

ANALYSIS

Item 5: Public Defense Services Commission Compliance, Audit, and Performance Management

Analyst: John Borden

Request: Acknowledge receipt of a report on the Compliance, Audit and Performance Division.

Analysis: The budget report for HB 5030 (2021), the primary budget measure for the Public Defense Services Commission (PDSC), included the following budget note:

The Public Defense Services Commission is directed to develop a comprehensive program plan for the Compliance, Audit, and Performance Division, which is to include, but is not limited to: (a) the administration of the Criminal Trial, Non-Routine Expenses, Court-Mandated Expenses, and Juvenile Divisions; (b) quality assurance/control plans for Criminal Trial, Non-Routine Expenses, Court-Mandated Expenses and Juvenile Divisions, including the PRCRP, and the Appellate Division; and (c) the development of Key Performance Indicators and Key Performance Measures for the agency. The Commission is directed to submit the plan to the Legislative Emergency Board in September of 2022 and then Key Performance Indicators and Key Performance Measurements to the Legislature prior to the Legislative Session in 2023.

History

PDSC's agency efforts at quality control and assurance involved the Office of the General Counsel performing quality assurance assessments of contract providers in each of 27 judicial districts through a peer review process. This program involved a volunteer group of public and private defense attorneys and other professionals as well as PDSC staff to devote two and a half days to on-site interviews that was then coupled with other study and analysis to ascertain the quality of representation being provided by a particular contractor or contractors in the county or district. PDSC's quality control and assurance model, while well-intended, was inherently limited by its not having dedicated or assigned professional staffing or having a more robust and routinized review process across the 27 judicial districts or by having no in-house ability to conduct financial audits of providers. PDSC's quality control and assurance efforts lost emphasis in recent years, with perhaps the exception of the Parent Child Representation Program, which reported has more robust performance and quality standards.

Background

The establishment of the Compliance, Audit and Performance Division (CAP) was designed to bring a heightened level accountability to Oregon's public defense system in general, and PDSC specifically, and to improve public defense outcomes through a robust monitoring of the quality of service delivery and the expenditure of funds at all levels of public defense. The CAP Division's purpose is to provide for the following mutually inclusive services: (a) vendor contract compliance; (b) auditing of vendors/contractors; (c) internal auditing of agency expenditures; (d) research and analysis; and (e) development and maintenance of performance measures, including Key Performance Measures and supporting internal Key Performance Indicators. CAP and its various sections are intended to operate autonomously from all other legal and administrative divisions within PDSC and exercises no managerial, supervisory, programmatic, or operational control over any other division or program. This structure

allows for independent assessment and reporting directly to the Commission of the agency's performance.

The 2021-23 legislative approved budget for CAP totals \$4.7 million General Fund includes 13 positions (11.27 FTE). The positions include: two permanent full-time Research Analyst 4 (1.50 FTE); two limited duration Operations and Policy Analyst 2 (1.76 FTE); and two permanent full-time Internal Auditors (1.76 FTE). The CAP budget temporarily houses legal operational staff of the Trial Criminal and Juvenile Divisions, including the Chief Adult Criminal Trial Counsel (0.75 FTE) and three Deputy Adult General Trial Counsel (2.50 FTE) and the Chief Juvenile Trial Counsel (1.00 FTE) and two Deputy Juvenile Trial General Counsel (2.00 FTE), who are responsible for direct program administration and to establish policy, procedure, and guidelines for each division as well as provide training and other assistance to providers. Transfer of these non-CAP positions to their respective programs will be considered during the 2023-25 budget process. It should be noted that PDSC has submitted a funding request to the Emergency Board to add staff to the CAP division (Item #8).

Report Findings

PDSC's report outlines a high-level five-year plan for CAP spanning two and a half biennia beginning with the 2021-23 biennium (September 2022) through the 2025-27 biennia. The first year of the plan will focus on measuring and monitoring workloads, developing policies and procedures, establishing contract monitor practices and key indicators of attorney performance, and to develop a stakeholder engagement plan. The second and third year will be to build workload models for the contracting cycle, begin contract monitoring, develop data tools and infrastructure, and look at practice standards for court mandated and non-routine expenses. Year four and five will put into place a more robust monitoring and practice aids to close programmatic gaps. Other key findings of the report were a recommendation to remove the Audit Section from the division as well as to have the division report to the Deputy Director of the agency. The report also appears to recommend placing the Appellate Division out of the scope of CAP.

Analysis

While PDSC has strived to be responsive to the budget note, and the agency has a strong conceptual understanding and commitment related to the importance of CAP, further planning work is necessary. PDSC's current approach and timeline for CAP will need to be reviewed as part of the Legislature's examination of the agency's 2023-25 budget request.

Recommendation: The Legislative Fiscal Office recommends that the Emergency Board acknowledge receipt of the report with instruction that the Public Defense Commission report to Joint Committee on Ways and Means during the 2023 Legislative Session within an update on the framework and implementation plan for the Compliance, Audit, and Performance Division.

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Public Defense Services Commission
Gibson

Request: Report on House Bill 5030 (2021) budget note on the Compliance, Audit and Performance Implementation Plan by the Public Defense Services Commission.

Recommendation: The Public Defense Services Commission is not under Executive Branch budgetary authority.

Discussion: In accordance with the budget note in House Bill 5030 (2021), the Public Defense Services Commission (PDSC) is providing a report on a comprehensive program plan for the Compliance, Audit, and Performance (CAP) Division. The budget note directs the agency to provide a comprehensive plan including detailed information on:

- 1) The administration of the Criminal Trial, Non-Routine Expenses, Court-Mandated Expenses, and Juvenile Division;
- 2) Quality assurance/control plans for the Criminal Trial, Non-Routine Expenses, Court-Mandated Expenses, Juvenile Division (including the Parent Child Representation program), and Appellate Division; and
- 3) Development of Key Performance Indicators and Key Performance Measures for PDSC.

The report describes the purpose of CAP, initial planning and challenges, and upcoming initiatives. The following is a high-level summary of the five-year Compliance, Audit, and Performance Plan.

Year 1 Initiatives (*September 2022 – June 2023*)

- Focus on measuring and monitoring workload across adult criminal, juvenile dependency, and juvenile delinquency case types, including:
 - Development of a measuring and monitoring infrastructure including policies, procedures, and logic models;
 - Establishing contract monitoring practices for basic attorney performance; and
 - Identify the key indicators for measuring and monitoring attorney performance.
- Develop a provider and stakeholder engagement plan based on equity-informed information.

Year 2 and 3 Initiatives (*July 2023 – June 2025 Initiatives*)

- Focus on measuring and monitoring workload across remaining case types, including:
 - Building workload models to use in the contracting cycle,
 - Executing the first stage of monitoring,
 - Developing data collection tools and infrastructure, and
 - Utilizing practice-informed standards for court-mandated expenses and case support services.

Year 4 and 5 Initiatives (*July 2025 – June 2027 Initiatives*)

- Build a vigorous evaluation and monitoring system based on data and client outcomes,
- Administer training, practice aids, and other interventions to close identified programmatic gaps, and
- Execute a continuous evaluation and improvement framework.



Oregon

Public Defense Services Commission

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August 26, 2022

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Dan Rayfield, Co-Chair
Joint Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairs:

Nature of the Request

The purpose of this letter is to report on the Budget Note from HB 5030 (2021).

The HB 5030 Budget Note reads:

The Public Defense Services Commission is directed to develop a comprehensive program plan for the Compliance, Audit, and Performance Division, which is to include, but is not limited to: (a) the administration of the Criminal Trial, Non-Routine Expenses, Court-Mandated Expenses, and Juvenile Divisions; (b) quality assurance/control plans for Criminal Trial, Non-Routine Expenses, Court Mandated Expenses and Juvenile Divisions, including the PRCRP, and the Appellate Division; and (c) the development of Key Performance Indicators and Key Performance Measures for the agency. The Commission is directed to submit the plan to the Legislative Emergency Board in September of 2022 and then Key Performance Indicators and Key Performance Measurements to the Legislature prior to the Legislative Session in 2023.

Agency Action

The Public Defense Services Commission requests to submit the 5-year Compliance, Audit, and Performance plan developed over the last several months in response to the HB 5030 (2021) budget note.

The agency will track its implementation plan progress throughout the project. Updates will be provided to stakeholders regularly and can also be provided to the committee, if desired.

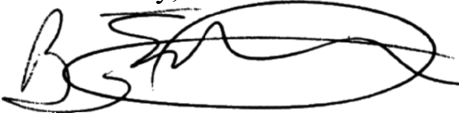
Action Requested

The Public Defense Services Commission requests acknowledgement and receipt of this report during the September 2022 Emergency Board.

Legislation Affected

No legislation is affected.

Sincerely,

A handwritten signature in black ink, appearing to read "B. DeForest", written over a horizontal line.

Brian E. DeForest
Deputy Director

cc:

Amanda Beitel, Legislative Fiscal Officer
John Borden, Principal Legislative Analyst, LFO
George Naughton, Chief Financial Officer
Wendy Gibson, Policy and Budget Analyst, CFO

PUBLIC DEFENSE SERVICES COMMISSION

COMPLIANCE, AUDIT, AND PERFORMANCE PLAN

JOINT EMERGENCY BOARD

SEPTEMBER 2022



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Executive Summary

Introduction

The budget report for HB 5030 (2021), the primary budget for the Public Defense Services Commission, included the following budget note and instruction:

The Public Defense Services Commission is directed to develop a comprehensive program plan for the Compliance, Audit, and Performance Division, which is to include, but is not limited to: (a) the administration of the Criminal Trial, Non-Routine Expenses, Court-Mandated Expenses, and Juvenile Divisions; (b) quality assurance/control plans for Criminal Trial, Non-Routine Expenses, Court Mandated Expenses and Juvenile Divisions, including the PCRCP, and the Appellate Division; and (c) the development of Key Performance Indicators and Key Performance Measures for the agency. The Commission is directed to submit the plan to the Legislative Emergency Board in September of 2022 and then Key Performance Indicators and Key Performance Measurements to the Legislature prior to the Legislative Session in 2023.

The Public Defense Service Commission (“PDSC”) was created by SB 145 (2001) following recommendations by HB 3598 (1999). The agency’s primary obligation is to ensure financially eligible individuals receive timely access to legal services consistent with the Oregon Constitution, the United States Constitution, and Oregon and national standards of justice.¹ The PDSC carries out its statutory mandate through the Office of Public Defense Services (“OPDS”). PDSC oversees the administration of public defense services for the State of Oregon through contracts with public defender offices, private law firms, consortia of individual attorneys and law firms, non-profit organizations, and occasionally individual lawyers around the state to provide these services for financially eligible persons.

In 2019, a legislatively funded report by the Sixth Amendment Center found that Oregon’s public defense bureaucracy fails to provide sufficient oversight or financial accountability over the provision of public defense services, and recommended, among other things, that the PDSC should have appropriate resources to provide this oversight.² In response to those findings, the 2021 legislature, through HB 5030, clarified the PDSC’s obligations to provide oversight to ensure the effective delivery of public defense services and provided for the infrastructure to do so, shifting existing research and data and deputy general counsel positions, as well as adding new ones. HB 5030 also added additional attorney capacity creating a base

¹ ORS 151.213(a); Public Defense Services Commission, Strategic Plan 2016-2021, *available at: <https://www.oregon.gov/opds/commission/reports/PDSCStrategicPlan2016-2021.pdf>* (last visited August 11, 2022).

² Sixth Amendment Center, *The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services*, at 3-5 (2019); *available at: <https://www.oregon.gov/opds/commission/reports/6ACOregonreport2019.pdf>* (last visited August 11, 2022).

infrastructure for the agency to create a Compliance, Audit, and Performance Division.

CAP Purpose

The purpose of the Compliance, Audit, and Performance (CAP) Division is to increase the agency's capacity to provide greater transparency, program management, and oversight over the delivery of public defense services. As detailed more extensively below, those goals will be achieved by:

- Improving internal controls, policies, and processes;
- Enhancing the agency's capacity to monitor the caseloads and workloads of attorney providers to improve forecasting and identify jurisdictional and system-wide capacity issues;
- Enhancing the agency's capacity to monitor provider adherence to practice-specific state and national performance standards;
- Developing a framework to monitor and evaluate provider performance to ensure that the public's investment in public defense services is achieving programmatic goals; and
- Employing the results of provider and entity monitoring and evaluation to improve the efficiency and quality of services delivered to indigent clients.

Initial Planning and Challenges

The agency began work on building the CAP Division in September 2021. Since then, the agency conducted extensive research into national best practices for public defense program evaluation and oversight, developed an organizational structure for CAP, hired for key positions, and developed a program plan to scope the Division's work over the next five-years. The agency's progress on that plan, however, has been hampered by insufficient research and policy expertise and dedicated program leadership within the agency. With additional capacity in those areas, the CAP Division will develop the internal controls, policies, and processes, attorney workload models, monitoring plans and evaluation tools necessary to lay the foundation for robust program management and oversight, data-driven decision making, and greater transparency over the delivery of public defense services in Oregon. An additional component necessary to CAP's success is the acquisition of a financial and case management system (F/CMS). The agency's existing archaic data infrastructure is a significant impediment to the agency's ability to timely and accurately monitor expenditures, provider activities and outcomes, workloads, and jurisdictional capacity issues. The agency is working with Department of Administrative Services Information Technology to acquire this new data system, which the agency anticipates will be implemented in 2025.

Looking Ahead

Specifically, with additional capacity and timely implementation of the F/CMS, the agency plans to pursue the following initiatives within the following timeframes:

September 2022 to June 2023 Initiatives:

- Develop infrastructure to monitor and evaluate criminal and juvenile contracts and validate caseload forecasting;
- Implement preliminary (basic) attorney performance monitoring in 2023 contract cycle;
- Define approaches for measuring and monitoring workload for adult criminal, juvenile delinquency, and juvenile dependency case types and integrate into specifications for F/CMS;
- Develop policies, procedures, and approaches for monitoring and evaluation, including developing programmatic logic models;
- Develop indicators for robust attorney and entity performance monitoring and evaluation tied to performance standards and outcomes; and
- Design and implement equity-informed provider and stakeholder engagement plans.

July 2023 to June 2025 Initiatives:

- Develop approach for measuring and monitoring workload for all of the other case types that the agency contracts for (e.g., civil commitments, post-conviction relief, appeals, Psychiatric Security Review Board Hearings);
- Implement a workload model in the 2025 contract cycle, with the goal of initiating the process to institute a workload metric as an agency Key Performance Measure in 2025;
- Implement the first stage of robust monitoring and support plan with the implementation of the F/CMS with the 2025 contracts;
- Develop infrastructure to collect and monitor client and stakeholder perceptual outcomes, observational assessments and other data points not encompassed in the F/CMS; and
- Develop practice-informed standards for case support services (CSS) and court-mandated expenses.

July 2025 to June 2027 Initiatives:

- Implement robust monitoring and evaluation using observational data, client outcomes, and client and stakeholder perception data;
- Develop and implement targeted trainings, practice aids, and other interventions in response to deficiencies identified through monitoring and evaluation activities; and
- Implement framework for continuous evaluation and improvement of agency policies and programs for efficiency, quality, and effectiveness.

Additionally, in April 2022, a Three-Branch Workgroup convened to review the current status of public defense in Oregon and craft recommendations for restructuring Oregon's public defense delivery model. The workgroup includes representation from the legislative, executive, and judicial branches, agency leadership (including PDSC), public defense providers, national experts, and other

stakeholders. The CAP Division will incorporate recommendations and direction from the Three-Branch Workgroup as they are developed so that the agency can meet the evolving needs of the public defense delivery system and its stakeholders.

Summary

The agency has developed a plan to build out a CAP Division that can provide robust program monitoring and evaluation, improved internal financial controls, transparency, and oversight, and enhance the agency's capacity for data-driven policy making. Progress on that plan has been hampered by a lack of research and policy expertise and dedicated program leadership within the agency. The addition of those resources and the implementation of new data system will be necessary for the agency to accomplish the PDSC's and the legislature's goals for the CAP Division.

Chronology of Organizational Design and Plan Development Process

September to October 2021: Benchmarking

- CAP Design Team established
- National best practices and models for audit and performance evaluation of public defense services are researched and collated
- PDSC presentation on CAP Design
- Public defense provider presentation on CAP Design

November to December 2021: Organizational Design

- Organizational design criteria established
- Scope and key processes for CAP Division defined
- High-level functional overview for CAP Division established
- Draft organizational design for CAP Division completed
- Public defense provider presentation on CAP
- PDSC presentation on draft CAP Organizational Design

January to February 2022: Legislative Presentation & Strategic Insights

- February presentation to Public Safety Sub Committee Restructuring and Modernization Progress Report
- Criminal and Juvenile Trial Chiefs hired & onboarded
- Strategic Insights Report (staff, provider, and justice-system stakeholder) complete

March to August 2022: Five-Year Program Plan Developed & Organizational Structure Refined

- Strategic Insights Report presentation to PDSC -March
- Client-survey Addendum to Strategic Insights Report presentation to PDSC April
- Comprehensive five-year program plan developed
- CAP organizational and structure refined
- Policy option package developed & shared with PDSC

Five-Year Plan for Improved Administration, Monitoring, Evaluation, & Support

September 2022 to June 2023: Improved Monitoring

- Develop and implement infrastructure to monitor contract compliance and validate forecasting
- Implement preliminary (basic) performance monitoring for 2023 contracts
- Define workload approaches for adult criminal, juvenile dependency and juvenile delinquency case types and integrate into specifications for F/CMS
- Develop infrastructure for policy and procedure formation
- Design and implement equity-informed provider and stakeholder engagement plans

July 2023 to June 2025: Improved Monitoring and Evaluation

- Define workload approaches for all other case types, implement workload model in 2025 contracts, establish workload KPM
- Implement robust monitoring and support plan with rollout of F/CMS in 2025 contracts
- Develop infrastructure to collect and monitor client and stakeholder perceptual outcomes, and other data points not encompassed in F/CMS
- Develop practice-informed standards and monitoring for Case Support Services and Court Mandated Expenses

July 2025 to June 2027: Improved Monitoring, Evaluation, & Support

- Implement robust monitoring and evaluation using observational data, client outcomes, and client and stakeholder perception data
- Develop and implement infrastructure for identification and targeted trainings, practice aids, and other resources and policy needs to support quality public defense services
- Implement continuous evaluation and improvement framework
- Lay foundation to expand monitoring and evaluation activities to non-attorney providers and incorporate system and agency measures

Background and Statutory Context

The PDSC has a constitutional duty to ensure that financially eligible persons are afforded their Sixth Amendment right to counsel as well as statutory obligation to ensure that these services are provided consistent with national best practices. The PDSC also has a fiduciary duty to taxpayers to exercise sufficient oversight of the delivery of public defense services to ensure that public money is spent in a prudent and cost-effective way. Consistent with those obligations, the American Bar Association’s Ten Principles of a Public Defense Delivery System instruct, “[s]ince the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.”³

In 2019, a legislatively funded assessment of Oregon’s public defense delivery system by the Sixth Amendment Center found that Oregon had created a complex bureaucracy that collects a significant amount of indigent defense data but fails to provide that necessary oversight.⁴ The Sixth Amendment Center found that the agency provided insufficient oversight over: (1) individual attorney workloads,⁵ (2) which attorneys are providing public defense services under contract,⁶ (3) whether attorneys handling public defense cases comply with the PDSC’s qualification standards,⁷ (4) whether attorneys handling public defense cases meet state and national standards for representation,⁸ (5) how contractors are spending public dollars and what the public is receiving in return on that investment,⁹ and (6) whether attorneys meet continuing legal education and other contractual requirements.¹⁰ The findings of that assessment accord with long-standing national best practices, which provide that data-informed, methodical, and practice-specialized oversight are essential components of a robust, efficient, and high-quality public defense delivery system.¹¹

In June 2021, the agency proposed an initial structure for the Compliance, Audit, and Performance Division that included a multilayered infrastructure for providing that oversight.¹² That infrastructure can be summarized as involving four anchors:

- (1) Ongoing and systematic monitoring of caseloads, workloads, and other metrics to enable better forecasting, identify contract and jurisdictional capacity issues, ensure that the agency is receiving the services it is paying

³ American Bar Association, *ABA Ten Principles of a Public Defense Delivery System*, commentary to Principle 2 (February 2002); see also National Association for Public Defense, *Foundational Principles*, Principle 3 (March 2017).

⁴ Sixth Amendment Center, *The Right to Counsel in Oregon*, 3.

⁵ Sixth Amendment Center, *The Right to Counsel in Oregon*, 178.

⁶ Sixth Amendment Center, *The Right to Counsel in Oregon*, 81.

⁷ Sixth Amendment Center, *The Right to Counsel in Oregon*, 108.

⁸ Sixth Amendment Center, *The Right to Counsel in Oregon*, 108.

⁹ Sixth Amendment Center, *The Right to Counsel in Oregon*, 207.

¹⁰ ¹⁰ Sixth Amendment Center, *The Right to Counsel in Oregon*, 113.

¹¹ National Right to Counsel Committee, *Justice Denied: America’s Continuing Neglect of Our Constitutional Right to Counsel*, e.g. 8, 12-13, 97-98, 164, 174-75, 199 (April 2009).

¹² OPDS, Memorandum on Compliance, Audit, and Performance Plan, June 3, 2021 (hereinafter “CAP Memo”), Appendix 1.

for, and allow the agency to better identify and respond to immediate and emerging needs;

- (2) Ongoing and systematic monitoring of providers and entities using quantitative and qualitative metrics (through collection mechanisms such as activity tracking, court observations, and site visits) to measure adherence to national and state-specific performance standards;
- (3) Ongoing, systematic, and client-centered evaluation of provider and entity performance using client case outcomes and client and system-stakeholder perception data to determine whether the provision of public defense services is achieving intended programmatic goals;
- (4) Employing the results of provider and entity monitoring and evaluation to inform agency contracting decisions,¹³ and to identify and deliver targeted remedial interventions (such as trainings),¹⁴ changes to agency policies or standards, and additional resource needs to support quality public defense practices across the state.

To do that work,¹⁵ the agency identified the following capacities needed to build out a new Compliance, Audit, and Performance Division:

- (1) Criminal Trial and Juvenile Trial Chiefs and deputy general counsels, who can bring specialized practice-area expertise in criminal, juvenile dependency, and juvenile delinquency law to ensure that oversight and compliance activities are practice-informed, identify and deliver trainings, practice aids, and effective policy solutions, and to engage with provider and other justice-system stakeholders across the state;
- (2) Research Analysts, who can bring additional research and evaluation capacity to develop meaningful metrics and data collection tools to measure and monitor attorney and entity performance and compliance with standards of representation, and measure, monitor, and evaluate effectiveness of contract models;¹⁶and
- (3) Data Analysts, who can bring additional data capacity, to support CAP's needs for additional data collection, cleaning, processing, and monitoring,

¹³ CAP Memo at 3, 6, 8. As the Sixth Amendment Center report notes and other national experts have explained, the independent contractor delivery model places significant constraints on ability of the PDSC to ensure quality representation. Sixth Amendment Center, *The Right to Counsel in Oregon*, 77.

¹⁴ CAP Memo at 5, 6,

¹⁵ As will be discussed more below, CAP Memo envisioned that CAP would fulfill wholly new functions within the agency and identified that capacities needed to support those new functions. It therefore did not account for the existing work that the lawyers within the general counsel team did to support the criminal and juvenile trial programs.

¹⁶ CAP Memo at 7-8, 11-14, 21-22.

and to support OPDS operations through data visualization and interpretation.¹⁷

- (4) Internal Auditor, to develop and implement programs to audit all aspects of agency expenditures, compliance with agency budgets and directives, payments made through the non-routine (now case support services) and court-mandated expenses, ensure agency compliance with operating procedures and applicable laws, and make direct and regular reports to the Commission regarding audit functions.¹⁸

The budget report for HB 5030, the agency's primary budget measure, included the following direction, which was adopted by the Legislature:

"The Public Defense Services Commission is directed to develop a comprehensive program plan for the Compliance, Audit, and Performance Division, which is to include, but is not limited to: (a) the administration of the Criminal Trial, Non-Routine Expenses, Court-Mandated Expenses, and Juvenile Divisions; (b) quality assurance/control plans for Criminal Trial, Non-Routine Expenses, Court Mandated Expenses and Juvenile Divisions, including the PCRCP, and the Appellate Division; and (c) the development of Key Performance Indicators and Key Performance Measures for the agency. The Commission is directed to submit the plan to the Legislative Emergency Board in September of 2022 and then Key Performance Indicators and Key Performance Measurements to the Legislature prior to the Legislative Session in 2023."

Budget Report of HB 5030 A at 7.

HB 5030 (2021) provided that the new CAP Division would be comprised of the following five sections: "(1) Administration; (2) Trial Criminal Compliance; (3) Juvenile/Parent Child Representation Program (PCRCP) Compliance; (4) Research, and (5) Internal Audit," and would provide the following mutually inclusive services, "(a) vendor contract compliance; (b) auditing of expenditures related to vendor contracts; (c) internal auditing of agency expenditures; (d) research and analysis; and (e) development and maintenance of performance measures, including Key Performance Measures and supporting Key Performance Indicators." Budget Report for HB 5030 A at 6. The Budget Report for HB 5030 directed the agency to move three deputy general counsels, who had been working under the supervision of the General Counsel into the trial divisions and added one new deputy general counsel to work under the Criminal Trial Chief. The report further specified that the intent of the additional staff capacity, which also included a research analyst and Operations and Policy Analyst 2 positions, was to provide additional quality assurance for the provision of trial level public defense services, support analytics and research on public defense outcomes, and data analysts for the agency. Budget Report for HB 5030 A at 8.

¹⁷ CAP Memo at 7-8, 9-11, 22-23.

¹⁸ As explained more thoroughly below, the agency has since moved the internal audit function out of the Compliance Audit and Performance Division to comport with nationally recognized best practices for the internal audit function.

Also during the 2021 Regular Session, the Legislature adopted House Bill (HB) 2003 (2021), which required the PDSC to adopt policies for contracting that (1) ensure compensation, resources and caseloads are in accordance with national and regional best practices, (2) ensure funding and resources to support required data collection and training requirements, (3) recognize the need to consider overhead costs and account for the cost of living and business cost differences in each jurisdiction, (4) establish operational and contracting systems that allow for oversight, ensure transparency and stakeholder engagement, and promote equity, inclusion, and culturally-specific representation, and (5) adopt a statewide workload plan, based on the caseload policies, that takes into account the needs of each county or jurisdiction, practice structure, and type of practice overseen by the agency. HB 2003 also requires the agency to promote policies for public defense provider compensation and resources that are comparable to prosecution compensation and resources.

Design and Development of the CAP Division and Five-Year Plan

Design and Development of the CAP Division

Starting in September 2021, the agency contracted with the Coraggio Group to assist with the full development of a CAP Division and CAP Program Plan to meet the objectives set out in the budget notes to HB 5030 and HB 2003.¹⁹

The agency prioritized an inclusive design process that would draw broadly on agency expertise, leverage best practices and lessons learned from other jurisdictions, and take into account how best to integrate CAP's new functions into existing agency operations.²⁰ To those ends, the agency assembled a design team that included the Executive Director,²¹ Deputy Director, the Juvenile Trial Chief²², a Deputy General Counsel, and a Research Analyst to co-design the CAP Division and Program Plan. That design process proceeded in three phases: (1) benchmarking, (2) CAP organizational design development, and (3) CAP Program Plan development.²³

Benchmarking: The CAP Design Team first conducted research into national best practices in public defense auditing and oversight, with a particular focus on how state agencies and other entities focused and structured their performance evaluation systems and employed research, data collection, and data management systems. After conducting an extensive literature review and interviewing nationally recognized public defense leaders to identify experts in public defense performance evaluation and oversight, an interview team conducted benchmarking interviews

¹⁹ Public Defense Services Commission Restructuring and Modernization Progress Report, at 22.

²⁰ Public Defense Services Commission Restructuring and Modernization Progress Report, at 22.

²¹ The Executive Director joined the design team after his start date on December 1, 2021.

²² The agency's Interim Parent Child Representation Program (PCRP) Manager became the Juvenile Trial Chief in February 2022.

²³ Public Defense Services Commission Restructuring and Modernization Progress Report, at 22-25.

with the International Legal Foundation,²⁴ the North Carolina Office of Public Defense Services,²⁵ and the Massachusetts Committee for Public Counsel Services.²⁶ Benchmarking revealed that the centralized CAP Division envisioned by the legislature would be a new model for auditing and oversight in public defense. It also crystalized the agency's goal to adopt a continuous improvement approach to performance management.²⁷

Organizational Design Development: With benchmarking complete, the CAP Design Team set out to define the key activities and process that would be in- and out-of-scope for CAP, align on CAP's high-level functions, design a draft organizational chart for CAP, and identify the key linkages that would require close coordination between CAP and other divisions within the agency.²⁸

As a result of those discussions, the CAP Design Team agreed that the CAP Division needed the support of two positions not contemplated in HB 5030: (1) a dedicated Program Manager that could advance CAP program objectives and support the linkages with other agency operations and (2) a Research Director, who has the research, data, and evaluation experience to guide the Research Team. A detailed explanation of the need for those positions to support CAP operations and execute the five-year Program Plan for CAP is set out below.

The agency also clarified that the internal audit function, originally envisioned by the agency and the legislature as residing in CAP, would be moved out of the CAP Division and made a stand-alone function within the agency, consistent with national standards for an internal audit function.²⁹

The results of the benchmarking and a draft functional overview and organizational chart for CAP and the agency were presented to the Public Defense Services Commission in December, and to the Legislature as part of the agency's January report to the Joint Committee on Ways and Means. See Appendix 2 (Public

²⁴ See the International Legal Foundation, *Measuring Justice: Defining and Evaluating Quality for Criminal Legal Aid Providers* (2016), available at <https://www.theilf.org/items/Measuring-Justice> (last accessed May 14, 2022). The approach taken by the ILF was later adopted by the National Legal Aid and Defender Association, see *National Indicators of Quality Indigent Defense: A Project of the NLADA Defender Research Consortium* (2018), available at: <https://www.nlada.org/tools-and-technical-assistance/defender-resources/research> (last accessed May 14, 2022).

²⁵ See Gressens, Margaret and Atkinson, Daryl, *The Challenge: Evaluating Indigent Defense: North Carolina Systems Evaluation Project Performance Measures Guide* (North Carolina Office of Indigent Defense Services, 2012).

²⁶ Hopkins, Ziyad, and Labriola, Melissa, *The Committee for Public Counsel Services Answering Gideon's Call Project Final Report and Recommendations* (2012).

²⁷ Public Defense Services Commission Restructuring and Modernization Progress Report, at 24.

²⁸ Public Defense Services Commission Restructuring and Modernization Progress Report at 24.

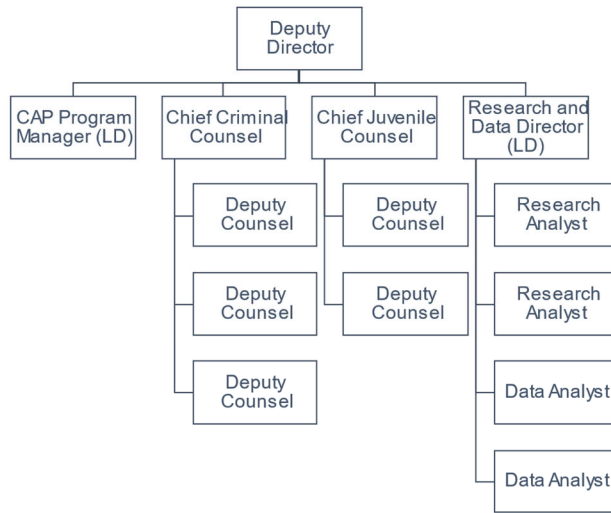
²⁹ Public Defense Services Commission Restructuring and Modernization Progress Report at Appendix 2 (DRAFT Agency Functional High-Level Design); see also The Institute of Internal Auditors, *Implementation Guides for the IIA's Code of Ethics and the International Standards or the Professional Practice of Internal Auditing* (2019), Standard 1100 (Independence and Objectivity).

Defense Services Commission Restructuring and Modernization Progress Report at 22-25, Appendix D, CAP High-Level Design and Functional Statement (Jan 14, 2022)). The draft organizational chart for CAP, as presented to the PDSC and legislature, is included below.

DRAFT CAP Organizational Chart (January 2022)

DRAFT CAP Organizational Chart - captures the roles to support the functions

Initial FTEs: 13



CAP Program Plan Development: Work on the CAP Program Plan began in earnest in April 2022, after the agency completed its stakeholder engagement efforts and hired and onboarded the Criminal Trial and Juvenile Trial Chiefs and two deputy counsel positions to set up the initial lawyer teams. The CAP Program Plan, discussed in greater detail below, sets forth the agency’s five-year plan to build out the four anchors initially envisioned to provide a robust infrastructure for public defense oversight and meet the legislative objectives set forth in the Budget Report for HB 5030 and HB 2003. As part of identifying and detailing out the work necessary to support those functions and objectives, the agency also identified additional staffing needs and refined the organizational design for CAP. The revised organizational structure and additional staffing needs are also detailed below.

Client, Provider, and Justice-System Stakeholder Insights

As the agency was developing the CAP structure, it was also engaged in extensive stakeholder outreach through paper and electronic surveys, focus groups, and one-to-one interviews. Notably, for the first time, the agency sought client perspectives and partnered with public defense providers, Oregon Youth Authority, Sheriffs, Community Corrections, Oregon State Hospital, and reentry programs to gather the perspectives of youth and adults involved in all stages of the adult criminal, dependency, and juvenile justice systems. Additionally, the agency sought

input from lawyers and non-lawyers working at the trial level and the appellate level in public defender offices, consortia, nonprofits, and law firms; public defense professionals such as investigators, case managers, interpreters/translators, transcriptionists, mitigators; experts; and others paid through the Case Support Services and Court-Mandated Expense Divisions. Finally, the agency sought perspectives of justice-system stakeholders, including trial and appellate judges, prosecutors, Citizen Review Boards, the Oregon Defense Consortia Association, Oregon Criminal Defense Lawyers Association, AFSCME, and other advocacy groups, on how the agency can improve. The results of that stakeholder engagement were shared with the PDSC in the February 2022 Strategic Insights Report³⁰ and an April 2022 Addendum.³¹

Specifically, the stakeholder engagement results included these high-level findings:

- The agency faces challenges implementing and overseeing its operations most acutely in the contracting and payment processes, procedures, and policies.
- The current contracting model is insufficient to meet the agency's mission of providing high-quality representation.
- Relationship-building with public defense stakeholders is key to improving the public defense system.
- Clients believe that the amount of time and contact that they have with their attorney is insufficient and were unsure of the agency's role in ensuring quality representation.

Insights received during the stakeholder engagement informed the priorities and strategies in the CAP Program Plan. In particular, the CAP Program Plan was designed to:

- Improve internal policies, procedures, and processes to increase uniformity and transparency, while also improving internal controls over approvals and payments for Case Support Services and payments for Court Mandated Expenses;
- Increase agency capacity to better monitor and evaluate provider caseloads, workloads, activities, and outcomes, to identify policy, resource, and other interventions necessary to improve the quality of representation;
- Continuously engage clients, providers, and other justice-system stakeholders in the development of metrics and measures for evaluating the quality of public defense services;

³⁰ PDSC Strategic Insights Report (February 2022), Appendix 3.

³¹ PDSC Strategic Insights Report, Addendum (Chapter 5) (April 2022), Appendix 4.

- Center client perspectives in the evaluation of public defense services.

Importantly, during this stakeholder engagement, the agency increased its internal capabilities with respect to gathering the perspectives of clients at all stages of the adult criminal, dependency, and juvenile justice systems. Including the best mechanisms for gathering the perspectives of clients and developing and strengthening its relationships with other state agencies, justice-system stakeholders, and community organizations necessary to reach current and former clients. Client feedback is critical to the agency's ability to successfully execute a CAP Program Plan that centers their perspectives.

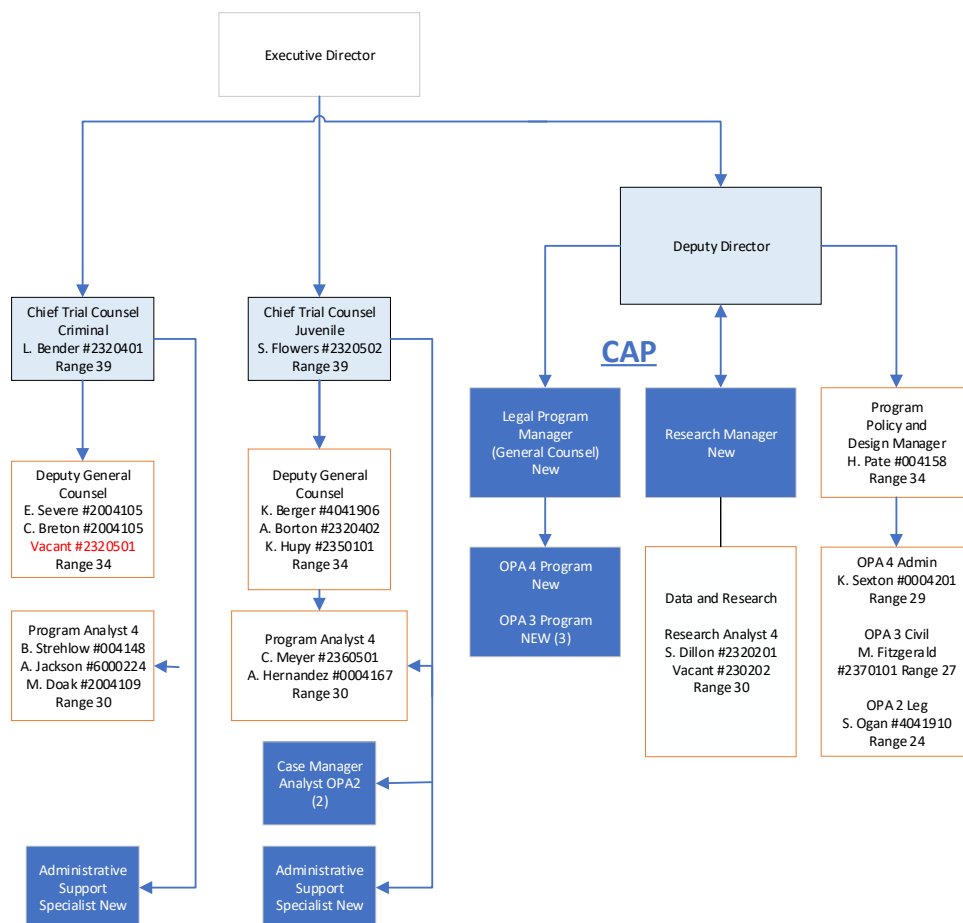
CAP Organizational Structure

Adding compliance, audit, and performance functionality to the agency's program delivery encompasses multiple facets of the agency and will take several biennia to achieve. The new CAP Division is integral to developing an outcome-based program delivery model that will enable the agency to better evaluate and manage the provision of legal representation services to financially eligible persons, increase program transparency, inform the development of policies and procedures, and ensure accountability to clients, taxpayers, policymakers, and other stakeholders.

The development of the CAP Division and related functions throughout the agency with additional staffing will help ensure increased effectiveness of public defense service providers by establishing and supporting the development of policies and processes, attorney workload models, evaluation tools, and monitoring plans. This groundwork sets the stage for the next phase of quality assurance, which will increase the agency's capacity to identify and deliver tools, technical assistance, trainings, and other resources to providers and identify and develop policies and practices that support quality public defense in Oregon.

The Compliance, Audit and Performance Division is located under the Deputy Director and encompasses legal program expertise, policy development, and research functions.

Trial Division and Compliance Audit & Performance (CAP)



The dark blue boxes are positions the agency is requesting now and in the 2023 legislative session.

The light blue boxes are positions created by HB 5030 (2021).

The boxes outlined in orange are existing positions have shifted during the agency reorganization.

The new Compliance, Audit, and Performance Division encompasses the following functional expertise:

Legal Program: The Legal Program is responsible for implementing and managing the five-year CAP Program Plan. This involves working collaboratively with Trial Division leadership and the Research team to develop and define practice-specific workload models for all case-types, including adult criminal, juvenile delinquency, juvenile dependency, civil commitments, post-conviction relief, and appeals. The Legal Program will work to establish a consistent framework for measuring and evaluating attorney, entity, and non-attorney provider compliance and performance against practice-specific state and national performance standards, constitutional standards, and against case, client, and system outcomes. The Legal Program will also work collaboratively with the Trial Division, Research and Policy teams, and the Finance Manager, developing practice-informed internal controls, policies, and procedures for case support services and court-mandated expenses. The development of policies, procedures, and processes related to public

defense provider compliance and performance will be centralized in the legal program section.

Research: The Research team will develop and implement the research agenda for CAP and conduct research activities in support of other facets of the agency. In its first years, this will involve working collaboratively with the Legal Program Manager, Trial Division leadership, and IT/Data Team formulate high-level, guiding principles that will help frame analytic activities pertaining to implementation, monitoring and evaluation of attorney and other service provider compliance, monitoring and performance evaluation. Also working collaboratively, the research team will develop practice-specific workload models for all case types, identify data points and collection tools needed to track attorney caseloads and workloads, and client, case, and system outcomes, and conduct special projects to identify deficiencies and potential improvements in the delivery of public defense services and outcomes.

CAP's Five-Year Plan for Improved Administration, Monitoring, Evaluation, and Support

The CAP Program Plan is staged in two phases.³² Phase I encompasses immediate agency needs and building the agency's internal monitoring and evaluation capacity by:

- (1) Ensuring ongoing and systematic monitoring of caseloads and other metrics to enable better forecasting, identify contract and jurisdictional capacity issues, ensure contract compliance and auditing of expenses, and allow the agency to better identify and respond to immediate and emerging issues;
- (2) Establishing an approach for analyzing attorney workload for all case types, with the goal of monitoring attorney workload and establishing a Key Performance Measure tied to workload in 2025;
- (3) Improving monitoring and internal policies and controls over Case Support Services (CSS) (formerly non-routine expenses) approvals and court-mandated expenses; and
- (4) Building the agency's internal capabilities with respect to policy formation and analysis, monitoring and evaluation, and improving internal processes and controls.

Phase II encompasses the development of monitoring and support plans for providers and entities. It is divided into two sub-phases, which reflect the agency's current limited information technology and data infrastructure and the anticipated

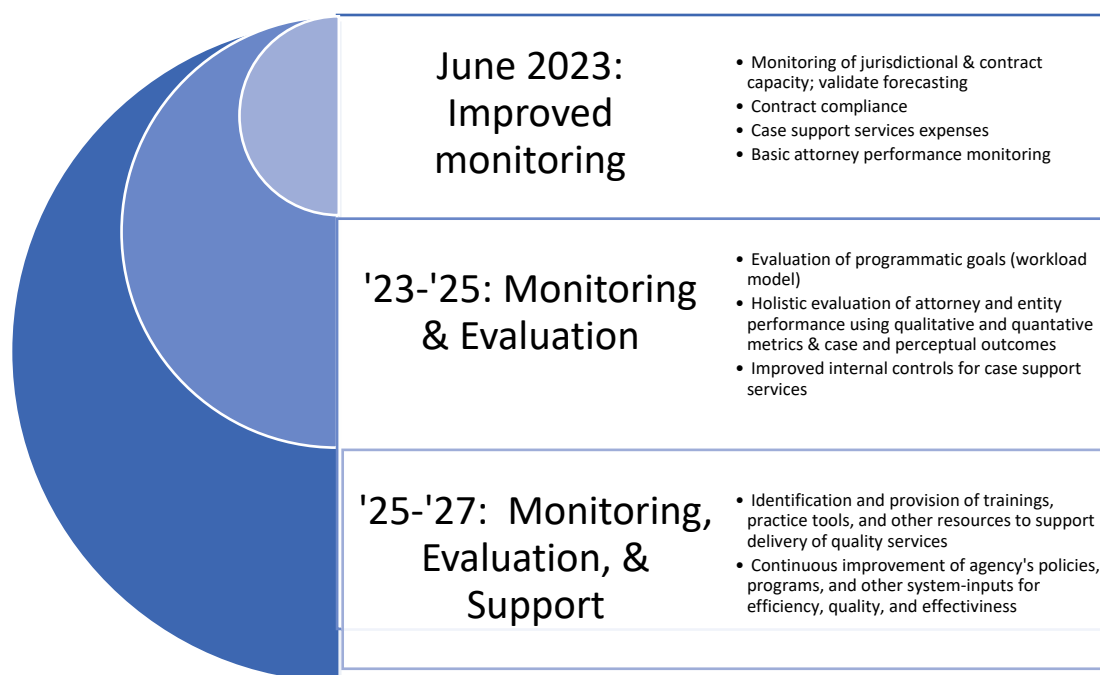
³² A copy of the Five-Year Program Plan is attached as Appendix 5.

capacities that will come with the implementation of a Financial Case Management System, which is anticipated to occur by 2025:

- (1) Sub-phase I: Identification and implementation of a few preliminary quantitative indicators of attorney quality based on state and national performance standards and monitoring of those indicators over the 2023 and 2024 contract cycles.
- (2) Sub-phase II: Development and implementation of a robust monitoring and support plan over the 2025 and 2027 contracting cycles, which will measure and evaluate attorney and entity performance using qualitative and quantitative process measures, client case outcomes, and client and stakeholder perceptual outcomes, and build out of the agency's capacity to identify and deliver tools, technical assistance, targeted trainings, and other resources to providers, and identify and develop policies, protocols, and practices that support quality public defense services across the state.

As described above, the CAP Five-Year Program Plan creates a process by which the collection of qualitative and quantitative data facilitates monitoring of contracts, providers, and entities, ensures programmatic fidelity, provides for the systematic evaluation of program impacts on clients and systems, and facilitates ongoing and data-informed improvement of agency programs, protocols, policies, and practices in support of efficient and quality public defense services. It further lays the foundation for the next stage of CAP development, which is to assist the agency in measuring, evaluating, and ultimately ensuring that it is meeting its constitutional and statutory obligation of delivering high-quality public defense services to all eligible persons in the state.

Five-year plan for Improved Administration, Monitoring, Evaluation, and Support



To accomplish CAP's short-and mid-term goals, the agency plans to pursue the foregoing initiatives within the following timeframes:

September 2022 to June 2023 Initiatives:

- Develop and implement infrastructure to monitor and evaluate criminal and juvenile contracts and validate forecasting models, including ongoing monitoring and jurisdictional capacity, contract compliance, and other program inputs;
- Implement preliminary (basic) performance monitoring in the 2023 contract cycle using quantitative process indicators to measure and monitor attorney compliance with performance standards;
- Define an approach for measuring and monitoring workload for adult criminal, juvenile delinquency, and juvenile dependency case types and integrate into specifications for Financial Information Management System;
- Begin development of common infrastructure and approach for policy identification, formation, and analysis, and for monitoring and evaluating, including defining terms, creating programmatic logic models, and formulating high-level guiding questions that will frame agency's analytic activities with respect to compliance monitoring, implementation, and performance evaluation;
- Develop high-level indicators for robust attorney and entity performance monitoring and evaluation, including process indicators tied to state and national performance standards and client case and perceptual outcomes,

and integrate into specifications for Financial Information Management System; and

- Design and implement equity-informed provider and stakeholder engagement plans.

July 1, 2023 to June 1, 2025 Initiatives:

- Define an approach for measuring and monitoring workload for all of the other case types that the agency contracts for (e.g., civil commitment, post-conviction relief, appeals, Psychiatric Security Review Board hearings) and identify ways of tracking those workloads within Financial Information Management System;
- Implement a workload model in the 2025 contracting cycle, which requires developing and implementing data collection and reporting tools, a communication plan, trainings, and other tools to facilitate workload monitoring, and incorporating a workload model into the 2025 contracts, with the goal of initiating the process to institute workload metric as an agency Key Performance Measure in 2025;
- Implement first stage of robust monitoring and support plan with roll out of Financial Information Management System with 2025 contracts;
- Develop infrastructure to collect and monitor client and stakeholder perceptual outcomes, observational assessments, and other data points not encompassed in Financial Information Management System; and
- Develop practice-informed standards for CSS and court-mandated expenses, services, which involves analyzing historical data to identify areas requiring policy and standard-development, conducting practice-informed policy analysis, engaging stakeholders in reviewing and finalizing new standards, and creating and implementing internal processes and protocols to monitor adherence to the new standards.

July 1, 2025 to June 30, 2027 Initiatives:

- Implement robust monitoring and evaluation using observational data, client outcomes, and client and stakeholder perception data;
- Develop and implement infrastructure for identification and implementation of targeted trainings, practice aids, and other resource and policy needs to improve provider performance in response to ongoing monitoring and evaluation;
- Implement framework for continuous evaluation and improvement of agency's policies, programs, and other system-inputs for efficiency, quality, and effectiveness;
- Lay groundwork to expand monitoring and evaluation activities to non-attorney providers (e.g., investigators, case managers), and to incorporate system and agency measures.

Current Challenges and Resource Needs

The PDSC has developed a staged plan for building a robust CAP Division and functionality within the agency. However, the agency's capacity to further develop that plan and take the initial, critical steps to begin implementing that plan have been limited by a lack of dedicated program leadership and insufficient research expertise and policy capacity within the agency. Additionally, agency infrastructure—particularly administrative support within the Criminal and Juvenile Trial Divisions and a Public Information Officer—are essential to accomplishing CAP's programmatic objectives.

To meet those needs, the PDSC requests that the following three staff positions be approved on a limited duration basis by the Joint Emergency Board:

Legal Program Manager

The PDSC is requesting a limited duration Legal Program Manager (General Counsel/1 FTE) to provide legal expertise, leadership, oversight, and program discipline to the development of the Compliance, Audit, and Performance Division. This position is responsible for implementing and managing the CAP Program Plan, including planning, developing, and implementing short and long-term goals, policies and objectives in support of agency strategic objectives related to client-centered compliance and performance. This position works collaboratively with Trial Division leadership, the Research Manager, and the Program and Policy Design Manager, Finance Manager, and IT/Data teams to develop metrics and measures (including Key Performance Measures) to monitor and evaluate attorney, entity, and non-attorney provider compliance with state and national performance, constitutional standards, and program requirements, and against case and client outcomes. This position works collaboratively with the Trial Division to analyze all pertinent issues and information to assess the impacts of proposed policies on programming and providing trial level services to indigent persons. In partnership with the Research Manager, the Legal Program Manager is responsible for building and fostering collaborative working relationships with other state and local government entities, community partners, and national organizations with respect to the collection, analysis, and reporting of data for purposes of monitoring and evaluating the delivery of public defense services and outcomes. This position acts in a management capacity under the Deputy Director, with direct reports being the Operation Policy Analysts, who are primarily responsible for developing CAP-specific policies and procedures and policy analysis, and related technical and professional duties.

Research Program Manager

The PDSC is requesting a limited duration Research Manager (Manager 3/1FTE) to provide supervision, oversight, and direction to the research team. The Research Manager would report to the Deputy Director and work collaboratively with the Legal Program Manager and Policy Manager. The Research Manager develops, implements, and manages the research agenda within CAP and provides oversight for all research activities within the agency. The Research Manager

collaborates with the Legal Program Manager, Trial Division Leadership, and IT/Data Team to develop a research and analytics agenda, develop program evaluation models, workload models, and research projects to identify deficiencies and potential improvements in the delivery of public defense services and outcomes. In partnership with the Legal Program Manager, the Research Manager is responsible for building and fostering collaborative working relationships with other state and local government entities, community partners, and national organizations with respect to the collection, analysis, and reporting of data for purposes of monitoring and evaluating the delivery of public defense services and outcomes. The Research Manager supervises and manages the work of the Research Analysts.

Operations and Policy Analyst 4

The PDSC is requesting a limited duration Operations and Policy Analyst 4 position to develop policies and processes to support the development and build-out of the Compliance, Audit, and Performance Division and implementation of the CAP Program Plan. This position will collaborate with the F/CMS project leaders and the Policy Team to ensure deadlines for policy and process needed for reporting and other CAP goals that intersect with the development of F/CMS are met.

Additionally, the PDSC will be requesting that (1) the above-listed positions be made permanent and (2) the following positions be approved during the 2023 Legislative Session:

Program Support

The PDSC is requesting three Operations and Policy Analyst 3 (3 FTE) to increase the agency's capacity to develop and administer consistent, practice-informed policies, procedures, and processes for the CAP and Criminal and Juvenile Trial Divisions. These positions are essential to support the development and build-out of the Compliance Audit and Performance Division. These positions will collaborate with the Policy Team to ensure that CAP-related policies, procedures, and processes are consistent with other agency policies, priorities, and infrastructure needs. These positions will also collaborate and support the work of Criminal and Juvenile Trial Programs to ensure that agency policies are practice-informed and accommodate client, jurisdiction, and provider-specific needs. These positions will further conduct analyses in support of policy option package development, proposed legislation, policies related to contract modifications, reporting, case support services and court-mandated expenses, and any other internal policy, practice, and protocol development that furthers quality, efficient, and cost-effective delivery of public defense services. Duties may include stakeholder engagement and coordinating and participating in workgroups related to policy development.

PCRP Case Manager Administrators

The PDSC is requesting two Program Analyst 4 (2 FTE) permanent positions to provide support to PCRP through the following tasks: (1) consultation and communication with OPDS staff, PCRP attorneys, and other relevant stakeholders to maintain program practices and procedures; (2) wide-ranging assistance to the PCRP/Juvenile program case manager and deputy general counsels to support

PRCP implementation, contract management and program evaluation; and (3) support in the production of written evaluations and reports about program performance and needed improvements.

Infrastructure initially allocated to the PCRCP program during its pilot-program stages is insufficient and currently impairs OPDS' ability to fulfill its mandate and the expectations of the PCRCP. In particular, the current PCRCP – Case Manager Administrators is not supported with permanent funding for staffing-levels that match other states with similar high-quality interdisciplinary defense models; nor does OPDS have the permanent funding for infrastructure necessary to create a centralized training program.

Administrative Specialist

The PDSC is requesting two Administrative Specialist 2 (2 FTE) to provide administrative support to the Criminal and Juvenile Trial Divisions. As the agency moves toward improved monitoring of its delivery of public defense services, the information being gathered over the next biennium will continue to increase. These positions will provide the day-to-day administrative support to the program managers and their staff, coordinate all internal and external activities, provide administrative support to committees and workgroups, along with data entry support to trial level programs. These positions will provide a bridge between government and providers to share and exchange information.

Public Affairs Specialist

The PDSC is requesting a Public Affairs Specialist 1 (1 FTE) to coordinate, draft, review and disseminate all agency communications internally and externally, including media relations. This position will be responsible for handling all public records requests that have increased exponentially of the last two years. It's important for the agency to have a consistent communication that comes from one office of the agency responding to all inquiries from the Commission, stakeholders, legislators, providers, clients, Oregonians, and interest groups.

APPENDIX

1. CAP MemorandumAPP 1-26
2. PDSC Legislative Report APP 27-36
3. PDSC Strategic Insight Report APP 37-76
4. PDSC Strategic Insight Report Client Survey Addendum.....APP 77-90
5. CAP Program Plan APP 91-92

Date: June 3, 2021
To: John Borden, Senior Legislative Fiscal Analyst
Re: Compliance, Audit and Performance Plan

Dear Mr. Borden:

This memo will outline OPDS' plan and vision for the proposed Compliance, Audit, and Performance (CAP) Division. First, it will describe the skill sets and functions OPDS needs to successfully monitor provider compliance and performance. The next section will identify and define each of the proposed positions' roles and responsibilities. The final section will explain how CAP will interact within the agency's overall structure.

1. The Need for Investment in OPDS' Compliance, Audit, and Performance Function

Research and empirical evidence demonstrate that a robust, efficient, and high-quality public defense delivery system requires a multifaceted infrastructure.¹ Central to an effective model is the ability to engage in data-informed, methodical, and practice-specialized oversight. It also includes accurate tracking of expenditures, provider activities, and outputs to understand workload fluctuations and resource needs. OPDS envisions CAP working with the Deputy Director to perform this critical oversight and compliance role of its trial-level providers. This section will outline the proposed components of CAP's provider compliance process, the role of data and research, and the importance of practice-area specialization.

Provider Standards, Compliance and Performance: Criminal defense and juvenile defense are each highly specialized areas of law. Additional areas of law

¹ ABA *Ten Principles of a Public Defense Delivery System* (Feb.2002), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet_authcheckdam.pdf (accessed May 19, 2021); National Right to Counsel Committee, *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel* (2001), <https://archive.constitutionproject.org/pdf/139.pdf> (accessed May 19, 2021).

within juvenile and criminal practice, and overseen by OPDS, include civil commitments, post-conviction relief, and juvenile psychiatric review board cases. Each practice area is informed by national and state-specific performance standards that outline the foundational skills and practices necessary to provide ethical, quality representation of indigent clients. The standards are detailed and numerous, often delineated by case stage, client type, and case complexity.² Accordingly, OPDS envisions the CAP Division as being comprised of two specialized teams, one focused on criminal defense and one on juvenile defense, staffed by juvenile and criminal experts. Both teams will work closely at the direction and advisement of the Deputy Director.

In addition to tracking individual provider adherence to practice standards, CAP will develop a uniform, overarching framework to analyze whether provider entities (such as public defense firms and consortia) are meeting state and national standards governing the provision of public defense services.³ Examples of these measures include use of vertical representation, time from arraignment to assignment of counsel, mentorship, attorney workloads, and sufficient staffing. OPDS intends to use these measures to gauge whether contracting entities are meeting contractual obligations and ensuring the provision of quality defense counsel in their region. Routine tracking of entity compliance according to standardized measures will allow OPDS to provide timely and direct feedback to contractors, providing clear communication on areas in need of improvement. Documentation of performance metrics and feedback will inform future contracting decisions and ensure that entities across the state are measured by identical standards, thus meeting the need for transparent expectations.

The overarching aim of the CAP division is to ensure that individual providers and defense provider entities are meeting established standards for representation and the provision of defense services through consistent tools and metrics.

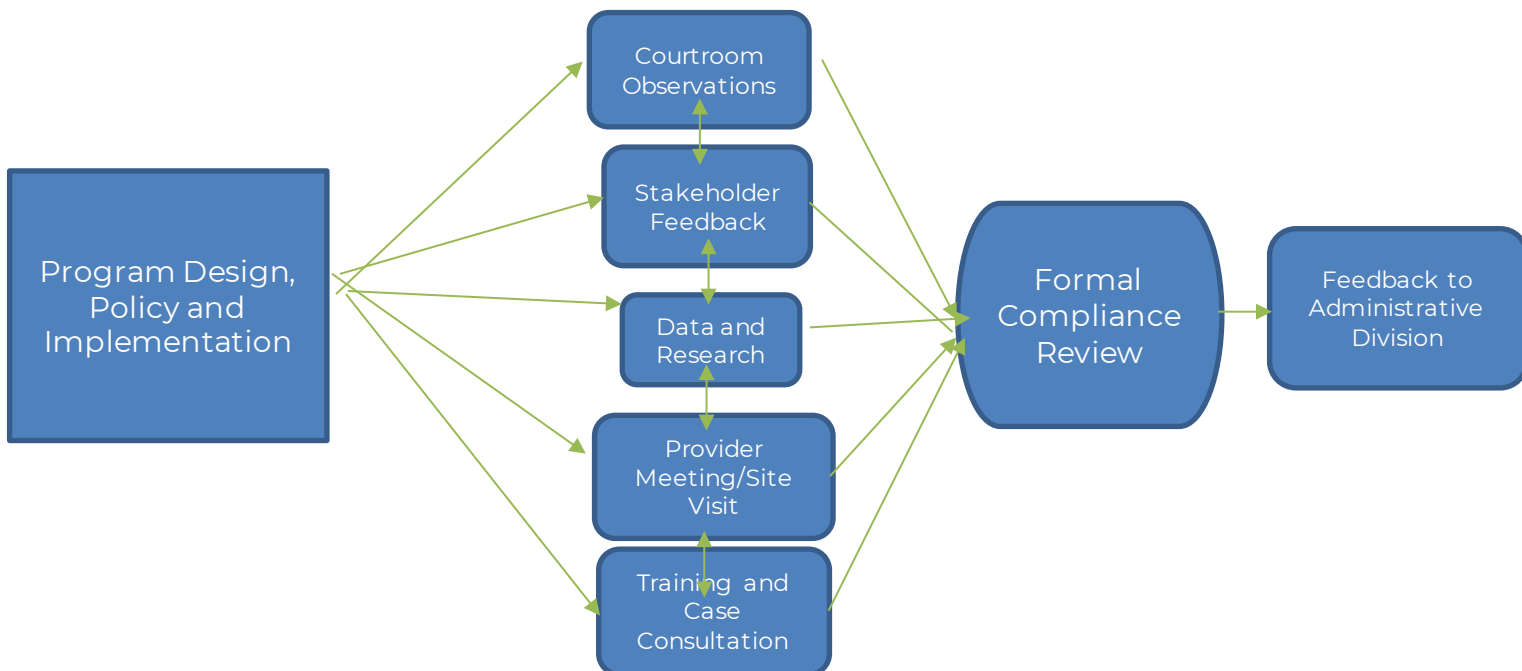
Regular Provider Monitoring: Without resources to perform standards-based and regular provider evaluation, OPDS has been largely unable to proactively identify

² Unsurprisingly, high-quality and effective public defense representation models, such as the Parent Child Representation Program (PCRP) often closely adhere to established standards of performance.

³ <https://www.nlada.org/defender-standards/assigned-counsel/black-letter>

provider performance issues, workload fluctuations, and resource needs. Historically, OPDS has conducted performance reviews in response to concerns or complaints concerning specific providers, rather than providing regular oversight of all providers and training to build providers' skills. A lack of staff with specialized subject-matter expertise to conduct meaningful oversight has also made OPDS less equipped to provide substantive and directive intervention of its providers. With sufficient personnel and infrastructure, CAP will be able to develop tools to monitor provider performance objectively and systematically. Using both quantitative and qualitative data, OPDS will develop tools to evaluate both 1.) whether providers are meeting practice-specific standards for representation and 2.) the extent to which the provision of those services are achieving intended outcomes. This system will allow OPDS to better anticipate needs for contract modification and targeted intervention for providers not meeting minimum standards.

Over the contract term, CAP will collect information from multiple sources to evaluate provider quality against state and national performance standards and desired outcomes. Sources will include courtroom observation of criminal and juvenile proceedings, stakeholder and provider feedback, review of available case-level outputs and outcomes, and input from clients. The data collection will culminate in a formal compliance review prior to contract renewal.



The multi-faced oversight process will provide OPDS with numerous opportunities to assess attorney quality and, as needed, proactively address challenges throughout the contract cycle. With the appropriate infrastructure, CAP will phase-in development and execution of the following oversight components:

- **Court Observations:** CAP will work to conduct regular courtroom observations of providers, using objective, practice-specific measurement tools tied to state and national performance standards. CAP will prioritize observation of providers identified as falling below required practice standards. CAP will coordinate with court staff to monitor attorney providers without prior notice to the provider. CAP will interpret and respond to trends revealed through the objective measurement tool. For instance, if CAP's observations reveal deficiencies in legal knowledge and performance, it will take an appropriate response. Possible responses may include placing attorneys under close monitoring, conducting targeted site visits, stakeholder and provider investigations or providing responsive resources and training. Likewise, if CAP observes that the performance of a defense provider entity is inconsistent with contractual obligations, or falls below established standards for public defense delivery, feedback will be provided to the entity and a remediation plan implemented as needed.
- **Activity, Outcome, and Workload Tracking:** The "Data and Research" section below (Section B) details how CAP will use data and research to validate provider compliance and contribute to agency operations. A central feature will be tracking key data points and performance targets to assess attorney performance and resource needs. Data dashboards will report attorney and county-level performance on key *process* variables, including client contact and use of experts. Data will also be collected on outcomes, which evaluate whether the provision of quality public defense services are, in the aggregate, achieving the objectives of representation. Those variables could include reduced lengths of pretrial or juvenile detention, dismissals, and reduced

sentence length, or improved client satisfaction or community perception of the public defense function. Both the criminal defense and juvenile defense oversight teams will use practice-specific data to monitor attorney and entity performance and respond as needed. CAP will also rely on the data to determine trainings needs. For example, if data reveals less than typical use of experts within a particular region, CAP may offer that jurisdiction a training on appropriate use of experts. Another likely use of data will be monitoring caseloads to identify immediate needs for contract adjustments.

- **Proactive Training and Case Consultation:** A key component of CAP's provider engagement will be through practice-specific training and case consultation. Through these resources, CAP will create opportunities for providers to develop stronger skills in their respective practice area. CAP will offer foundational training to new attorneys to ensure that public defenders are well-equipped to represent clients according to practice standards, as well as regular and on-going training to experienced providers.⁴ CAP will use case consultation and training to proactively support contractors, and also responsively to remedy and resolve identified practice quality concerns. CAP will track trends in case support requests and training participation to inform oversight and future training curriculum. OPDS's intent to integrate Training and Case consultation into provider compliance is described in detail in Appendix 1.
- **Stakeholder Feedback:** CAP will maintain communication with justice-system partners, including judges, district attorneys, assistant attorneys general, Assistant Attorney Generals (AAGs) and the Oregon Department of Human Services (DHS) staff, in their respective practice areas. Each contract term, CAP will issue practice-specific surveys to relevant system partners. The surveys will be designed to identify system partner perceptions of OPDS provider adherence to practice standards, CAP will use the data to detect trends in practice perceptions within and between jurisdictions and providers. Where CAP has already identified provider or jurisdictional challenges through regular oversight or a complaint, staff will engage in in-depth interviews with system

⁴ *Id.*, Standard 4.3.2, In-Service Training.

partners, including judges and prosecutors, to develop a more thorough understanding of the challenges and possible remedies.

- **Client Feedback:** CAP will work to implement a client survey that will be practice-specific and designed to solicit client perception of attorney performance and procedural justice.
- **Provider Meetings:** CAP will meet directly with provider and provider entities during each contract cycle. The meetings will be an opportunity to address practice-specific provider or regional specific trends—both qualitative and quantitative—evidenced through ongoing oversight. The meetings will also be an opportunity to discuss workload, resource, and other unique issues occurring in the respective region. Where appropriate, CAP will lead roundtable discussions on relevant caselaw updates, research, or practice tips following court observations. The providers will have an opportunity to respond to any identified practice deficiencies or contract compliance concerns. Where more intensive inquiry is warranted, the provider meetings will follow structured questions to ascertain whether attorney practice aligns with practice standards.

Prior to contract renewal, CAP will incorporate findings from ongoing oversight into a formal review of each provider and entity's compliance with standards of performance and best practice. CAP will then make recommendations for contract renewal of providers in the respective practice areas. If CAP's oversight has revealed concerns in provider quality and compliance, CAP will consider alternatives pursuant to a standard process. Alternatives to contract renewal may include a term of probation with conditions, including close monitoring, targeted training, or regular case consultations. Where appropriate, CAP may also consider disqualifying attorneys from court-appointed work or not renewing an entity's contract in an upcoming contract cycle.

Establishing program policies and standards: CAP will work with the Deputy Director and General Counsel to develop practice-specific policies and standards to facilitate transparent and consistent implementation of oversight processes and contract requirements. Policies and standards may include qualification requirements, workload limits, training requirements, evaluation standards, and

performance-based disciplinary responses. Performance standards and empirical evidence of effective public defense models and stakeholder engagement will inform policy development. OPDS' Administrative will also provide input on policy development.

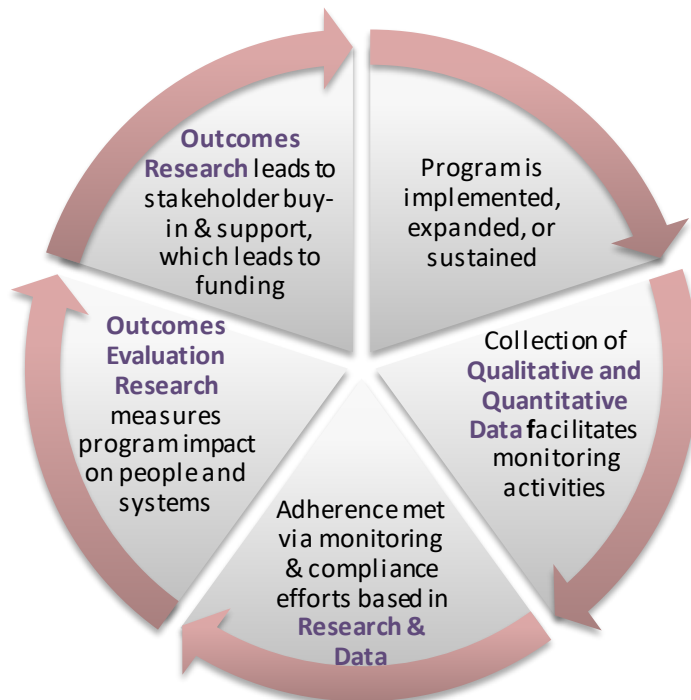
As an example, OPDS' current qualification process involves attorney completion of a form and affirming practice experience and/or access to supervision. By contrast, corresponding processes in other jurisdictions involve a practice-area intensive contractor review and selection process, requiring prerequisite training, interviews, and writing samples. This kind of vetting process would aid OPDS in establishing tools for assessing and ensuring provider quality and adequate experience at the outset. CAP will work across divisions to explore modification of OPDS' qualification process. Similarly, OPDS needs to establish practice-specific uniform caseload and case weighting definitions. Establishing a uniform case load policy will facilitate reliable comparison, understanding, and enforcement of attorney workloads. OPDS will also need to explore and establish additional policies, such as appropriate use of staff, mentoring programs, reporting processes and multi-county contracts.

A. Data and Research: Data and research will be a foundational element of CAP's monitoring and compliance activities. With sufficient data and research personnel, OPDS will be able to identify, quantify, and explore 1) what OPDSOPDS has actually paid for; 2) what OPDSOPDS should pay for; and 3) whether OPDS' distributed funds had the intended outcomes and impacts. Furthermore, research and evaluation will enable successful program implementation, as research efforts measure compliance with standards and evaluation efforts illustrate the program's wider impact (see Figure 1 below). All OPDS contracting models would benefit from a research-informed approach, like the approach underpinning OPDS' Parent Child Representation Program (PCRP), as such a model will facilitate reliable system-wide monitoring and evaluation.

CAP's data and research portfolio should encompass two primary categories of work: (1) data collection, processing, and monitoring activities that support the

agency's contracting unit and general operations and (2) research and evaluation activities that will support compliance and oversight of contracting models and contracted attorney performance. Data collection, processing, and monitoring will help OPDS know what the agency paid for and inform future contracting decisions. OPDS currently has infrastructure to support this category of work, and some of the necessary components of this work have already been implemented. Research and evaluation activities will provide information not supplied through data collection, processing, and monitoring, including whether OPDS and contracted attorneys meet set standards and the impact of OPDS funding. Although preliminary research and evaluation activities are underway within the PCRCP, OPDS lacks the needed infrastructure, resources, and staff to fully implement and execute the research and evaluation category of work. The sections below provide details on how the data and research portfolio could operate in the CAP division with the needed staff and infrastructure.

Figure 1: Role of Data and Research in Quality Program Implementation, Expansion, and Sustainability



Data Processing and Monitoring Activities to Support Contracting and General Operations: OPDS collects data from attorney providers that include case and client information for each attorney's court appointments, open caseload, and activity

time. These data can help OPDS understand how many appointments and cases the agency pays for and can be used, alongside supplemental court data from the Oregon Judicial Department (OJD), to forecast future funding needs. CAP Data and Research will be involved in all stages of collecting, cleaning, processing, analyzing, and interpreting these data, and in supporting agency use of data analysis in operations.

- **Collecting, cleaning, and processing self-reported provider data:** Attorney providers are contractually obligated to submit monthly caseload or workload reports to OPDS. Non-PCRPs attorneys submit case-level reports and PCRPs attorneys submit two client-level reports, one reporting open cases and one tracking case activities, time spent and outcomes. Once collected, cleaned, and processed, these monthly data reports are turned into analytic files. The files can be used to determine how actual provider caseload and workload align with contracted caseload and workload, and, for PCRPs, whether attorneys are meeting performance standards. Collecting, cleaning, and processing data is a time-intensive process that must precede analytic activities. CAP will perform those activities to ensure data is consistent across providers and free of errors so analysis will be accurate. To ensure OPDS has good-quality provider data, CAP will complete the following activities:
 - Work with information systems staff, who build and maintain data systems, to ensure that OPDS data systems can produce and export analytic files to support OPDS data and monitoring activities.
 - Gather providers' self-reported appointment, open caseload, and activity data files by training providers to enter quality data, producing data entry guidance materials to support providers in their data entry, and following up with providers to retrieve outstanding reports.
 - Ensure high quality data by reviewing submitted data files to identify data entry errors, reaching out to providers to provide guidance regarding data entry errors, cleaning data entry errors so that data files align with database specifications, importing clean data files into the database, and verifying that the data were successfully imported.

- **Determining future county-level caseload, workload, and FTE to support contracting:** CAP will support the use of data in all contracting decisions at OPDS, including forecasting case volume and need for court appointed counsel. To support accurate contracting decisions, CAP will complete the following activities:
 - Using historical data collected by OPDS and OJD court data extracts, calculate how many future annual appointments or open cases are expected for each county, converting the number of annual appointments into annual caseload or workload, and determining how many FTE are needed to cover the expected caseload or workload using OPDS caseload and workload standards.
 - Provide estimated FTE by county to the contracts team so they can determine the contract funds needed for each contractor.
- **Monitoring provider appointment, open caseload, and activity data to support contracting:** CAP will analyze provider data to determine whether providers are meeting their contracted caseload/workload or are falling above or below the contracted caseload or workload. CAP will complete the following activities:
 - Access and export provider data from OPDS' databases to create analytic files for analysis.
 - Use data analytic software (i.e. excel, SPSS, PowerBI) to determine the number of appointments and open cases for each month, quarter, and year disaggregated by county, provider, case type, and client type, and, for PCRCP contracts, also determine the number of attorney activity hours for each month, quarter, and year disaggregated by county, provider, case type, client type, and activity type.
 - Summarize data by county and provider and share with providers and contract analysts so that providers can understand their appointment, open caseload, and activity trends.
- **Using data narratives to support OPDS operations through data visualization and interpretation:** When data are needed to support OPDS operations, respond to legislative inquiries, prepare for hearings and

commission meetings, or submit Title IV-E reimbursement, CAP will work with staff throughout OPDS to determine what data are needed and how data can be appropriately used. CAP will generate data narratives that incorporate data visualization and interpretation to fairly represent the analysis and its findings in their internal and external conversations. CAP will perform this role through the following activities:

- Use data visualization software (i.e. excel and PowerBI) to create data charts that represent appointment, open caseload, and activity trends and that are easily understood by laypeople.
- Provide written and verbal explanations of research assumptions, rationale, and data limitations to staff making data requests, ensuring that data can be accurately represented by laypeople.
- Act as data gatekeepers and stewards to ensure that data analysis and visualization is only used in straightforward and accurate ways.

Research, Monitoring, and Evaluation Activities to Support Compliance of Evidence-Based Programming and Models: OPDS does not currently have the infrastructure or resources needed to support robust research and evaluation activities and is unable to systematically monitor OPDS' compliance with contracting models and contracted attorney adherence to representation standards. CAP will employ additional staff with training and experience in social science research and program evaluation to fully plan and execute sound system-wide performance monitoring and evaluation activities. These additional staff will work to develop and execute research and evaluation structures informed by practice-specific standards of representation. Research and evaluation activities will, in the shorter term, determine if OPDS and contracted attorneys adhere to necessary standards. In the longer term, these activities will demonstrate the impact of OPDS funding on clients, cases, and Oregon's court systems.

- **Partnering with state agencies to acquire and understand data needed for evaluations:** The data that OPDS currently collects from attorney providers are insufficient to evaluate contracting models and monitor attorney performance. Developing data sharing agreements with the state agencies who are the source

of case processing and outcomes data, such as OJD and DHS, would facilitate OPDS' evaluations of the implementation and outcomes of its contracting models and monitor attorney performance. CAP will complete the following activities:

- Develop good relationships with research staff at partnering agencies that will illustrate OPDS' ability to accurately analyze and interpret partnering agencies' data and be good stewards of the data they share with OPDS.
 - Determine data needed from each partnering agency and work with the research staff at each agency to refine the data elements based on what is available in their data systems.
 - When data extracts are received from partnering agencies, work closely with their research staff to ensure OPDS can accurately interpret and use each data element.
- **Developing metrics to measure and monitor attorney performance and compliance with standards of representation:** Attorneys with OPDS contracts are required to adhere to national and state-specific state practice standards to ensure that indigent clients have access to high-quality representation. Monitoring attorney performance will allow OPDS to determine whether each attorney provider is meeting these standards of representation. Quantitative and qualitative data can be used to gauge which providers are meeting the required standards and identify which practice areas would benefit from additional training. To ensure that providers are meeting standards of representation, CAP will perform the following activities:
- Identify measurable standards of representation, determine the metrics that will be used to measure each standard, and select the best research method to generate data for each metric including descriptive data analysis, stakeholder surveys, stakeholder interviews and focus groups, and court observations. For each research method selected, develop an analytic plan that will inform how data is requested and collected.
 - Develop standardized data collection tools, including surveys, observation tools, and interview and focus group guides, that generate reliable and valid data across counties and contractors.

- Develop standardized data collection processes and work with the staff collecting data to ensure consistency and reliability.
- **Developing metrics to measure and monitor inputs needed to achieve contracting model outcomes:** Evidence-based and evidence-informed models have specific activities and resources (i.e. “inputs”) that must be implemented with fidelity to achieve the model’s expected outcomes. For example, the PCRCP model requires that attorneys maintain a workload of no more than 80 open cases, because research shows that capping attorney workload helps achieve reunification in interdisciplinary models of representation. Ensuring inputs are implemented with fidelity is a critical component of implementation and must be done before the model can be evaluated for outcomes; that is, only when necessary inputs are implemented with fidelity can outcomes be attributed to the model. To confirm that OPDS and its contractors are implementing contracting models with fidelity, and in anticipation of an outcome evaluation, CAP will partner with other OPDS staff to perform the following activities:
 - Identify measurable short- and long-term goals for each contracting model, drawing upon research and best practices.
 - Develop logic models for each contract model to ensure OPDS has sufficient resources to implement each model and that OPDS and contractors are implementing all necessary activities to achieve each model’s short-term and long-term goals.
 - Identify measurable inputs and develop mixed-methods analytic plans to monitor the implementation of these inputs at the attorney-level, contractor-level, county-level, and statewide.
 - Identify internal and external qualitative and quantitative data sources, including OPDS provider data, OJD court data, stakeholder survey data, stakeholder interview and focus group data, and court observation data, that will assist the monitoring plans.
 - Develop standardized data collection tools, including surveys, observation tools, and interview and focus group guides, that generate reliable and valid data across counties and providers.

- Develop standardized data collection processes and work with the staff collecting data to ensure consistency and inter-rater reliability.
- **Evaluating contracting model outcomes against expected case and client outcomes:** Evidence-based and evidence-informed models have specific short- and long-term goals (i.e. “outcomes”) that, if implemented with fidelity, the model should produce. For example, interdisciplinary models of representation for parents involved in child welfare proceedings, such as PCRCP, are shown to reduce the number of days children spend in foster care. Accordingly, OPDS will use days spent in foster care as an outcome measurement when evaluating the PCRCP model. Once OPDS confirms that contracting models are implemented with fidelity, the agency can then measure the outcomes of each contracting model. To evaluate outcomes of OPDS contracting models, CAP will partner with other OPDS staff and key stakeholders to perform the following activities:
 - Draw upon program evaluation methodologies to design an outcomes evaluation plan for each contracting model that will support causal inference between the contracting model and measurable outcomes where possible. Use advanced statistical tests to execute outcomes evaluation plan.
 - Identify and access external quantitative data sources, including OJD court data, that will provide the highest-quality data available to measure outcomes.
 - Translate complex analytic findings to other OPDS staff and key stakeholders and seek input for additional areas of inquiry.

B. Need for Practice-Area Specialization: within CAP Criminal defense, juvenile delinquency defense, and juvenile dependency representation are specialized areas of law, requiring unique skill sets and technical expertise. Although some overlap exists between these three practice areas, national standards of public defense recognize that delinquency, dependency, and criminal defense are specialized practice areas requiring specialized expertise and delivery models.⁵

⁵ For example, the National Juvenile Defender Center (NJDC) and National Legal Aid & Defender Association (NLADA) stress that public defense delivery systems must recognize that representation of children and adolescents is a specialized area of the law that is “different from,

National Assessments of Oregon’s Criminal and Juvenile Defense Systems

Identified the Need for Improved and Specialized Oversight: The proposed CAP approach to provider compliance and division structure (described in Section 2 below) will directly address the agency’s oversight deficiencies recognized by national assessments of Oregon’s public defense systems.

The Sixth Amendment Center’s 2019 report examining Oregon’s indigent criminal defense system included findings that OPDS provided inadequate training and oversight to attorneys handling criminal defense cases and that attorneys handling both criminal and civil matters (such as juvenile dependency cases) lacked tailored qualifications, training, and oversight to ensure adequate representation in each practice area.⁶ The Sixth Amendment Center report stressed that the inherent differences and tensions between indigent criminal and civil representation require specialized training and oversight in order to ensure adequate representation to clients in each practice area. Then, in 2020, the National Juvenile Defender Center (NJDC) issued an assessment of Oregon’s juvenile defense system that included similar findings and specifically recommended that OPDS implement a system for monitoring and enforcing state standards for juvenile defense and commit to promoting expertise and specialization in juvenile defense.⁷ The report stated that “juvenile defense must be recognized as a specialized area of legal practice that requires expertise, adherence to specialized standards of representation, and ongoing training.”⁸

but equally as important as representing adults in criminal proceedings” and that “the public defense delivery system provides and mandates training” on topics related to juvenile representation, such as detention advocacy and dispositional planning. National Juvenile Defender Center and National Legal Aid & Defender Association, *Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems* at 2 (2nd ed July 2008), <https://njdc.info/wp-content/uploads/10-Core-Principles.pdf>

⁶ Sixth Amendment Center, *The Right to Counsel in Oregon, Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services* https://sixthamendment.org/6AC/6AC_Oregon_report_2019.pdf

⁷ National Juvenile Defender Center, *Advancing Youth Justice: An Assessment of Access to and Quality of Juvenile Defense Counsel in Oregon* <https://njdc.info/wp-content/uploads/Oregon-Assessment-Web.pdf>

⁸ *Id.* at 55.

These findings were echoed again in a 2020 National Legal Aid & Defender Association (NLADA) study that determined that the State of Oregon had failed to provide “regular, systematic review of defense attorneys’ performance” and no provision for attorneys to participate in training.⁹

Effective Oversight of Juvenile and Criminal Practice Requires Subject Matter

Expertise: As the national assessments identified, OPDS’ path to effective oversight of its providers requires robust compliance and training processes tailored to each practice specialization. Criminal defense, juvenile delinquency defense, and juvenile dependency representation are distinct practices of law. As noted above, each practice area is governed by separate national and state performance standards. Each require specialized knowledge of Oregon statutes and administrative rules, case law, constitutional provisions, and federal law. Accordingly, robust and successful oversight of criminal and juvenile defense providers requires distinct practice area oversight infrastructures. An effective delivery system requires practice-area-informed program management, attorney engagement, training and research. As an example, since 2014, the PCR model has been led by OPDS staff with significant juvenile practice expertise. The practice-area-informed program design, management, and attorney engagement has facilitated the model’s efficacy and positive outcomes.

As a state public defense agency, OPDS is unique in coordinating court-appointed counsel across all practice areas. A number of other states spread the same breadth of provider oversight over three distinct agencies.¹⁰ In states that, like Oregon, have one agency conducting oversight over all practice areas, there are distinct infrastructures from leadership to staff to ensure that oversight and compliance activities are practice-informed.¹¹ Unsurprisingly, agencies with those

⁹ National Legal Aid & Defender Association, *Review of the Municipal Court Indigent Defense Service Delivery Eugene, Oregon* at 30 (September 2020), https://www.nlada.org/sites/default/files/pictures/NLADA_indigent_defense_service_delivery_Eugene_OR_11_17_20.pdf

¹⁰ Colorado Public Defense Agency Oversight is spread over several agencies, one overseeing adult criminal defense, one overseeing representation of parents in juvenile proceedings and one overseeing representation of children in juvenile proceedings.

¹¹ Massachusetts’s Committee on Public Defense Counsel is structured with practice-area

practice-specific infrastructures and mechanisms are recognized for robust and effective compliance activities and producing quality attorneys. This is because attorneys conducting oversight must have detailed knowledge of how a case in a particular practice area should be litigated: which motions an attorney should be filing in a particular case, arguments and objections they should make on a client's behalf, and what to look for when observing an attorney in court. Differences between the practice areas are numerous. For example:

- Criminal defense representation requires familiarity with criminal statutes, local rules of procedure, case law, constitutional principles applicable in criminal cases, jury trial skills, rules of evidence, mitigation, and Oregon's complex felony sentencing structure.
- Juvenile dependency representation requires familiarity with the juvenile dependency section of the Oregon Juvenile Code (ORS chapter 419B), numerous other state statutes, as well as federal statutes, that can impact dependency cases, DHS's administrative rules governing child welfare cases, and social science research around family separation, addiction, trauma, and foster care.
- Juvenile delinquency attorneys must, at a minimum, know distinct provisions of Oregon's criminal statutes, but also criminal and juvenile case law, the juvenile delinquency section of the Oregon Juvenile Code (ORS chapter 419C), research on adolescent brain development and how the research intersects with substantive law, and potential collateral consequences of juvenile adjudications

A fluent understanding of the practice and legal framework of each specialization is needed for CAP staff to identify whether the provider is meeting standards. It is also essential to engage with an attorney provider and provide constructive feedback, training, or resources as needed. Likewise, a strong understanding of the practice, laws, client populations, and interaction with system partner agencies is necessary to inform sound research and data. As each practice area is tied to its

specialized oversight divisions, including adult criminal defense, child and family representation, youth representation and Mental Health Litigation.

own standards of performance, the performance measures and related assessment tools will be distinct across practice areas. The distinct standards, data collection, and oversight processes require the juvenile and criminal oversight teams to be led and staffed by subject matter experts.¹²

Subject Matter Expertise Facilitates Stakeholder Engagement & Systemic

Improvement: Ensuring that OPDS' CAP Division is staffed with attorneys who are experts in their field will facilitate strengthened communication, collaboration, and trust with the provider community. Moreover, subject matter expertise within the agency will allow OPDS to meaningfully engage with other system partners to improve the criminal and juvenile court systems, such as through providing technical expertise in workgroups and task forces. For example, OPDS is already engaged with a number of workgroups specific to juvenile practice, such as OJD's Juvenile Court Improvement Program (JCIP), which tracks dependency practice across the state and works collaboratively with stakeholders to craft practical solutions to issues as they arise in the court setting.

C. Financial Compliance:

Internal Auditors will review agency billing patterns and collaborate with CAP staff as needed. This critical internal auditing and monitoring function will ensure that agency costs are tracked and monitored accurately and managed effectively. This will include ensuring that the agency's trial-level contract expenditures are consistent with policy. It will also allow the agency to provide services within its budget and recognize when particular costs do not confirm with standard practice or are arise due to external factors such as prosecution practices, legislative changes, or other unavoidable system influences so that the agency may respond accordingly. These functions will also help ensure that the agency's budget decisions conform with Commission and legislative direction.

2. Infrastructure Needed to Execute the CAP vision

¹² See National Legal Aid and Defender Association, *Defender Training and Development Standards*, Standard 1.6 (1997), <https://www.nlada.org/defender-standards/training/black-letter> (“[A]ll employees who have training responsibilities should have abilities, experience and attitudes commensurate with their training responsibilities and assignments.”)

Successful execution of compliance and performance oversight will require specialized teams with program management, subject matter expertise, and research skills. The CAP unit will include a Criminal Team and Juvenile Team with parallel structures to carry out successful oversight and compliance. Specializing management, compliance, and research by practice area will make it possible for OPDS to develop and execute an effective oversight plan.

- **Criminal Trial and Juvenile/PCRP Program Managers:** The Program Managers will plan and lead their respective teams in developing and implementing practice-specific compliance activities. As the CAP function is largely undeveloped and without a foundational infrastructure at OPDS, the Program Managers will be tasked with significant “ramp up” and program management responsibilities. These tasks will require substantive practice area knowledge, fluency with performance standards, credibility when communicating with providers and system partners, and appreciation for data-informed decision-making.¹³ To support collaboration and positive integration across the agency, and ensure oversight of Quality Assurance processes, Program Managers will closely under the Deputy Director, Program Manager tasks will likely include:
 - Acting as internal and external point person on decisions related to policy, funding, and contracting.
 - Managing development and implementation of the performance evaluation protocols, including supporting research and data staff to develop practice-informed activity and performance metrics and workload projections, in coordination with the Deputy Director.
 - Overseeing and leading each team’s compliance activities in the respective practice areas.

¹³ Managers with subject matter expertise are essential to ensuring fidelity to state and national standards as recommended by the American Bar Association’s Ten Principals of a Public Defense Delivery System, and developing key performance measures and standardized assessment tools. *ABA Ten Standards of a Public Defense Delivery System*, Feb. 2002. Principle Ten: “Defense Counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.”

- Coordinating with the Deputy Director and General Counsel on the content for vendor RFPs for attorney services and assist in the negotiation of provider contracts
- Regularly engaging with the Deputy Director, General Counsel and the and Administrative Divisions to inform policy and funding, decisions in the respective practice areas.
- Providing written and oral reports to the Public Defense Services Commission (PDSC) on programmatic and compliance activities in the respective practice areas.
- Participation in work groups, task forces and committees.

The Juvenile/PCRP Manager will continue to oversee compliance activities already underway in the PCRP contracting model. The PCRP compliance model will also serve as a base framework for non-PCRP Juvenile Compliance.

- **Criminal and Juvenile Quality Assurance Councils** – Each team will have Quality Assurance Councils. The Quality Assurance Councils will carry out the oversight activities for the respective practice area. Likely tasks may include:
 - Conducting court observations, performance reviews, site visits, and stakeholder engagement to assess the quality of defense representation by providers and the quality of defense administration by provider entities.
 - Working closely with the Program Manager and Research Analyst to develop standardized assessment materials, including identifying key performance measures and trackable outcomes.
 - Assessing provider adherence to practice standards and responding to juvenile practice quality concerns, including identifying responsive training and resources.

- Assessing provider needs and responding to case support requests.
 - Developing resources to support provider practice, such as checklists, reference guides, sample filings and other materials responsive to the needs of providers.
 - Collaborating with the Program Manager and Research staff to appropriately identify regional trends and respond as needed, including involvement of system partners, resource development and need for timely intervention with providers or provider entities.
 - Assessing contract entities' compliance with contractual obligations and national defense standards through site visits, data review, stakeholder interviews and provider input.
 - Providing formal feedback on providers and provider entities to the contracts team to inform contracting decisions.
- **Research Analysts** –Research Analysts will plan development, implementation and evaluation of major research and complex data analysis projects at OPDS. One Research Analyst will lead the criminal research and data portfolio and one Research Analyst will lead the juvenile research and data portfolio. Specific tasks and responsibilities include:
 - Manage the research and data portfolios at OPDS by providing oversight for all research and data projects and activities, supporting data processing and analytic tasks, serving as the in-house expert of their respective research area (i.e. criminal or juvenile), and leading the development of all qualitative and quantitative research and data activities supporting OPDS operations
 - Implement of quality data collection processing by serving as a liaison with information systems staff specialist to provide a research- and analytic-lens during the build of OPDS data management systems,

designing data submission and cleaning processes, and overseeing the collection, cleaning, and processing of provider data submissions.

- Execute research and data projects needed to support OPDS operations by partnering with programmatic, legal, and financial staff to determine data and research needs, designing research and analytic plans, and overseeing the execution of analytic plans.
 - Serve as the liaison to external State agencies' research and data teams to establish data sharing agreements with these agencies and make informed and necessary requests for data extracts that will enhance OPDS' ability to do monitoring and evaluation.
 - Partner with programmatic and legal staff to develop mixed-methods compliance monitoring plans for each contracting model, compliance plans for attorney oversight, and outcome evaluation plans for contracting models that are based in program evaluation theory and design and utilize social science research methods.
 - Develop standardized data collection tools and processes, including surveys, observation tools, and interview and focus group guides, that generate reliable and valid data across counties and contractors and staff collecting data.
 - Use statistical and data visualization software to analyze and visualize internal and external data needed for monitoring and evaluation of contracting models and attorney performance.
 - Lead the analysis of contracting model outcome evaluations by utilizing advanced statistical techniques.
- **Data Analyst:** The data analyst will support the Research Analysts during the development, implementation, and evaluation of research and data projects at OPDS. Specific tasks and responsibilities include
 - Collect, clean, and process provider data submissions and work directly

with providers to ensure quality data entry.

- Use statistical and data visualization software to analyze and visualize monthly, quarterly, and annual provider data trends in support of OPDS operations.
 - Work with the Research Analysts to write narratives describing the research assumptions, rationale, and data limitations of data analyses and visualizations.
 - Work closely with the contracts team to understand their data needs and produce high-quality data analyses and narratives to support this team in their contracting decisions.
 - Work with the Research Analysts to execute compliance monitoring plans for contracting models and attorney performance through data analysis, visualization, and interpretation.
 - Assist the Research Analysts in designing and implementing qualitative and quantitative data collection tools and processes to support compliance monitoring.
- Internal Auditor:
 - Develop and implement programs to audit all aspects of agency expenditures, including compliance with agency budgets and legislative directives, payments under provider contracts, and NRE expenditures and court-mandated expenses;
 - Ensure agency compliance with applicable state operating procedures, as well as state and federal law.
 - Directly report any irregularities to the Commission and provide the Commission with regular reports and status updates on ongoing auditing functions;

Act as liaisons between Secretary of State Office (SOS) for purposes of audits conducted by SOS as well as any external auditors.

3. CAP and the Agency

CAP will work under the oversight of the Deputy Director to execute the Executive Director's vision for public defense. CAP will inform agency decisions on contracting decisions and related funding needs. CAP will share data and information gleaned from oversight processes with the Administrative Division. This information will add accuracy to contracting decisions and budget requests. CAP will work with the General Counsel and Deputy Director to develop vendor RFPs and contracts. CAP will also collaborate with the Executive and Administrative Division to develop consistent, clear and enforceable policies to support the provision of standards-based, quality representation.

Addendum 1: Training and Case Consultation

CAP's Training and Case Consultation function will play a critical piece within CAP's provide compliance. Public defenders require significant substantive legal knowledge and litigation skills to effectively represent clients. Dependent on practice area, familiarity with social science research, forensics, adolescent development, mental illness, and varied specialized areas is also integral to effective representation. All attorneys must stay current on case law developments, changes in the law, and relevant policies to provide quality representation to their clients. As detailed in the Specialization section of this memo, the agency must deliver practice-specific case consultation, training, and resources to develop requisite subject matter knowledge and support quality indigent defense representation.

With the requisite personnel, CAP will offer a mix of practice-specific resources and training to support new and experienced providers:

- **Technical Assistance:** Contractors will be able to solicit practice-area specific technical assistance. Examples of technical assistance include guidance on pertinent statutory and case law citations, consultation on litigation strategy, review of draft briefs and motions, and advice on appropriate use of experts, investigators and other ancillary defense supports.
- **Practice Resources:** CAP will manage an online Public Defense Provider Toolkit. The Toolkit will contain an ever-growing library of practice-specific resources providers can use to develop and refine knowledge and skills. This centralized resource will bolster attorney performance through accessible, up-to-date resources. allowing attorneys access to model motions and checklists rather than “reinventing the wheel.” The resources will be subject matter practice-specific and may include the following:
 - Model Motions and Forms
 - Case Summaries
 - Webinars and Training Materials
 - Legal Primers, Checklists, and Guides

OPDS has already launched a **Juvenile Defense Provider Toolkit** (Password: ZealousAdvocacy) and online **Juvenile Attorney Litigation Support Request:**
<https://www.oregon.gov/opds/general/Pages/assistance.aspx>

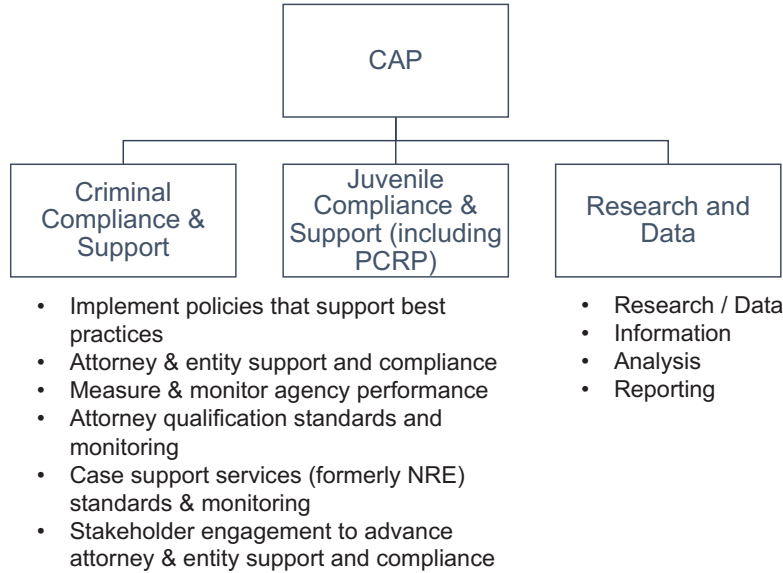
- **Trainings:** CAP will offer regular trainings to providers of all skill levels. It is critical that new attorneys receive foundational and practice-specific trainings at the outset. It is equally important for experienced attorneys to participate in on-going trainings to maintain and enhance skills. CAP will work to raise the level of practice among contract entities through yearly, practice-specific foundational (“boot camp”) trainings for new attorneys, tailored trainings for experienced attorneys, and annual trial skills trainings. CAP will also offer regular opportunities for skill development, such as “brown bags” and lunch-time practice-specific CLEs, and opportunities for litigation skill simulations. These trainings will be offered virtually and in person (when public health regulations permit). CAP will record trainings and make them available on the Public Defense Provider Toolkit.

CAP will prioritize responsive trainings to target identified practice quality concerns. As an example, the 2020 National Juvenile Defender Center (NJDC) assessment of juvenile representation cited infrequent appeals and developed case law as a deficiency in Oregon’s system. An OPDS PCRPP initiated survey of juvenile providers revealed that providers also self-identified a need for increased knowledge of record preservation. In response, OPDS PCRPP team offered a CLE entitled “No Regrets! Preserving Claims of Error and Making a Record for Appeal.” The training was recorded and is available online at the OPDS Juvenile Defense Provider Toolkit site, located on OPDS’ website.

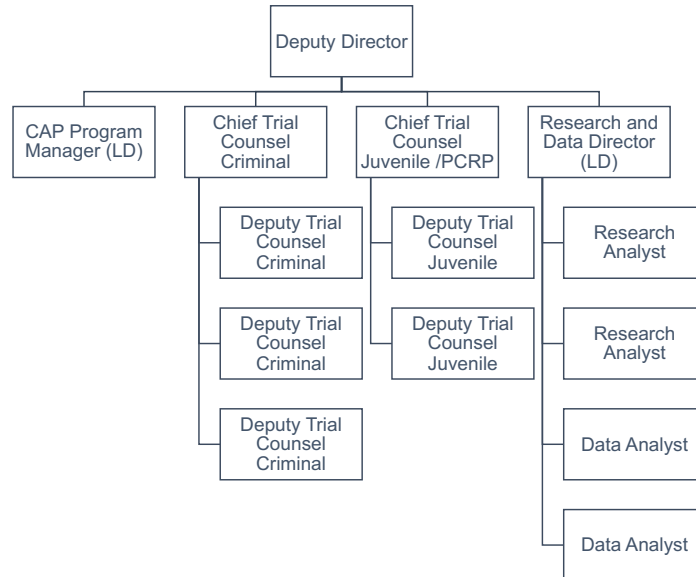
Training is integral to supporting an effective public defense delivery model. CAP will utilize this function strategically as a means of supporting provider quality, and remedying provider limitations.

Appendix D: CAP Organizational Design

DRAFT CAP High Level Design - captures the functions of the work



Initial FTEs: 13



CAP Scope – Compliance Function (Criminal and Juvenile)

Functional Statement: Manage ongoing entity and jurisdictional needs and contract compliance

In Scope: Compliance	Out of Scope: Compliance	Linkages
POLICY DEVELOPMENT		
<ul style="list-style-type: none"> Policy development to support CAP operations 		<ul style="list-style-type: none"> Central policy development in Administrative Services
COMPLIANCE & SUPPORT		
<ul style="list-style-type: none"> Identify and ensure the supports are provided to improve the quality of services (e.g., training, technical assistance, access to experts, support services). Develop and implement trainings when other resources are not available 		
<ul style="list-style-type: none"> Ensure providers are adequately resourced to do high quality work 	<ul style="list-style-type: none"> Set fee schedules / rates 	<ul style="list-style-type: none"> CAP research and data to provide input into trends / insights into how performance is impacted by fee schedules / rates
<ul style="list-style-type: none"> Manage trial resources within the legislatively approved budget 	<ul style="list-style-type: none"> Appellate operations 	<ul style="list-style-type: none"> Appellate measures of performance and outcomes would be aligned with CAP

CAP Scope – Compliance Function (Criminal and Juvenile)

Functional Statement: Manage ongoing entity and jurisdictional needs and contract compliance

In Scope: Compliance	Out of Scope: Compliance	Linkages
COMPLIANCE & SUPPORT Continued		
<ul style="list-style-type: none"> Measure attorney and 1st tier supporting services (e.g., investigators, dependency expenditures, supervisors, juvenile case manager) performance against performance standards and report issues to Criminal and Juvenile Chiefs and their deputies 	<ul style="list-style-type: none"> Decide on actions associated with provider performance (Criminal and Juvenile Chiefs and their deputies) 	<ul style="list-style-type: none"> General Counsel engages when formal agency action is needed to resolve provider performance Informs contract procurement
ATTORNEY COMPLAINTS		
<ul style="list-style-type: none"> Identify and respond to systemic issues (within agency control and outside of agency control) 	<ul style="list-style-type: none"> Evaluate and respond to attorney complaints (Criminal and Juvenile Chiefs and their deputies) 	<ul style="list-style-type: none"> General Counsel engages when formal agency action is needed to address complaints
ATTORNEY QUALIFICATIONS STANDARDS AND APPROVALS		
<ul style="list-style-type: none"> Develop and monitor attorney qualifications and performance standards 	<ul style="list-style-type: none"> Evaluate and approve attorney qualifications (Criminal and Juvenile Chiefs and their deputies) 	<ul style="list-style-type: none"> General Counsel to resolve disputes related to attorney qualifications PDSC adopts standards

CAP Scope – Compliance Function (Criminal and Juvenile)

Functional Statement: Manage ongoing entity and jurisdictional needs and contract compliance

In Scope: Compliance	Out of Scope: Compliance	Linkages
CASE SUPPORT SERVICES (CSS)		
<ul style="list-style-type: none"> Develop policies and standards for Case Support Services (CSS) (routine and non-routine expenses and court related expenses) 	<ul style="list-style-type: none"> Approve CSSs (Criminal and Juvenile Chiefs and their deputies) 	<ul style="list-style-type: none"> General Counsel to support the review of CSS for legal and policy compliance as needed PDSC adopts policies
STAKEHOLDER ENGAGEMENT		
<ul style="list-style-type: none"> Collaborate and coordinate with outside state and county agency partners and stakeholders, such as OJD, DHS, OYA, DOC, and county jails, to ensure efficient cooperation in the handling of cases 		<ul style="list-style-type: none"> Government Relations to facilitate policy development and communications
<ul style="list-style-type: none"> Assist providers in advancing relationships at the local level with courts, prosecutors, law enforcement, and supervision and treatment providers 		

CAP Scope – Compliance Function (Criminal and Juvenile)

Functional Statement: Manage ongoing entity and jurisdictional needs and contract compliance

In Scope: Compliance	Out of Scope: Compliance	Linkages
STAKEHOLDER ENGAGEMENT Continued		
	<ul style="list-style-type: none"> Provide short term limited litigation support where that support is not available by existing internal and outside resource (e.g., juvenile peer to peer discussions) (Criminal and Juvenile Chiefs and their deputies) 	

CAP Scope – Compliance Function (Criminal and Juvenile)

Functional Statement: Manage ongoing entity and jurisdictional needs and contract compliance

In Scope: Compliance	Out of Scope: Compliance	Linkages
Agency Performance Management		
<ul style="list-style-type: none"> Measure whether the agency is meeting its constitutional, statutory, and regulatory compliance (key analysis of achieving the mission to deliver effective and meaningful access to lawyers) 		
<ul style="list-style-type: none"> Identify key outcomes (contractual and non-contractual) and monitor performance (client, case, entity, and system level) 		
<ul style="list-style-type: none"> Participate in subject matter specific workgroups that are focused on practice and systemic improvements 		
<ul style="list-style-type: none"> Research and implement best practices and systemic innovations 		

CAP Scope – Compliance Function (Trial and Juvenile)

Functional Statement: Manage ongoing entity and jurisdictional needs and contract compliance

In Scope: Compliance	Out of Scope: Compliance	Linkages
Agency Performance Management Continued		
<ul style="list-style-type: none"> Monitor contract compliance issues 	<ul style="list-style-type: none"> Respond to contract compliance issues (Criminal and Juvenile Chiefs and their deputies) Draft contracts Manage relationships with contractors 	<ul style="list-style-type: none"> Standards that CAP develops get incorporated into contracts that are drafted by General Counsel Contracts team manages and monitors relationships with contractors in consultation with Criminal and Juvenile Chiefs and deputies when necessary

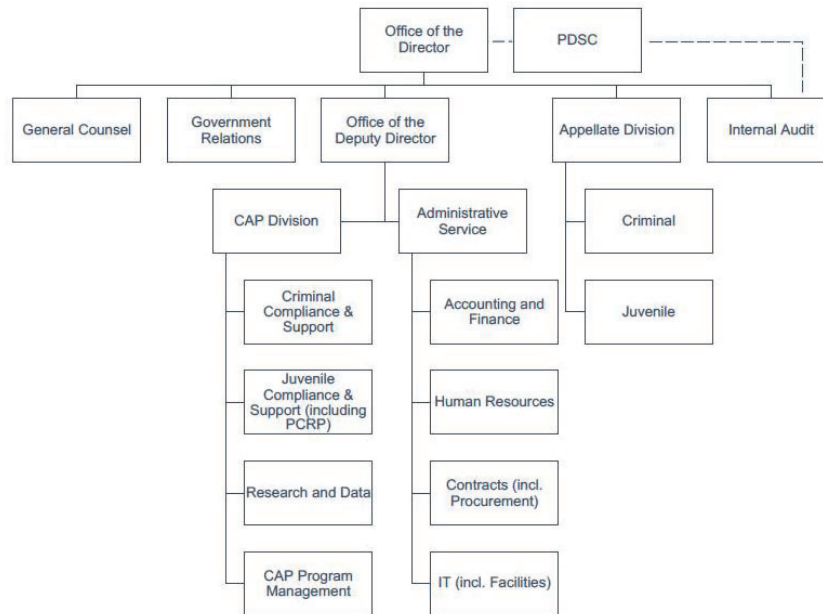
CAP Scope - Research and Data Function

Functional Statement: Research best practices, innovative approaches and provide recommendations and supports to continually improve the quality and equity of services

In Scope: Research and Data	Out of Scope: Research and Data	Linkages
<ul style="list-style-type: none"> Establish the standards and approach for research and data collection and management (e.g., surveys, focus groups) 	<ul style="list-style-type: none"> Data entry Other data related elements that are not associated with the scope areas of CAP (e.g., financial analysis) 	
<ul style="list-style-type: none"> Develop research and data projects to support agency operations by partnering with programmatic, legal, and financial staff to understand agency needs and translating those needs into qualitative and quantitative research and data activities 		<ul style="list-style-type: none"> IT Projects Collaboration with non-CAP divisions
<ul style="list-style-type: none"> Implement research and data projects by designing research and analytic plans, identifying and collecting needed data, and executing research and analytic plans 		<ul style="list-style-type: none"> IT Projects
<ul style="list-style-type: none"> Compare research and analytic results to the policies, goals, and objectives of the agency and prepare findings and recommendations using both narrative and statistical reports 		
<ul style="list-style-type: none"> Provide agency management advice with regard to data-driven strategic planning and initiatives 		<ul style="list-style-type: none"> Support F/CMS project implementation

Appendix E: Agency Organizational Design

DRAFT Agency Functional High-Level Design



General Counsel Scope

Functional Statement: Serve as the legal and strategic advisor for the agency

In Scope	Out of Scope	Linkage Needed
<ul style="list-style-type: none"> Provide legal and strategic advice to the executive director, agency staff, and the PDSC 		
<ul style="list-style-type: none"> Represent the agency in legal proceedings when applicable 		
<ul style="list-style-type: none"> Collaborate with the executive director on the planning of PDSC meeting agendas, initiatives, and agency priorities 		
<ul style="list-style-type: none"> Review all agency contracts for vendors, including attorney and non-attorney services, as well as all intergovernmental agreements 	<ul style="list-style-type: none"> Monitor compliance with contracts and provide recommended actions. Manage relationships with contractors. 	<ul style="list-style-type: none"> CAP
<ul style="list-style-type: none"> Review all agency policies and proposed policy changes When appropriate, prepare policies for presentation to the PDSC for adoption 	<ul style="list-style-type: none"> Drafting policies 	<ul style="list-style-type: none"> Central policy development in Administrative Services
<ul style="list-style-type: none"> Advise the agency on public defense contract disputes 		

General Counsel Scope

Functional Statement: Serve as the legal and strategic advisor for the agency

In Scope	Out of Scope	Linkage Needed
<ul style="list-style-type: none"> Review all proposed legislation impacting the agency and advise the agency on all fiscal impact statements 		
<ul style="list-style-type: none"> Support the review of Case Support Services (CSS) (formerly NREs) for legal and policy compliance 	<ul style="list-style-type: none"> Define and set policies and standards for CSSs 	<ul style="list-style-type: none"> CAP to approve, define and set policies and standards for CSSs PDSC adopts policies
<ul style="list-style-type: none"> Resolve issues regarding formal agency action needed to respond to complaints 	<ul style="list-style-type: none"> Evaluate and respond attorney complaints and identify systemic issues (within agency control and outside of agency control) 	<ul style="list-style-type: none"> Criminal and Juvenile Trial Chiefs to evaluate and respond attorney complaints CAP to identify systemic issues
<ul style="list-style-type: none"> Resolve disputes related to attorney qualifications 	<ul style="list-style-type: none"> Evaluate and approve attorney qualifications. Set and monitor attorney qualifications and performance standards 	<ul style="list-style-type: none"> Criminal and Juvenile Trial Chiefs to evaluate and approve attorney qualifications CAP sets and monitors attorney qualifications and performance standards

General Counsel Scope

Functional Statement: Serve as the legal and strategic advisor for the agency

In Scope	Out of Scope	Linkage Needed
<ul style="list-style-type: none"> Review referrals from Criminal and Juvenile Trial Chiefs and advise on actions associated with provider performance 	<ul style="list-style-type: none"> Measure attorney and 1st tier supporting services (e.g., investigators, dependency expenditures, supervisors, juvenile case manager) performance against performance standards 	<ul style="list-style-type: none"> Criminal and Juvenile Trial Chiefs to monitor and address individual attorney, entity, and first-tier support performance issues CAP to provide insights to inform actions associated with provider performance
<ul style="list-style-type: none"> Respond to public records requests 		
<ul style="list-style-type: none"> Advise on public meetings law 		
<ul style="list-style-type: none"> Advise on Government Ethics (both Commission and Agency staff as state employees) 		<ul style="list-style-type: none"> HR for ethics issues pertaining to state employees

Government Relations Scope

Functional Statement: Serve as the liaison between the agency and the legislature and outside partners

In Scope	Out of Scope	Linkage Needed
<ul style="list-style-type: none"> Provide communications on agency updates to providers 		<ul style="list-style-type: none"> Agency has public relations and internal communication needs that are not met
<ul style="list-style-type: none"> Serve as a resource for the other state agencies and elected officials on Agency subject areas 		
<ul style="list-style-type: none"> Consult with executive team and plans for short-term and long-term information needs 		
<ul style="list-style-type: none"> Serve as the spokesperson for all external media 		<ul style="list-style-type: none"> Connected to Executive Director and General Counsel depending on topic
<ul style="list-style-type: none"> Supervise the publication of all external communications 		
<ul style="list-style-type: none"> Provide political advice to the Director and Executive Team 		

Government Relations Scope

Functional Statement: Serve as the liaison between the agency and the legislature and outside partners

In Scope	Out of Scope	Linkage Needed
<ul style="list-style-type: none"> Direct the legislative agenda and coordinate with outside allies 		<ul style="list-style-type: none"> Support from General Counsel
<ul style="list-style-type: none"> Manage the legislative process and serve as the legislative liaison 		<ul style="list-style-type: none"> Connected to external stakeholders (strategic and tactical), budget (situational awareness) and General Counsel
<ul style="list-style-type: none"> Serve as point person for various task forces 		

Appellate Scope

Functional Statement: Serve as the institutional presence in the state appellate system for court-appointed criminal and juvenile defense bars

In Scope	Out of Scope	Linkage Needed
<ul style="list-style-type: none"> Provide quality appellate representation for eligible individuals 	<ul style="list-style-type: none"> Measure whether the agency is meeting its statutory and regulatory compliance (key analysis of achieving mission to deliver effective and meaningful lawyers) 	<ul style="list-style-type: none"> Appellate measures of performance and outcomes would be aligned with CAP Appellate Chiefs share with CAP trends and systemic issues
<ul style="list-style-type: none"> Participate in the development of law and policy to protect rights of clients within the Oregon criminal and juvenile justice systems 		<ul style="list-style-type: none"> Central policy development in Administrative Services
<ul style="list-style-type: none"> Ensure cases referred for appeal or judicial review are initiated, records are carefully scrutinized for legal error, the clients are kept informed about their appeal and its ramifications, and the appeal is timely and vigorously prosecuted to completion 		<ul style="list-style-type: none"> Appellate measures of performance and outcomes would be aligned with CAP Appellate leverages support from Research and Data
<ul style="list-style-type: none"> Manage statewide appellate functions 		<ul style="list-style-type: none"> Consultation with General Counsel and CAP on key issues
<ul style="list-style-type: none"> Conduct outreach for continued training and development 		

Appellate Scope

Functional Statement: Serve as the institutional presence in the state appellate system for court-appointed criminal and juvenile defense bars

In Scope	Out of Scope	Linkage Needed
<ul style="list-style-type: none"> The Criminal Appellate Section: Provides statutorily and constitutionally mandated appellate representation to financially eligible individuals in a variety of case types: appellate representation to criminal defendants in misdemeanor and felony appeals (including capital cases), contempt cases, DNA-related appeals, mandamus actions, and appeals of decisions by the Board of Parole and Post-Prison Supervision 		<ul style="list-style-type: none"> Appellate measures of performance and outcomes would be aligned with CAP
<ul style="list-style-type: none"> The Juvenile Appellate Section (JAS): Provides representation to financially eligible parents on direct appeal from juvenile dependency and termination of parental rights proceedings, and to youth on direct appeal from juvenile delinquency proceedings. 		<ul style="list-style-type: none"> Appellate measures of performance and outcomes would be aligned with CAP
<ul style="list-style-type: none"> JAS: Approves and maintains a panel of qualified external providers to provide appellate representation when JAS has a conflict or lacks capacity 		<ul style="list-style-type: none"> Appellate measures of performance and outcomes would be aligned with CAP General counsel resolves disputes arising from attorney qualifications

Administrative Services Scope

Functional Statement: Manage daily organizational operations of the agency

In Scope	Out of Scope	Linkage Needed
<ul style="list-style-type: none"> • Accounting: Manage all accounting activities (AP, General Ledger, Financial Reporting). Ensure disbursements are appropriate in relation to Agency policies and procedures, and state and federal laws. 		<ul style="list-style-type: none"> • Research and Data team • Internal Audit
<ul style="list-style-type: none"> • Budget: Create budgets, plans, forecasts and analysis 		<ul style="list-style-type: none"> • Research and Data team
<ul style="list-style-type: none"> • Human Resources: Manage all employee related matters including state personnel system, classification and compensation, administration of employee leave, benefit coordination and worker's compensation, personnel policies, labor negotiations, performance management (e.g., training, coaching, mentoring, consultation, advice, progressive discipline) and onboarding. Design and implement Internal workforce development activities 	<ul style="list-style-type: none"> • Provider community workforce development 	
<ul style="list-style-type: none"> • IT: Operate and maintain agency data systems and technology assets 		

Administrative Services Scope

Functional Statement: Manage daily organizational operations of the agency

In Scope	Out of Scope	Linkage Needed
<ul style="list-style-type: none"> • Contracts: Manage contracts with providers 	<ul style="list-style-type: none"> • Monitor compliance with contracts and provide recommended actions 	<ul style="list-style-type: none"> • Contracts team manages and monitors relationships with contractors in consultation with Criminal and Juvenile Trial Chiefs and deputies when necessary
<ul style="list-style-type: none"> • Procurement: Review and assess purchasing needs for the Agency. Evaluate vendor resources and make recommendations. Develop, maintain and track non-provider contracts. Prepare drafts and amendments to agreements as necessary 		
<ul style="list-style-type: none"> • Case Support Services (CSS): Intake, research and pre-authorize case related expenses for public defense cases 	<ul style="list-style-type: none"> • Define and set policies and standards for CSSs 	<ul style="list-style-type: none"> • CAP
<ul style="list-style-type: none"> • Facilities Management: Purchase equipment, supplies and services. Manage space moves and facilities 		

Public Defense Services Commission

Strategic Insights Report

February, 2022

Prepared By: Coraggio Group

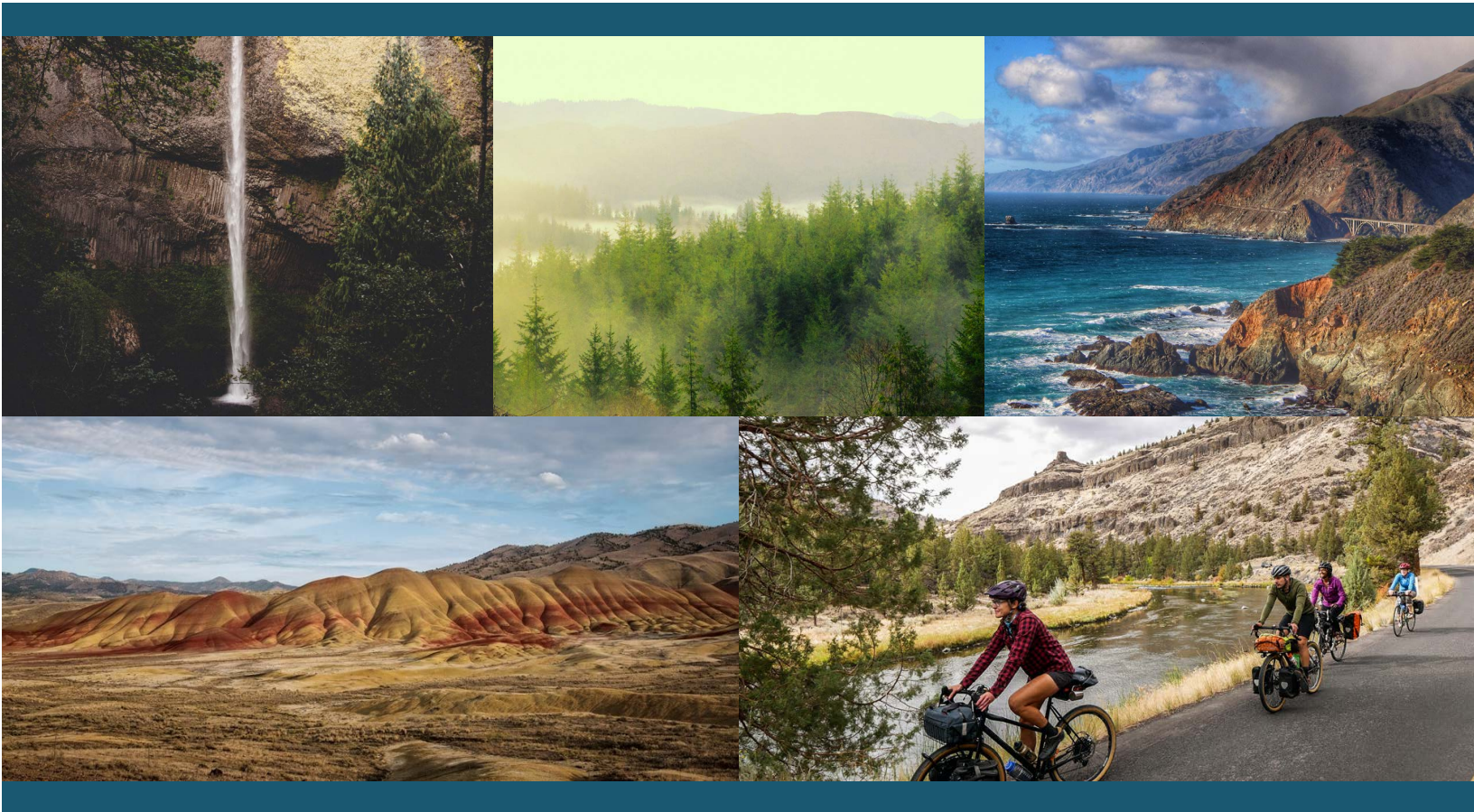




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Coraggio is not officially connected with the Public Defense Services Commission, or any governmental entity or agency. The advice and recommendations contained herein are based on our professional opinion and experience, as applied to the facts and circumstances of which we have been apprised. While reasonable effort has been made to verify the accuracy of those facts and circumstances, Coraggio recognizes that in many respects, it is relying on information incapable of precise determination and inherently subject to competing interpretation. Should the facts provided to us be incorrect or incomplete, our advice may be misplaced or inappropriate. Absent request Coraggio is not responsible for updating our advice or recommendations after the date rendered, or in light of further information or developments.



Executive Summary

In September 2021, the Public Defense Services Commission (Commission) through the Office of Public Defense Services (Agency) engaged Coraggio Group to assist with its modernization and transformation efforts. Coraggio Group worked closely with the Agency Executive Team to co-create and co-implement multiple workstreams to support their modernization and transformation efforts. One of the key workstreams was a robust stakeholder engagement process. This workstream has a dual purpose of developing insights to inform the strategic planning process and creating pathways for ongoing stakeholder engagement. This report summarizes the data collection and outreach efforts conducted through January 31, 2022.

The purpose of this outreach was to assess the perceptions of current opportunities and challenges in the administration of public defense services held by the public defense professional community and community partners, as well as Agency staff. This report will help inform the Commission’s five-year strategic plan and will be utilized as guidance for the internal operation of the Agency, the assurance of quality public defense services, and the improvement of stakeholder relationships.

Stakeholder perspectives were captured through three focus groups, eight (8) one-on-one interviews, and three online surveys. Stakeholders included Agency staff, public defense providers and community partners. Responses were received from a total of 836 stakeholders.

Survey Demographics:

Figure 1 – Survey Respondents by Affiliation N=805

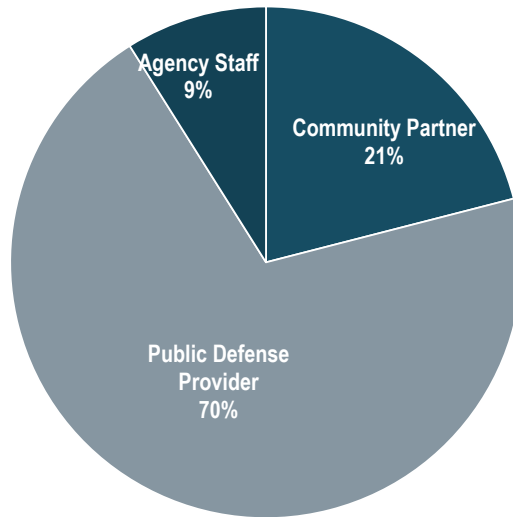
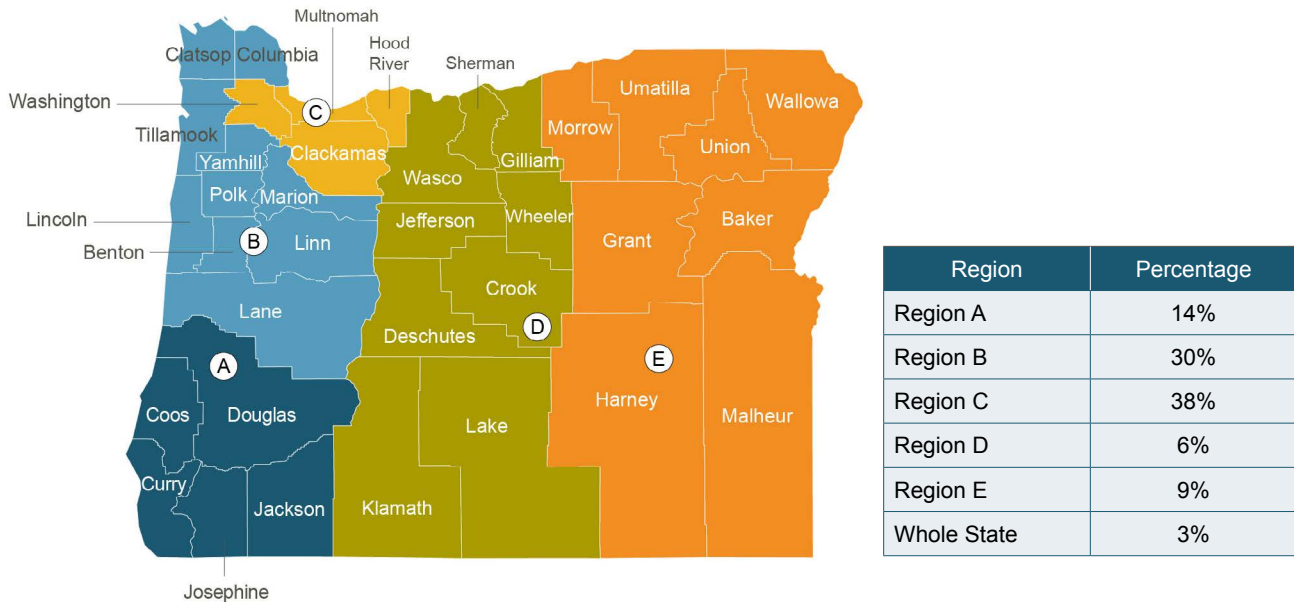


Figure 2 – Survey Respondents by Region N=733



Additional demographic questions were asked to understand stakeholder perceptions by demographic type. Responses to these questions can be found in the Appendix of this report.

With these stakeholder inputs, quantitative questions were analyzed using category means, percentage rates, and frequencies. Qualitative, open-ended questions were analyzed by assigning themes influenced by response content and Coraggio’s interpretation of those responses.

Coraggio then synthesized findings from all data gathering efforts and compiled the findings into key themes for the Commission to consider as it crafts its five-year strategic plan. Each theme reflects insights shared across all data gathering efforts (interviews, surveys, and focus groups). Each theme is supported by relevant data and quotations.

In this document you will see quantitative data related to questions and summary qualitative data from the open-ended questions. Scores that are 4 or above (on a 5-point scale) signify “satisfaction”.

Excluded from this report are the stakeholder engagement results from clients. Data collection efforts related to insights from public defense clients will be consolidated and synthesized after February 15, 2022. Depending on the number of client respondents and how those response may alter the themes and insights contained within this report, an Addendum may be developed to provide client insights.

The themes are grouped into four chapters. Each chapter contains multiple insights to support each theme.

Chapter One

Internal Operations: The Agency faces challenges implementing and overseeing its operations most acutely in the contracting and payment processes, procedures, and policies.

Chapter Three

Stakeholder Relationships: Relationship-building with public defense stakeholders is key to improving the public defense system.

Chapter Two

Quality Representation: The current contracting model is insufficient to meet the Agency’s mission of providing high-quality representation.

Chapter Four

Internal Agency Culture: Although strengths were identified by Agency staff, the Agency needs to focus on key cultural issues to enable the Agency to achieve its mission.



Chapter One

Internal Operations

The Agency faces challenges implementing and overseeing its operations most acutely in the contracting and payment processes, procedures, and policies.

1. The current contracts for the provision of public defense services are insufficient to meet the Agency's mission of providing high-quality representation [Figure 3 – Agency's Current Mission]. Although stakeholders have different individual experiences, participants specifically see the Agency's contracts as a detriment to its ability to deliver public defense services [Figure 4 - Agency]. Participants report that the Agency needs to improve its payment amount and its administration of contracts [Figure 5 – Improvement Opportunities].

- “They have to completely redesign how they contract. They need to amend relationships with providers and have an organizational structure that works.”
- “When they switched to a new contracting model it made no sense, but they were telling us that they had the problem solved. That erodes trust.”
- “[Agency] likes to paint the picture that this system has been broken for decades but it wasn't, you broke it.”
- “There is lack of messaging, communication, clarity, and accountability. The contracting process is terribly inadequate deeply behind schedule. The caseload metrics in the contract are absurd. They ignore the retention crisis occurring at the trial level. Large disparities between contracts. No coherent mission.”

2. Differences in payment based on contracting models create inequities within the public defense system. There are a variety of places where participants see pay inequities including the Parent Child Representation Program (PCRCP), the differences in pay between consortium and nonprofit public defense offices, and the difference in payment between public defense providers and district attorneys. The most-cited example is the implementation of the PCRCP, which has created friction between jurisdictions due to the differences in rates. Participants believe the PCRCP program is helpful in stabilizing caseloads and providing adequate rates; however, they are frustrated that the differences in rates make it harder for non-PCRCP areas to recruit and retain attorneys [Figure 9 – Contract Administrators/Business Manager].

- “Work on the disparities between contractors/pay for attorneys (trial level v. appellate)/contracts. Much progress has been made over the past three years, but providers want the Agency to continue to advocate for more resources and funding for trial level services.”
- “The public defender model is better than models like the consortium or list model. Public defender office model has more institutional supports, training, and supervision. It is a better institutional model and a better player with other agencies.”
- “For decades Agency executive leadership has favored certain providers, not been totally honest with the budgeting process, and played providers off against each other. It has abused the budget process to direct funds to providers who claimed a need. Perhaps they did need extra funding, but change the process, don't abuse it. There is a substantial lack of trust between Agency leadership and those providers who are not nonprofit law firms.”

3. There are important differences between the nonprofit public defense offices and providers in the consortium model. Nonprofit public defense providers argue that their offices are better positioned to offer training, oversight, mentorship, and support services needed to provide high-quality representation. They express frustration at the current contracting compensation.
- “[The Agency] needs to listen to its providers and take their views and ideas into account. It needs to stop treating PD offices and consortia the same. Its business end is a mess. You name it and it is probably not working.”
 - “If we continue to have a decentralized system of independent public defense providers, then provider funding needs to be enough to run law offices (i.e., with support staff and overhead), attract and retain high-quality employees (i.e., competitive wages, advancement opportunities, and benefits), and incentivize high quality representation (i.e., manageable caseloads). This kind of funding/system needs to be consistent for all types of public defense attorneys, including trial level, appellate level, juvenile, and post-conviction. None of the contract structures I have heard about or experienced in recent years have not done this, despite that clearly being their supposed goal.”
 - “The Agency needs to embrace a complete dismantling of the current public defense system. As it stands, a relatively low number of highly competent lawyers work in non-profit offices where they are brutally overworked and, despite all the hours they put in, are put in a position where they cannot provide the type of representation that I and other (competent) private attorneys provide on even our lowest-level cases. Meanwhile, the majority of indigent defense providers are, at best, maybe okay at managing clients but have neither the time nor the incentive to zealously advocate for their individual clients. And there are a great number, if not a majority, of indigent defense providers who are blatantly incompetent and but who are still permitted to carry indigent defense caseloads. The Agency should immediately get rid of private consortia and immediately switch to paying the non-profit firms based on an hourly rate. The Agency has or can easily get quality data about average time spent per individual case types. Once the Agency knows approximately how many hours of representation a given firm spends per year on their average caseload so I don’t think this would be particularly difficult. The hourly rate should be high enough to provide both one market-rate attorney salary per 30 hours of attorney and to cover the firm’s overhead expenses. The Agency can handle conflict cases by paying a realistic hourly rate and appointing individual attorneys on a very simple rotating basis. Once this system is in place, the Agency can move toward creating county-based PD offices staffed by govt employees who have pay parity with the DA’s offices.”
 - “Contracting, not being oppositional in contracts with providers, transparency, equality amongst providers, not lying during contract negotiations, not being hypocritical during contract negotiations, not upending the entire system because of a study from an unheard-of organization for no reason without discussion with providers and then doing the opposite of what was even recommended.”

4. Approval of and payment for Case Support Services (CSS) is a particular frustration for participants. Policies regarding criteria for approvals of CSS are hard to understand and inconsistently applied.
- “Right now, trying to figure out any Agency policy is very difficult. Policies are not easy to find and are located all over the place on the Agency’s website. They also are not very clear, and there are often unwritten rules or ‘standard practices’ that no one knows until they’re told. This makes it very difficult for new, and even old, providers to figure out anything. It also creates a lot of inefficiency and probably wastes a lot of the Agency’s employees’ time.”
 - “The accounts payable department is a miasma of ever-changing policies rarely conveyed to providers but used to delay or reduce payments. The prior Agency leadership was indifferent to the needs of providers to be timely paid. The Agency tells providers that they may not be paid timely because of “staff issues” or workloads. That is asinine to say to indigent defense providers who are constantly facing heavy workloads. It bothers me when I have to loan my firm money to pay our monthly overhead costs timely, yet state employees, who always get paid and have benefits complain that they can’t be expected to get providers paid in a timely manner.”
 - “The NRE¹ process has completely changed. I used to so appreciate the support here in what I think is the most important tool the Agency gives to lawyers. But over the last few years the Agency has done a complete 180 in the wrong direction. I now feel like I am fighting the Agency over approval for the tools I need to do my job. It feels like the Agency has become DHS in many ways. The constant denials for reasons that make no sense, or for small typos or processing errors, is infuriating and exhausting. I spend tons of money to pay staff in dealing with these issues. At this point I almost expect a denial for everything. I know many providers who feel the same way and the Agency is going to lose many of them because of this issue if things do not change.”
 - “I still think the speed in payments and responses needs to be improved. Consistency is not always there. For example, NRE1 request for the same services in similar cases will be approved in some instances and denied in others. No discernable reason why. Often seems like it is just a question of who actually processes it. I am also concerned about policies which will increase the administrative burdens on providers and their time, taking away from time that should be used for representation of clients.”
-
5. Participants in consortia, law offices, non-attorney professionals, and nonprofit public defense offices show high levels of agreement that they experience frustrating delays in payment for expenses and case support services and attribute the delays to ineffectiveness within the Agency [Figure 10.1 – Agency Invoicing and Expense Process by role; Figure 10.2-Agency by organizational by role]. Participants report that the Agency’s process for reviewing and submitting invoices is cumbersome, results in delayed payments and require significant input from providers [Figure 6 – Improvement Opportunities] [Figure 7 – Agency’s Invoicing and Expense Process]. They note that the communication and administration of invoices for payment are both barriers to receiving timely payments and report that there are inconsistencies in the direction that agency staff provides. Non-attorney providers remain committed to continuing to do state court public defense work but are very dissatisfied with the manner and timeliness of their payment [Figure 8 – Non-Attorney Public Defense Professionals].
- “Why does it take so long getting paid. It’s difficult to run and maintain a business when you don’t know when you will get paid. I have to pay my bill every 30 days, otherwise I have to pay a late fee! The nice thing about your office is everyone is union, so they get paid on time. I have at times gotten paid 38 Calendar days later.... WHY? I wasn’t notified of any problems with my invoice. We used to get paid 3-5 business days after submitting an invoice. You have asked us to be patient so you can restructure and train the staff.... WHY? nothing changed! I’m tired of giving, giving, and more giving to your office, and NOTHING is given back. You guys even got more money to hire more staff, more

1. The Non-Routine Expense (NRE) process is now called Case Support Services (CSS)

computers, and a BIGGER office..... for what? Nothing has changed in your office. I bet if the staff got paid by the piece, everyone's check would be quick!"

-
6. Participants in the focus group and interview process, as well as through survey data, note that the Agency needs to increase its accountability for and oversight for provider quality. Participants see the provision of high-quality representation as the Agency's key mission [Figure 3-Agency Mission] and want to see the Agency gain knowledge about the current conditions and needs of providers. Providers would like to see the Agency increase its understanding of the skills, training and experience that are necessary to implement their work [Figure 12 – Non-Attorney Public Defense Professionals]. Of the groups surveyed, nonprofit public defense offices particularly viewed the agency as lacking a sufficient understanding of the current conditions of public defense services and the quality of the work performed, with many participants linking the issue to high caseloads.
- "Leadership and the Commission are out of touch."
 - "They need more awareness of on-the-ground conditions in our counties that are affecting our workloads and caseloads. Our county dealt with COVID very differently than many other counties causing caseloads and workloads to explode, but we are still being scrutinized based on our pickup levels - ignoring how hard it is to close cases. They also take a passive role, requiring a provider to come to them and ask for relief rather than stepping in when they see high caseloads, meaning quality of representation is necessarily being negatively impacted. I'm also not sure how much they keep track of attorneys who are consistently fired or who have an excessive practice of pleading out their appointed cases very quickly."
 - "[The Agency] should ensure consistently high-quality defense representation across the state by supporting attorneys with adequate resources and training as well as creating standards to ensure attorneys appointed are able and willing to provide that standard of defense."
 - "I'd like to see the Agency monitor and hold accountable the firms and attorneys it contracts with. Often, if there is a complaint about a practitioner, there is no one to go to because there is no chain of command or supervisory authority to influence or curtail the conduct."
-
7. Communication as an improvement opportunity is referenced by both internal and external stakeholders. Agency staff cited communication as the most important priority for the Agency to address [Figure 13-Agency Improvements]. This is also reflected in external stakeholder's level of satisfaction with communication with agency staff [Figure 10.2 - Agency by organizational role]. This improvement opportunity across staff and stakeholders represents a capability and/or resource issue the agency needs to address both externally and internally. However, respondents also report that direct communication with agency staff is a strength for the organization and highlights individual staff capacity for effective communication.
- "Answer phone calls. I never get a human being on the line when I call. Always voicemail. And it can take days to get a call back. Highly frustrating."
 - "[The Agency] needs to develop better communication with contractors/practitioners, with the Commission, and with the legislature. The Agency seems to view the contractors/practitioners as their opposition and end up getting defensive when someone disagrees with them. They need to find better ways to communicate so that they can build positive lines of communication."
 - "The staff interaction with attorneys is excellent."

- “Pretty decent communication if you ask. Sometimes it is not accurate, but they usually do not ignore questions.”
- “Our Analyst is prompt and responsive. It has not always been that way. She is a straight shooter”
- “When you are able to talk to someone, the staff professionalism is great.”
- “I like the people with whom I have contact. To me they are enjoyable and professional. Their hands are simply tied by too much bureaucratic red tape.”
- “Most of the attorneys are personable on a one-on-one basis. Each cares about their clients and wants to see only the best outcome for the client.”



Figure 3 – Agency’s Current Mission N=401
 What do you believe the Agency sees as its mission?

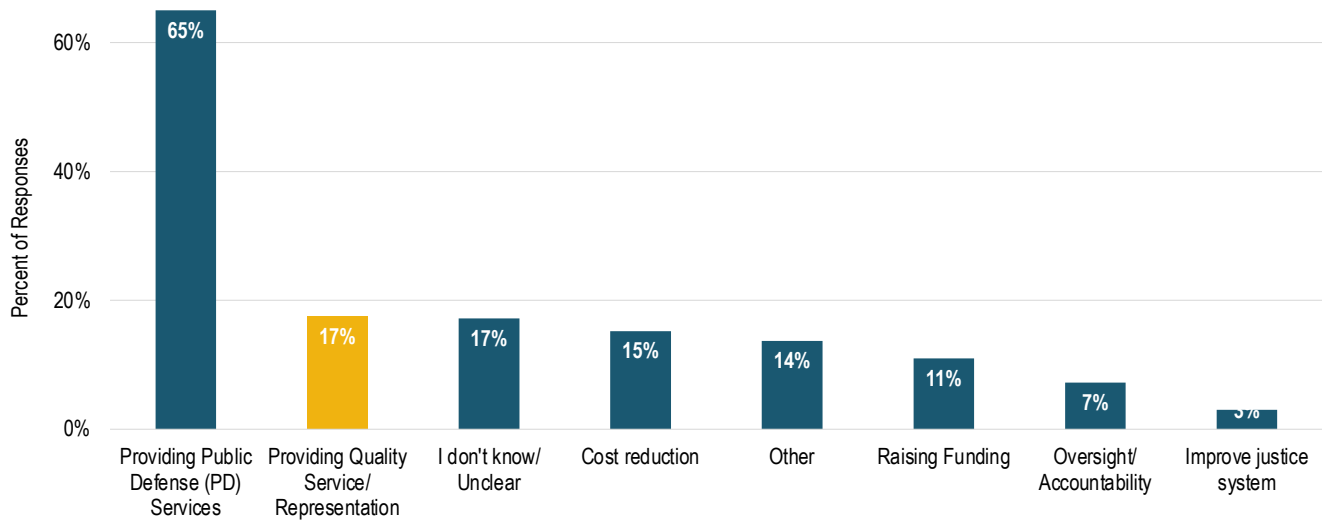


Figure 4 – Agency N=589
 How strongly do you agree or disagree with each of these statements?

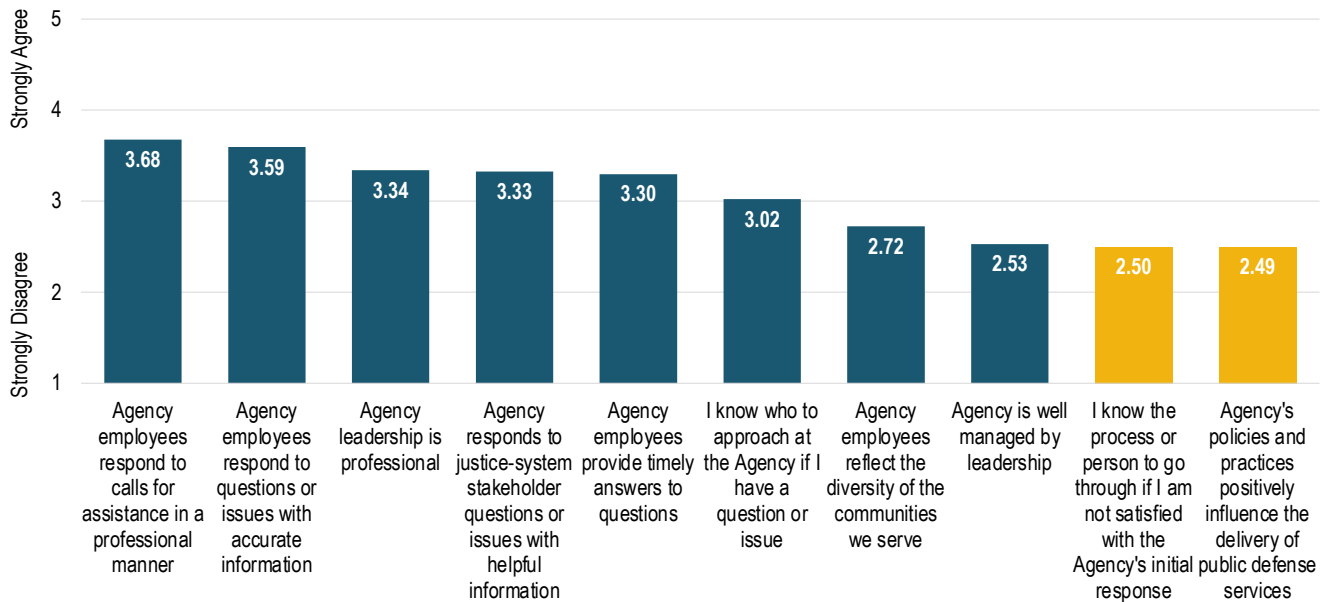


Figure 5 – Improvements Opportunities N=379

Where does the Agency need to improve?

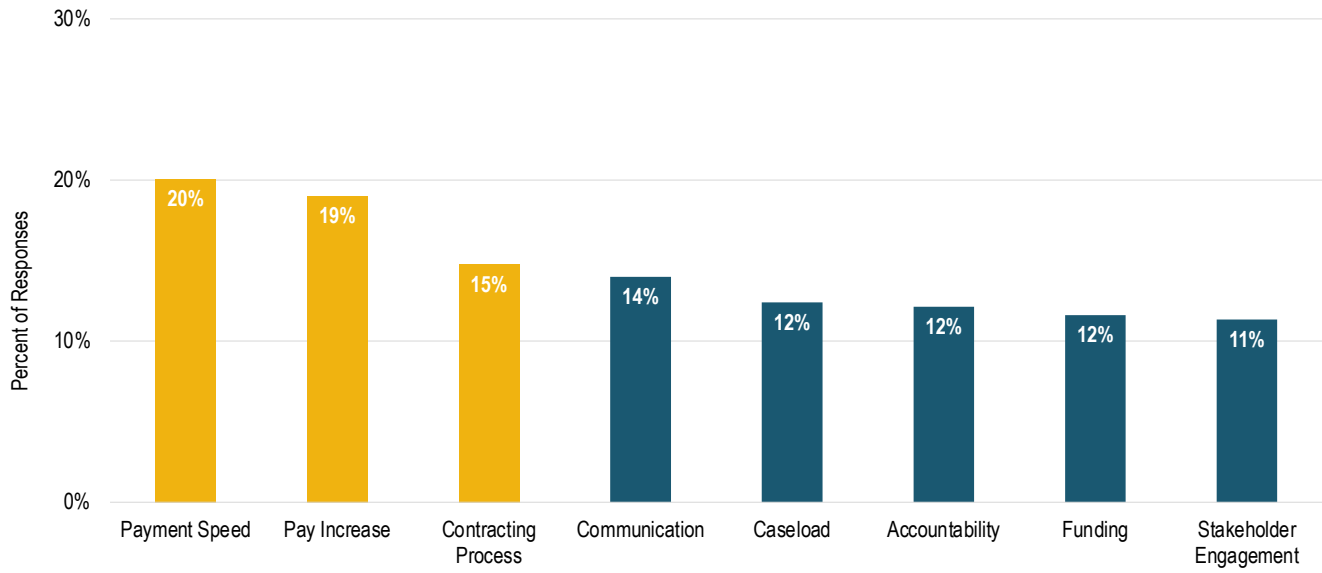


Figure 6 – Improvements Opportunities N=379

Where does the Agency need to improve?

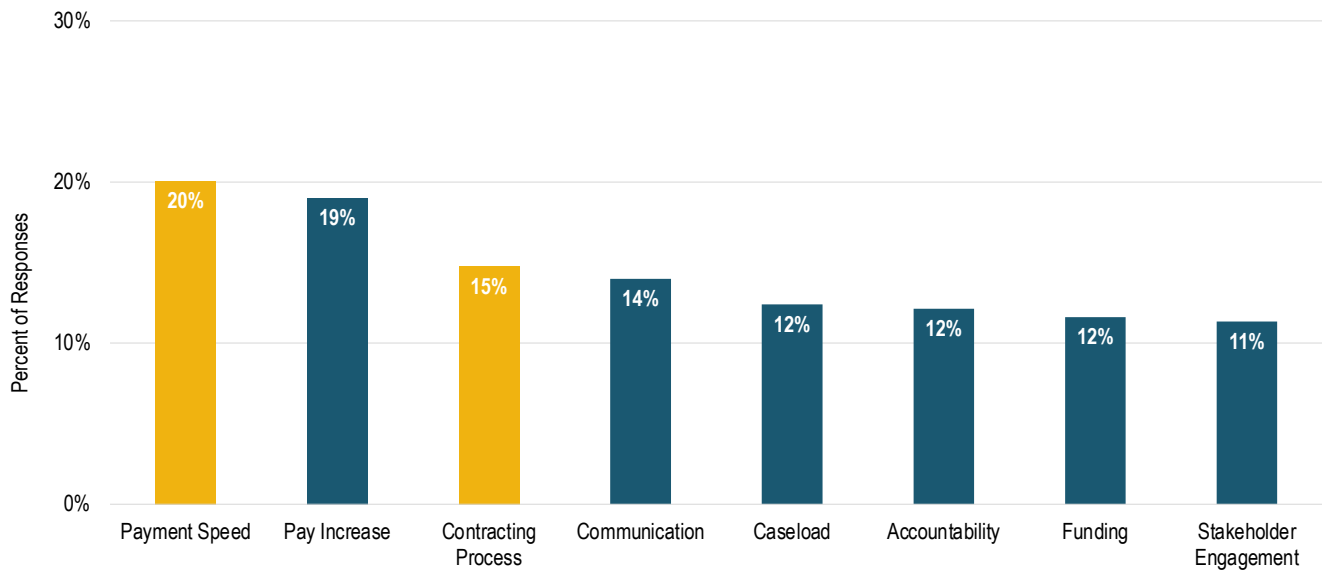


Figure 7 – Agency Invoicing and Expense Process N=456

How strongly do you agree or disagree with each of these statements?

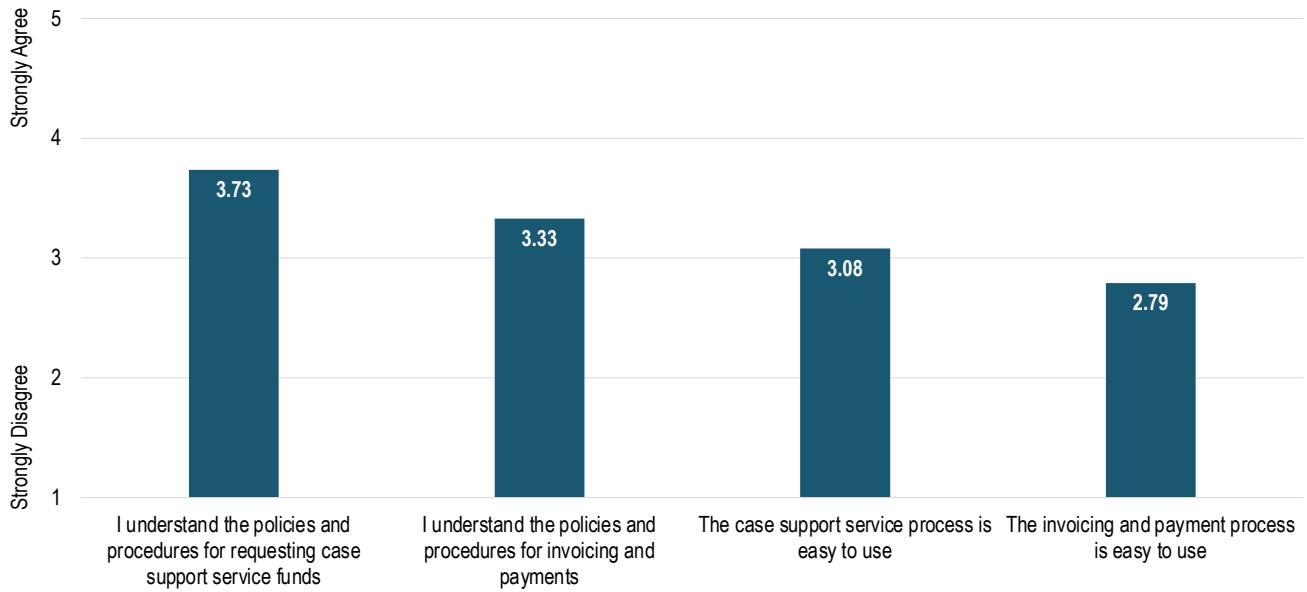


Figure 8 – Non-Attorney Public Defense Professionals N=357

How strongly do you agree or disagree with each of these statements?

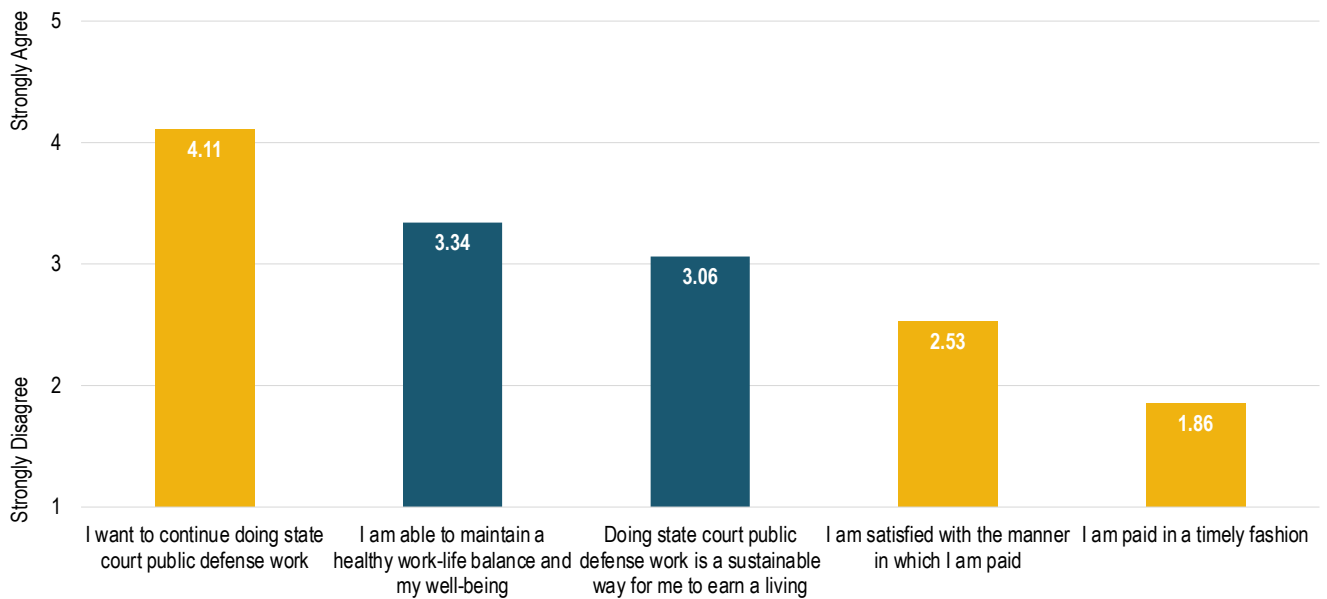


Figure 9 – Contract Administrators/Business Manager N=25
 How strongly do you agree or disagree with each of these statements? (overall)
 My office, firm, or consortia...

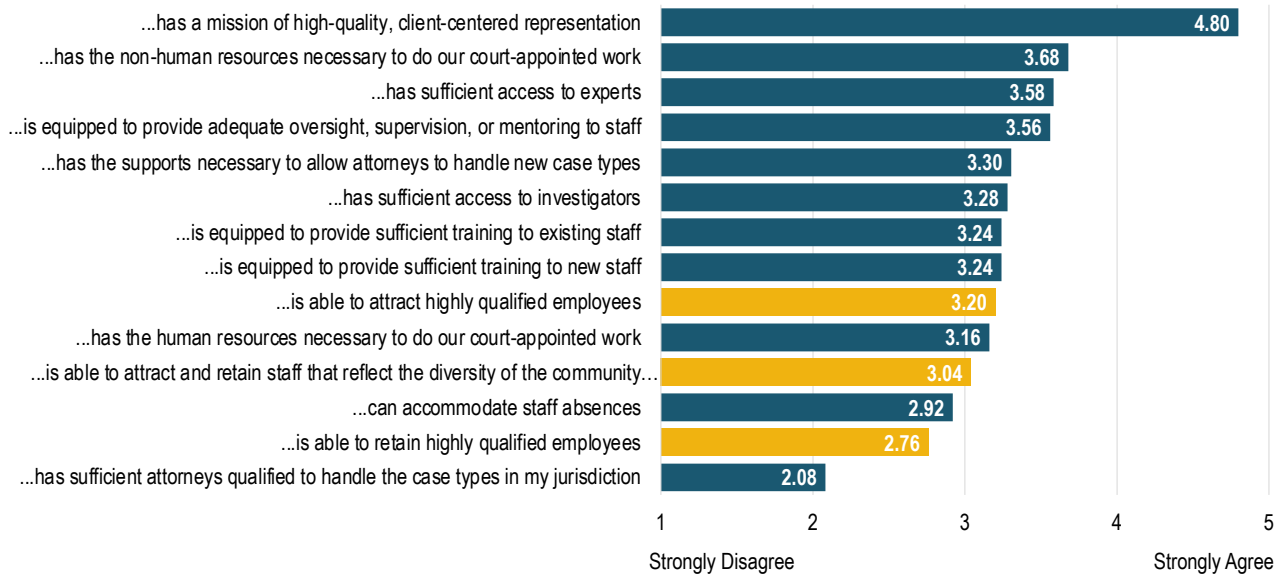


Figure 10 – Agency Invoicing and Expense Process N=456
 How strongly do you agree or disagree with each of these statements?

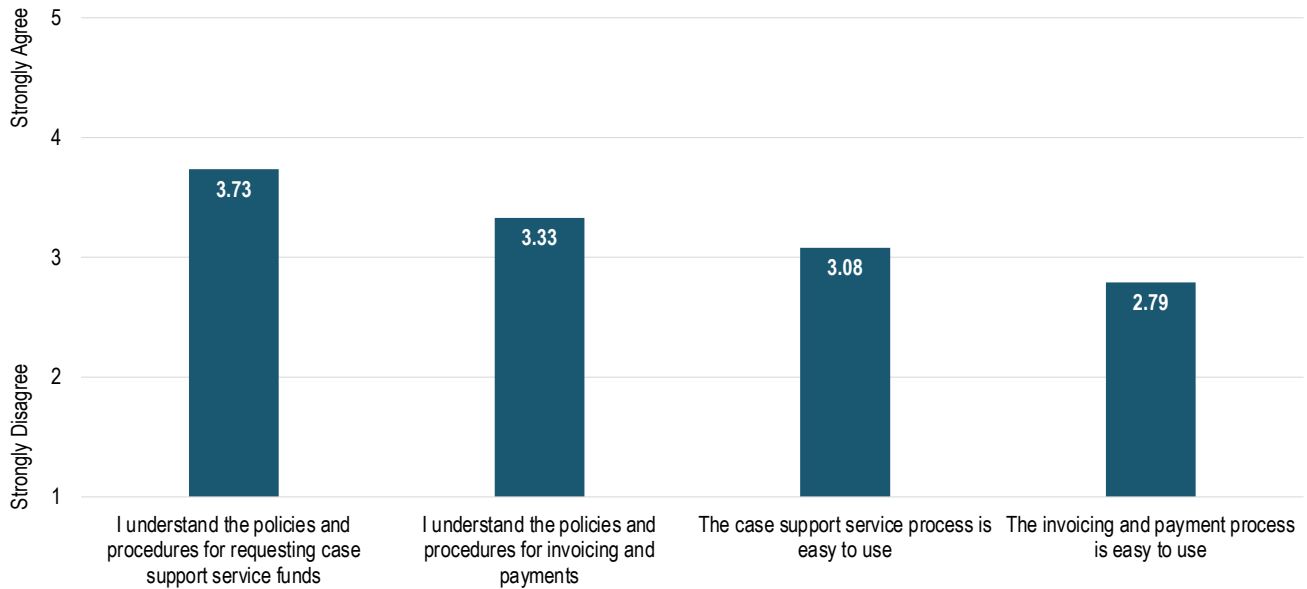


Figure 10.1 – Agency Invoicing and Expense Process by Role N=456

How strongly do you agree or disagree with each of these statements?

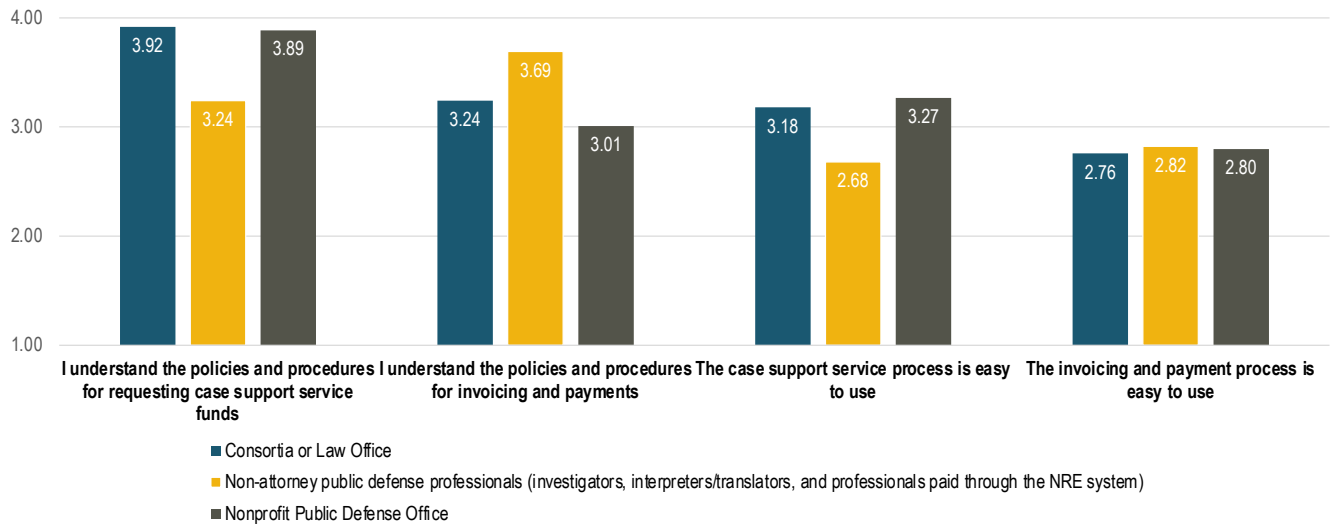


Figure 10.2 - Agency by organizational by role

How strongly do you agree or disagree with each of these statements?

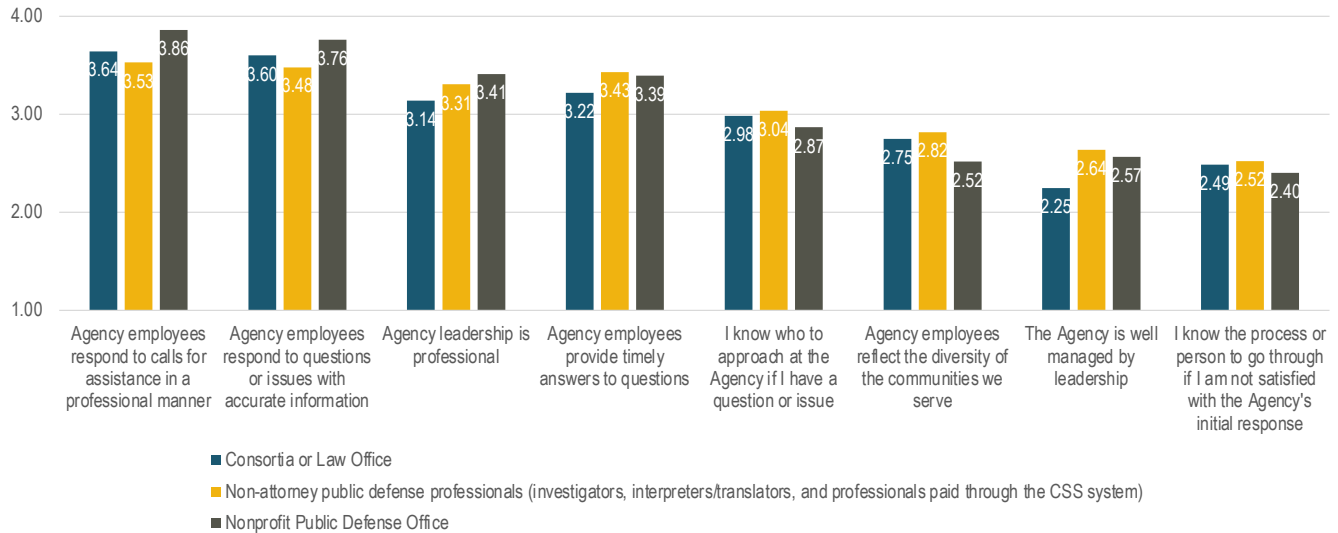


Figure 11 – Agency Reputation N=360
 What are the three words you would use to describe the Agency?



Figure 12 – Non-Attorney Public Defense Professionals N=357
 How strongly do you agree or disagree with each of these statements?

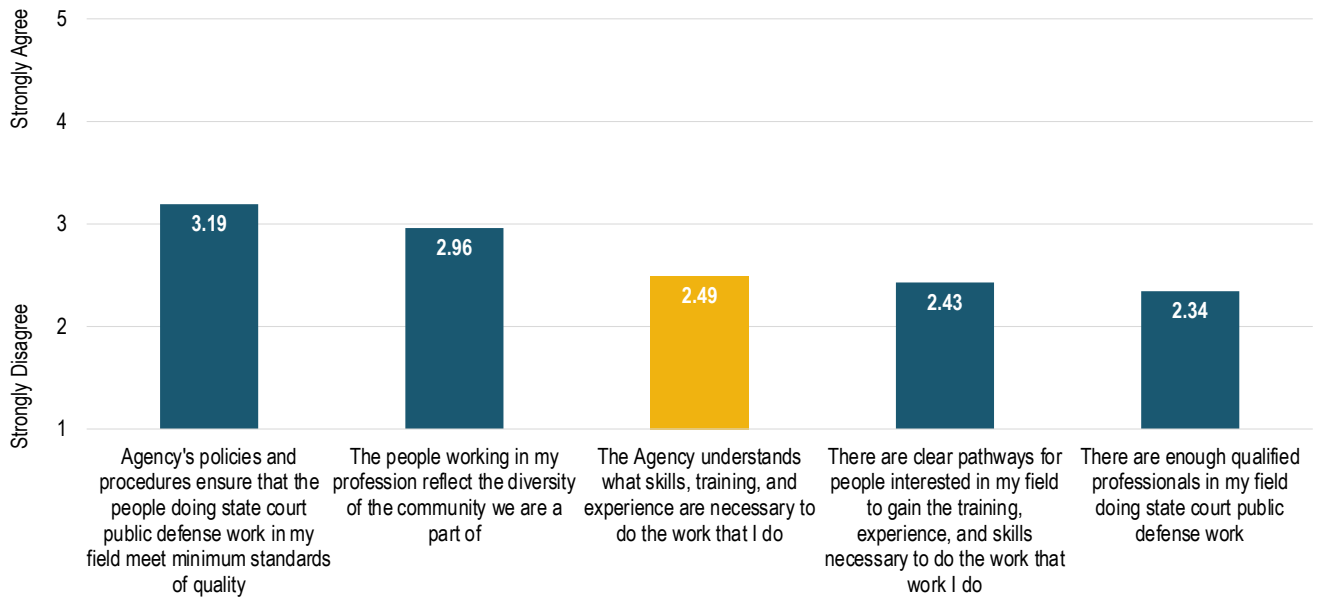
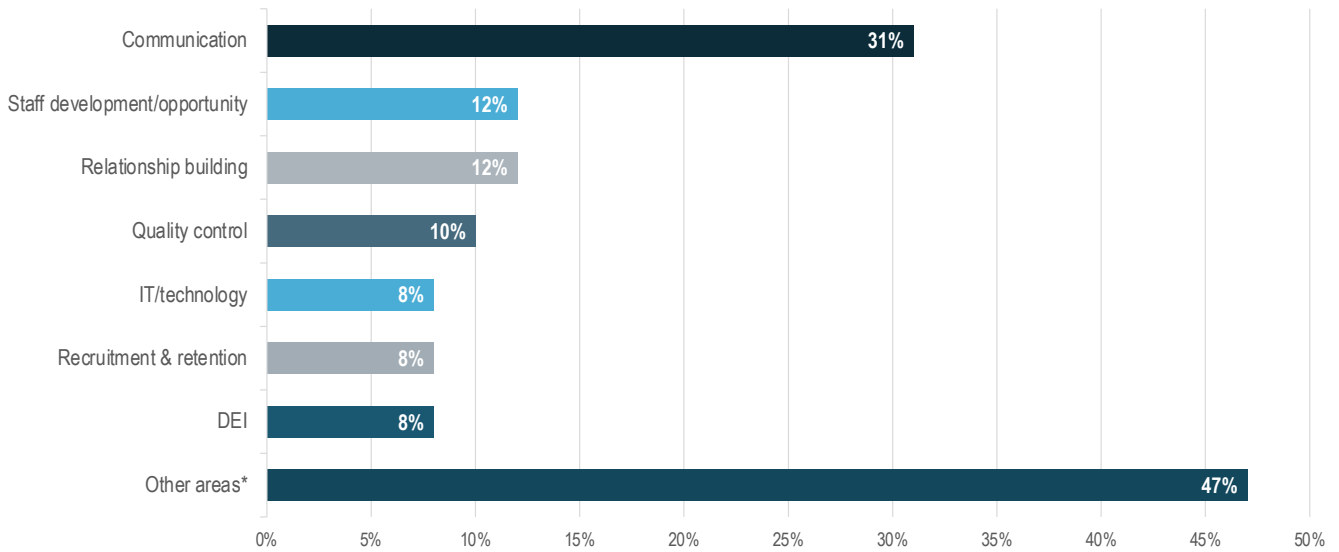
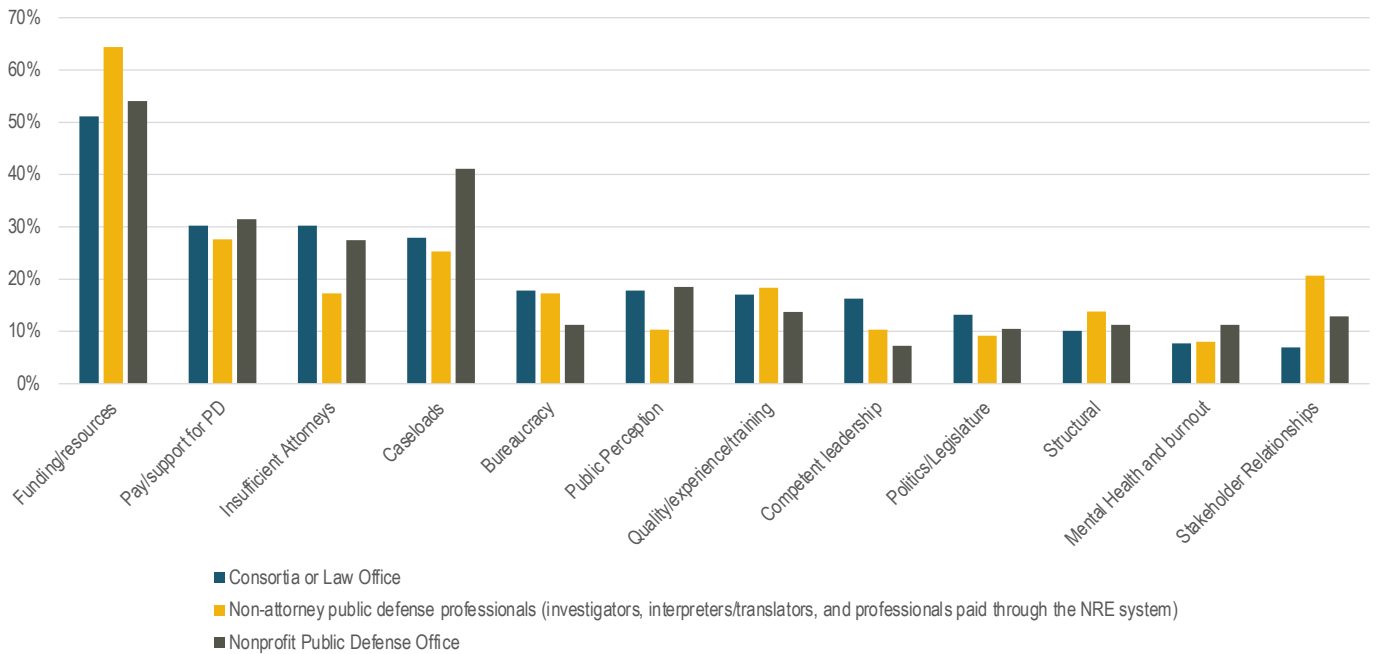


Figure 13 – Agency Improvements-Internal Staff N=51
Where does the Agency need to improve?



* Including increased staff input, outreach & education, improving reputation & perception, stronger teamwork, better resourcing – amongst many others.

Figure 13 – Agency Improvements-External Stakeholders
Where does the Agency need to improve?



Chapter Two

Quality Representation

The current contracting model is insufficient to meet the Agency's mission of providing high-quality representation.

“At times, it seems like we are providing ‘It Just Is’ vs ‘Justice’.”

1. Providers and partners have significant concerns that current caseloads are too high [Figure 14 - Caseload]. Participants overwhelmingly agree that current caseloads are detrimental to providing high-quality representation for their clients. This is particularly true for those working in nonprofit public defense offices [Figure 14.1-Caseload by stakeholder organizational type]. They note that clients are having to wait longer in custody before seeing their attorney and that high caseloads are a key barrier to their effectiveness in representing their clients [Figure 15 – Barriers Facing the Public Defense System].
 - “It’s a really bad situation. People shouldn’t have to plea to get out of prison.”
 - “There are people sitting in jail without representation for a month. This has never happened before.”

2. Participants, particularly those working in public defense offices, cite increasing provider pay as a key area for improvement and believe that the Agency must advocate for additional funding for public defense services [Figure 16 – Improvement Opportunities]. Non-attorney public defense professionals overwhelmingly cited payment speed as the most important area for improvement; however, that area was noted by participants in all roles.
 - “What we have right now is not good. The decision to put dependency attorneys on a different pay scale and reduce the number of cases criminal attorneys can take has decimated our local public defender’s office and our consortium and outside attorneys. I shudder to think what the morale may be at our public defender’s office.”

3. Providers in consortia and nonprofit public defense offices feel that they need additional access to client resources such as translation and investigation [Figure 18 – Access to Resources] and note that legal processes are more complex, particularly during the COVID 19 pandemic. Participants report frustration that they do not have the support, particularly during the discovery phase, to provide representation on par with that of paid clients. The current provider payment procedures push non-attorney providers to prioritize non-Agency work [Figure 17 – Non-Attorney Public Defense Professionals]. This is a key challenge to providers ability to maintain high-quality public defense services.
 - “Attorneys are forced to pay for the discovery process and then wait for reimbursement. This includes the huge number of hours required to obtain files, reply to pretrial motions, producing discovery, drafting etc.”
 - “[The Agency] needs to continue to pay for discovery, till the legislature either makes it clear that was the intent of the law change (which I don’t believe is the case) or the legislature funds discovery. With body cams, MAVS, grand jury recordings, all the discovery we didn’t have 5 or 10 years ago, it is very expensive and time consuming for DAs to provide, the County should not bare the expense.”
 - “[The Agency] has a complete lack of understanding for the complexity of these case and the out-of-pocket expenses required of attorneys. These are civil cases and the rules of civil discovery apply. Attorneys are forced to pay for this discovery process and then wait for reimbursement.”
 - “Their system needs to be designed better administratively with a focus on effectuating the outcome. We regularly don’t get paid for work that we do and the cost to chase down that money exceeds the value of that money. Providers are in the same boat. We literally have to scratch and claw to get pennies from the Agency which causes us as a rule not to work for the Agency. We would love to be able to help, but the system is so terrible that if my business were to try and work on the Agency cases, we would be losing money as a result.”

4. Participants would like to see the Agency provide resources beyond direct funding, such as recruiting more attorneys into the public defense field, providing mentorship, and training, and helping increase collaboration between providers. The lack of available non-attorney public defense staff is also a key barrier to providers ability to deliver high-quality defense services [Figure 19 – Non-Attorney Public Defense Professionals Work Environment]. Contract Administrators also argue that there is a lack of qualified providers in their work, [Figure 20 – Contract Administrators/Business Manager] which exacerbates the problem of attorneys with high caseloads.
- “They need to find a better system for recruiting and maintaining high quality attorneys.”
 - “I am concerned that there is a lot of legal talent that will be retiring in the next few years, and I am concerned that there is really not a system in place to make sure new attorneys are added. Also, I think morale has been lowered. I also think some of the exodus of attorneys has been due to changes by Agency leadership. I hear from more attorneys they are displeased with the management of the Agency and talk about leaving. I think management does not understand how certain directives effect the attorneys in private practice. I don't think there is an understanding of the higher costs we have.”
 - “When the Agency began contracting with dependency attorneys it was purported that there would be more attorneys available. That the contracting would draw attorneys. What it actually did was cause some attorneys to decide to stop representing in dependency cases due to the contract which precludes them from representing other cases. I believe the contract needs changed to allow this. We have a severe lack of attorneys and often court is held up while attorneys are in other courtrooms. The more availability we have from more attorneys the better for us.”
-
5. Participants believe oversight and accountability for attorney quality control is an important responsibility for the agency [figure 3]. The majority of survey respondents for the Adult Criminal/Criminal Contempt case type reported that they question the competence of at least one public defense attorney in their jurisdiction [Figure 21 - Competence of Public Defense Attorneys]. A significant number of respondents for other case types, although still a minority, questioned the competence of attorneys in their jurisdiction . Participants characterize the lack of oversight in quality management as a barrier to understanding which providers need additional support and training.
- “Providers don't think they are doing a bad job but agree that there are enormous constraints to their work.”
 - “[The Agency] needs quality assurance and fairness. Non-profit firms serve as quality assurance for the attorneys practicing in that jurisdiction. There is oversight, performance reviews, training, and mentoring. Consortiums offer none of that yet are treated the same financially. Public defense should not be combined with retained work. The incentive to ignore the appointed work will always exist. Public defense offices should be well funded and supported to provide representation to the vast majority of clients, with consortium providing conflict representation. And there should be some oversight of those providers, like there is built-in at a PD office.”

Figure 3 – Agency’s Current Mission N=401
 What do you believe the Agency sees as its mission?

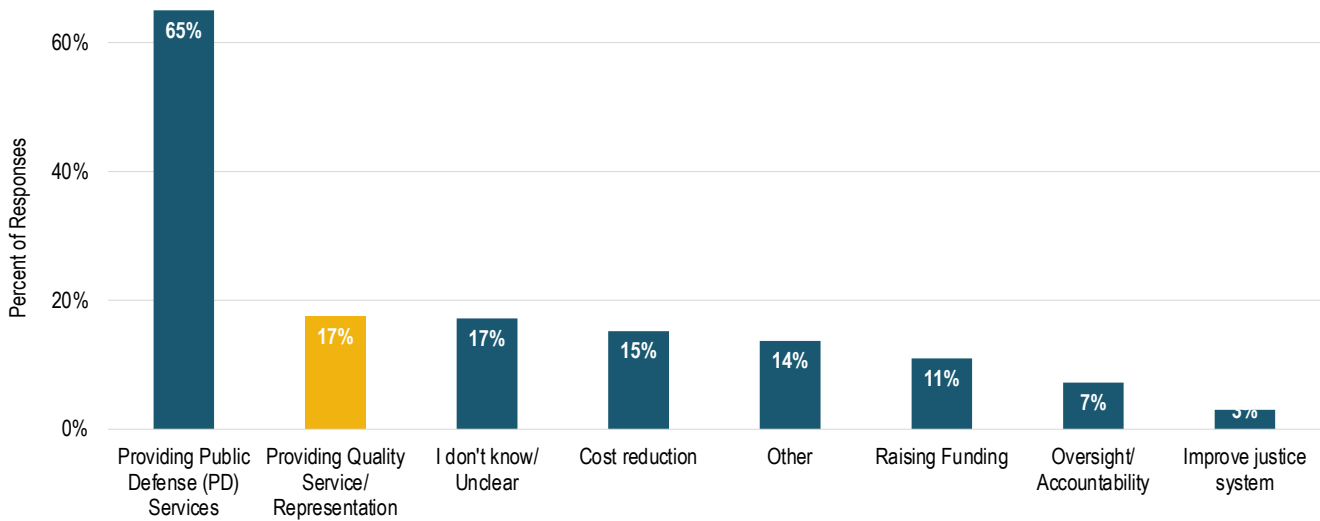


Figure 14 – Caseload N=721
 How would you describe the caseloads of public defense attorneys in your jurisdiction?

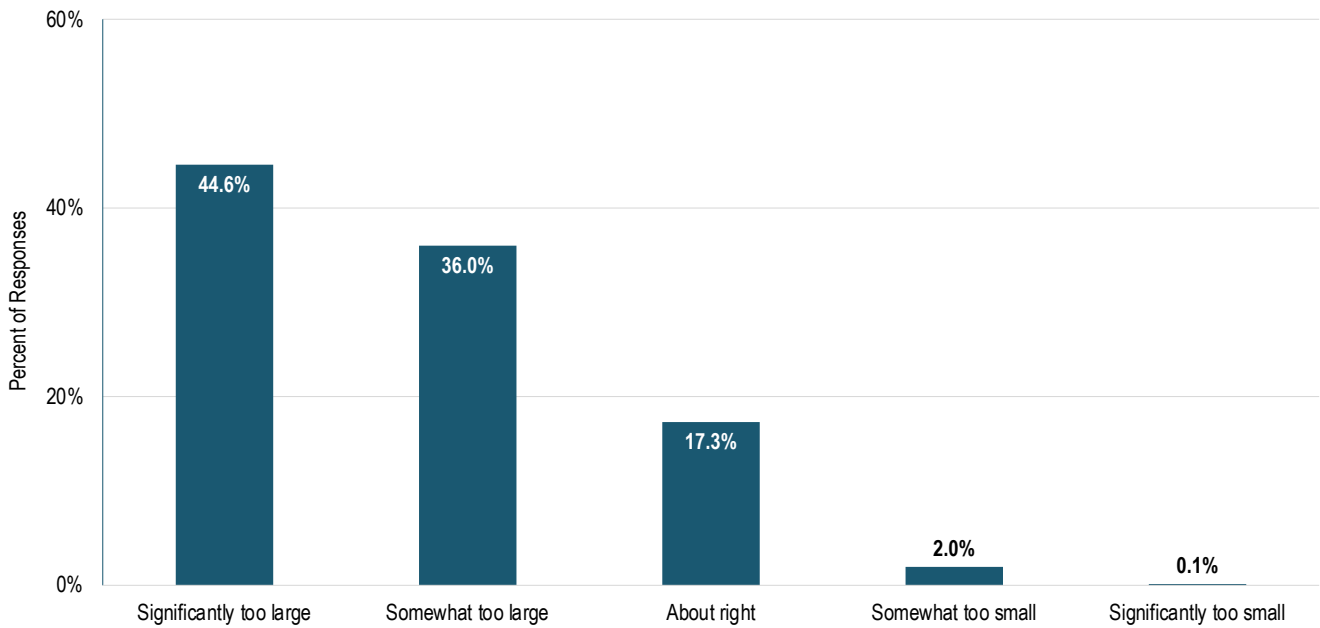


Figure 14.1 – Caseload
Caseload by stakeholder organizational type

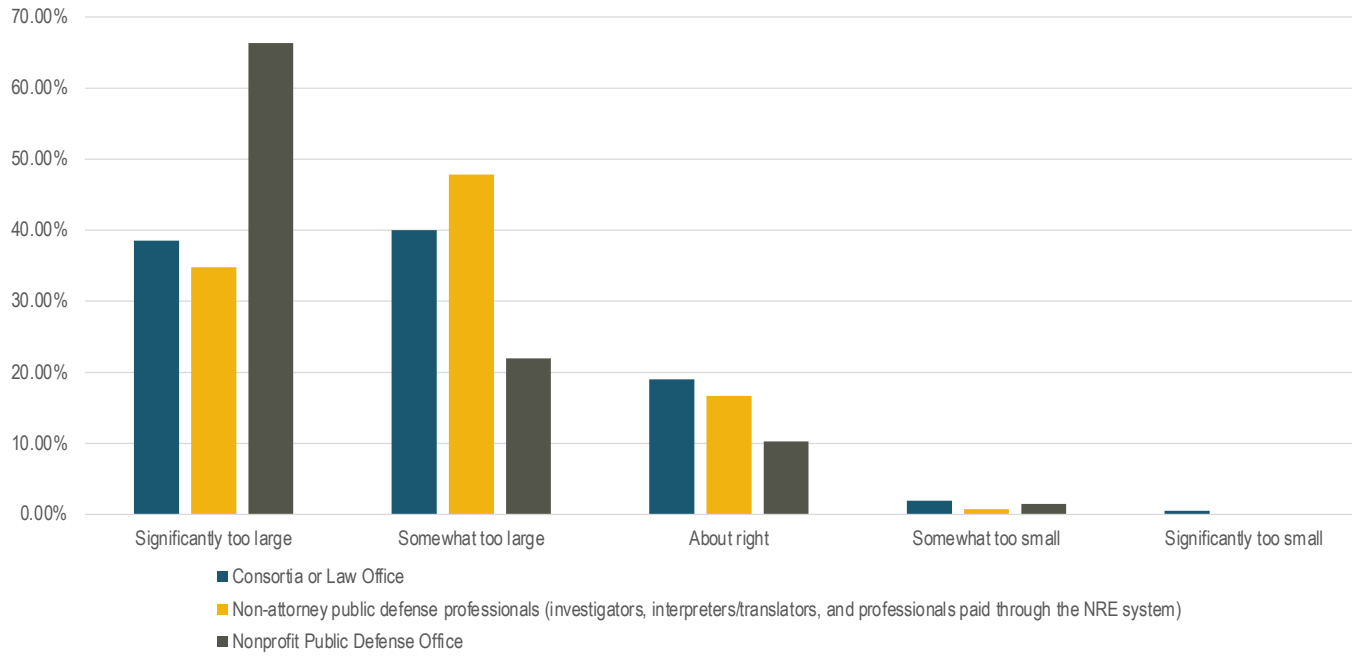


Figure 14.2 – Caseload
Caseload by stakeholder role type

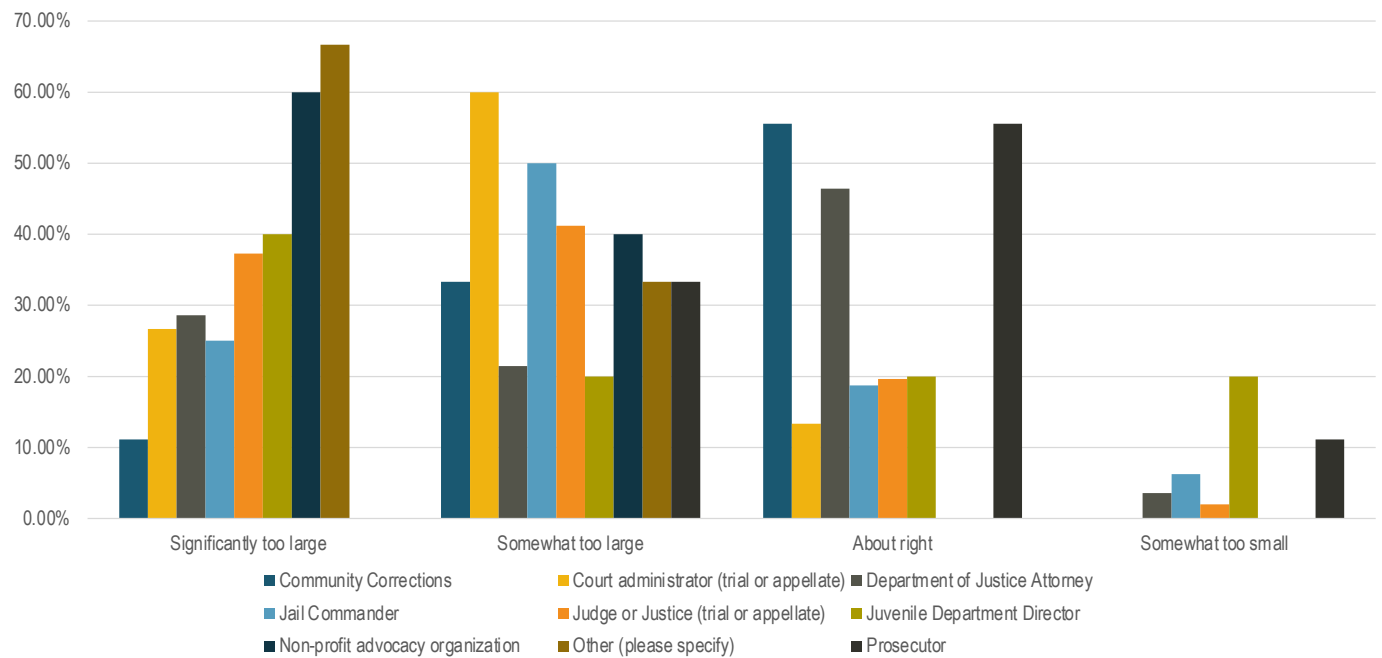


Figure 15 – Barriers Facing the Public Defense System N=421

What are the biggest barriers facing the public defense system?

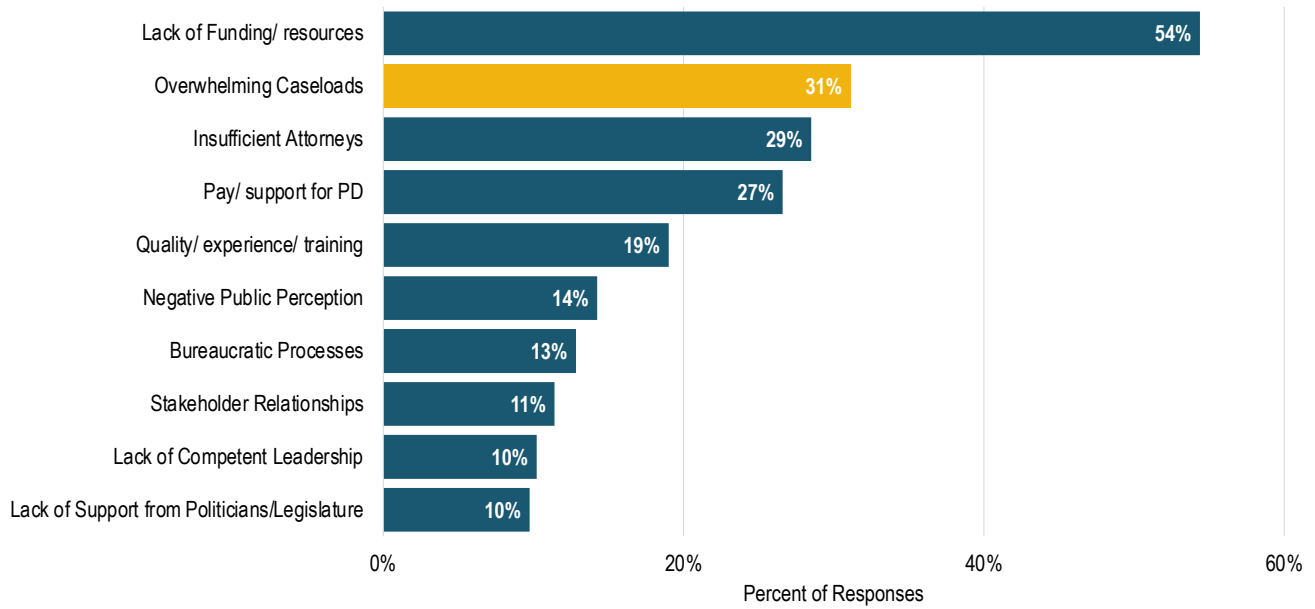


Figure 16 – Improvements Opportunities N=379

Where does the Agency need to improve?

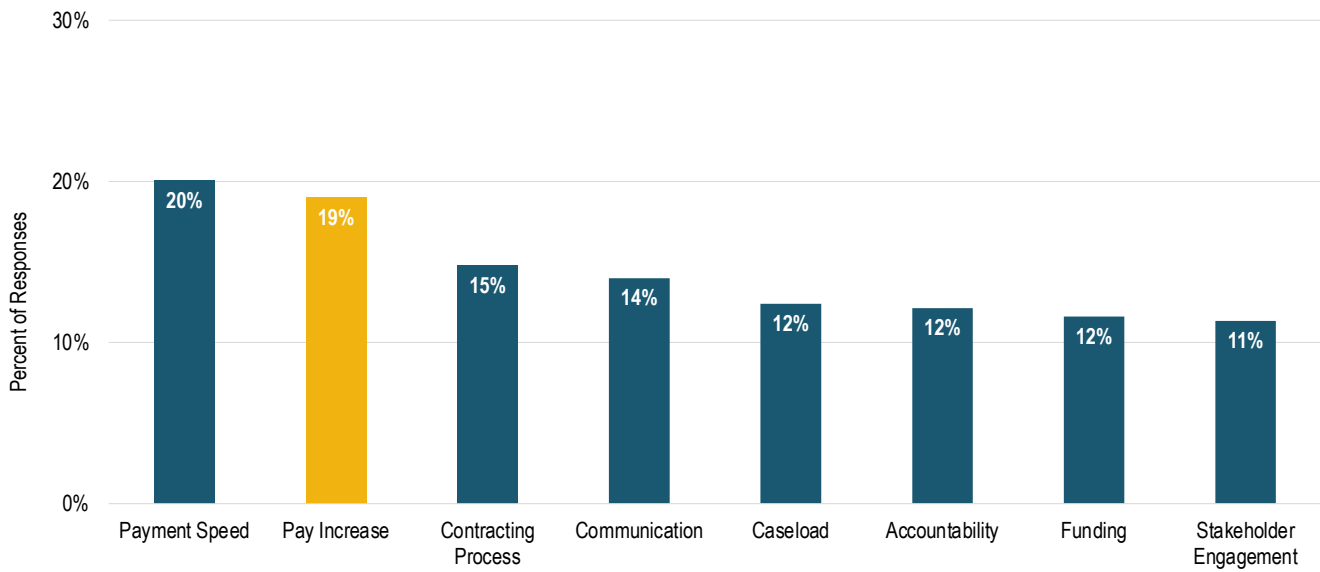


Figure 17 – Non-Attorney Public Defense Professionals N=357
 How strongly do you agree or disagree with each of these statements?

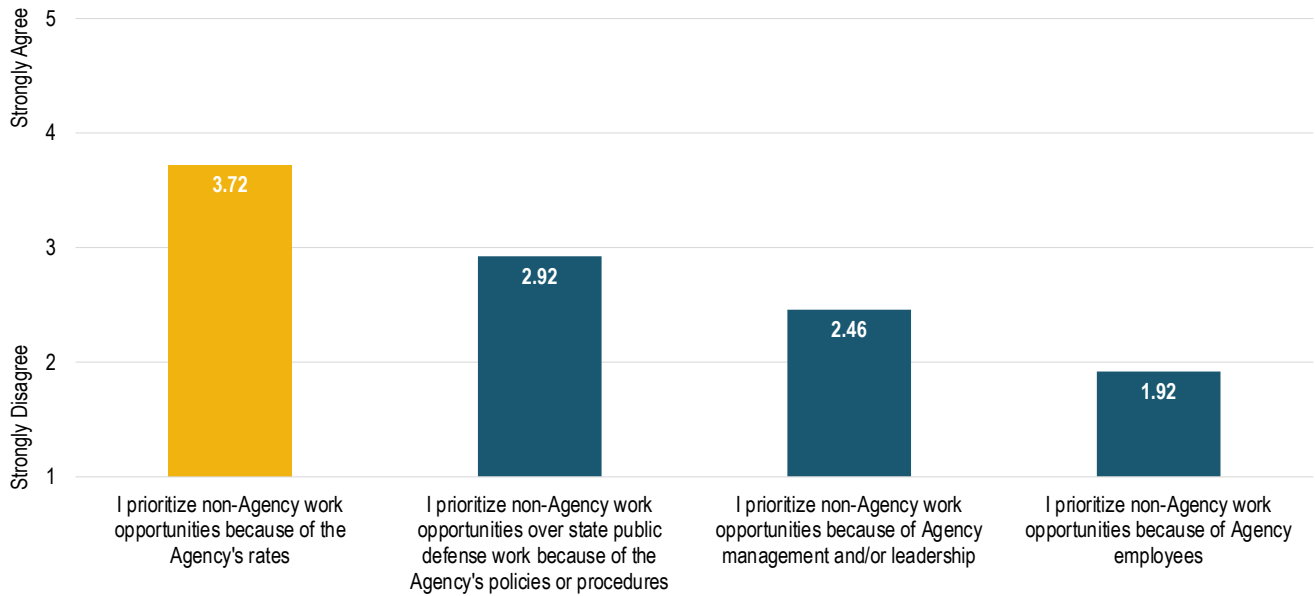


Figure 18 – Access to Resources N=456
 How strongly do you agree or disagree with each of these statements?

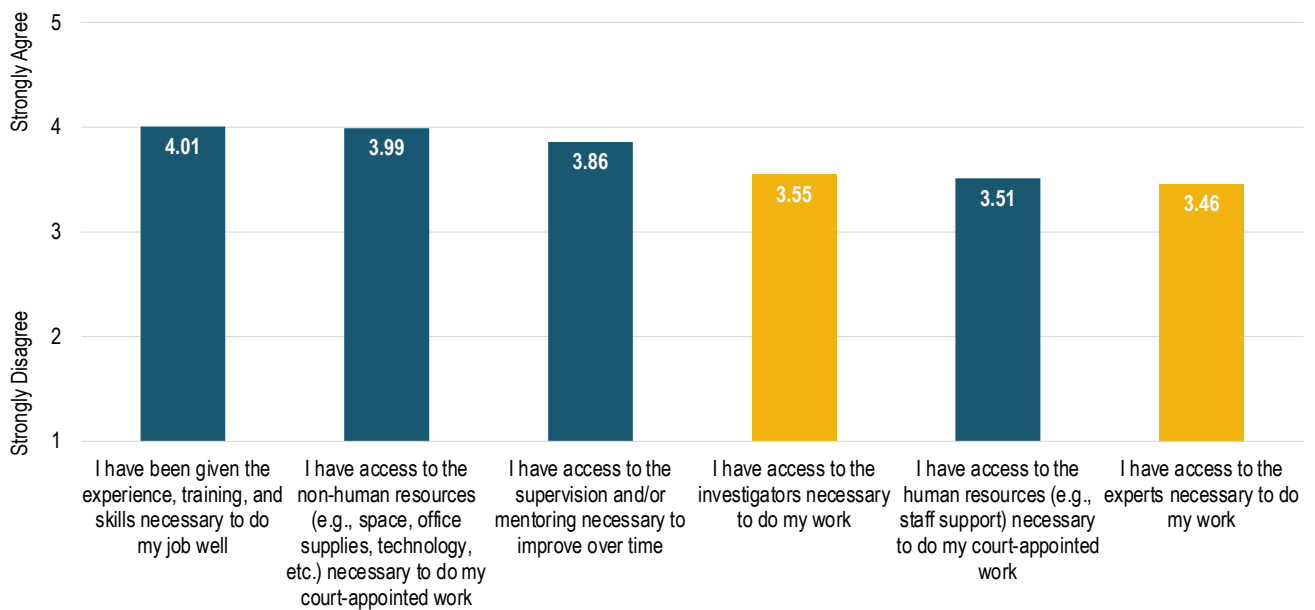


Figure 19 – Non-Attorney Public Defense Professionals Work Environment N=357

How strongly do you agree or disagree with each of these statements?

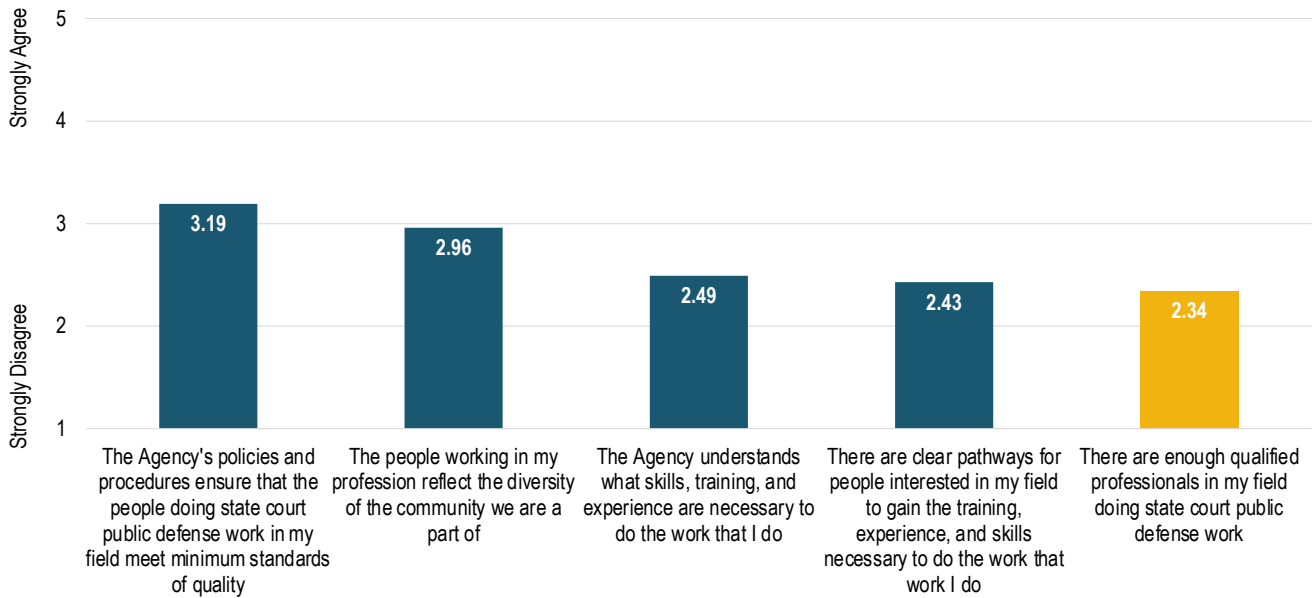


Figure 20 – Contract Administrators/Business Manager N=25

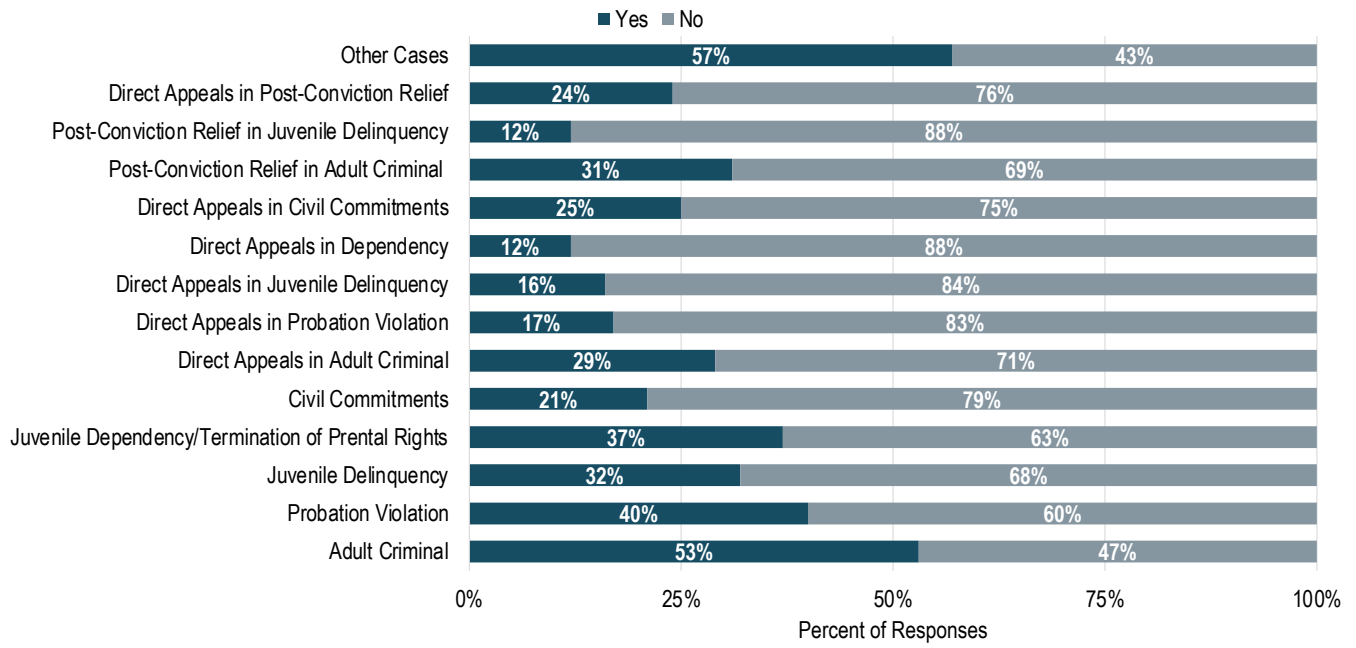
How strongly do you agree or disagree with each of these statements? (overall)

My office, firm, or consortia...



Figure 21 – Competence of Public Defense Attorneys N=729

Do you question the competence of any public defense attorneys in your jurisdiction?



Chapter Three

Stakeholder Relationships

Stakeholder Relationships: Relationship-building with public defense stakeholders is key to improving the public defense system.

“My impression of this survey is that the Agency is making a focused effort to improve its services.”

1. The Agency's role within the public defense system needs to be better defined and communicated to stakeholders. Currently, stakeholders report that they are unsure who to speak with at the Agency if they have a question or issue [Figure 22– Agency], and don't know what the next steps would be if they need to follow-up for additional information. In the past, Commission members and Agency staff would participate in site visits to speak more directly with stakeholders. Although in-person visits are more difficult due to community safety guidelines to prevent the spread of COVID 19, stakeholders would like to see more direct involvement and information-gathering by the Agency. Participants characterize their relationships with the Agency as adversarial and would like additional opportunities for engagement and cooperation.
 - “They've lost credibility with stakeholders and have to get it back. They need to have enough people who stakeholders know can be trusted.”
 - “COMMUNICATION! You have a new system I heard is starting Jan 1st for billing NREs . And I've heard nothing about what is expected of me. I have no clue how to bill beginning Jan 1st. No big surprise. Communication has lacked for a long time. I'm always in the dark of about how long it will take for me to get paid.”
 - “[The Agency] should improve on how it communicates expectations to providers. The Agency should not be afraid to set a high standard for representation and require that providers meet it.”
 - “The last couple years have been miserable. There is a lack of trust between PD Offices and the Agency. The current COLA for the Appellate Division is a prime example.”

2. While stakeholders agree that the Agency's primary role is to fund high-quality public defense services for indigent clients, there are expectations that the Agency's mission also includes improving the justice system and providing training, support, and resources to recruit and retain quality attorneys and case support service providers [Figure 23 – Agency Current Mission]. Participants state that increasing stakeholder outreach and communication is a key improvement opportunity [Figure 24– Improvements Opportunities].
 - “[The Agency] needs to be forward looking and proactive rather than having to react to ongoing changes in the industry and profession.”
 - “Robust public defense needs resources. I don't know the how's, but it would be great to see the Agency collaborating with other professional fields (e.g., psychology) to develop or recruit more diverse professionals that we could then use for our clients.”

3. Participants would like to see the Agency have a stronger relationship to the state legislature. Stronger relationships with the Oregon legislature could help the Agency better advocate for funding and resources, which is a key area that participants would like to see the Agency address. [Figure 25 – Top Priorities]. Providers also note that friction between the Agency and the Commission, as well as between the Agency and the state legislature is a barrier to the Agency’s ability to deliver high-quality representation.
- “The Agency has no credibility with the legislature.”
 - “The Legislature demanded an external culture shift that [the Agency] will need to address.”
 - “The Agency (and indigent defense prior to the establishment of the Agency) often is begging for and then very thankful for crumbs from the legislature. The Agency has not done enough to educate the members of the legislative, executive and judiciary about the challenges faced by indigent defense providers. This leaves providers feeling like second-class citizens without support from the Agency, and therefore little to no voice in the system.”
 - “[The Agency] should improve getting the message out to the public and the legislature as to why public defense matters to everyone. The Agency needs to knock off the favoritism and the misogyny that goes on. Good lawyers are leaving because they are lacking support and proper training.”
 - “The Agency needs to devote time and resources to convince the legislature to adequately compensate trial level attorneys and staff and to control the workload of trial attorneys and staff.”
 - “The Agency’s lobbying efforts have not gotten the results that our clients need. Under the current structure, without improving the actual standard of representation, getting every indigent person an attorney is going to cost a lot more than the legislature is interested in spending. The Agency’s practice of asking for more and stretching a small increase across the same lawyers isn’t working. We are all do-gooders of one kind or another in this field, and we’ll all sacrifice things we shouldn’t to struggle to meet our clients’ needs.”
-
4. The Agency must demonstrate accountability both through internal and external quality assurance and performance management. The Agency must create and sustain new avenues for feedback and communication. Participants currently struggle to see what the Agency does well [Figure 26 - Strengths] and believe that the Agency needs to strengthen its ability to assess provider quality and proactively engage providers to understand what resources they need to improve and how to best address the challenges they face.
- “The work of public defense is exhausting and overwhelming. We need the Agency to be a champion and beacon for the work and there to support providers. It is no longer sustainable to believe public defenders need to work themselves to the bone for little pay and little reward. This is not healthy and doesn’t elevate practice. We need the Agency to hold practitioners accountable to high standards in a supportive way, where they are eager to provide resources and support to partner with defenders to provide high quality representation for indigent clients.”

5. The Agency's engagement needs to be oriented to communities most burdened by structural barriers. Providers point to rural areas that need additional outreach and support in recruiting attorneys. In addition, given the lack of diversity representing diverse clients, the Agency must maintain its commitment to building a foundational equity practice. As a state agency, the Agency must align with state Diversity, Equity, and Inclusion (DEI) commitments and action plans. This means investing in training, tools, and resources, as well as building an internal capacity for maintaining focus and resources towards those goals.
- "It's hard to get local representation in rural areas. There is not a good pipeline. [The Agency] needs to think about how they can either partner with justice system leaders or think about how to develop programs and positions in less desirable locations. We need a program that incentivizes lawyer going into remote locations."
 - "[The Agency] has to pay people the same regardless of gender. The best PDs I know are women."
 - "The overall culture from one of an "old boys club" to one where the needs of indigent clients are put front and center."
 - "It is a very white dude loaded system, at least in my part of the state. That impacts retention of people who are not a white male as well as recruiting."
 - "You will probably have to pay bonuses to get attorneys to stay in more rural areas for longer than a year or two. I know all this costs money, but I suspect it will cost the state of Oregon less than a lawsuit for failure to provide competent attorneys in all criminal cases in a timely way."



Figure 22 – Agency N=589

How strongly do you agree or disagree with each of these statements?

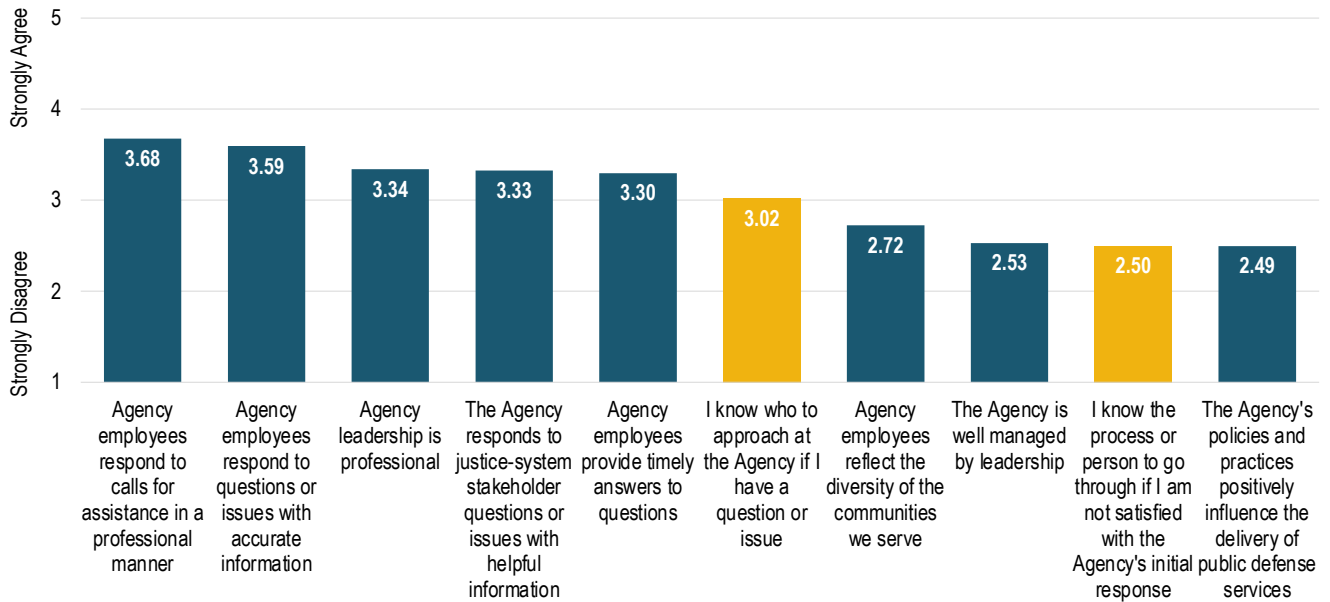


Figure 23 – Agency's Current Mission N=401

What do you believe the Agency sees as its mission?

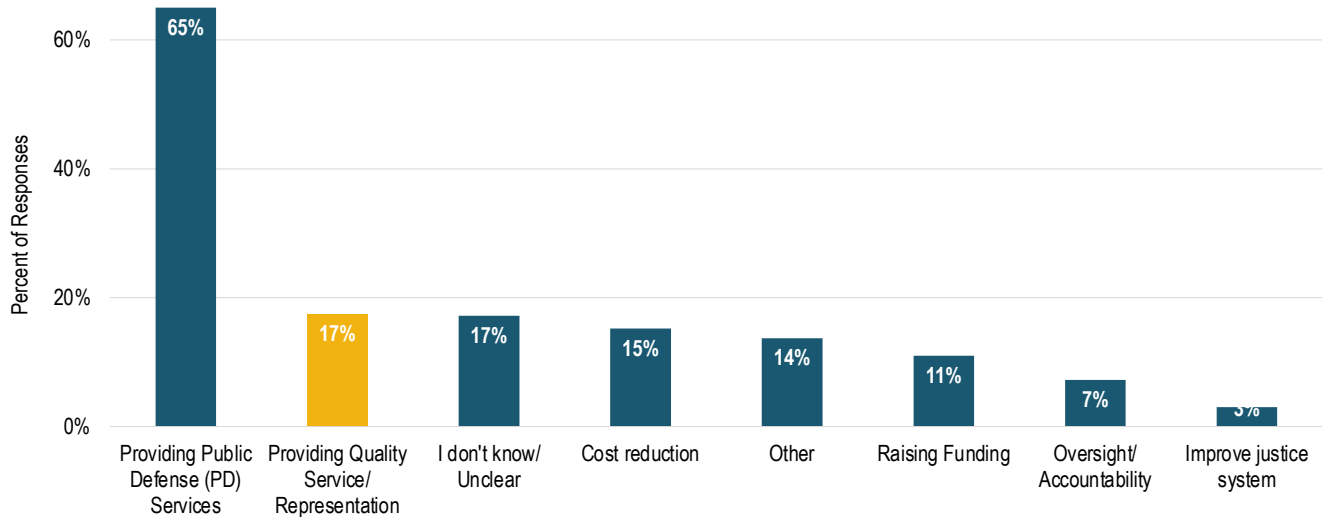


Figure 24 – Improvements Opportunities N=379

Where does the Agency need to improve?

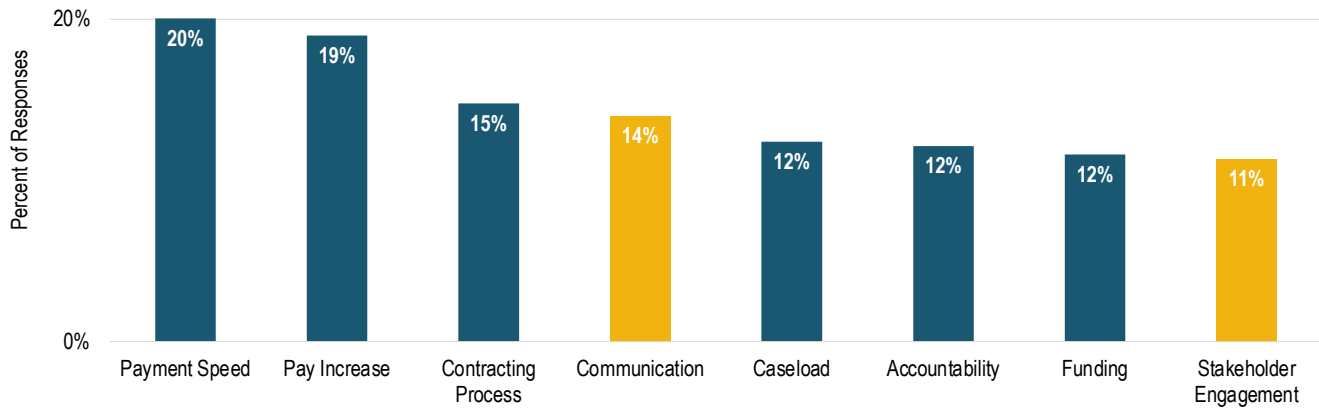


Figure 25 – Top Priorities N=379

Where does the Agency need to improve?

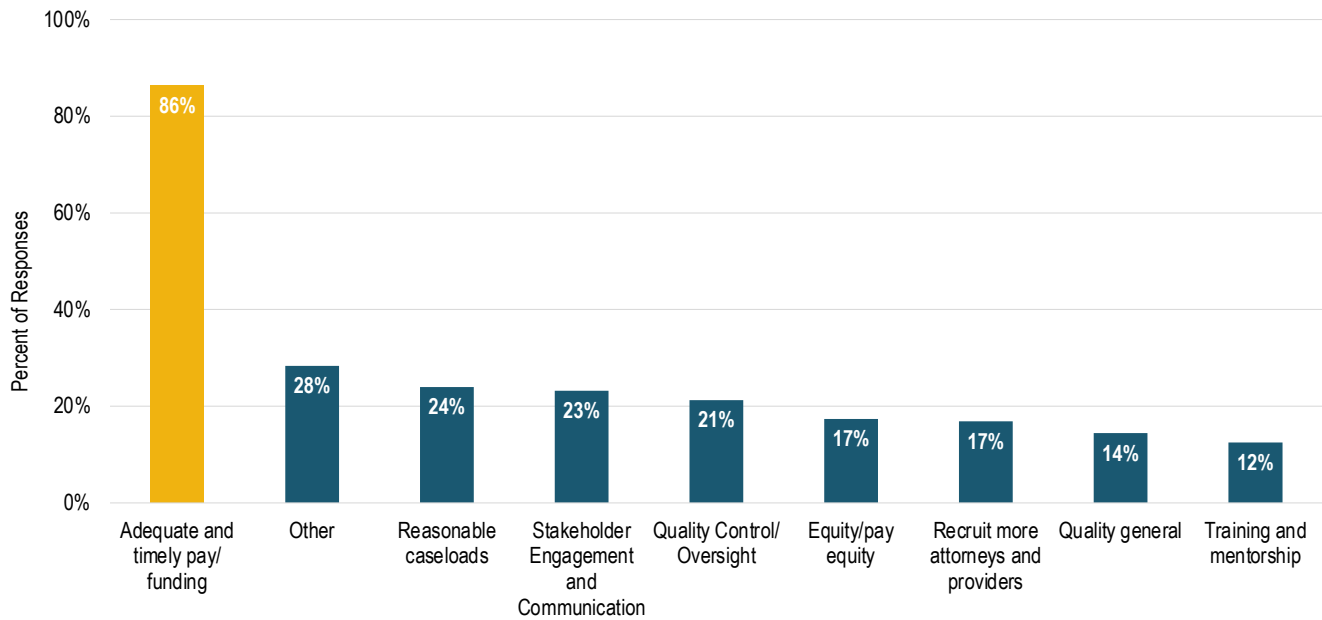
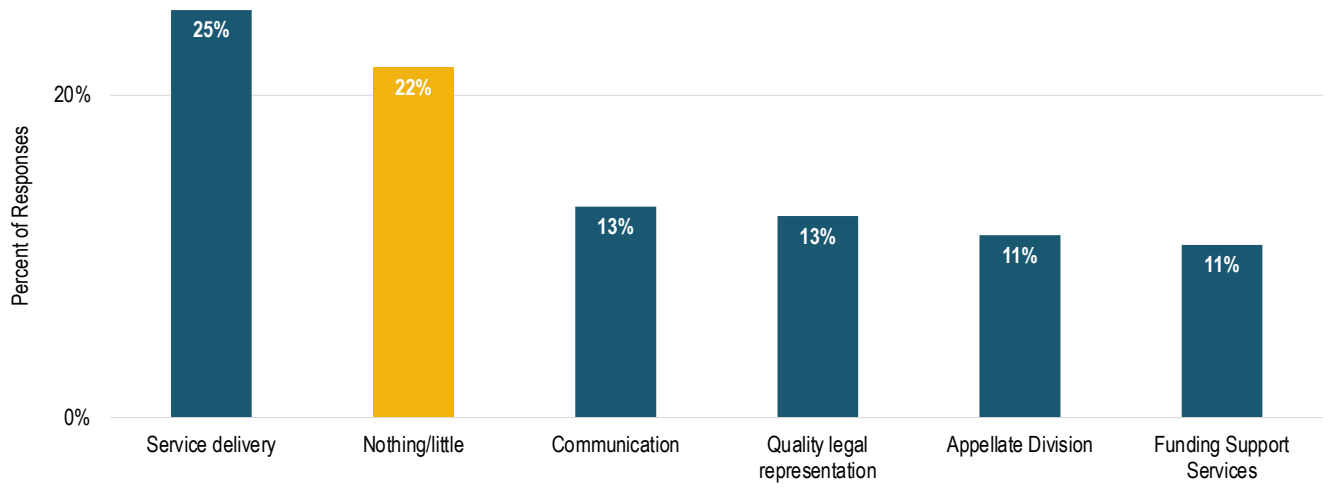


Figure 26 – Agency Strengths N=336
What does the Agency do well?



Chapter Four

Internal Agency Culture

Internal Agency Culture: Although strengths were identified by Agency staff, the Agency needs to focus on key cultural issues to enable the Agency to achieve its mission.

“It is often unclear to me why people leave [the Agency] and the sense on the ground is internal dysfunction.”

1. Staff often describe Agency culture as collegial, collaborative, and supportive, as well as hopeful, dedicated, growing, transforming and hard-working. However, there are a significant number of employees who regard the Agency as disorganized and disconnected.
 - “I think it's impossible to see evidence of our organizational values in action on a daily basis when it's not at all clear that we are operating from any set of shared values.”

2. Survey results indicate Agency leadership often demonstrates fairness and respect. However, there is a perception of a lack of staff inclusion in decision-making and a lack of commitment to advancing Diversity, Equity, and Inclusion (DEI). Legal Support staff are particularly dissatisfied with measures of leadership quality and actions. Across all staff, those with the shortest tenure, males and BIPOC employees are the most satisfied with leadership.
 - “Input is received respectfully but never goes anywhere. This means work-related issues never get resolved.”
 - “I cannot recall the last time I was asked to give my opinion as to a manager/leadership evaluation, and I don't think the agency has been very thoughtful about creating a uniform, supportive model for employee feedback and growth.”
3. Many staff are unsure of the required skills and abilities within each role in the Agency; this is particularly true of staff who identified themselves as part of the Accounting division, which includes accounting technicians and accountants.
 - “My experience is pretty siloed”

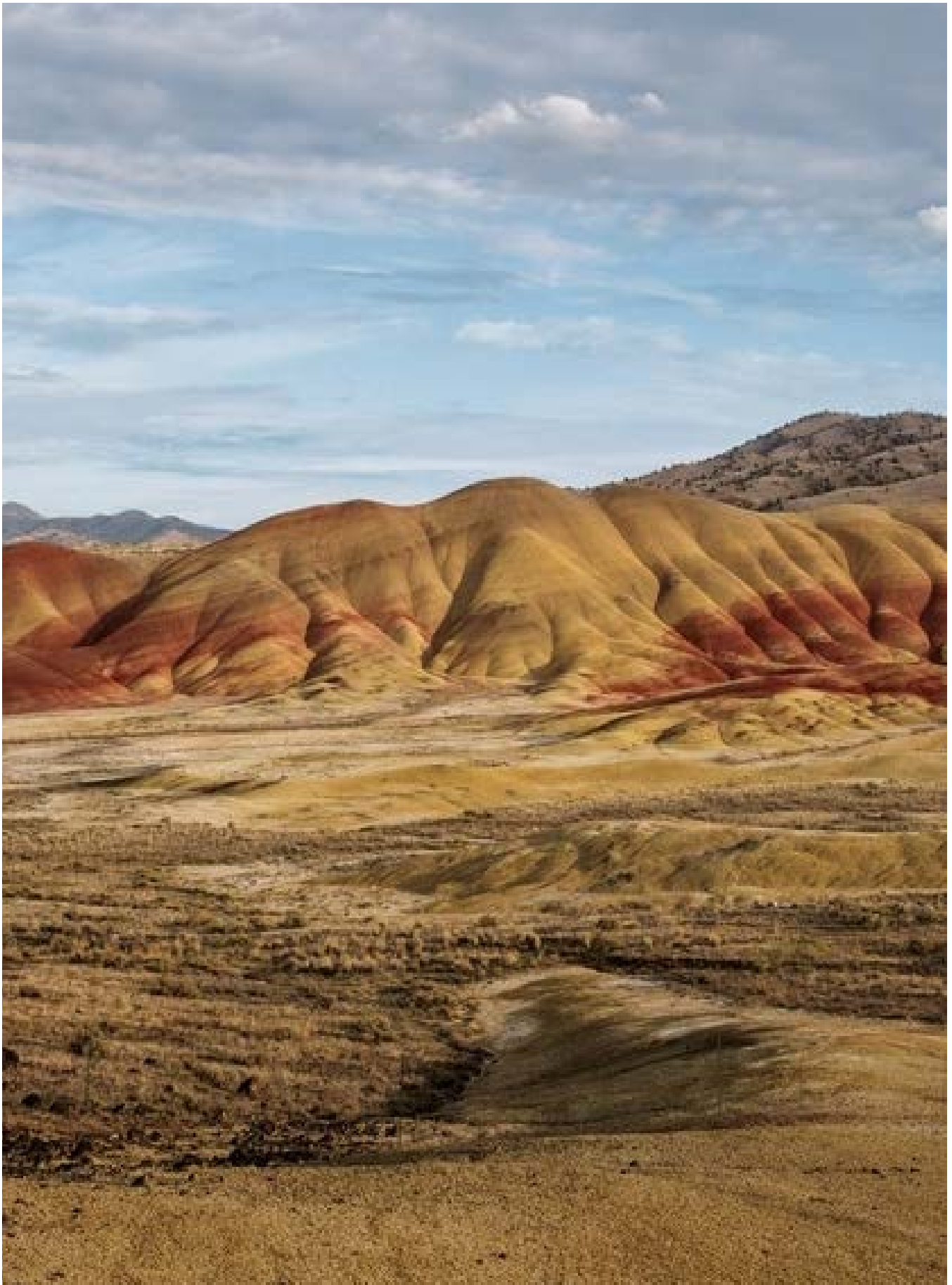
4. While staff highly rate their work-life flexibility and feel valued for their everyday contributions, opportunities for promotion and advancement are felt to be lacking.
 - “I think there is a lack of emphasis on self-development to learn more of the tools available or that could be available to staff to improve work function. By observation many are stuck in not being able to perform at a high level for not having the knowledge or training to be as effective in the tools they have at hand.”
 - “I believe I currently have the flexibility to balance family, community, and job obligations but fear that as soon as the pandemic rules are changed that the telework opportunity will vanish.”

5. The Agency's strengths are perceived to be the provision of high-quality appellate representation and commitment to clients. Staff support and flexibility is referenced as a plus, with high quality, collaborative staff also regarded as a strength.

- "I do feel like everyone who has some input on anything that is happening within the agency is heard. That is important especially in an agency that is trying to grow and make progress in turning a new leaf."
-

6. Insufficient funding is perceived to be the primary barrier facing the public defense system. This is accompanied by concerns about staff recruitment/retention and a perceived lack of trust and understanding within the organization.

- "I believe the goals for the Agency work culture is not focused inward on working collaboratively as a team to reach the agency goals. The organization has a great amount of talent outside of upper management that does not seem to be tapped in order to help make decisions and move the agency forward in a thoughtful way."





coraggiogroup

Chapter Five

Clients believe that the amount of time and contact they have with their attorney is insufficient

The purpose of this survey is to create an opportunity for the clients of public defender providers to offer feedback on the quality of their representation. This survey is part of the Agency's efforts to build its capacity to gather feedback from clients about their experience in order to better ensure the quality of representation to indigent clients.

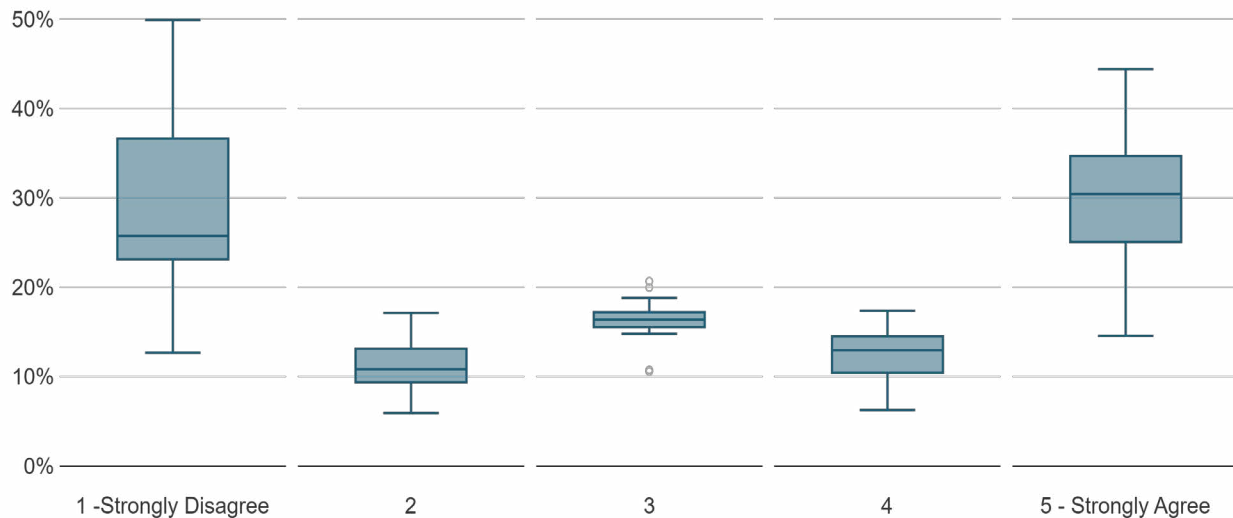
The survey was advertised and distributed by public defense providers across the state of Oregon and through the aid of community partners, including Youth Rights & Justice, Oregon Youth Authority, jails, adult community corrections, Oregon State Hospital, Sponsors, Inc., Central City Concern, Bridges to Change, and others. The agency met with the Department of Corrections to explore the logistics of increasing the survey distribution but were unable to complete the review process in the time frame of this project.

The Agency received a total of 754 completed survey responses and interviewed three individuals with lived experience as a client. These themes represent the feedback we received through both processes.

1. Clients expressed strong feelings regarding the quality of their representation, both negatively and positively. The survey responses regarding the quality of representation followed a bi-modal distribution with responses, responding “strongly agree” or “strongly disagree” for all questions. (Figure 6)
 - “Quit taking on so many cases just for money. Show compassion towards clients facing life without and defend them like she should.”
 - “My attorney didn’t give me options, he told me what I was doing. I was young and naive and trusted him. I wish he took the time to talk to me, explain things to me in a way that I would have understood.”
 - “How do you improve perfection?”
 - “I can’t think of one thing he should improve regarding his job. He was kind, consistent, organized and very helpful and did everything as close to perfect as one could ever get.”
 - “Nothing, I felt there was the right efforts dedicated to helping me receive a positive outcome”
 - “I think my attorney is a good guy already”
 - “She was overall a good attorney. I don’t really have complaints.”
 - “My new lawyer is amazing, and she came to see me talked my options over w/ me and she is great.”
 - “I cannot think of a single thing. He couldn’t have done better. I had the best legal team. Thank you all so very much.”

Figure 6 – Bimodal distribution of attorney ratings N=721

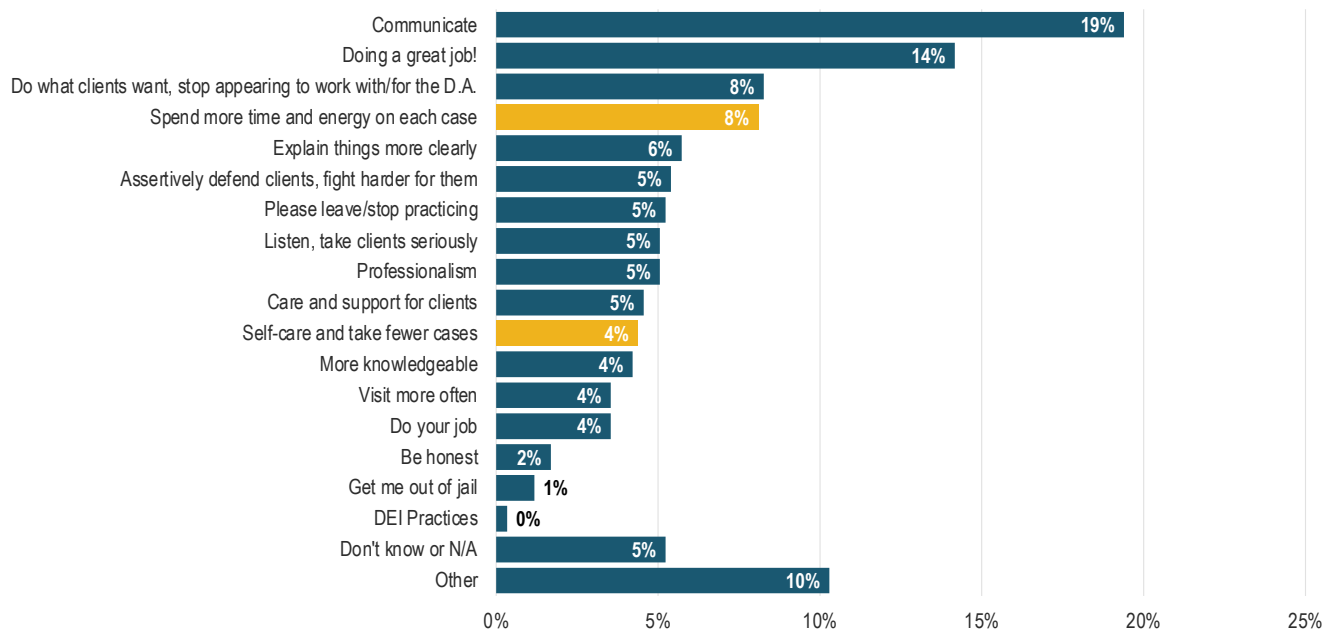
Clients were asked to rate their agreement (on a scale of 1 to 5) with 17 different statements regarding their experience with their attorney. (see Appendix 1.3) This chart summarizes the distribution of the frequency of each score. For example: in each of the 17 statements, between 15-45% of respondents rated it a 5, and the median is 30%.



2. The attorney relationship is profoundly important to clients and clients believe that attorneys may have hundreds of clients' cases they are balancing. Clients acknowledged the time constraints on their attorneys yet would like to have more time to discuss their case and to know that their attorney is listening to their needs and desires. (Figure 7)

- “My current attorney is representing 4 of the 11 guys in my dorm alone and is almost completely unavailable to talk or communicate with.”
- “He needs to be more prepared and do more research on the cases he is assigned to.”
- “Stop looking at your watch when you come in for 15-minute meetings...the ONE time you come to see me in 2 months.”
- “My attorney needs less cases.”
- “Take on less cases so he can concentrate on the cases he has better.”

Figure 7 – Take a lower caseload and spend more time on my case N=593
 What is one thing you think your attorney should do to improve?

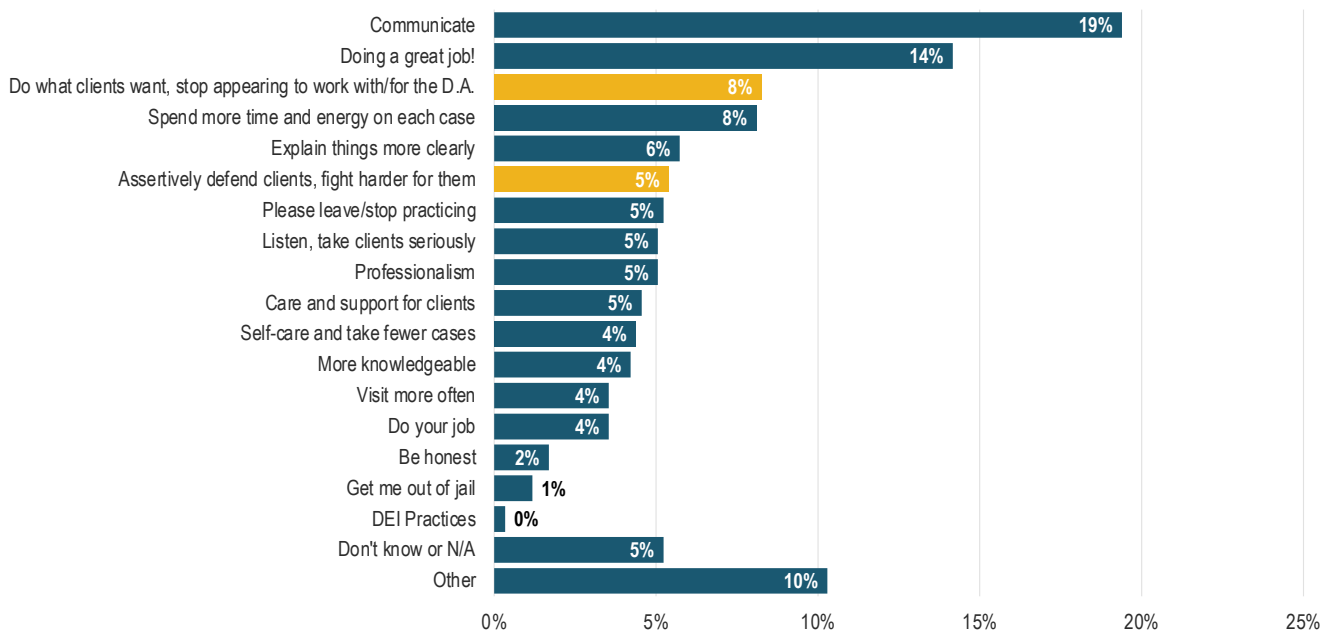


5. Clients expressed concern that public defenders were too closely aligned with the District Attorney’s offices. Clients indicated that their attorneys pursued plea agreements too often and suspected that plea bargains were done at the convenience of their attorneys and not in the best interest of their clients. (Figure 9)

- “My attorney needs to communicate, try a defense other than take a deal.”
- “Honestly, they don’t care about us they just want us to take a plea deal, so they don’t have to work the case.”
- Actually try to defend me and stop trying to make pleas, 95% of Douglas County system is plea deals, what does that tell you?”
- “I think that the attorney shouldn’t take more cases than they can handle. My attorney never even saw my discovery. They are too worried about their relationship with the DA and what kind of deal they can get you. What about the innocent?”

Figure 9 – Regular pursuit of plea agreements affect reputation N=593

What is one thing you think your attorney should do to improve?



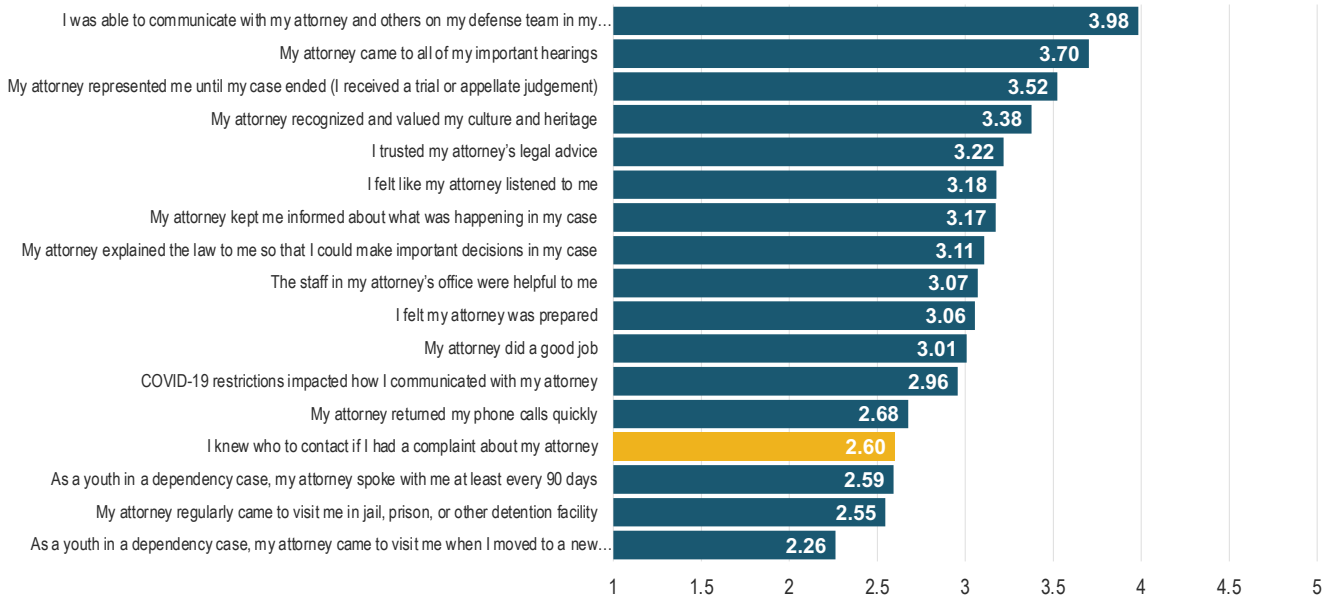
6. Clients wanted additional guidance for judging the quality of their representation. Clients often cited the outcome of their case as the primary mechanism for judging the quality of their representation or expressed confusion about what their attorney could do to improve.

- “I think my attorney might look better in different hair styles.”
- “My attorney should shave his beard.”
- “My attorney needs to dress better to improve.”
- “Win my case. That’s all I care about it.”
- “I really don’t know.”

7. Clients reported a lack of clarity on who to contact if they had a complaint against their attorney (Figure 10)

- “In 13 months my attorney has done nothing but put off 60 days at a time and show up to see me 15 minutes before a court. I don’t understand why I have a public defender and not “pro bono” with co-counsel since my case is capital/death penalty?”
- “I’ve had two attorneys and I don’t even know what they have to do to actually have a consequence.,”

Figure 10 – Lack of clarity on how to file complaints about attorneys N=721
 How strongly do you agree or disagree with each of these statements?



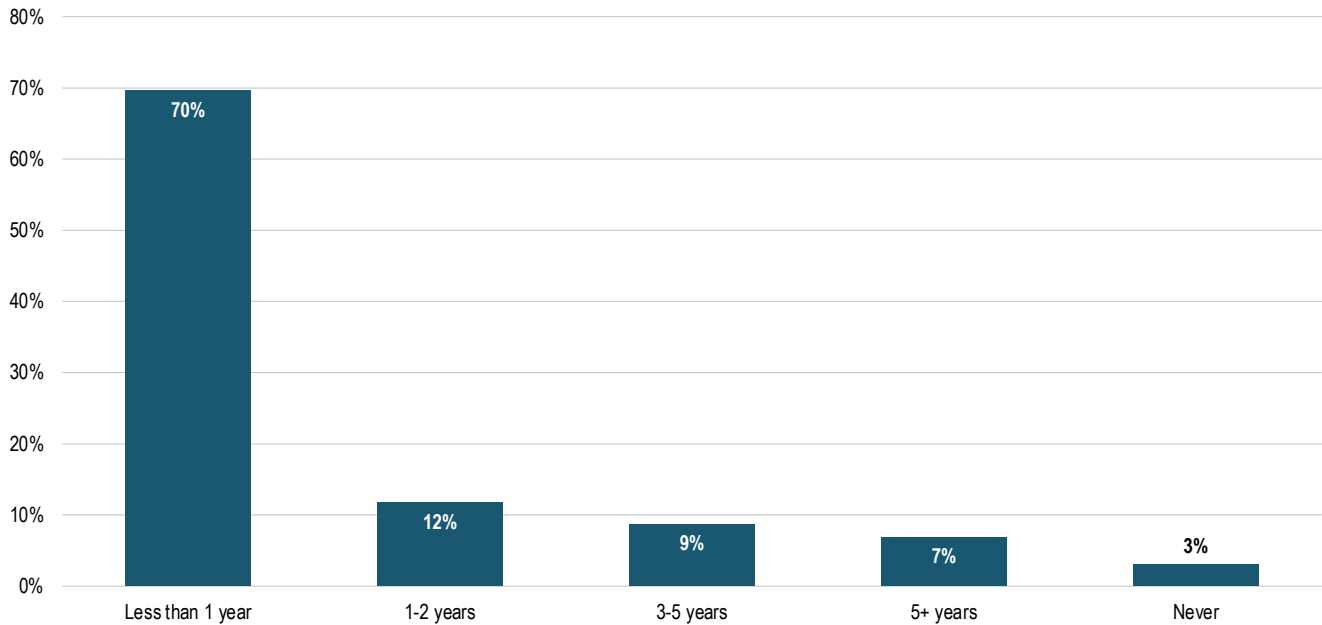
Implications:

- The agency needs to develop more effective ways of monitoring and improving the quantity and quality of attorney/client communications, particularly around plea negotiations, litigation options, and the attorney's role.
- The agency should focus on educating clients about its role in ensuring quality representation and the options clients have if they have complaints about their attorney.

Appendix

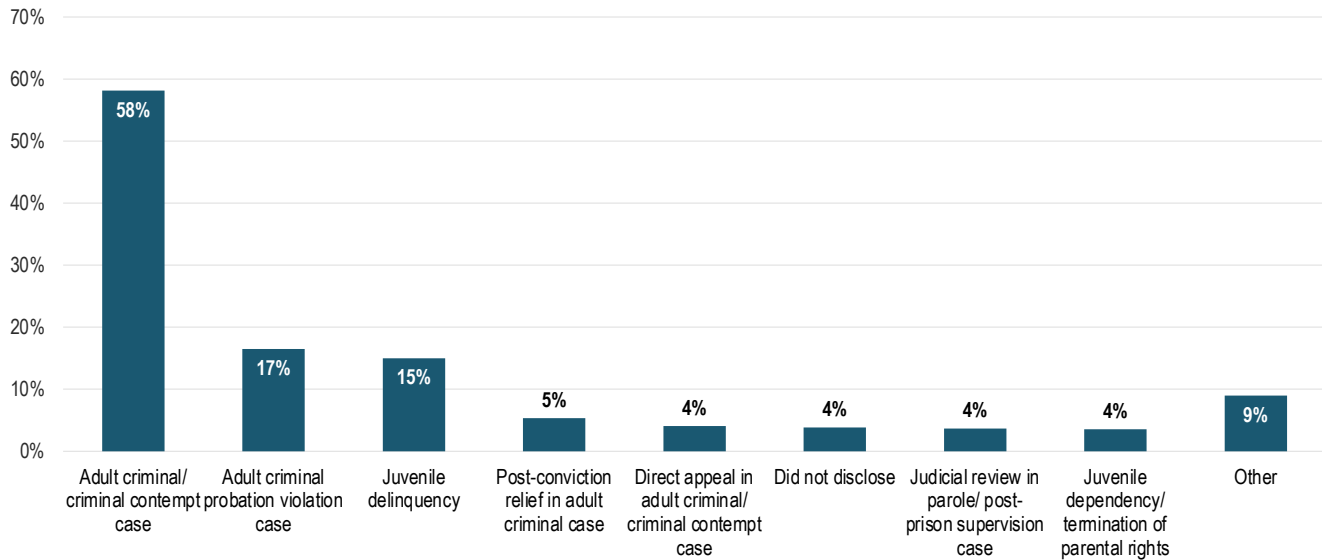
Appendix 1.1 – Duration since last interaction N=743

How long has it been since you had an interaction with a public defender?



Appendix 1.2 – Case Type N=733

In my most recent case, I was represented by a public defender in the following type of case.



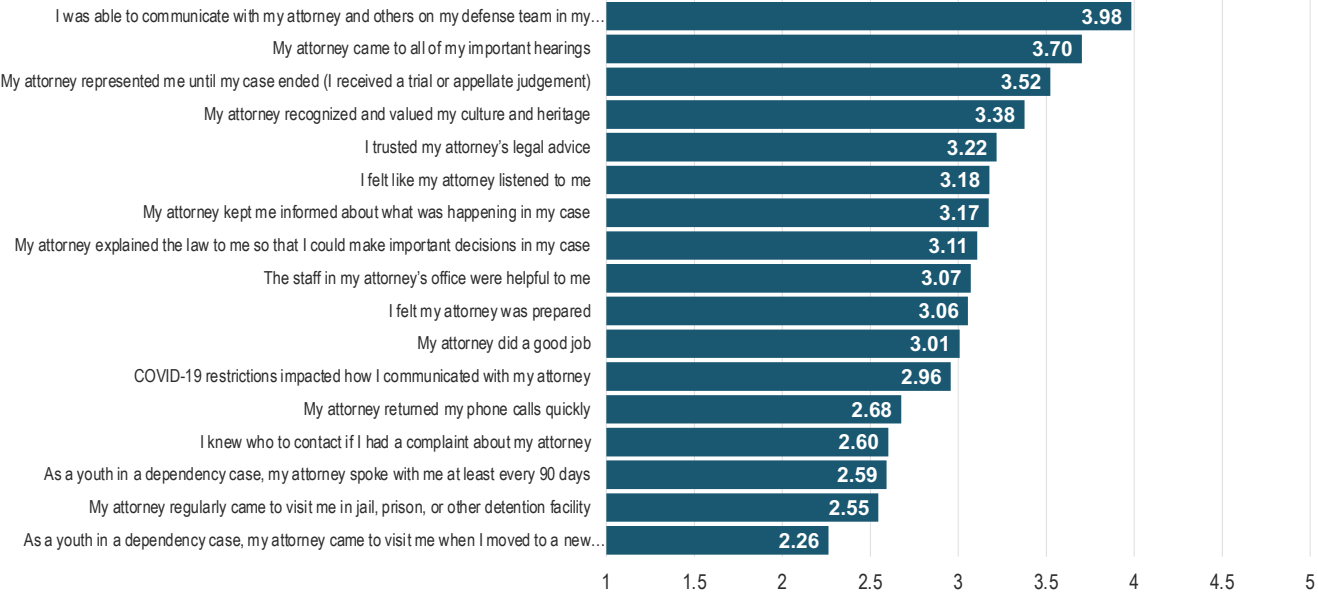
Appendix 1.2a – All Case Type N=733

In my most recent case, I was represented by a public defender in the following type of case.

	%	Count
Adult criminal/criminal contempt (violation of restraining order) case	58%	426
Adult criminal probation violation case	17%	121
Juvenile delinquency	15%	110
Post-conviction relief in adult criminal case	5%	39
Direct appeal in adult criminal/criminal contempt (violation of restraining order) case	4%	30
Did not disclose	4%	28
Juvenile dependency/termination of parental rights	4%	26
Judicial review in parole/post-prison supervision case	4%	27
Direct appeal in adult criminal probation violation case	2%	18
Civil commitment	2%	15
Direct appeal in post-conviction relief case	2%	13
Direct appeal in juvenile delinquency case	1%	10
Direct appeal in dependency case	1%	5
Post-conviction relief in juvenile delinquency case	1%	5
Direct appeal in civil commitment case	1%	4
Other	1%	6
NET	100%	733

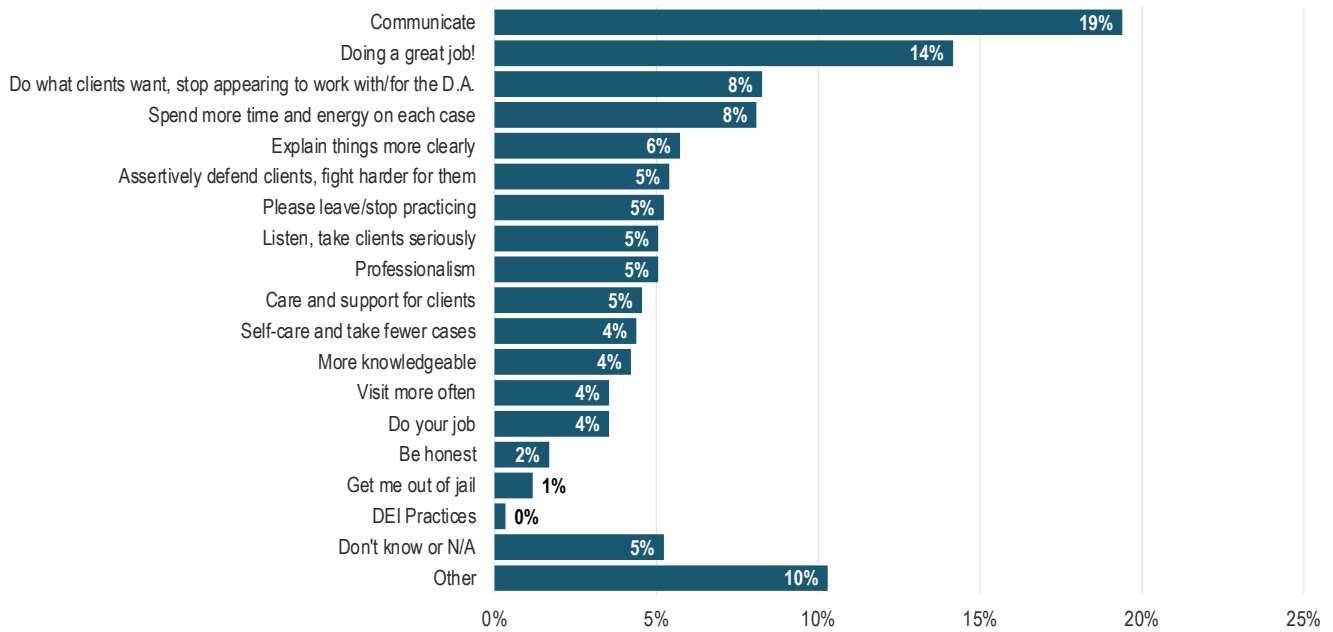
Appendix 1.3 – Attorney ratings N=721

How strongly do you agree or disagree with each of these statements?



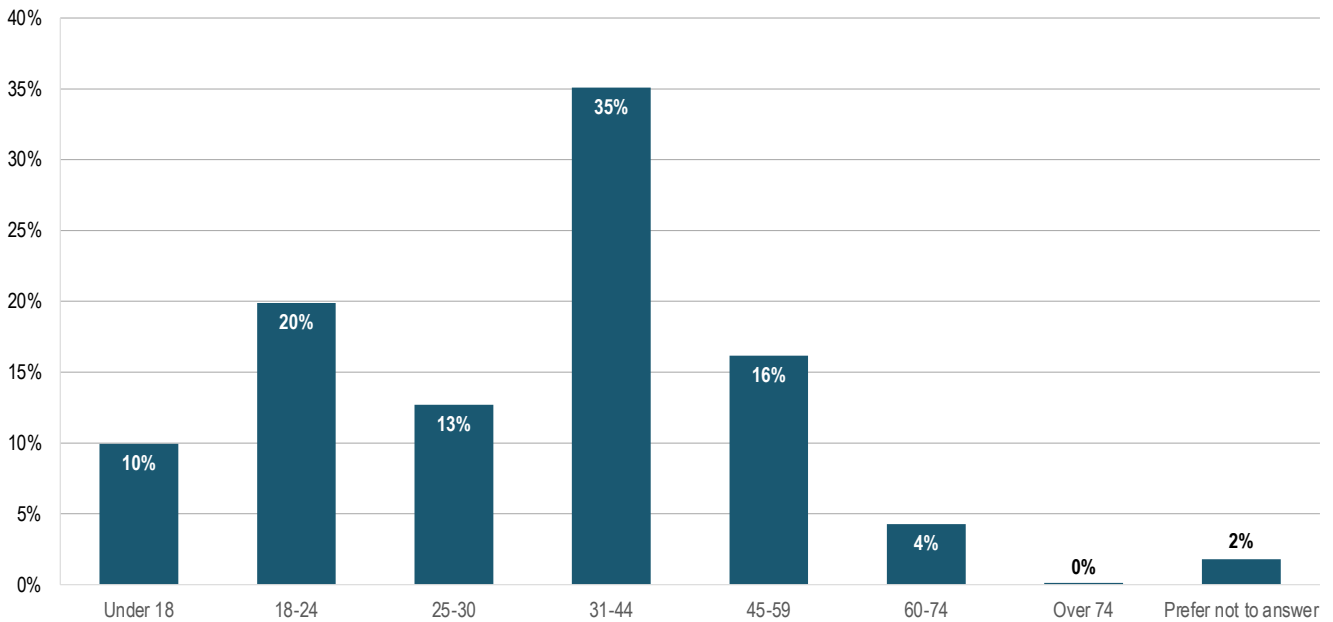
Appendix 1.6 – Opportunities for Improvement N=593

What is one thing you think your attorney should do to improve?



Appendix 1.7 – Survey Respondents by Age N=724

What is your age?



Appendix 1.8 – Survey Respondents by Level of Education N=727

What is your highest level of education?

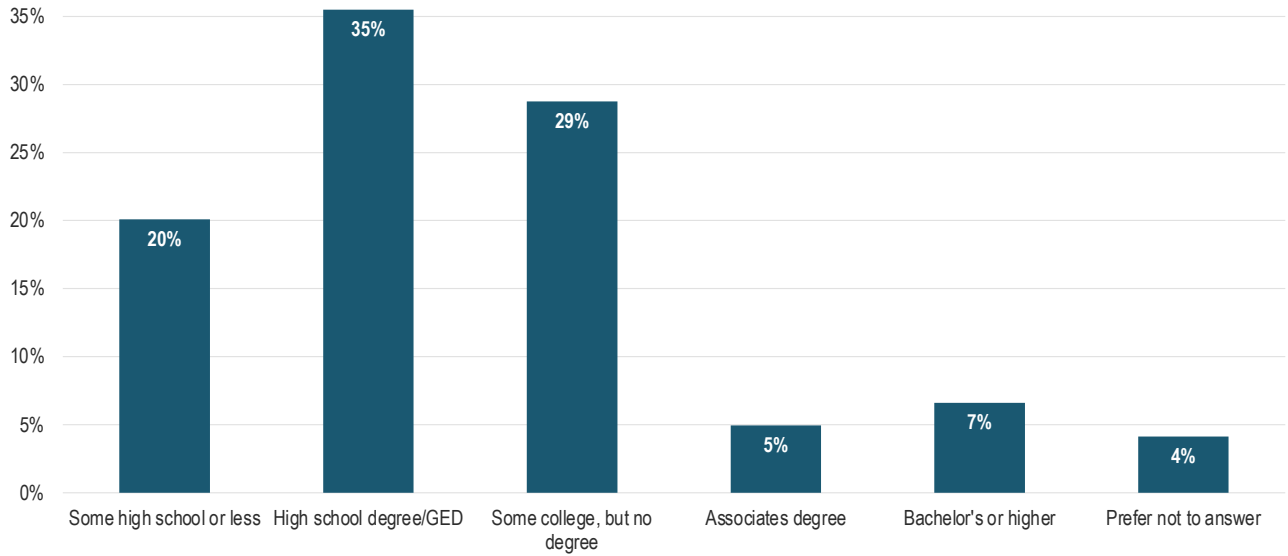
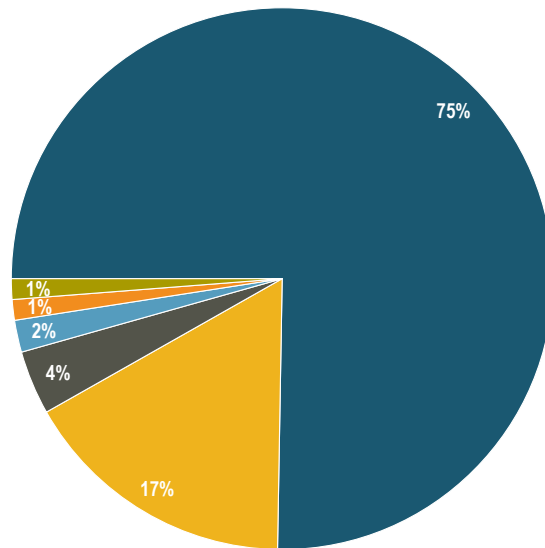


Figure 1.9 – Survey Respondents by Gender N=732

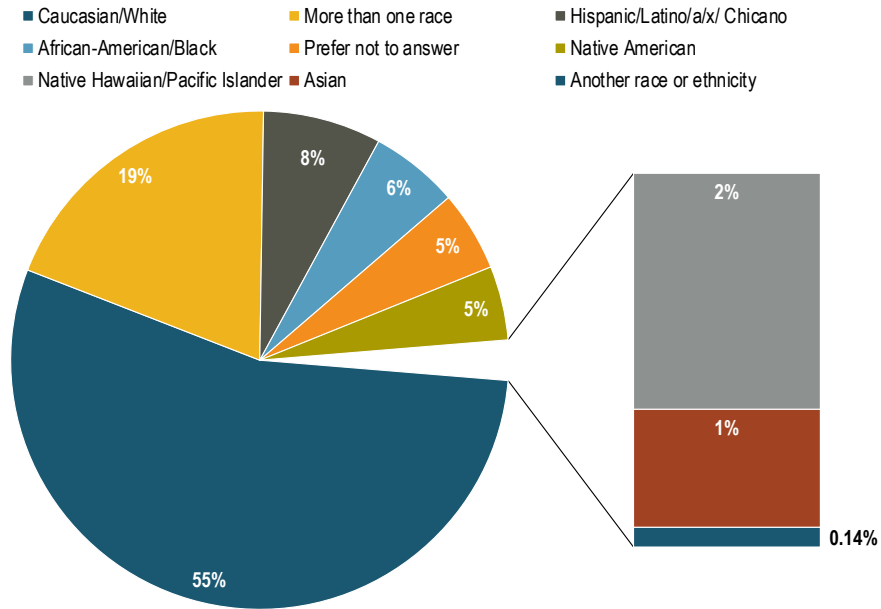
What is your current gender?

■ Man ■ Woman ■ Prefer not to answer ■ Transgender ■ Non-binary ■ A gender not listed here



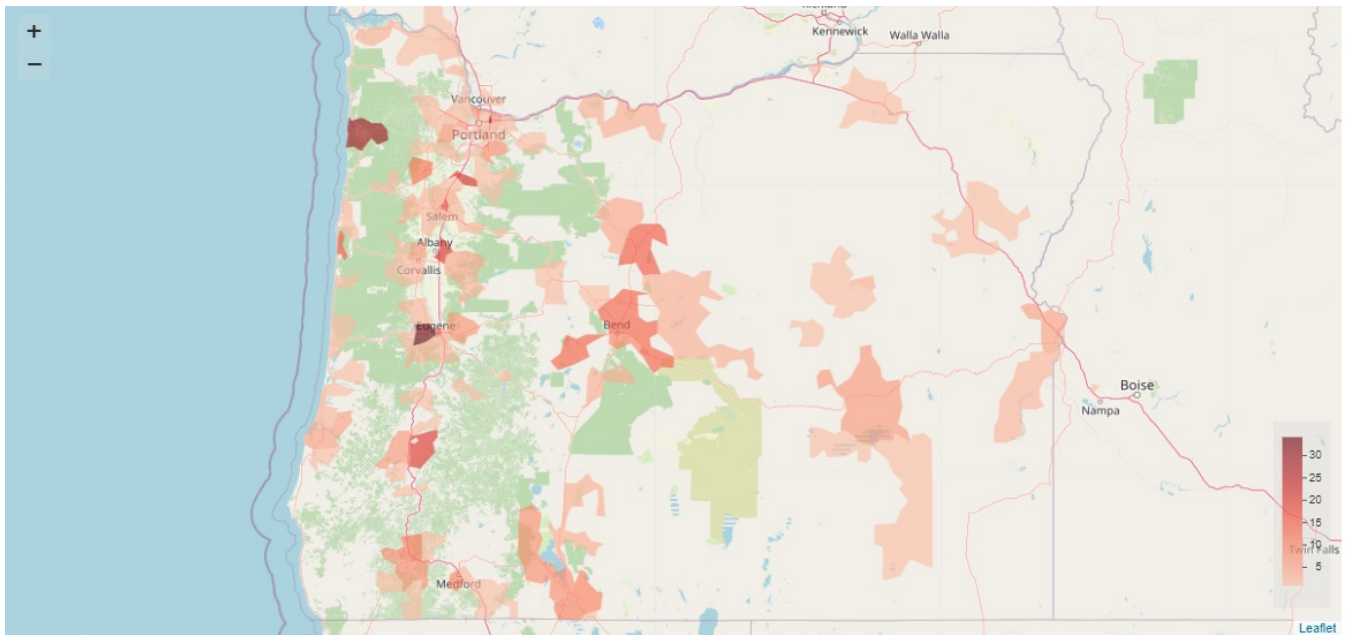
Appendix 1.10 – Survey Respondents by Race/Ethnicity N=729

What is your racial background?



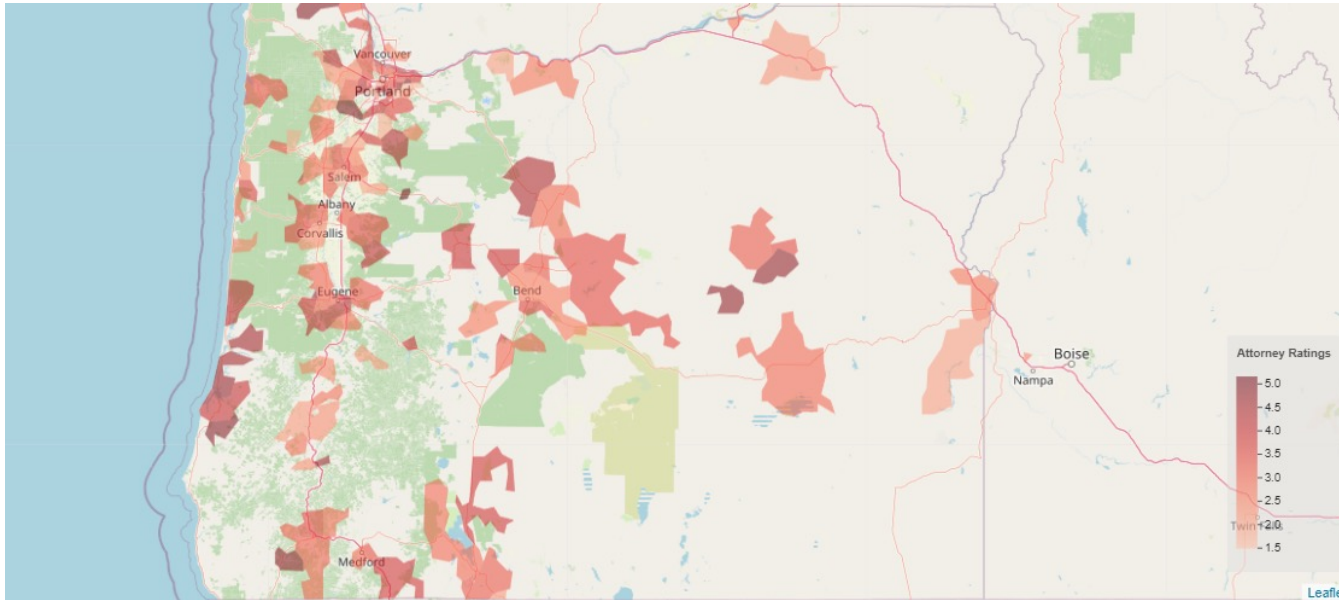
Appendix 1.11 – Survey Respondents' Zipcodes N=646

What is your ZIP code?



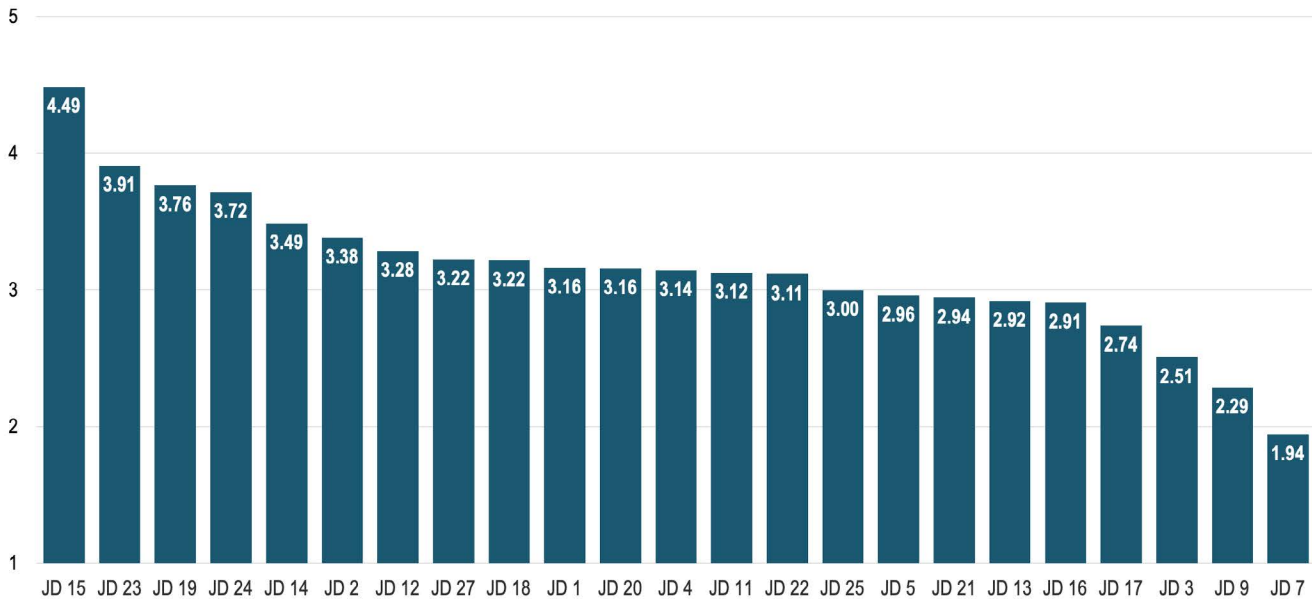
Appendix 1.12 – Average attorney ratings by zip code N=646

Clients were asked to rate their agreement with statements regarding their attorney on a scale of 1 to 5, 1 being very negative and 5 being very positive.



Appendix 1.13 – Average attorney ratings by jurisdiction N=646

Clients were asked to rate their agreement with statements regarding their attorney on a scale of 1 to 5, 1 being very negative and 5 being very positive.



JD 1-Jackson Co.
 JD 2- Lane Co.
 JD 3-Marion Co.
 JD 4-Multnomah Co.
 JD 5-Clackamas Co.
 JD 6-Umatilla and Morrow Co.
 JD 7-Sherman, Wasco, Gilliam,

Wheeler and Hood River Co.
 JD 8-Baker Co.
 JD 9- Malheur Co.
 JD 10-Union and Wallowa Co.
 JD 11-Deschutes Co.
 JD 12-Polk Co.
 JD 13-Klamath Co.

JD 14-Josephine Co.
 JD 15-Coos and Curry Co.
 JD 16-Douglas Co.
 JD 17-Lincoln Co.
 JD 18-Clatsop Co.
 JD 19-Columbia Co.
 JD 20-Washington Co.

JD 21-Benton Co.
 JD 22-Jefferson and Cook Co.
 JD 23-Linn Co.
 JD 24-Grant and Harney Co.
 JD 25- Yamhill Co.
 JD26-Lake Co.
 JD 27-Tillamook Co.

Initiatives	Milestones	Action Steps	Risks/Challenges/Change Barriers	Owner	Additional Capacity Needs	Start	End	Status	Notes	Jun-22
Address immediate agency needs	Monitoring, compliance, and evaluation of 2022 Contracts	Identify data points & systems needed to monitor programmatic goals	Confusion over who is responsible for data management, reporting, & monitoring	CAP Program Lead		May-22	Jun-22	BS		
		Identify data points & systems needed to monitor compliance with contracts and capacity		Research & Data, Analysts		Jun-22	Jun-22	BS	Capacity indicators could be: projected v actual caseloads/FTE; case weighting, appointment of co-counsel, # hourly attorneys by case type/jurisdiction, # attorney withdraws by case type/jurisdiction) Contract compliance could be % compliance w/ reporting requirements; AQ req'ts, CLEs	
		Solicit feedback from key internal stakeholders		CAP Program Lead		June	Jun-22	BS		
		Identify data points needed to track goals as defined above		Research & Data		Jun-22	Jul-22	BS		
		Identify most appropriate data source to capture needed data points		Research & Data		Jun-22	Jun-22	BS		
		Update, vet, and implement new forms & protocols		Research & Data		Jul-22	Jul-22	BS		
		Create communication plan for new form roll out and timing	Resistance to 20-day reporting requirement & reporting generally	CAP Program Lead		Jun-22	Jul-22	BS		
		Establish Approach to Analyze Attorney Workload Established (workload may get implemented in 2023, but will not be monitored until 2024 (earliest) or 2025 (likely))	Define workload approach for adult criminal, juvenile delinquency, and juvenile dependency case type including key terms used in the definition (e.g. appointment start/end, active/inactive cases, primary/secondary attorney, PIT/monthly/average monthly assessment)	Stage monitoring of workload model with roll out of FCMS in 2025; data elements need to be in place in 9-12 months (May 2023)	CAP Program Lead, Trial Division & Research		Sep-22	Jan-23		Note that RAND, ABA, and NCSC, NAPD working on updating National Criminal Defense Workload Standards (for release in August 2022) information. Case specific workgroup facilitated by researcher (month for each case type)
	Solicit feedback and input from key stakeholders on definition. Revise as needed			CAP Program Lead		Oct-22	Jan-23		This is a concurrent process to externalize definitions with key stakeholders and revise	
	Identify data points needed to track workload as defined above			Research		Oct-22	Jan-23		This works hand in hand with definition development because needs to be a definition that can be quantified	
	Identify most appropriate data source to capture needed data points		Fit gap with FCMS system and timing of FCMS system roll out	Research		Oct-22	Jan-23		Deadline is May 2023 for integration into specs for FCMS	
	Identify potential collection tools and processes that will allow the agency to monitor workload as defined above		Deadline of May 2023 (latest) to incorporate workload into FCMS rollout	Research		Feb-23	May-23		This is something that we hand over to Jim's team for FCMS; we will need to participate in fit-gap for any issues not covered, and develop collection tools and processes for anything we cannot collect for FCMS	
	Repeat steps above for all other case types (PCR, civil commitment, all types of appellate cases, PSRB, etc)		Will not have in place to inform FCMS RFP	Research		Feb-23	Sep-24			
	Create provider communication plan and materials to define workload and data collection tools and processes outside of FCMS system		Lack of centralized and consistent information dissemination	CAP Program Lead & Public Affairs	Public Affairs	Sep-24	Dec-24			
	Create a plan to implement workload monitoring and reporting in 2025 contracts		See Plan for 2025 Contracting Cycle Below	CAP Program Lead		Sep-24	Dec-24			
	Initiate process to institute a workload metric as a KPM (due April 30, 2024)			Research Director & CAP		Sep-23	Apr-24			
	Phase I begins: Collect descriptive stats x case type (service/provider type, hours per service, \$ approved, jurisdictions, 5-year (7 or 3 year) average & trends)		CSS database service type information is hard to analyze because number of overlapping provider & service-type entries	Data & CSS		Sep-22	Nov-22			
	Set CSS expense thresholds by case/provider types		Not including stakeholder engagement b/c this just improves agency's internal monitoring capacity (stakeholder engagement re new standards in Phase II below)	Research & Data (content); Trial Division		Dec-22	Jan-23		May not get all service types identified or 100% encompassed because of data analysis issues; priority is to identify large buckets of service	
	Phase I: Identify data points needed to monitor against thresholds (by jurisdiction/case types/attorney/provider types; rate of compliance / % deviation from thresholds)		Will not have full standards in place to fully inform tie in with FCMS system (due May 2023), but can inform re minimal monitoring tools	Data		Jan-23	Feb-23		Identify how we can use to monitor for quality issues	
	Create processes, dashboards, & reporting schedule			Data		Feb-23	Apr-23			
	Phase II begins: Catalogue existing official and unofficial standards and policies for CSS approvals (e.g., approval of co-counsel, mitigation by case type, etc.);		Lack of good documentation of historical policy decisions Inconsistent application of standards	Policy	Policy analysts	Jan-23	Apr-23			
	Create typology of standards for CSS (e.g. max hours/case types for service, etc.) & proposed policy solutions	Likely that policy solutions will need to be rolled out as POPs (2025).	Policy & Trial Division		May-23	Jun-23				
	As needed, research best practices relative to those standards		Policy		Jun-23	Sep-23				
	Research rates to inform budget and finance setting rates		Data		Jul-23	Sep-23				
	Identify and collect historical CSS data needed to identify current state & exceptions		Data		May-23	Jul-23				
	Rough draft of standards; identify potential policy concepts for 2025		Policy (content); Trial Division (review)		Aug-23	Nov-23		We may not have all data points needed for validation, but we will work with those that we do have.		
	Create and implement stakeholder engagement plan	Expectation that past practices/exceptions will govern future practices	CAP Program Lead		Aug-23	January 2024				
	Refine & finalize standards in response to internal and external feedback		CAP Program Lead		Oct-23	Feb-24				
	Identify what data points are needed for validation/whether we currently collect those	We may not have all of the data points that we need for validation, but we will work with what we do have.	Research		Feb-24	Apr-24		Setting rates and rate schedules are out of scope for CAP.		
	Draft POPs for 2025 (proposed policy solutions, new contract concepts)	Agency does not like to wait on legislative timelines to implement new policies	Policy		Feb-24	Apr-24				
	Create implementation and communication plan for standards/new policies	sync to roll out with 2025Ks or w/ FCMS	CAP Program Lead & Public Affairs	Public Affairs	Apr-24	Jun-24				
	Create a process to monitor adherence to standards and protocols & policies	See above	Research & Data		Jun-24	Jan-25		This is tied to implement in 2023 K cycle.		

