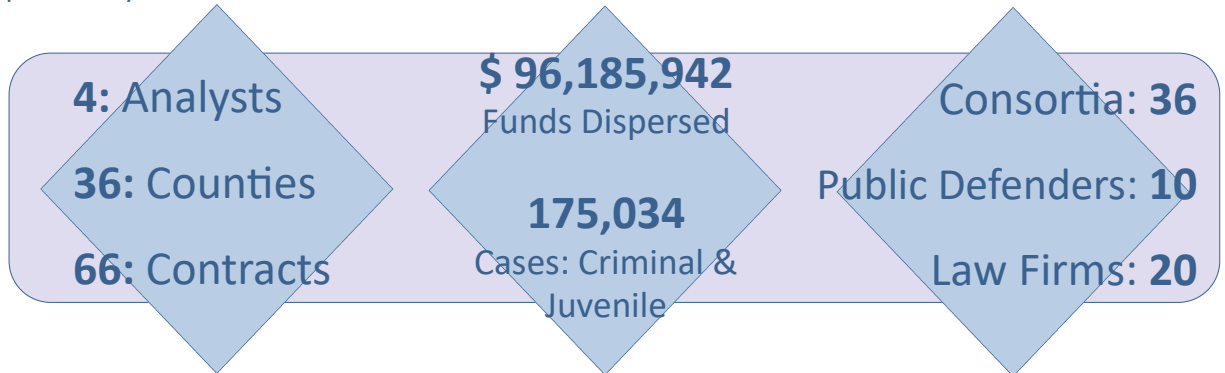
CLE Activities and Outreach

The JAS attorneys regularly serve as a resource to the trial bar, providing daily consultation and support. Because most dependency cases are ongoing at the trial and appellate levels, the JAS unit often consults with trial attorneys and, resources permitting, drafts motions and memoranda for trial attorneys. The unit has worked successfully with trial counsel in several cases to obtain favorable outcomes in the trial courts that obviate the need for appeal.

JAS attorneys are recognized leaders in the juvenile dependency community. They presented at various CLE presentations in 2017 including the annual OCDLA Juvenile Law Training Academy in Eugene, and the OCDLA Juvenile Law CLE in Newport. While JAS's primary commitment is to the direct representation of parent clients on appeal, in 2017, JAS attorneys had capacity to serve on numerous workgroups and boards. Those groups include the Executive Committee of the Juvenile Law Section of the Oregon State Bar, the Oregon State Bar Juvenile Law Performance Standards Task Force, the Editorial Board of the Oregon State Bar's Juvenile Law Bar Book, OCDLA's Juvenile Law Section, and the Governor's Child Foster Care Advisory Commission.

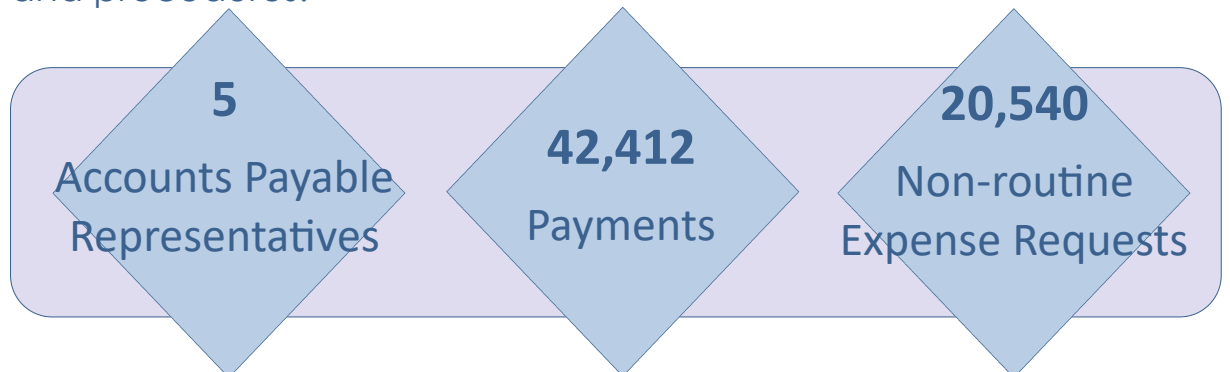
Oregon Caseload Trends & Contract Management

The statewide public defense caseload continued to increase in 2017. The agency projected 172,000 trial level, non-death penalty cases statewide, but received claims for 175,034 cases. The agency continues to analyze caseloads at the trial level, and is reporting regularly to the legislature regarding the increases. The death penalty caseload also increased in 2017.



Financial Services

The financial services team worked very hard to provide a high level of service while managing several transitions in the unit, with significant time dedicated to training and consistency in all accounts payable practices. This focus on consistency ensures that all providers receive the same level of service, and protects the agency by ensuring consistent adherence to all payment policies and procedures.



Budget

Comparison of 2015-17 Legislatively Approved Budget to 2017-19 Agency Request Budget

	2015-17 Legislatively Approved Budget	2017-19 Current Service Level	2017-19 Agency Request Budget
General Funds	\$275,454,477	\$301,366,459	\$379,472,826
Other Funds	\$3,846,904	\$4,109,950	\$4,109,950
All Fund Types	\$279,301,381	\$305,476,409	\$383,582,776

Parent Child Representation Program

Program Summary

OPDS continued to see consistent performance and outcomes with the Parent Child Representation Program (PCRP) in Columbia, Linn and Yamhill counties. The focus of the PCRP is on ensuring competent, client-centered legal representation in juvenile cases through caseload limits, additional oversight and training requirements, and multidisciplinary collaboration, which in turn promote positive outcomes for parents and children.



For the third consecutive year, OPDS evaluated the PCRP using qualitative and quantitative measures indicative of quality legal representation. These measures include: reasonable caseloads, access to multi-disciplinary staff, use of investigators and experts, time spent with clients, attorney presence at case related meetings, presence at shelter hearings, case outcomes, time to reunification, time to permanency, rate of re-entry, number of children in foster care, and client satisfaction. The trends observed through the first two years—improved quality of representation, reduction in the use of foster care, and decreased time to permanency—have continued during year three. Client satisfaction continues to improve as well; 75% of clients report being “very satisfied” with the way their attorney handled their case.

Education & System Reform

Legislative Advocacy OPDS staff supported several important legislative reforms during the 2017 session. First, legislation crafted by the Oregon Law Commission's Direct Criminal Appeals Workgroup passed this session, creating a more clear and efficient appellate process. CAS Chief Defender Ernie Lannet was a valuable workgroup contributor, and attended hearings as a subject matter expert to ensure that legislators understood the changes as they considered and passed the bill. Second, Deputy General Counsel Amy Miller worked with other juvenile law stakeholder groups on the passage of legislation to stop the indiscriminate shackling of youth in court and in transportation by DHS and to prohibit waiver of counsel for youth under 16 and increase procedural protections for youth age 16 and up. Ms. Miller, along with her Deputy General Counsel counterpart Eric Deitrick, participated in several legislative workgroups and provided technical assistance on a number of legislative issues.

Workgroup Participation The OPDS Executive Director continued to participate in the Governor's Public Safety Team meetings, the Oregon Judicial Department Audit Committee, the Multnomah County Bar Association Judicial Selection Committee, the NLADA's Systems Development and Reform Committee, the Oregon Law Commission, and participated as a contributing editor of the Juvenile Law Reader.

Other workgroup participation included:

- Marc Brown, Victim Rights Task Force
- Dave Ferry, OCDLA President
- Andy Robinson, OCDLA Board, OSB Uniform Jury Instruction Committee
- Erin Snyder-Severe, OSB Constitutional Law Section
- Erik Brewster, OSB Uniform Jury Instruction Committee
- Zack Mazer, OSB UTCR Committee
- Josh Crowther, OSB Diversity Annual, OLIO Employment Retreat, OSB Disciplinary Counsel
- Rond Chananudech, OSB Diversity Annual, OLIO Employment Retreat
- Shawn Wiley, OSB Criminal Law Section
- Paul Levy, OCDLA Education Committee
- Shawn Wiley, OCDLA Legislative Committee

Education & System Reform

Other Presentations, Training, CLE, & Education Efforts *(key participants)*

- MPD Presentation (*S. Laidlaw, M. Brown*)
- OJD History of Eugenics in Oregon (*M. Brown*)
- CLE at Umpqua Valley Defenders (*M. Brown*)
- DeYoung presentation to FBA (*M. Brown*)
- OSB Criminal Law Section presentation (*J. Crowther, S. Werboff*)
- NW Public Career Fair (*J. Crowther, R. Chananudech*)
- Lewis & Clark Law School preparation and recruitment (*J. Crowther*)
- Willamette Law School Appellate Moot Court Competition Judging (*J. Crowther*)
- Oregon Supreme Court case moots (*AD*)
- State Direct Appeals presentation at Federal Defenders Office (*J. Crowther*)
- Ch 138 presentation with Nass (*E. Lannet*)
- OSB Criminal Law Section CLE (*R. Chananudech, M. Brown*)
- Juvenile Law Training Academy (*A. Miller*)
- Annual Juvenile Conference (*A. Miller*)
- OCDLA Juvenile Law Committee (*A. Miller*)
- OSB Juvenile Law Executive Committee (*A. Miller*)
- ABA Center on Children and the Law Parent Representation Steering Committee (*A. Miller*)
- ABA 17th National Conference on Children & the Law (*A. Miller*)
- OCDLA Annual Juvenile Conference (*A. Miller*)
- Public Defense Management Conference (*A. Miller*)

RFP Webinar

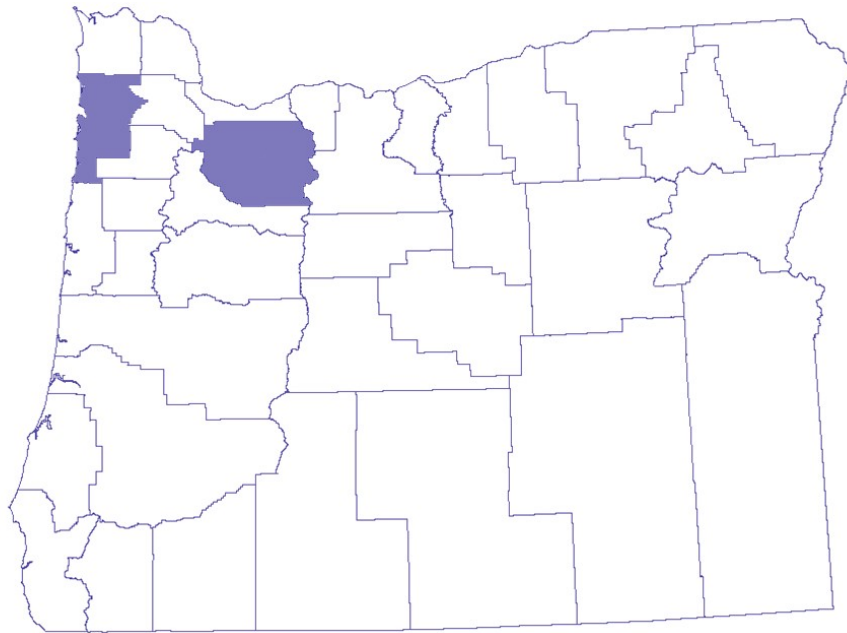
OPDS Contracts Manager Caroline Meyer and General Counsel Paul Levy presented a first-ever “RFP Webinar,” hosted by OCDLA in April 2017, which explained to interested parties the changes and important deadlines and requirements for the OPDS Request for Proposals for contracts to provide public defense services in Oregon for the 2018-2019 biennium.

- MDI Appellate Case Discussions (*M. Brown, E. Seltzer, S. Werboff, S. Laidlaw, E. Herb, K. Krohn*)
- Marion County Public Defender Weekly Appellate Case Discussions (*M. Brown*)
- Lane County Bar Association presentation (*M. Allen, L. Coffin*)
- OCDLA CLE presentations & podcasts (*S. Werboff, M. Brown, E. Snyder-Severe, M. Daniels*)
- O’Connell Conference presentation (*M. Brown*)
- Yamhill County Bar Association presentation (*D. Sherbo-Huggins*)
- OCDLA Articles (*I. Miller, A. Robinson, K. Krohn, E. Seltzer, B. Allin, S. Werboff, R. Chananudech*)
- OPDS Holidaze

Service Delivery Reviews

The PDSC conducted two Service Delivery Reviews in 2017. A review in Clackamas County followed up on a peer review there in 2015. The Commission also began a review in Tillamook County, considering a draft report and taking testimony from local stakeholders in the county at its December, 2017 meeting. The Commission will finalize the review in 2018.

OPDS staff also completed an examination of public defense services in Jackson County. As a result, the principal public defense provider in criminal cases there transitioned to new leadership. OPDS staff also conducted a site visit in Clatsop County, examining the services provided by the public defense contractors there.



National Developments

In addition to periodic updates provided to the Public Defense Services Commission, at its June, 2017 meeting, the Commission received a major presentation from General Counsel Paul Levy and Deputy General Counsel Amy Miller and Eric Deitrick, on national developments in public defense. The presentation reported on systemic litigation challenging the adequacy of public defense services in jurisdictions around the country, in addition to an update on workload studies, and a review of scholarship devoted to reform of public defense services.

Workload Study

OPDS General Counsel Paul Levy and Deputy General Counsel Eric Deitrick continued to work with experts from the American Bar Association on obtaining a public defense workload study in Oregon that would assist in establishing evidence-based caseload limitations for public defense providers. The study would be conducted using methodology employed in similar studies in Missouri, Louisiana, Colorado, Rhode Island, New York, and elsewhere. OPDS staff is working with the ABA to develop a proposal for an Oregon study. Meanwhile, Eric Deitrick attended a national summit of public defense leaders that focused on establishing and enforcing meaningful workload limitations.

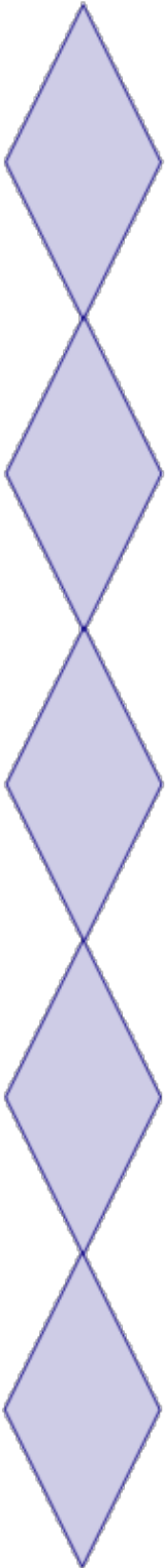
Complaint Investigations

OPDS received complaints in 2017 about public defense services from clients, judges, prosecutors, and others. In many instances, these complaints concern problems with attorneys not responding to requests for case information and assistance, and OPDS can often work with the appointed attorney or contract administrator to quickly resolve the issue. However, both General Counsel and Deputy General Counsel devoted significant time to several matters that required substantial investigation and other efforts to come to an effective resolution to the matter.

Statewide Survey

As in previous years, OPDS conducted a statewide survey of public defense performance in 2017. The survey was distributed statewide to judges, prosecutors, Citizen Review Board coordinators, Department of Human Services personnel, Department of Justice attorneys, and others. OPDS staff followed up on survey comments with respondents and public defense providers. The Commission received a report of the survey at its October 2017 meeting. In addition, OPDS analysts made both in-person visits and regular phone contact with courts throughout the state to receive feedback on the quality of public defense services and to discuss court processes and other issues affecting the delivery of public defense services.

Diversity & Inclusion



OPDS strives to support a diverse and inclusive environment for all employees and clients. This includes a commitment to semi-annual diversity trainings and on-going efforts to ensure that the office remains a welcoming place for everyone.

Over the past year, OPDS hired new employees to fill twelve positions:

- Executive Director
- Budget and Finance Manager
- Human Resources Manager
- Research and IT Director
- Executive Assistant
- Legal Secretary (3)
- Deputy Defender I
- Accounting Technician (2)
- Compliance Specialist

Due to the increased workload in the Finance section, an additional Fiscal Analyst limited duration position was added. This turnover was predominately due to employees taking higher paid positions at other agencies. 75% of the employees hired were women; women hold more than 58% of the Appellate Division positions including those employees working as attorneys, legal assistants, and paralegals. Women fill more than 71% of positions in Executive Services, Contract Services, Accounting and Finance, and Operations. Persons of color hold 10% of the positions in the Appellate Division, and 7% in non-Appellate division positions.

OPDS Diversity Training Program

General Counsel Paul Levy planned and presented the Biennial OPDS Diversity Training Program for all staff in May 2017. The program, entitled, *“Black Lives in Oregon: The Enduring Legacy of Racism and The Experience of Black Lives in Oregon Today,”* featured a presentation on the neuroscience of prejudice by an Oregon Health & Science University neuroscientist, followed by a panel of black community activists and leaders.

Community Contributions



Governor's Food Drive

Every February, OPDS staff participate in the Governor's State Employees Food Drive. In 2017, OPDS collected **222 pounds of food, \$1768 in payroll deductions and \$1414.43 in cash donations**. This equates to **9,714** meals contributed to Oregon communities!



State Employees' Charitable Fund Drive

In October, OPDS staff worked to beat last year's total raised in the State Employees' Charitable Fund Drive, with great success! OPDS raised **\$5484** this year, which included cash donations and payroll deductions.



Holiday Toy Drive

OPDS staff's generosity shined through the holiday season. More than **\$200 in cash donations were received in addition to dozens of toys**.

Looking Forward

Challenges for 2018 The Commission continues to struggle with limited resources and an inability to provide adequate case rates for all case types. Attorneys have repeatedly expressed concern about limited time for case work due to excessive caseloads, and increased personal stress as a result of high student loan debt and low compensation. Public defense providers are experiencing a high rate of attorney turnover, leaving clients in the public defense system with multiple attorney transfers in a single case, which puts additional stress on defendants, victims, and courts by creating unnecessary delays and missed opportunities for case resolution.

The Commission has the additional challenge this year of moving through another phase of relatively significant change. Two legacy members of the Commission retired at the end of 2017, and the agency is also receiving a new Executive Director in January 2018. While these changes create challenge in terms of business continuity, they also bring opportunities for new perspectives and further development of Oregon's public defense system. OPDS is well-structured to withstand these changes, and will no doubt continue to develop, mature, and excel as it approaches its 20-year anniversary as a state agency.

The Public Defense Services Commission and OPDS managers will be working together to secure additional funding in 2018, and to develop and robust and targeted budget request for the 2019-21 biennium. With several critical projects and plans underway, the agency is poised to experience continued successes, even if modest, in the year ahead.

