

**Benton & Franklin Counties
Office of Public Defense
2014 Annual Report**

Benton County Operations

As the Public Defense Manager for Benton and Franklin Counties, I am proud to present the 2014 Annual report for our Benton County operations. This report recaps many of the highlights of our operations in 2014 including a year-end financial snapshot, and also summarizes our key achievements including achievements that fulfilled strategic goals set at the beginning of 2014.

A Strategic Plan for 2015 is being published simultaneously to this report. I encourage you to review that plan if you are interested in what this office plans to accomplish in 2015 and how these goals align with our stated Mission and Values.

In 2014, we made great strides in advancing our Mission and Values, which are stated below, and we will continue to do the same in 2015.

Very truly yours,

Eric Hsu

Eric Hsu, Attorney at Law
Public Defense Manager
Benton & Franklin Counties

Benton & Franklin Counties Office of Public Defense
7122 W Okanogan Pl, Bldg A
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Mission Statement

The Mission of the Benton & Franklin Counties Office of Public Defense is to provide quality, cost-effective, legal representation to indigent and other qualified persons charged with criminal offenses, or otherwise facing incarceration or loss of liberty interest, so as to protect their Constitutional and other legal rights, educate them about the criminal justice system, and champion the interests of justice. The Benton & Franklin Counties Office of Public Defense will always be mindful of the fact that the resources that enable it to advance its Mission are entrusted to it by the taxpayers of Benton & Franklin Counties, and as such it will constantly strive to improve the efficiency and effectiveness of its team, of system which it manages, and of systems of which it is a part of, so as to always be a good steward of such resources.

Values

In order to advance its Mission, all Benton & Franklin Counties Office of Public Defense staff and contractors share the following Values.

A	Teamwork	We are constantly seeking out and developing inter-office and intra-office synergistic relationships through which to accomplish shared goals and create win-win outcomes.
B	Effectiveness & Efficiency	We are always choice-driven and introspective so as to maximize effectiveness (do that which has the most effect on advancing the Mission) and efficiency (while consuming the least amount of resources)
C	Quality	We take pride in quality work product in all aspects of what we do.
D	Cost-Effectiveness	We recognize the fiduciary duty we owe to the taxpayers who provide the resources by which we can advance our Mission and always strive to maximize cost-effectiveness without jeopardizing quality.
E	Compassion & Fairness	We recognize that all members of the public with whom we interact and for whom we provide services are fellow community members and citizens and we will treat them with respect, compassion, and fairness.
F	Effective Risk Management	We will always be mindful of the liability related interests of Benton & Franklin Counties and constantly seek to minimize the exposure of the Counties to liability risk.

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G**Continuous Improvement**

We recognize and embrace the dynamic nature of many factors that affect our ability to advance our Mission and as such, constantly seek out, and take action on, ways to improve every aspect of our operations. We will never settle for “good enough” or accept that the “way it has always been done” is necessarily the best way to continue to do it.

OPERATIONAL UPDATE

This next portion of the report provides a recap of Public Defense operations in Benton County including **caseloads, staffing and other updates.**

District Court Operations

Summary

This office provides public defense services for all criminal cases that are pending in Benton County District Court. As of the end of 2014, the defender staffing in District Court was as follows:

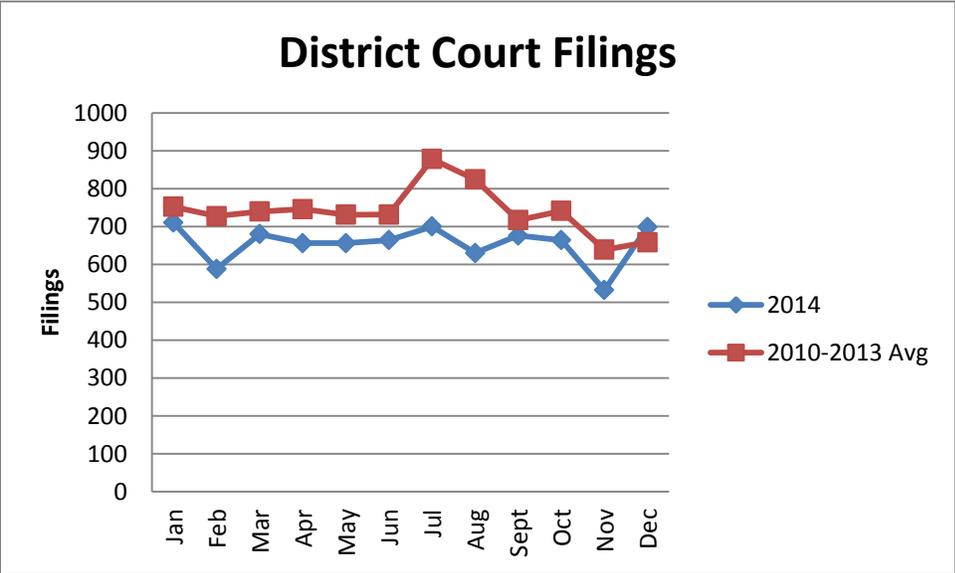
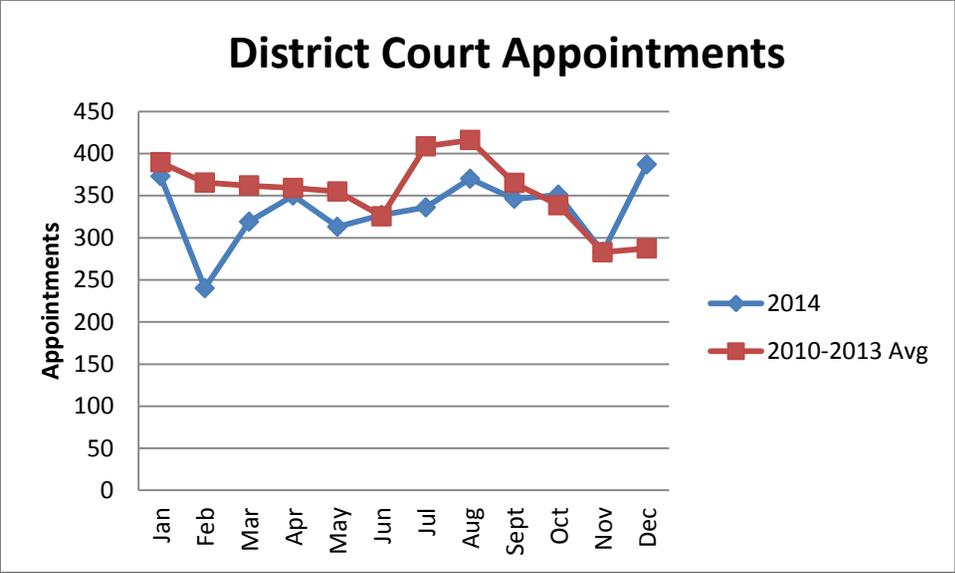
- **3 attorneys (contractors)** – provisional representation at all in-custody initial appearances including felony “72 hour hold” matters on for initial appearance in District Court¹.
- **1 attorney (contractor)** – all probation violation and fail to pay fine dockets.
- **8 contract attorneys and 1 staff attorneys** – all pre-trial criminal cases with criminal charges².
- **2 attorneys (contractors)** – conflict cases and cases in excess of cumulative system caseload caps (these 2 contract attorneys are only paid by the case with no minimum compensation level)

2014 Operational Highlights

¹ Because of the felony related responsibilities of these attorneys, 33% of their funding is provided out of a budget line item dedicated to Superior Court defense services.

² Staffing levels were lower than usual at the end of 2014 both because of out-going contract defenders and a promotion of a Staff Defender to the Benton County Superior Court Defense Unit.

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- While caseloads for much of the year were below recent historical averages, a spike in caseload (particularly appointments) was seen at the end of the year. Anecdotally, it is understood that this spike may have been due to hiring by Benton County law enforcement agencies almost across the board, to bring their numbers back up to authorized strength. Since this would be a persistent factor, this trend of increased cases is expected to continue into 2015 and in fact is expected to intensify as Benton County law enforcement agencies start hiring even additional numbers using Benton County Public Safety Tax Measure revenues.
- Another noticeable trend was the change in the percentage of cases filed that were appointed to counsel. As reported last year, there had been a downward

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trend in this measure, with 2013 ending the year with an average of 43.8% of filed cases appointed to public defense counsel. Interestingly, 2014 reversed this trend sharply to end the year with 50.9% of filed cases being appointed to public defense counsel. Since District Court conducts screenings and determines eligibility for public defense counsel, it is unclear to OPD why there was such an increase in rate of appointment (+16.2%).

- **Staffing report**

- While not taking place in 2014, it is noteworthy to mention that Sr. Staff Defender Alex Sheridan, who has been with OPD for almost 6 years, has been instrumental in helping to shape the office and has also served in supervisory capacities, has unfortunately indicated her desire to resign from employment as of the end of May, 2015. Fortunately, as of the writing of this report, an offer of employment has been extended and accepted and Eric Scott will be starting with the office April 20, 2015 with the intent to take over much of Ms. Sheridan's duties. Between Mr. Scott's start date and Ms. Sheridan's end date, she and I will be working on training Mr. Scott to get him ready to take over both a Superior Court caseload and much of Ms. Sheridan's supervisory duties.
- Also not taking place in 2014 but noteworthy is the departure of Staff Defender Deric Orr (who had been assigned to the District Court defense unit), who left OPD to join the firm of Mendoza & Johnson, P.S. Mr. Orr had been with OPD for over 1 year and had been expanding his role with the office to serve as the defender on the Bi-County Adult Drug Court and had a track to be promoted to Superior Court within another year or so. Fortunately, as of the writing of this report, an offer of employment has been extended and accepted and Sarah McFadden will be starting with the office April 27, 2015 to replace Mr. Orr in the District Court defense unit).
- As indicated earlier, there has been a substantial amount of staffing changes amongst Staff Defenders. There was a similar amount of movement amongst contract defenders as well.

The following contract defenders remained on contract as of the end of 2014

Monthly Contracts³:

- Stacey McKinley
- Adrienne Farabee
- Dawn Hickman
- Trinity Orosco
- Raymond Hui
- Scott Naccarato

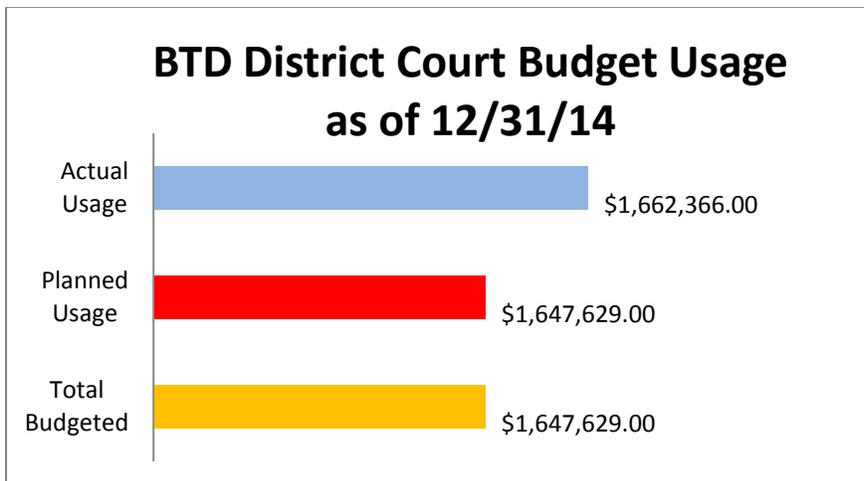
³ Three monthly contract holders had been awarded contracts in 2012 (Mark Cano, Caleb DiPeso and Gary Metro) so their respective contracts did not expire in 2013 as with the remaining contract holders.

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- Mia Mendoza
- Alexis Rado
- Elisa Riley (new contractor starting November 2014)
- Benjamin Riley (new contractor starting November 2014)
- Brandon Pang (new contractor starting November 2014)
- Overflow/Conflict Contracts⁴
 - Doug McKinley (converted to monthly contract starting February 1, 2015)
 - Danielle Purcell
 - Laura Ashley (new contractor starting January 1, 2015)
- The following were out-going contract defenders as of the end of 2014
 - Gary Metro
 - Caleb DiPeso
 - Joshua Lilly

District Court Financial Update

As shown in the biennial end budget usage chart, expenditures for District Court operations finished the biennium slightly over-budget (just 0.89%). This was expected and, in fact, was lower than anticipated given the significantly higher-than-usual caseloads in the last months of 2014. Furthermore, on an overall budget basis, this slight budget overrun was significantly eclipsed by the significant surplus in Superior Court Operations.



⁴ Overflow/Conflict contract holders are only appointed cases on an “as needed” basis and are not guaranteed any minimum caseload level or compensation.

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Superior Court Operations

Summary

This office provides public defense services for all Superior Court criminal cases as well as contempt cases that may result in incarceration. As of the end of 2014, the defender staffing in Benton County Superior Court was as follows:

- **8 contract defenders and 2 staff defenders** - all pre-trial criminal cases pertaining to new criminal charges⁵
- **1 contract attorney (reduced rate)** – Benton/Franklin Drug Court – shared between Benton and Franklin Counties
- **1 contract attorney (reduced rate)** – Child support contempt cases
- **1 contract attorney (reduced rate)** – Legal financial obligation contempt cases
- **1 contract attorney (reduced rate)** – Involuntary Treatment Act (“ITA”) defense – shared between Benton and Franklin Counties

2014 Operational Highlights

CASELOAD:

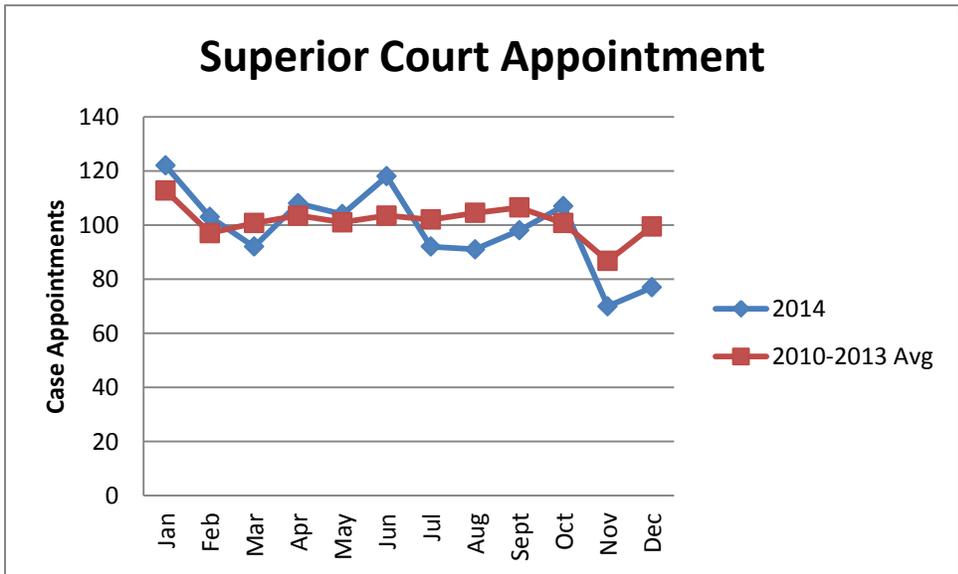
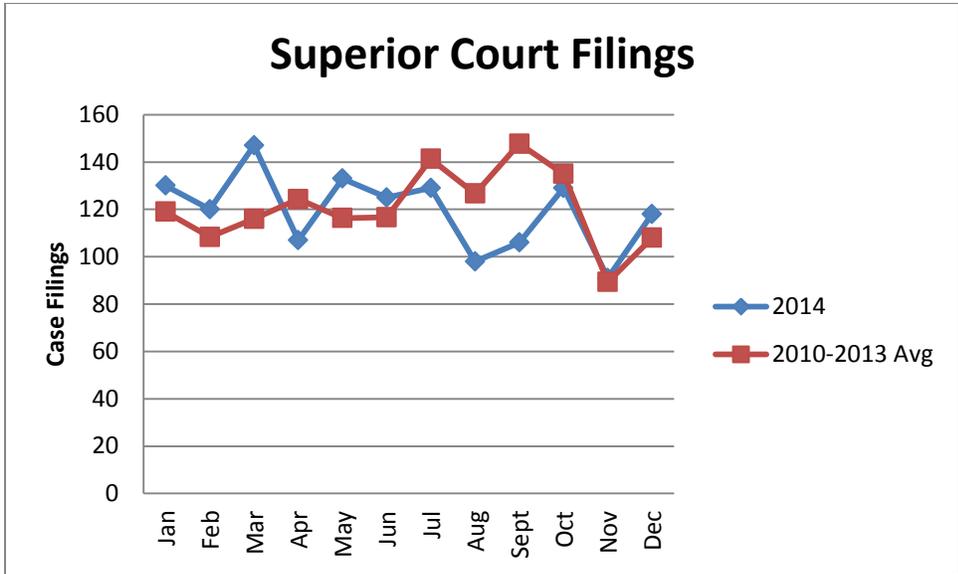
- Overall, the Superior Court caseload in 2014 did not exhibit any unusual trend when compared to recent years. However, when considered on a Wednesday docket vs. Thursday docket basis⁶ there was a significant trend of large volumes of cases being filed on the Wednesday docket as compared to the Thursday docket. This trend, when combined with the fact that an additional Superior Court prosecutor was added to the Benton County Prosecutor’s Office in 2014 (bringing their total from 9 to 10), resulted in a caseload imbalance that strained the ability of OPD to adequately provide public defenders for cases filed on the Wednesday docket. The promotion of Staff Defender Mike Vander Sys earlier than initially planned (from District Court to Superior Court) evened out the staffing between defenders and prosecutors on the Wednesday docket and also provided the means for OPD to finish the year within caseload limits.

⁵ Staffing was increased in light of the staffing change in the Prosecutor’s Office that brought Deputy Prosecutor levels to five per docket day (criminal pre-trial dockets are held both Wednesday and Thursday in Superior Court).

⁶ Superior Court criminal pre-trial dockets are held on both Wednesdays and Thursdays so cases are divided between these two days depending on which prosecutor filed the case (since prosecutors are assigned to either the Wednesday or Thursday docket on a long term basis).

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- 2015 staffing, with one Staff Defender and four contract defenders for each of the Wednesday and Thursday dockets (evenly matching the five Superior Court prosecutors assigned to each docket) is, at this time at least, anticipated to be adequate to handle the caseload in 2015.



Hourly case report⁷

Fortunately, homicide cases in 2014 were much lower than the previous year. The

⁷ Only homicide cases (defined as only including Aggravated Murder, Murder in the First or Second Degree, Manslaughter, Homicide by Abuse, Homicide by Controlled Substance, and vehicular homicide) and persistent offender crimes (three strike violent felony and 2 strike sexual abuse felony cases that are qualified for a life sentence without parole) qualify for hourly billing.

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following is a report of Benton County homicide and other hourly cases defended by OPD in 2014.

Case Name	Charge	Offense Date	Assignment	Status
Jacobsen	Manslaughter	2011	Contractor	1 st trial mistrial Re-trial in 2015 (conflict counsel assigned)
Devore	First Degree Murder	Late 2014	Contractor	Pending
Miranda	Aggravated First Degree Murder	Mid 2014	Contractor	Pending (death penalty counsel has been assigned)

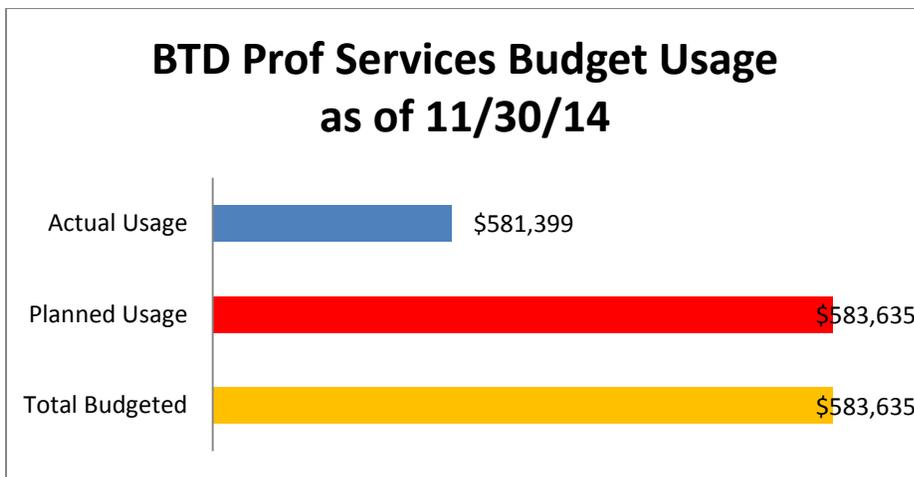
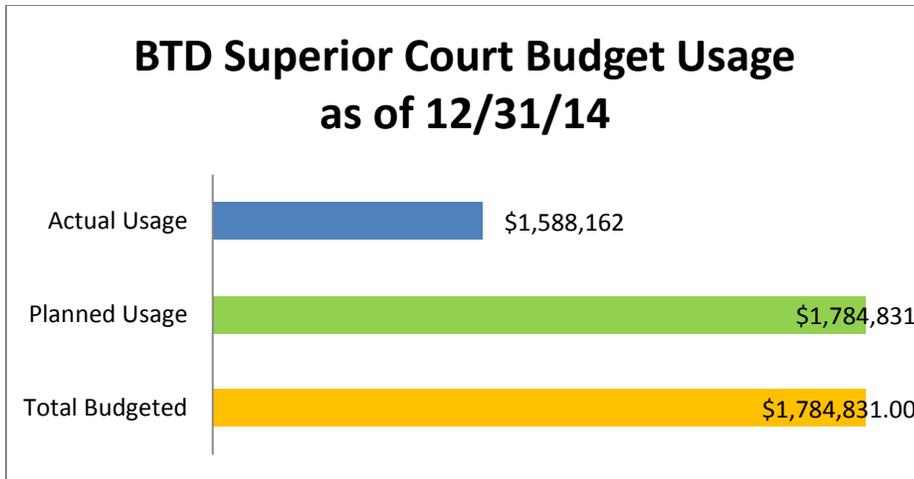
Staffing report

- 2014 was a mid-contract-term year. No contract defenders left their contracts and no new contract defenders were added.
- Staff Defender Michael Vander Sys was promoted from the District Court Defense Unit to the Superior Court Defense Unit earlier than anticipated because of both his proven abilities and a shortfall in staffing at the end of 2014 (due to the fact that the overall caseload for the last two months of the year was both higher than anticipated and above historical trends for that period).

Superior Court Financial Update

A change in compensation from contracts that paid a fixed compensation for “any number of cases up to a maximum caseload,”⁸ to contracts that paid on a “per case-equivalent” basis seems to have paid off significantly in cost savings. Despite an increase in case filings and appointments in Superior Court Operations (as shown in the following financial charts,) and an anticipation of a budget deficit in the Miscellaneous Professional Services line item, a significant budget surplus was realized as of end of biennium for both of the line items supporting these operations.

⁸ This was problematic and not cost effective since the maximum contract caseloads were virtually never reached.
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Juvenile Justice Operations

At the request of Benton/Franklin Superior Court, this office has entered into an agreement with Benton/Franklin Juvenile Justice to move toward taking over management of Juvenile public defense contracts. This will take place in two stages:

1. **(2013-14)** Take over all oversight of investigator/expert/vendor funding approval and claim approval. *Juvenile Justice Staff will retain responsibility for actual disbursement of funds (for investigator/expert/vendors), monthly caseload management and verification, and contract compliance.*
2. **(2015)** Take over all oversight of investigator/expert/vendor funding approval, claim approval and disbursement of funds (from Juvenile Justice line items); manage contract compliance. *Monthly caseload management and verification will retain responsibility for monthly caseload management and verification.*

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**No financial information is available for Juvenile Justice Operations.
That information is available directly from the Benton & Franklin
County Superior Court, Juvenile Division.**

GOAL ACCOUNTABILITY

A number of office-wide Strategic Goals were presented last year in our 2014 Strategic Plan. This next portion provides a re-cap of these goals and an update as to progress toward the metrics or deliverables indicated for each.

Goal #1 – Leadership Scorecard Annually

Summary: During the inaugural **Leadership Scorecard** exercise (conducted in March, 2014) the responses, while not as many as would be nice to have, were quite honest and constructive. I am committed to undertaking the **Leadership Scorecard** process at the beginning of every year and incorporating the top suggestions for improvement into the Strategic Plan for the year. I am hopeful that as everyone sees the benefits of this process and also becomes comfortable with the anonymity of the responses, the number of participants will grow and it will become all that much more effective of an exercise.

Deliverables for Goal #1

1. Conduct a **Leadership Scorecard** exercise annually, soliciting anonymous responses and suggestions for improvement.
2. Incorporate top suggestions for improvement into Strategic Plan for the year.

Goal #2 Accomplished

A **Leadership Scorecard** survey form was sent out and results received April 27, 2015. The top suggestions have been incorporated into the 2015 Strategy Plan.

Goal #2 – Improve Funding Request System Response

Summary: This office retains oversight over the expenditure of funds for investigators, experts and other necessary services/costs for the defense of public defense cases. In

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compliance with applicable court law and pursuant to office policy, pre-approval of expenses, and assignment of a unique “tracking number” is necessary before any investigator, expert or other service professional can be retained, or funds otherwise expended. The main suggestion in this regard from my **Leadership Scorecard** survey in early 2014 is to improve the turnaround time for these pre-approvals.

Deliverables for Goal #2

1. Effective immediately, set aside time every day to approve funding requests.
2. For the remainder of 2014, respond to 100% of properly submitted funding requests within 72 hours.
3. Review the funding preapproval request policy, republish to public defenders and contract investigators and remind them of what is necessary in requests so that fewer requests need to be delayed because of a need for clarification or additional information. **By March 31, 2014.**
4. Incorporate a short training session about funding pre-approval and accounts payable/compensation processes to further familiarize public defenders and contract investigators with the overall system lifecycle from request to payment. **To be incorporated into April 11, 2014 CLE seminar.**

Goal #2 Accomplished in 2014

1. It ended up not being feasible to approve funding requests every single day. Instead, funding requests were reviewed for approval at least every two days if not three days a week.
2. While the number of requests approved within 72 hours was probably not at 100%, it is estimated that it is definitely in the 95%+ range.
3. Pre-approve request policies were republished a number of times to defenders and also mentioned at training CLEs.
4. As planned, the April 11, 2014 CLE included training on pre-approval and accounts payable/compensation processes.

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Goal #3 – Review Possibility of More Formalized Mentoring

Summary: The second significant improvement opportunity that came from the **Leadership Scorecard** exercise was the implementation of a more formalized mentorship program.

Deliverables for Goal #3

1. Survey public defenders to determine who is a) interested in being mentored; b) interested in serving as a mentor. **By April 30, 2014**
2. If program appears feasible, facilitate the matching of mentors to mentees. **By June 30, 2014**

Goal #3 Accomplished in 2014

A number of new contract defenders, while possessing desirable aptitude and attitude conducive to public defense work, did not have the requisite skill level yet. These contract defenders were paired up with formal mentors to get their skill level up to requisite levels. Other than these formal pairings of mentors and mentees, no progress was made on the mentorship program because of a prioritization of goals in 2014 and workload considerations.

Goal #4 – Contractor Compliance Templates and Training

Summary: Of the roles this office plays with regard to contracts, enforcement of contract compliance is probably the most important and most mission critical as far as risk management goes. The purpose of this goal is to make contract compliance from the contractor's perspective more "turn-key" and therefore encourage and facilitate better voluntary compliance without need for attention by our Office Manager.

Deliverables for Goal #4

1. Develop a template of key compliance provisions applicable to each contractor with due dates for each. **Already completed.**
2. Develop easy to use fillable Adobe Professional forms that incorporate one-click submission into Adobe cloud-computing based Forms Central. This will enable better tracking of incoming forms and easy download and importing into a spreadsheet. **By April 1, 2014.**

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3. Conduct mandatory orientation/training for all contractors on use of the compliance template and new forms, and remind them of contract compliance process, deadlines and consequences of failure of contract compliance (potential contract termination or unfavorable consideration in future Requests for Qualifications). *This may be potentially done by video as well as incorporated into a CLE training seminar.* **By June 1, 2014**

Goal #4 Accomplished in 2014

1. A template of key compliance provisions including due dates has already been created and published to contractors through the OPD website and training seminars conducted in 2014.
2. This deliverable was modified because Adobe Forms Central was discontinued and, while similar forms delivery functionality is available through Sharepoint, Benton County has not rolled out IT-supported county-wide implementation of Sharepoint yet. Instead, all commonly used contract compliance forms have been converted to Adobe Acrobat fillable format, are readily available through the OPD website, and are now primarily received by OPD electronically through email attachment to a dedicated email address.
3. The required use of the new forms was publicized to OPD contract defenders both through emails sent out with full instructions on their use, and through the training seminar for public defenders held in October, 2014.

Goal #5 – Standardize all Forms on Adobe Acrobat Fillable

Summary: An unavoidable part of OPD's role in providing public defense services is the use of forms. While much work has already been done in recent years to convert all paper forms to electronic forms, there is still some lack of uniformity among forms and some duplication of efforts or unnecessary steps in the transfer of information from these forms to OPD usable formats. Conversion of all the office's forms into a uniform, Adobe Acrobat format will substantially improve the system both from the user interface standpoint (for contractors etc) and for OPD staff needing to access the information. Eventually, the potential use of electronic signatures (also built into Adobe Acrobat Professional) may further streamline this process.

Deliverables for Goal #5

1. Convert all office forms into Adobe Acrobat fillable format. **By May 31, 2014**

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2. Determine which forms should support direct submission to forms central (for instant conversion into excel spreadsheets) and build functionality for those forms. **By June 30, 2014**
3. Determine feasibility of digital signatures on key forms and develop proposal. **By end of year**

Goal #5 Accomplished in 2014

1. All commonly used contract compliance forms have been converted to Adobe Acrobat fillable format.
2. This deliverable has been delayed pending the full roll-out of IT-Supported Microsoft Sharepoint on a county-wide basis. Both since Forms Central has been discontinued, and since Sharepoint will undoubtedly become a better platform for direct submission/receipt of forms, this goal deliverable has been modified and delayed.
3. This deliverable has also been delayed pending the full roll-out of Microsoft Sharepoint.

Goal #6 – Revisit Necessary Performance Metrics for Monitoring

Summary: In 2013, the case of *Wilbur et al v. City of Mt. Vernon et al* was decided by the US District Court for the District of Western Washington. This case pertained to questionable public defense practices utilized by the cities of Mt. Vernon and Burlington and ultimately resulted in a very damning decision. While the practices in these cities were well outside the bounds of reasonable public defense practices (one of them was the practice of assigning close to 2,000 cases a year each to their public defenders) the court did engage in a detailed analysis of a number of factors that are at least partially dispositive with regard to the evaluation of the sufficiency of any given public defense system.

Since it is always arguably best to learn from the mistakes of others, and since this office is committed constant self-evaluation and improvement, we will be engaging in an extensive evaluation of this case and will plan to implement the monitoring and reporting of performance measures deemed by the federal court in *Wilbur* to be important.

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Deliverables for Goal #6

1. Attend 2014 *Justice Initiative* conference in Seattle, WA to hear presentation from plaintiff's counsel on *Wilbur* case and appurtenant discussion. **Already done.**
2. Discuss the *Wilbur* case at April 11, 2014 In-House CLE.
3. Determine which performance metrics are important to monitor as decided by the federal court in *Wilbur*, devise system of measuring, reporting and publishing the performance metrics. **By June 30, 2014**

Goal #6 Accomplished in 2014

2. Training materials based on the *Wilbur* case were presented at both the April, 2014 and October, 2014 training seminars.
3. A set of performance metrics, deemed by the court opinion in *Wilbur* to be indicative of a well-functioning and effective public defense system, have been identified. As it turns out, all but a handful of data-types are already conducive to easy collection by OPD without additional reporting requirements by contract defenders. These data-types, as well as proposed additional reporting (if any) was presented at the most recent March, 2015 training seminar. Additional research is being conducted to determine whether the remaining data-types can also be collected by OPD without requiring them to be reported by contract defenders (which would be ideal for a number of reasons including accuracy) and the collection of this data is planned to start by mid-year 2015.

Goal #7 – At Least 15 CLE Hours including Trial Advocacy Clinic

Summary: As stated in our Mission Statement, quality public defense is the highest priority in this office. Of course training and professional development is one of the most critical ingredients that contribute to the quality of the representation provided by our defenders.

Since 2009, this office has sponsored in-house Continuing Legal Education (“CLE”) programs that are free both to public defender participants and to the Counties. This has been accomplished both through a fee waiver with the Washington State Bar Association, as well as the use of mostly local talent (attorneys, experts and service providers) who have been willing to volunteer their time to help improve the professional competency of our public defenders.

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For 2014, OPD's continuing commitment was to continue the sponsorship of class-leading CLE training and offer at least 15 hours of CLE credits (far more than the 7 hours mandated by law and public defense contracts) in this program.

Deliverables for Goal #7

1. Continue sponsoring quarterly CLE training seminars on topics relevant to public defense practice. **By end of the year**
2. Sponsor a Trial Advocacy Clinic offering 7 CLE credits of classroom and simulated trial work for attorneys with from 0-3 years of defense experience. **By September 1, 2014**
3. Deliver a total of 15 or more CLE credits through this training program. **By the end of the year**

Goal #7 Accomplished in 2015

1. CLE seminars were offered in April, July, October and December, 2014.
2. A Trial Advocacy Clinic offering 7.5 CLE credits of classroom and simulated trial work was provided to select public defenders in December, 2014.
3. A total of 21 CLE credits was provided through this training program.

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