

ANALYSIS

Public Defense Commission Quality Management Plan and Key Performance Measurements

Analyst: John Borden

Request: Acknowledge receipt of a report on a quality management plan.

Analysis: The budget report for HB 5532 (2023), the primary budget measure for the Public Defense Commission (PDC), included the following budget note:

The Public Defense Services Commission is directed to develop a quality management plan for public defense and associated Key Performance Measures and Indicators. The Commission is directed to submit the plan prior to the Legislative Session in 2024. In addition, the Chair and the Executive Director of the Public Defense Service Commission are directed to report on existing Performance Measurements and targets.

The genesis of the budget note is the Legislature's interest to improve public defense outcomes through a robust monitoring of the quality-of-service delivery at all levels of public defense.

Background

The establishment of the Compliance, Audit and Performance (CAP) Division was designed to bring a heightened level of 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 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 Emergency Board in September of 2022 (Item #8) approved a permanent full-time position General Counsel attorney to lead and manage the CAP Division and to redress the material deficiencies noted in the CAP report to the Emergency Board in September of 2022 (Item #5). This position was not filled until the spring of 2023 and has since experienced turnover in the position.

Report Findings

In previous reporting to the Emergency Board in September of 2022 (Item #5), the analysis noted that PDC demonstrated a strong conceptual understanding and commitment related to the importance of CAP, but that further planning work was necessary. Since that time, PDC has made marginal progress related to establishing CAP.

For example, PDC has established a new *internal* division entitled “Trial Support and Development Division.” The purpose of this internal division, and its relationship to CAP, has not been defined. The activities of this internal division are being conflated with those of CAP, which is causing confusion. The internal division also falls outside the divisional and budgetary structure established for the agency by the Legislature. In addition, PDC has reclassified the position approved by the Emergency Board to lead and manage the CAP Division. Key staff assigned to the Administrative Services Division - Procurement Section have apparently been reassigned to the internal division and the nature of their work is now unknown.

PDC has made no request to the 2024 session to realign staff, including the reclassification of a number of positions. To-date, PDC has yet to finalize an organization chart. These actions have reduced the transparency of agency operations, as uncertainly exists as to what positions are charged with doing what activities in which divisions. This complicates further staff resourcing of PDC, given the uncertainty of how PDC is utilizing legislatively authorized position authority.

The Quality Management Plan submitted by PDC does not outline specific indicators for measuring and improving the quality-of-service delivery in public defense. PDC’s report provides plan related to continued development of the CAP Division, but does not identify many critical components of quality management and improvement, such as what to measure, how to measure, when to measure, against what best practice or standard and what training or remedial action needs to be undertaken in instances of sub-optimal performance. The report indicates that development of performance measures will begin in February 2024 and that the agency is working on finalizing an organizational chart. Development of a strategic plan is also anticipated to inform key performance measures.

Legislative Fiscal Office Recommendation: The Legislative Fiscal Office recommends that the Joint Committee on Ways and Means acknowledge receipt of the report with instruction that the Public Defense Commission report to the Emergency Board in May of 2024 on the Quality Management Plan and proposed Key Performance Measures.

Oregon Public Defense Commission Gehringer

Request: Report on Senate Bill 5532 (2023) Budget Note regarding the quality management plan and key performance measures of the Oregon Public Defense Commission (OPDC).

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

Discussion: As part of a budget note in the budget report for Senate Bill 5532 (2023), Public Defense Services Commission (PDSC) was directed to develop a quality management plan for public defense and associated Key Performance Measures and Indicators, as well as submit the plan prior to the 2024 Legislative Session. Additionally, PDSC leadership was directed to report on existing performance measurements and targets. It's worth noting, Senate Bill 337 (2023) changed the name of PDSC to the Oregon Public Defense Commission (OPDC), in the law clarifying that OPDC "is a continuation of the Public Defense Services Commission and not a new authority." Therefore, the agency will be referred to as OPDC hereafter.

OPDC approves the submission of the report to the Legislature, though the report notes its current composition has only been in effect since January 1, 2024. In this report, OPDC presents the combination of building depth in its Compliance, Audit, and Performance (CAP) program, KPMs, ongoing monitoring, and their forthcoming strategic plan as collectively making up their quality management plan.

Compliance, Audit, and Performance (CAP) division

The Legislature established the CAP division during the 2021 Legislative Session "to help strengthen the agency's program management, performance, and oversight." OPDC has assembled a Policy and Procedure team and Data and Research team within the CAP division to develop written policies, a policy management plan, data collection, and analysis.

OPDC's report shares a description of the development of the CAP program since 2021, including setbacks around management of the program and its alignment with their mission. The report attributes problems in the program to misalignment in skill sets of staff and a consultant study, which reflected a majority of employees not feeling valued or that they belong. After a review of these historic setbacks, OPDC discusses options for moving forward including maintaining the status quo or to staff new positions for procurement functions related to management of public defense legal services contracts and distributing work appropriately. OPDC has chosen and started work on implementing the latter option.

Key Performance Measures (KPMs)

OPDC's report provided updates on their current KPMs:

- **Appellate case processing** - median number of days to file opening brief.
 - OPDC is meeting and maintaining this target.
- **Customer Service** - percentage of customers rating their satisfaction with the OPDC's customer service as "good" or "excellent."
 - OPDC did not complete a customer service survey for 2023.
- **Best Practices for Boards and Commissions** – percentage of total best practices met by OPDC.
 - OPDC has not completed a self-assessment for compliance with the Department of Administrative Services (DAS) due to changes in the composition of OPDC.
- **Trial Level Representation** - during the term of the OPDC contract, percent of attorneys who obtain at least 12 hours per year of continuing legal education credit in the area(s) of law in which they provide public defense representation.
 - OPDC did not conduct this survey for the reporting period.
- **Parent Child Representation Program (PCRPP)** – percentage of PCRPP attorneys who report spending approximately 1/3 of their time meeting with court appointed clients in cases which the attorney represents a parent or child with decision making capacity.
 - OPDC discusses several issues affecting the measurement of this KPM, but the trend has been downward, meaning fewer PCRPP attorneys are spending the targeted time with the intended population.

OPDC attributes the lack of data for several KPMs to successive changes in leadership over the last several years and states the changed structure gives new opportunities to refocus on this requirement. The forthcoming strategic plan is also intended to be used to identify new KPMs.



Oregon

Oregon Public Defense Commission
198 Commercial St. SE, Suite 205
Salem, Oregon 97301-3489
Telephone: (503) 378-2478
Fax: (503) 378-4463
www.oregon.gov/opds

January 16, 2024

Senator Elizabeth Steiner, Co-Chair
Representative Tawna Sanchez, Co-Chair
Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairs:

Nature of the Request

The budget report for SB 5532 includes the following budget note:

Quality Management Plan: The Public Defense Services Commission is directed to develop a quality management plan for public defense and associated Key Performance Measures and Indicators. The Commission is directed to submit the plan prior to the Legislative Session in 2024. In addition, the Chair and the Executive Director of the Public Defense Service Commission are directed to report on existing Performance Measurements and targets.

Agency Action

The attached report details the quality management plan for the Oregon Public Defense Commission focusing on the development of the Compliance, Audit, and Performance division. It also discusses the commissions current Key Performance Measures and future KPM work.

Action Requested

The Oregon Public Defense Commission requests acknowledgement and receipt of the attached report.

Legislation Affected

No legislation is affected.

Sincerely,



Jessica Kampfe
Executive Director

Attachments: OPDC Quality Management Report

Cc:
Amanda Beitel, Legislative Fiscal Officer
John Borden, Principal Legislative Analyst, LFO
Kate Nass, Chief Financial Officer
Zachary Gehringer, Policy and Budget Analyst, CFO

Oregon Public Defense Commission

QUALITY MANAGEMENT PLAN

January 16, 2024

NATURE OF THE REPORT

A budget note included with SB 5532 (2023) states:

Quality Management Plan: The Public Defense Services Commission is directed to develop a quality management plan for public defense and associated Key Performance Measures and Indicators. The Commission is directed to submit the plan prior to the Legislative Session in 2024. In addition, the Chair and the Executive Director of the Public Defense Service Commission are directed to report on existing Performance Measurements and targets.

This report discusses the quality management plan for the Oregon Public Defense Commission, focusing on the development of the Compliance, Audit, and Performance division. The report also discusses the Commission's current Key Performance Measures, as well as future KPM development.

The Commission approves the submission of the report to meet legislative timelines, however, the Commission has had inadequate time to consider the contents of these reports due to its constitution on January 1, 2024.

CONTENTS

Nature of the Report	1
Compliance, Audit and Performance (CAP) Division.....	3
Definition.....	3
Program Review/Issue Identification.....	3
Additional CAP Development Information	6
Key Performance Measures (KPMs)	7
September 2023 – KPMs	7
KPM limitations/plans to improve.....	9

COMPLIANCE, AUDIT AND PERFORMANCE (CAP) DIVISION

DEFINITION

The legislature established the CAP Division in the 2021 legislative session “to help strengthen the agency’s program management, performance, and oversight.” (*Budget Report and Measure Summary*, page 6, HB 5030 (2021)). The CAP Division works with staff throughout the agency, particularly the Trial Support & Development Division, to monitor the provision of public defense services in Oregon, support improvements in the delivery of those services, and ensure good stewardship of public funds. The CAP Division currently consists of the following teams:

- Policy & Procedure

One of the most significant challenges the agency currently faces is the lack of written policies and procedures to guide the day-to-day work and decision making of agency staff and inform stakeholders about basic agency functions, particularly those that impact contract and hourly providers. The CAP Division’s Policy team will work closely with Trial Support & Development, Data & Research, and Budget staff to develop written policies and procedures where they are lacking. In addition, the Policy team will develop a policy management plan that includes policy hierarchy, a policy development process, and identification of policy roles and responsibilities, as well as the development of clearly documented processes and procedures.

- Data & Research

Data collection and analysis are fundamental components in determining whether and how the agency is fulfilling its mission to provide constitutionally competent and effective representation to all individuals who are eligible for a public defender and identifying areas in need of change to ensure fulfillment of that mission. Data collection and analysis also support effective management of public defense legal services contracts and oversight of providers working under those contracts. Communication of data and the insights gained therefrom helps to convey the experiences of public defense clients and the challenges they face in navigating the public safety system and supports client-centered decision making. When shared with providers and other stakeholders, data collection and analysis can be a key component in driving providers to operate utilizing best practices.

Informed by a strategic plan, the development of updated Key Performance Measures (KPMs) and a plan for ongoing monitoring of those measures at regular intervals will allow the agency to move out of crisis mode and into innovations and best practices for public defense delivery.

PROGRAM REVIEW/ISSUE IDENTIFICATION

1. **Issue:** Develop a Compliance, Audit, and Performance program plan that can independently monitor, measure, and report on the quality of public defense being provided by OPDC.
2. **Priority:** Developing Compliance, Audit, and Performance functionality has top priority for the Oregon Public Defense Commission's (OPDC) modernization and remediation efforts.
3. **Evidence of Concern:** The original objective for the Compliance, Audit and Performance (CAP) Division was to hire a team of attorneys to develop standards and best practices, training, and other resources for public defense attorneys across Oregon and to provide subject matter expertise to agency program management staff. Since the legislature's establishment of CAP in 2021, the agency has undergone significant change such that staff who were hired to develop the CAP program have been focused on activities misaligned to their skill sets, such as managing the processes and documentation related to complaints, locating counsel for unrepresented persons, managing contracts, and other such work.
4. **Objective:** Create a CAP division that provides honest analysis and assessment of the public defense system and agency operations to the commission and the executive director.
5. **Best Practice:** A McKinsey study found that the top three reasons employees quit are that they didn't feel valued by the company (54%), they didn't feel valued by their managers (52%) or they didn't feel a sense of belonging while at work (51%). When an organization builds job roles that clearly define responsibilities and focus on the employee skills, they will feel valued as they are contributing to achieving department and business goals.

By building depth into the CAP program at all levels OPDS will also address other issues that were identified in a survey by the Coraggio Group. Staff do not feel that there are opportunities to move up due to lack of depth in OPDS, while high level staff are unsure why they are doing the type of work currently assigned due to their high-level technical abilities.

Implementing best practices for Compliance, Audit, and Performance (CAP) programs involves defining clear objectives and a focused scope aligned with national standards. Implementing best practices for Compliance, Audit, and Performance (CAP) programs involves defining clear objectives and a focused scope aligned with national standards. Ensuring independence and impartiality, adopting a risk-based approach for prioritization, and incorporating continuous monitoring mechanisms are crucial. Engaging stakeholders throughout the process and investing in the professional development of CAP team members contribute to the program's effectiveness. Transparency in reporting findings, developing corrective action plans, and integrating

technology for data analysis are essential components. By following these practices, PDSC can establish a robust CAP division that promotes accountability, addresses high-priority areas, and fosters continuous improvement in public defense services.

6. **Options to Resolve the Issue:**

Option 1: Maintain status quo and put CAP on hold for another legislative session.

Option 2: Develop new positions for procurement functions related to management of public defense legal services contracts and to support work related to unrepresented persons; transition existing workload in these areas to these new positions.

The agency anticipates that Option 2 will free up resource counsel and program analyst staff in the Trial Support & Development Division, who can then provide subject matter expertise for the CAP Division's development of policies and procedures, performance measures, and a plan for ongoing monitoring and oversight of public defense providers. Option 2 will also help to ensure that Trial Support & Development staff have sufficient time and resources to develop and implement changes in the delivery of public defense services that the agency's data collection and analysis indicate are needed.

The agency has begun work to enable it to implement this option. In recent months, the CAP Division's Policy and Data & Research teams worked with Trial Support & Development and Budget staff, to begin developing written policies and procedures where they are lacking and to improve the agency's collection, analysis, and dissemination of public defense data, both internally and externally.

Notably, these efforts have led to adoption of a new Preauthorized Expense (PAE) Policy, effective January 1, 2024, which was developed over several months with input from both internal and external stakeholders. The Commission also adopted several policies in fall 2023 to support improved management of public defense legal services contracts. In January 2024, the Data & Research team anticipates releasing a public data dashboard to help support administrators of public defense legal services contracts in monitoring their own adherence to contract obligations.

7. **Recommended Options:** Option 2.

8. **Timeframe:**

October-January (2024) evaluate work attorneys are currently doing in the Trial Support & Development division, (program analysts and contracting work/evaluation of complaint process/connection to trial division attorneys) then work with HR to determine appropriate classification levels and identify gaps for full transition.

January – March (2024), begin looking at current positions OPDS may use to fill the gap.

April – June (2024) begin transitioning by prioritizing the work. As the burden lessens for the trial division, begin to prioritize CAP program needs, establish what can be done

with current staffing and what must be on hold until additional staff can be hired. Concurrently, OPDS buildout the POP/ staffing needs for the next biennium. CAP will also be building a strategic plan to align with the OPDS modernization efforts.

9. **Fiscal Impact:** There will not be an initial fiscal impact as this will be a transition and reorganization of current staff and positions. The fiscal impact will come in the form of POPs in the 25-27 biennium. It is not currently clear what those fiscal impacts will be. However, part of the goals of this transition is to ensure that work being performed matches the position.

10. **Expected Outcome:** A CAP program that aligns roles, responsibilities, and direction to ensure effective standards and practice for public defense in Oregon.

ADDITIONAL CAP DEVELOPMENT INFORMATION

Phase 1: October 2023 – January 2024

During this time the CAP team will evaluate work currently being done by attorneys in the Trial Support & Development. For example, we currently have an attorney managing complaints. This entails receiving emails, letters and documents from the complainant scanning and arrange them chronologically in a pdf in a database by complaint number. In addition, these complaints require a response and ongoing communication, most of which could be completed by a non-attorney. Review and update existing policies and procedures. Develop new processes and policies as needed. Improve data integrity by creating policies, establishing workflows, creating quality assurance processes, and coordinating with information technology (IT) on database enhancements. Once work has been clearly identified begin transitioning work to non-attorney staff. Develop escalation protocols to ensure that issues needing attorney attention appropriately reassigned.

Phase 2: February – April 2024

Begin transition into the CAP program initiative. Trial Support & Development attorneys will develop curriculum for training, develop certification criteria that meet best practices, set criteria for in court audits and mentoring programs for new attorneys. Ensure that every staff member is an updated position descriptions and understands expectations. Regular manager/employee check-in will be required. Review, revise, and develop new agency KPMs to encompass new work and keep the agency accountable.

Phase 3: May – July 2024

Once the framework is built and approved, all current attorneys in the Trial Support & Development will be responsible for delivery of training, auditing attorneys, ensuring compliance to standards and practices. The agency will continue policy and process

improvements. Evaluate potential gaps in staffing and develop budget requests to address during the 2025 Legislative Session.

Related Projects

The agency undergoing a major transformation and much of this work relates directly to the CAP work outlined above. Agency leadership is in the process of developing a new organization chart, staff are being reassigned to tasks that better meet the skills they possess. Two pilot offices are being developed and attorneys are being hired allowing the agency to deliver public defense services directly to those in need. Agency staff are being offered leadership and coaching opportunities.

Additionally, OPDS is hiring a consultant to assist with development of a strategic plan. A well thought out strategic plan will lead to a successful CAP program.

KEY PERFORMANCE MEASURES (KPMs)

SEPTEMBER 2023 – KPMs

See the [2023 KPM](#) report for additional information.

KPM #1 Appellate Case Processing – Median number of days to file opening brief.

The Appellate Division continued to make progress toward its goal during the 2022-23 fiscal year. The ability to meet and exceed the goal correlates positively to the number of experienced attorneys and negatively to the number of cases and the complexity of the cases referred. Attracting and retaining attorneys affect progress toward this goal.

KPM #2 Customer Service – Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent".

The agency did not complete the Customer Service Survey for 2023. The agency has continued to engage providers through stakeholder engagement in relation to: Agency contracts for 2023-2025

biennium, creation of policies to be transparent with our processes and our funding allocation methods. The agency experienced significant leadership change from January 2021 to December 2022 including four executive directors and the dissolution and reconstituting of the commission in August 2022. The agency's current Executive Director was hired in November 2022. In addition to leadership changes the agency also experienced many internal changes with reference to the contracting model, the external communication with our providers, working with Commission, and the increased focus on the agency with the Legislature during the 2023 session. These significant disruptions would indicate a continued downward trajectory towards lower numbers for the agency in all categories had the survey been initiated.

Best Practices for Boards and Commissions – Percentage of total best practices met by the Commission

The Commission has not completed a self-assessment for compliance with the Department of Administrative Services (DAS) best practices for boards and commissions. This current commission was constituted in August 2022, following the Chief Justice’s dissolution of the prior commission. Since then, the commissioners have dedicated significant time to addressing and responding to the number of persons without counsel throughout Oregon. But the commission had not been in their role for a year at the time of the KPM reporting period. Thereafter, SB 377 (2023) was enacted, which calls for a new commission to be named by November 1, 2023, with the new commission assuming their positions on January 1, 2024.

Trial Level Representation – During the term of the OPDS contract, percent of attorneys who obtain at least 12 hours per year of continuing legal education credit in the area(s) of law in which they provide public defense representation.

There was no survey conducted during this reporting period. There has been extensive change within the commission and the agency, and this key performance measure was not brought forward. The agency is currently in the process of creating a formalized plan for moving forward with agency restructuring and modernization which will influence KPMs including this one.

The agency continues to be involved in extensive planning exercise, to include how it fits within the overall statewide Public Safety conversation. There is ongoing daily work with many of the team at OPDS and OJD around the unrepresented persons crisis. This work has taken a priority to ensure we are working diligently to address the unrepresented persons crisis.

Parent Child Representation Program (PCRP) – Percent of PCRP attorneys who report spending approximately 1/3 of their time meeting with court appointed clients in cases which the attorney represents a parent or child with decision making capacity.

This KPM separates representation of clients with decision-making capacity from representation of clients with diminished capacity (typically young children). However, data gathered by PCRP does not distinguish based on decision-making capacity.

This measure analyzes attorney performance in the ten counties in which the PCRP has been implemented: ’s initial five implementation counties: Linn and Yamhill (2014), Columbia County (2016); Coos and Lincoln Counties (2018); Multnomah County (2020); and Benton, Clatsop, Douglas, and Polk Counties (2021). As with earlier KPM reports, there has been a continued decline in this measure. The lower rate of attorneys who report meeting the one-third target may be impacted by: an increase in the number of jurisdictions and attorneys participating in the PCRP; changes to how attorneys report the time spent on various aspects of representation that were implemented in January 2021; turnover in agency staff that support the PCRP; a lack of

sufficient training on reporting; and a lack of clarity regarding the methodology used previously in reporting on this measure.

KPM LIMITATIONS/PLANS TO IMPROVE

Over the last several years that agency has experienced multiple changes in leadership, this has led to a loss of focus on KPMs. With the passage of SB 337 (2023) and the legislature's direction to restructure the agency there is an opportunity for developing KPMs that address the current issues impacting public defense delivery in Oregon. The development of a new strategic plan will assist in identifying new KPMs.