



To: Co-Chair Devlin; Co-Chair Buckley

From: Nancy Cozine, Executive Director

Date: January 21, 2014

Re: PDSC Key Performance Measures – Report to the Legislature

---

### Request

Currently, the Public Defense Services Commission has three Key Performance Measures: Commission adherence to best practices of boards and commissions; median days to filing of the opening brief in appellate cases; and customer satisfaction. The agency's Annual Performance Progress Report for Fiscal Year 2012-13 is attached for reference. The Commission requests permission to continue these three measures, with one modification to the appellate KPM. The Commission further requests permission to submit in the agency request budget new KPM proposals that will offer a meaningful measure of trial court representation.

### Background

In July 2013, the Oregon Legislature passed the Public Defense Services Commission budget bill, House Bill 5041-A, with a request that the agency "review its KPMs and to report to the Legislative Assembly during the 2014 Session on the outcome of this review and on any proposed revisions to its KPMs that would better measure the effectiveness and efficiency of the agency's programs."

The Public Defense Services Commission and staff at the Office of Public Defense Services have been diligently examining existing KPMs and exploring possible new KPMs.

### Suggested Change to Appellate KPM

The current appellate KPM targets 210 days as the median date following record settlement for filing the opening brief in agency appeals. The time to filing of the opening brief is an important measure, as delays in the appellate process can adversely impact the agency's clients, who are often incarcerated during an appeal, and others involved in the case, and cause injury to the integrity of the criminal appellate process. For several years the criminal appellate attorneys at OPDS have been working toward the goal of filing within 210 days of record settlement, and in 2013 reached the median filing date of 223 days. While the goal of 210 days was not met, OPDS believes that with the elimination of furlough days and filling of positions that were temporarily held vacant in order to meet the 3.5% holdback in 2011-13, it will reach the 210 target in 2014 (this assumes that the agency will not have to again hold vacant positions in order to manage budget reductions). Given the systemic importance of reducing delays, the likelihood of reaching the 210 day target in 2014, and the beneficial effect of having and achieving a landmark

goal, the agency would like to reduce the KPM target to 180 days in order to better serve clients, the judicial system, and the citizens of Oregon.

### Trial Level KPM Discussions

The Commission is aware that the existing KPMs do not provide a measure of the quality of representation at the trial court level, and is very interested in adopting a KPM that will provide such a measure. Possible KPM measures explored by OPDS staff and the Commission since July 2013 include:

- Number of hours of attorney training
- Substitutions of attorney
- Peer reviews completed
- Post-conviction relief claims involving public defense providers
- Number of failures to appear
- Continuances in dependency cases
- Number of public defense cases in which the lawyer is present at the client's first appearance in dependency and criminal cases
- Number of delinquency cases in which a lawyer is appointed when the petition is filed
- Length of time between lawyers' appointment and the first client visit
- Frequency of client communication
- Contractor adherence to Best Practices for Oregon Public Defense Providers
- Number of cases per attorney

### Challenges

While each of the potential trial level representation measures has some bearing on trial court case outcomes and quality of representation, no one measure is in and of itself indicative of quality services, and at this point, there is no available means of collecting the data necessary for implementation of a statewide measure. Unfortunately, current court and provider data systems are not structured to capture the data necessary to measure suggested performance criteria.

### Plans for the Future

Three factors should increase the agency's ability to develop and begin measuring trial court outcomes within the next several months.

First, OPDS is in the process of increasing its ability to collect and analyze data. After a decade without dedicated on-site information technology (IT) expertise, the agency developed a Research and Information Technology Director position, which was filled on January 13, 2014. One of the agency's expectations for the person in this role is development of data sets to support new KPMs. While OPDS uses one case management system for appellate cases, that system has not been significantly updated in many years and must be modified in order to adopt new appellate KPMs. Additionally, contract providers across the state do not use a standard case management system. OPDS began discussions regarding uniformity in data collection during the Public Defense Management Conference in October 2013, and expects to continue working with

providers to support their increased need for electronic case management and data collection. The agency is now exploring available case management systems, and hopes to help public defense providers acquire case management systems that collect standardized information. Additionally, the agency is exploring other ways to effectively collect and analyze relevant data.

Second, full implementation of the Oregon eCourt Case Information (OECI) System could provide the agency with data that is helpful in assessing outcomes in public defense cases. The court's current system, OJIN, does not allow OPDS to sort cases. OJIN statistical reports available on the OJD website include all cases within a particular case type, and it is not possible to separate public defense cases from privately retained cases for meaningful analysis. The new OECI System should have more ways to filter data so that public defense cases can be analyzed separately from cases in which the attorney is privately retained, and with a full time research and IT person on staff, the agency expects to have more capacity to explore possible data sharing and analysis opportunities.

Third, there are efforts at the national level to develop reliable measures of representation at the trial court level. The National Legal Aid and Defender Association established a Research and Data Advisory Committee for the purpose of developing specific measures, and the Office of Public Defense Services is participating in the work of this Committee. The first phase of this grant-funded project will be completed in June 2014, and should yield some helpful information about what data points are necessary to complete specific measures that are indicative of quality representation.

With these pieces currently in progress, the agency intends to dedicate available resources to development of critical foundational structures necessary for data collection and analysis. Once the foundational structures are in place, the agency will be able present to the Legislature new KPMs specifically targeting trial level representation, and expects to have made enough progress toward that goal to have new targets identified for inclusion in the 2015-17 agency request budget.

# **PUBLIC DEFENSE SERVICES COMMISSION**

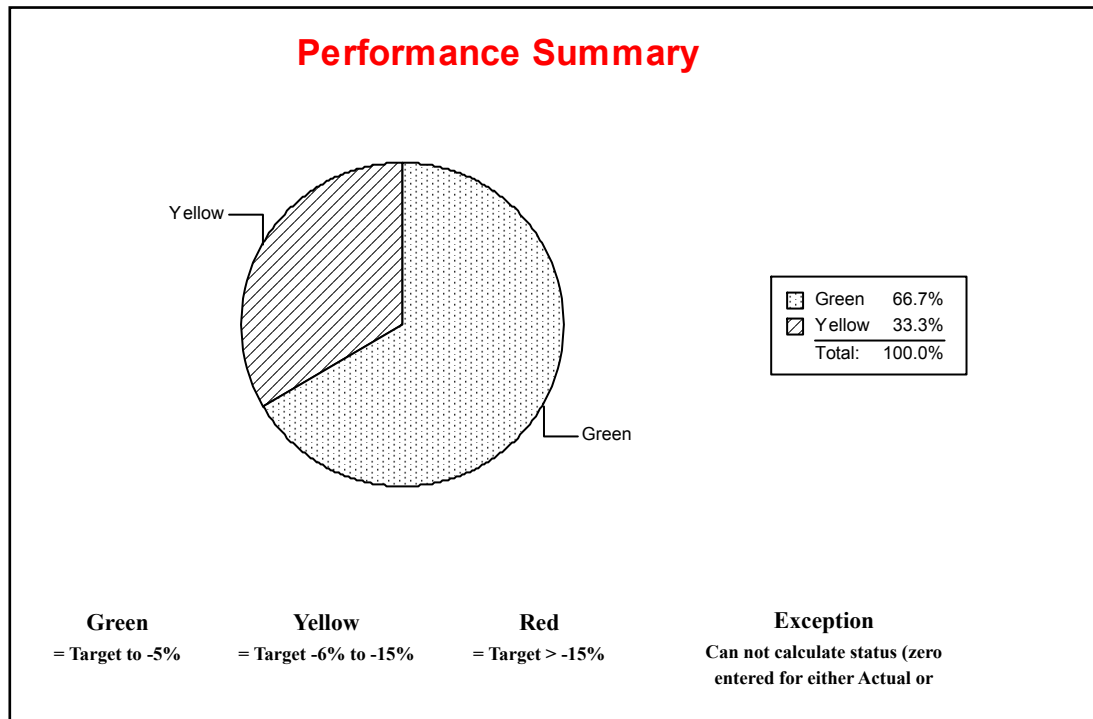
## **Annual Performance Progress Report (APPR) for Fiscal Year (2012-2013)**

Original Submission Date: 2013

Finalize Date:

2012-2013 KPM #	2012-2013 Approved Key Performance Measures (KPMs)
1	APPELLATE CASE PROCESSING - Median number of days to file opening brief.
2	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.
3	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.

<b>PUBLIC DEFENSE SERVICES COMMISSION</b>		<b>I. EXECUTIVE SUMMARY</b>
<b>Agency Mission:</b> Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.		
<b>Contact:</b> Billy Strehlow	<b>Contact Phone:</b> 503-378-2512	
<b>Alternate:</b> Peter Gartlan	<b>Alternate Phone:</b> 503-378-2371	



## 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 in Oregon state courts to financially eligible individuals 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**

The agency is making progress in all of its Key Performance Measures.

### **4. CHALLENGES**

The primary challenge for the agency is that public defense in Oregon has been chronically underfunded. Prior to fiscal year 2008, the hourly rate for an attorney appointed on a non-Aggravated Murder case was \$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 had steadily declined. Although the 2007 Legislature provided funding to increase that rate to \$45 per hour, this still represents a decline in real dollars based on Consumer Price Index increases over the 17-year period. 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 in some cases 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. If additional funding is not provided to address such changes, the quality of representation is further eroded.

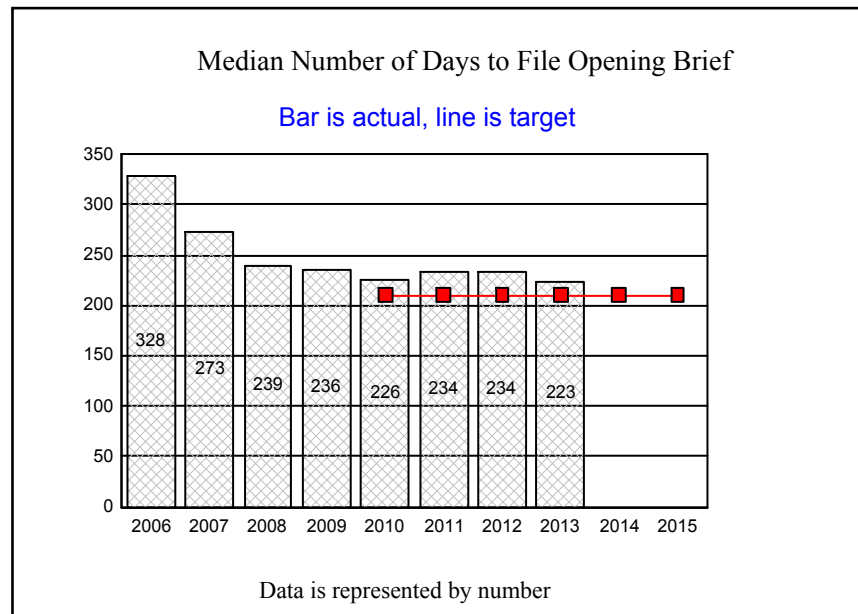
### **5. RESOURCES AND EFFICIENCY**

The agency's 2011-13 Legislatively Adopted Budget was \$223,717,479.

Within existing resources, the agency continues to convert to electronic storage and retrieval of documents; has further automated document production with improvements to the case management database.

With the implementation of e-filing, the agency continues to move toward a largely paperless office. In addition to saving paper and file storage costs, it saves attorney and staff time by having files instantly available at the click of a button.

<b>KPM #1</b>	APPELLATE CASE PROCESSING - Median number of days to file opening brief.	2009
<b>Goal</b>	GOAL 1: Reduce delay in processing appeals. GOAL 2: Ensure cost-efficient service delivery.	
<b>Oregon Context</b>	Mission Statement.	
<b>Data Source</b>	Case Management Database Reports.	
<b>Owner</b>	Appellate Division, Peter Gartlan, (503) 378-2371.	



## 1. OUR STRATEGY

Our goal is to reduce the delay in the appellate system. Reducing the number of open cases in the pre-briefing stage enables Appellate Division attorneys to address and resolve cases more efficiently, instead of "managing" – without resolving – an excessive caseload.

## 2. ABOUT THE TARGETS

The Appellate Division wants to file the opening brief within 210 days of record settlement. The 210-day target addresses several considerations. First, the agency considers it intolerable that an individual would have to wait more than seven months for an appellate attorney to advise the client concerning the viability of an appellate challenge to his conviction and/or sentence. Second, past budget reductions in the Attorney General's Office caused the Solicitor General to slow its briefing schedule in criminal cases, which causes additional delay in the appellate process and additional delay for the client. Third, federal courts have intervened when a state appellate system routinely takes two years to render decisions in criminal appeals. The 210-day target represents a reasonable attempt to meet various systemic considerations.

## 3. HOW WE ARE DOING

The agency has made significant progress. In 2006, the median number of days to file the opening brief was 328; in 2013 it was 223. Assuming adequate resources, the agency anticipates reaching or approaching the goal of 210 days in 2014.

## 4. HOW WE COMPARE

Appellate Division attorneys significantly exceed national caseload standards. Nationally, the appellate public defender workload ranges from 25 to 40 cases annually. For example, Georgia, Indiana, and Washington set the maximum annual appellate caseload at 25 cases per attorney; Nebraska sets the maximum annual appellate caseload at 40 cases per year. US Department of Justice, Compendium of Standards for Indigent Defense Systems, vol. IV, C 1-5 (2000). On average, an Appellate Division criminal defense attorney was assigned 48 cases in the fiscal year ending in 2013, which exceeds the maximum recommended standards and practices.

## 5. FACTORS AFFECTING RESULTS

The ability to meet and exceed the target correlates positively to the number of attorneys and negatively to the number of cases. The agency does not control the number of referred cases. Attracting and retaining competent attorneys affects progress toward the goal.

## 6. WHAT NEEDS TO BE DONE

The agency continues to meet regularly and work cooperatively with the appellate courts and the Attorney General's Office to promote system efficiencies. The agency has made steady progress over the past several years to reduce the median brief filing date for its criminal cases (from 328 days in 2006, to 223

days in 2013). Barring significant caseload increases, milestone Supreme Court decisions that affect hundreds of open cases, or an atypical loss of talented and trained attorneys, the agency expects to approach its target of 210 days in criminal cases in fiscal year 2014

## **7. ABOUT THE DATA**

The data is derived from the agency's case management database. The strength of the data lies in historical comparison with prior years. The weakness is attributable to the inherent difficulty in quantifying appellate caseloads. The agency continues to refine caseloads based on case type, transcript length, and issues presented.

<b>KPM #2</b>	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	2007
<b>Goal</b>	To provide greater accountability and results from government by delivering services that satisfy customers.	
<b>Oregon Context</b>	To maintain and improve the following category ratings of agency service: overall quality of services, timeliness, accuracy, helpfulness, expertise and availability of information.	
<b>Data Source</b>	Customer Service Surveys (survey and results stored on SurveyMonkey).	
<b>Owner</b>	Contract and Business Services Division, Billy Strehlow, (503) 378-2512.	



## 1. OUR STRATEGY

The general strategy is to utilize feedback to address cited problems and improve the general level of service provided by the agency.

## 2. ABOUT THE TARGETS

Targets for 2011-13 have been set at 95% of respondents rating the agency as good or excellent.

## 3. HOW WE ARE DOING

The survey results indicate a high level of customer satisfaction with the agency. Service was rated as good or excellent by more than 93% of the respondents in all categories. Although the standard reporting measure for state agencies groups both "good" and "excellent" into one category, the more telling aspect of the agency's results is the percentage of respondents who rated the service as excellent. In the categories of Timeliness and Helpfulness, over 70% of respondents rated the agency's service as excellent.

## 4. HOW WE COMPARE

Services and customers differ greatly among state agencies, so a direct comparison to other state agencies may lack validity. Similarly, comparisons to public defense systems in other jurisdictions would not be useful due to variations in the survey questions, the survey pool, and the types of services provided. Given the high percentages of positive ratings received by the agency, we would likely compare favorably were such a comparison possible.

## 5. FACTORS AFFECTING RESULTS

The ratings are somewhat lower this year than in prior surveys. The agency believes that the lower ratings are a reflection of cost-cutting measures the agency implemented. For example, in order to reduce the costs associated with processing payments, the agency grouped some categories of vendors so that payments were processed for that group one day per week rather than being processed throughout the week as submitted. Although this added an average of three days to the time in which payments were processed, the agency still processes payments within 10 days and did realize a savings as a result of this procedural change.

## 6. WHAT NEEDS TO BE DONE

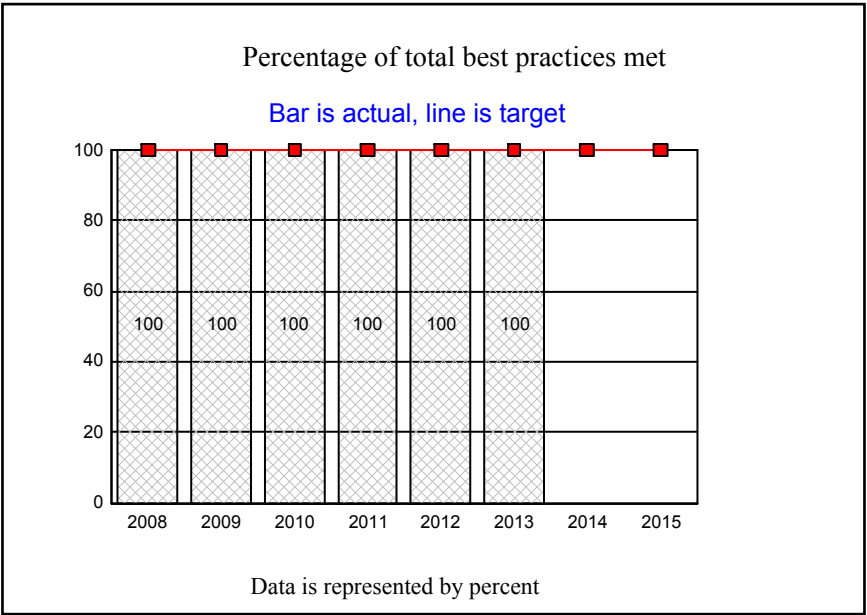
In the 2008 survey, the agency's lowest satisfaction rating (89%) was in the category of Availability of Information. In order to improve this rating, the agency restructured its website so that information is better organized and easier to locate. The agency is pleased that the 2012 survey results show that 93% of the respondents now rate the Availability of Information as good or excellent. The agency will continue to make improvements in this area.

## **7. ABOUT THE DATA**

A total of 886 contract attorneys, private bar attorneys, and service providers were invited to complete the agency's Customer Service Survey. The survey was administered in June 2012 as a snapshot for fiscal year 2012. There was a 29% response rate (255 responses) to the survey. The agency administers the customer service survey every two years to coincide with its two-year contract cycle. The next survey will be conducted in June 2014.

<b>PUBLIC DEFENSE SERVICES COMMISSION</b>	<b>II. KEY MEASURE ANALYSIS</b>
---	---------------------------------

<b>KPM #3</b>	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.	2007
<b>Goal</b>	Best practices as a pathway to improved performance and accountability.	
<b>Oregon Context</b>	Required KPM for all Oregon boards and commissions.	
<b>Data Source</b>	Commission agendas and minutes.	
<b>Owner</b>	Contract and Business Services Division, Nancy Cozine, (503) 378-2515.	



# 1. OUR STRATEGY

The agency's commission currently follows all of the best practices.

## **2. ABOUT THE TARGETS**

The agency anticipates meeting all of the best practices for boards and commissions.

## **3. HOW WE ARE DOING**

The Commission's minutes provided in the materials for its July 31, 2013 meeting included the discussion of the self assessment confirming that the agency met all of the best practices for boards and commissions.

## **4. HOW WE COMPARE**

The agency assumes that most boards and commissions will be able to implement all best practices.

## **5. FACTORS AFFECTING RESULTS**

There are no factors that would prohibit the agency from meeting all of the best practices.

## **6. WHAT NEEDS TO BE DONE**

No change is needed.

## **7. ABOUT THE DATA**

The Commission continues to meet all of the best practices as documented in the Commission meeting minutes.

<b>PUBLIC DEFENSE SERVICES COMMISSION</b>		<b>III. USING PERFORMANCE DATA</b>
<b>Agency Mission:</b> Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.		
<b>Contact:</b> Billy Strehlow		<b>Contact Phone:</b> 503-378-2512
<b>Alternate:</b> Peter Gartlan		<b>Alternate Phone:</b> 503-378-2371
<b>The following questions indicate how performance measures and data are used for management and accountability purposes.</b>		
<b>1. INCLUSIVITY</b>	<p><b>* Staff :</b> The agency's Management Team drafted initial performance measures.</p> <p><b>* Elected Officials:</b> The Joint Legislative Audit Committee and the interim Judiciary Committee assisted the agency in refining and finalizing its performance measures. After five years of data collection, it was apparent that some performance measures were not providing useful information and were eliminated by the Legislature during the 2009 session.</p> <p><b>* Stakeholders:</b> Input was received from the agency's Contractor Advisory Group comprised of public defense service providers.</p> <p><b>* Citizens:</b> The agency developed, discussed and revised its performance measures during two public meetings.</p>	
<b>2 MANAGING FOR RESULTS</b>	The agency's lowest customer service rating in 2008 (89% good or excellent) regarding availability of information caused us to restructure our website so that more information is available and is easier to locate. As a result, the rating for 2012 improved to 93%.	
<b>3 STAFF TRAINING</b>	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.	
<b>4 COMMUNICATING RESULTS</b>	<p><b>* Staff :</b> The Annual Performance Progress Reports are available to staff online. The results and future plans are discussed at staff meetings.</p> <p><b>* Elected Officials:</b> The agency communicates results to the Legislature through the Executive Director's biennial report to the Legislature, and by the inclusion of the APPR in the Agency Request Budget binder.</p>	

	<p>* <b>Stakeholders:</b> Performance results are communicated through the agency's website and DAS's website as well as being provided in the materials distributed at public meetings.</p>
--	--

	<p>* <b>Citizens:</b> Performance results are communicated through the agency's website and DAS's website as well as being provided in the materials distributed at public meetings.</p>
--	--