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BENTON COUNTY OFFICE OF PUBLIC DEFENSE

2016 STRATEGIC PLAN

“Quality Representation – Fiscal Responsibility”

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INTRODUCTION

Introduction

Thank you for your interest in the Benton County Office of Public Defense (“BCOPD”). Serving the people of Benton County, Washington, the BCOPD is a professional public defense agency charged with providing legally mandated public defense counsel to all people appearing before the District and Superior Courts of Benton County. Most commonly these are criminal cases but BCOPD also provides public defense services for other proceedings including civil contempt, Involuntary Treatment Act commitments, dependency and parental rights termination cases.

STRATEGIC CHALLENGES

Looking forward to the rest of 2016, the biggest issues facing this office are anticipated to be:

- Caseload increases especially in light of significant law enforcement hiring driven by the [Benton County Public Safety Sales Tax](#)
- The increasing need to monitor, report, and promote quality representation through use of objective data
- The need for systematic changes in Juvenile public defense services as those services are completely absorbed into BCOPD

THIS REPORT

This report details specific and measurable goals that BCOPD will undertake in 2016 in order to continue to advance its Mission in light of the Strategic Challenges identified above. As usual, at the beginning of 2017, an Annual Report will be published detailing how well BCOPD met its stated goals.

INTRODUCTION

I appreciate the trust the citizens of Benton County and our clients have placed in me and my office and am committed to discharging the legal duties of this office with the utmost in efficiency and fiscal responsibility. If you ever have questions or comments about how this office is managed or about the performance of any of its public defenders, I welcome your feedback at any time by email or phone.



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MISSION STATEMENT AND VALUES

Mission Statement and Values

MISSION STATEMENT

The Mission of the Benton County Office of Public Defense is to provide quality public defense representation with fiscal responsibility.

VALUES

In order to advance its Mission, all Benton County 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 County and constantly seek to minimize the exposure of the Counties to liability risk.
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

MISSION STATEMENT AND VALUES



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.

2016 MAJOR TRENDS

A number of trends are anticipated to have a significant impact on Benton County public defense operations in 2016. The effects of most of these trends are hard to predict but they will all be monitored closely.



MORE CASES

The number of cases handled by Benton County public defenders is expected to increase noticeably in part because of the county-wide hiring of police officers with funding from the Benton County Public Safety Sales Tax.

BCOPD anticipates needing to defend well over 6,000 cases in 2016



EMPHASIS ON LFOS

The legal financial obligations ("LFOS") imposed on defendants on criminal cases will continue to be a focus of local and state-wide attention. This means a need to have more and better training and guidelines for defenders on LFO related issues.

LFO training and guidelines will be part of the 2016 Strategic Plan Goals



MENTAL HEALTH

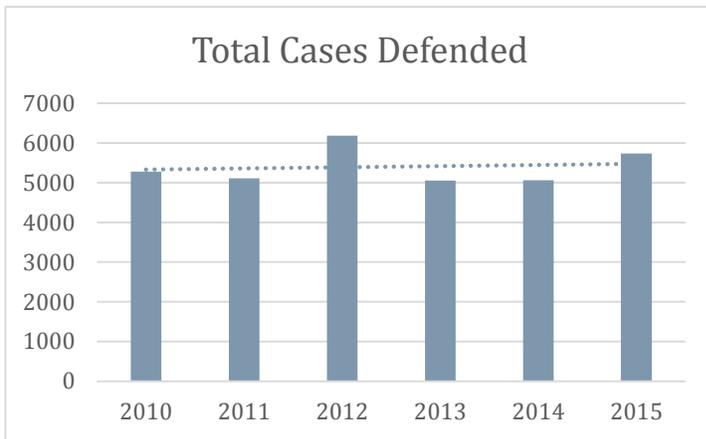
The number of criminal public defense cases that have a mental health component has been on the rise for the past few years and this trend is expected to continue in 2016. More training and better access to experts are two needs when it comes to mental health.

2016 NUMBERS

2016 Numbers

CASELOAD

The caseload for 2016 has been difficult to project since the effect of over 20 additional law enforcement officers hired through the Benton County Public Safety Tax is as yet unknown. Based on historic data as



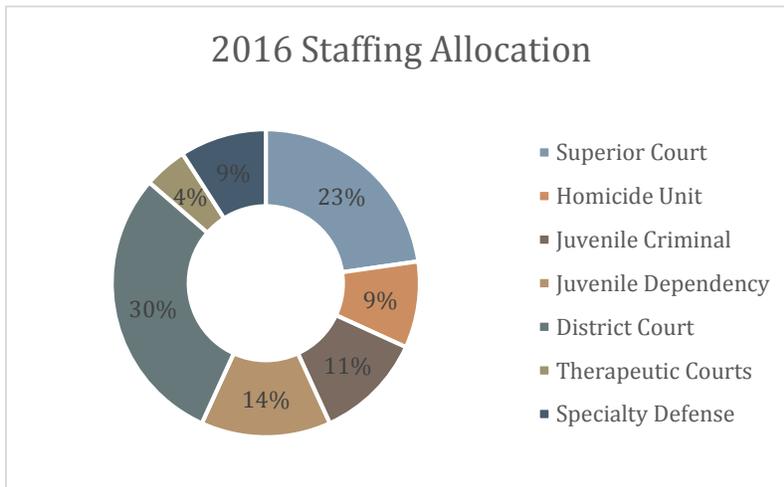
shown in Figure 1, the caseload is anticipated to be well above 6,000 and may even be over 6,500 if more law enforcement officers translates into more criminal case filings.

Caseload trends will be closely monitored in 2016. If the annual caseload ends up being much over 6,000, then additional contract resources will be needed.

Figure 1- Total Cases Defended

STAFFING

As of the beginning of 2016, BCOPD had over **40 contract defenders** and **3 staff defenders**, allocated across its operational units as shown in Figure 2.



The large number of contracts and operational responsibilities of BCOPD is a driving factor behind the planned development of Public Defense Plans in 2016 (a listed Strategic Goal).

Figure 2 - Staffing Allocation

GOAL #1 – DEVELOP PUBLIC DEFENSE PLANS

Goal #1 – Develop Public Defense Plans

SUMMARY

Develop detailed Public Defense Plans (“PDPs”) for each area of public defense operations with the intent to: a) match resources closely with anticipated needs; b) clearly demonstrate compliance with State Standards for Indigent Defense (“SID”); c) enhance fiscal responsibility; and d) ensure seamless availability of legally mandated services.

DELIVERABLES

1. Divide overall public defense operations into individualized Defense Units based on type of services needed or cases handled (this includes, for example, the Homicide Defense Unit, Therapeutic Courts Unit etc). **By April 30, 2016**
2. Develop detailed PDPs for each Defense Unit. **By June 30, 2016** (in time for use in 2017-2018 biennial budget planning if necessary).

BACKGROUND

BCOPD is responsible for providing public defense services in Benton County District and Superior Court, including the Juvenile Division of the Superior Court. In addition to criminal defense cases, which represent the bulk of BCOPD’s services, public defenders are also assigned in civil matters whenever there is a risk of incarceration or civil commitment, or a risk of losing parental rights. This includes the following types of cases:

- Involuntary Treatment Act commitments
- Dependency and termination of parental rights cases
- Child Support Contempt
- Legal Financial Obligation (“LFO”) collection¹

BCOPD provides most of its legally mandated public defense services through the use of contracts with private attorneys (over 40 such contracts are in place as of the beginning of 2016). Almost all of these contracts have existed in a similar format (with minor changes to compensation and caseload but virtually no change in scope of services) for over eight years.

Significant changes have taken place over the last years including significant case decisions, state public defense standards, changes in contract structure in other parts of the state, and changes in types and quantities of local cases needing public defense counsel.

¹ Public defenders are only assigned when there is an imminent risk of jail as a sanction for failing to pay Legal Financial Obligations.

GOAL #1 – DEVELOP PUBLIC DEFENSE PLANS

The process of developing Public Defense Plans will serve as an opportunity to re-evaluate BCOPD’s operations from top to bottom to ensure that things aren’t just “being done the way it’s always been done.” Instead, every effort will be made to make sure that

WHY THIS IS IMPORTANT

The process of developing (and periodically reviewing) PDPs will ensure that Benton County’s public defense services meet standards set by court rule, statutes, and the constantly evolving landscape of public defense caselaw² while being cost effective, transparent, and responsible to the taxpayers of Benton County.

GOAL DETAILS

Every PDP will be carefully developed using a broad array of reliable sources of information and data to demonstrate the following:

1. **What** legal services Benton County is mandated to provide.
2. The **standards** for the mandated legal services are set by court rule, statutes and case-law.
3. What resources are **currently available** to provide the mandated legal services in a way that meets applicable standards.
4. The **most cost-effective way** to provide the mandated legal services in a way that meets applicable standards.

² For example, while not technically changing existing law, the case of *State v. Blazina* has significantly changed how courts and public defenders have to deal with the imposition and collection of certain legal financial obligations (“LFOs”).

GOAL #2 – PERFORMANCE STANDARDS MONITORING

Goal #2 – Performance Standards Monitoring

SUMMARY

Data-driven objection portions of Performance Standards Monitoring (Part 1), which were implemented in the end of 2015, will be refined and streamlined in 2016. The observation-driven subjective portions of these Standards (Part 2) will be implemented in 2016.

DELIVERABLES

1. Working with Staff Defenders, including Staff Defenders who will be promoted to supervisory duties (see Goal #3), develop a set of objective criteria by which to evaluate public defenders during in-court observation. **By May 15, 2016**
2. Develop a schedule of evaluations and assignment of evaluation roles (including Staff Defenders who will be promoted to supervisory duties) encompassing all public defense operations (including specialty and therapeutic dockets) such that each public defender will be evaluated at least once per quarter. **By June 30, 2016**
3. Develop a system to track visits of juvenile detention center detainees by their public defenders. This is the only performance metric that cannot be readily tracked at this time³. **By June 30, 2016**

BACKGROUND

Providing public defense services through mostly contract-defenders presents many unique challenges, one of which is the monitoring of the quality of legal representation. While BCOPD has a very well implemented and publicized client complaint process, complaints usually don't come about until defender performance is extremely poor and usually long after the fact. The high threshold and long delay leading up to client complaints means that considerable damage to client cases, and considerable exposure to ineffective assistance of counsel liability risk can be incurred in the meantime.

Performance Standards Monitoring is a two-pronged approach to monitoring public defender effectiveness combining data collection and in-court observation. This approach is designed to provide up-to-date management information on public defender performance, based on standardized criteria.

WHY THIS IS IMPORTANT

Public defender effectiveness is not only of paramount importance in the office, but it is one of the two very core components of BCOPD's mission statement of: Quality Representation and Fiscal Responsibility.

³ As part of its 2014 strategic goals, this office worked with the Benton County Jail to upgrade its "pen and paper"-based system of tracking visitors at the jail to a computer database-driven system. This has significantly improved the accuracy and availability of jail visit data at the jail. As of the time of the writing of this report, there is no system in place to track public defender visits to the juvenile detention center at all.

GOAL #2 – PERFORMANCE STANDARDS MONITORING

Ineffective public defender performance is also the singular largest source of liability for Benton County that can come from BCOPD operations. As a result, it is important both for risk mitigation and for public perception reasons, for public defender effectiveness to be gauged on a regular basis using performance benchmarks that are meaningful and relevant.

GOAL DETAILS

Part 1 data: To protect clients and the County from the risk of ineffective assistance of counsel claims, and pursuant to the 2014 and 2015 Strategic Plans, objective, data-driven portions of Performance Standards Monitoring have been fully implemented as of the end of 2015 (except for jail/detention visits by juvenile public defenders). This data-driven portion of Performance Standards Monitoring allows BCOPD to gauge the effectiveness of contract public defenders (and provide a redundant manner of evaluating staff defenders) by regular review of statistics that have a proven correlation with effective public defense representation.

Part 2 observation: Part 2 of Performance Standards Monitoring, to be fully implemented in 2016, will consist of regular court observations under a schedule that will ensure that every public defender will have his/her in-court performance reviewed and graded on a set of fixed criteria at least twice a year.

GOAL #3 – SUPERVISORY RESTRUCTURE AND TRAINING

Goal #3 – Supervisory Restructure and Training

SUMMARY

The remodel of BCOPD's new offices is slated for completion by the end of 2016 and with that, planned hiring with revenue from the Public Safety Sales Tax can begin. To maximize the effectiveness of the BCOPD team (including contractors) three supervisory positions will be created and filled with current staff members with a proven track record.

DELIVERABLES

1. Create position summaries, roles and expectations for three supervisory positions all of which report directly to the Public Defense Manager **by July 31, 2016:**
 - a. **District Court Supervisor** – responsible for supervision of District Court Unit operations including oversight of contract public defenders assigned to this Unit, but not including supervision of Staff Defenders assigned to District Court duties. *The District Court Supervisor will also carry a 90% Superior Court caseload.*
 - b. **Mentorship Supervisor** – responsible for supervising and mentoring Staff Defenders assigned to District Court duties and for managing the Mentorship Program for all new contract defenders in the District Court Unit. *The Mentorship Supervisor will also carry a 90% Superior Court caseload.*
 - c. **Office Manager** – responsible for supervising all support staff (position already exists but will be modified to account for the anticipated increase in support staff).
2. Put together a multiple-year training and professional development/growth program for each supervisory position so that they have the tools to lead and supervise in their respective areas and professional growth opportunities to keep them interested in their roles. **By Oct 31, 2016.**

BACKGROUND

BCOPD currently has three Staff Defenders and two support staff (though one is only 0.4 FTE). Using Public Safety Sales Tax funding, and with the completion of the anticipated office remodel, staffing has the potential to increase to four Staff Defenders⁴ and three FT support staff. To effectively manage this amount of staff and over 40 contract public defenders, it is imperative to have an effective system of supervisory delegation.

Currently, one position (the Senior Staff Defender position) has supervisory and mentorship oversight over all District Court operations including Staff Defender development. It has been quite apparent that this is too much supervisory responsibility to place on one person who is also handling a felony caseload.

⁴ The configuration of BCOPD's future office suite will accommodate up to five Staff Defenders.

GOAL #3 – SUPERVISORY RESTRUCTURE AND TRAINING

Therefore, in meeting this strategic goal, a split supervisory framework of two positions: District Court Supervisor and Mentorship Supervisor, will be used.

Significant training and development resources have already been provided for Denise Gerry, BCOPD's Office Manager. However, since her supervisory duties will increase to encompass supervision of unionized staff, special emphasis will be made in providing her with the tools to be successful with this unique type of supervision.

An added benefit of creating and supporting the supervisory positions is that it will provide significant professional growth opportunities for the staff filling these positions, which should hopefully result in greater professional fulfillment from their jobs.

WHY THIS IS IMPORTANT

Significantly increased oversight responsibilities over contract defenders is creating much greater administrative demands on BCOPD staff. At the same time, staff professional development and talent retention has, and always will be, a top priority. Promoting staff into supervisory positions as part of their professional growth plans, and providing them with training to be effective supervisors should simultaneously address the administrative needs of the office and create greater job satisfaction through more job fulfillment and a visible promotion track. Ideally this greater job satisfaction should assist with the retention of talent and branding of BCOPD as a desirable workplace.

GOAL #4 – DIGITAL EFFICIENCY INITIATIVES

Goal #4 – Digital Efficiency Initiatives

SUMMARY

This Goal will involve using digital resources to increase operational efficiency in a number of ways.

DELIVERABLES

1. Develop an ipad or other mobile data device-based means of inputting standardized public defender evaluation information obtained during in-court observation portions of Performance Standards Monitoring. **By September 30, 2016**
2. With the assistance of Benton County IT Services, continue to refine the digital data collection and reporting system for use with the data-driven portions of Performance Standards Monitoring (to organize and report data that is already being collected on a monthly basis). **By June 30, 2016**

BACKGROUND

BCOPD has engaged in a multi-year effort to maximize its use of digital technology to best leverage its staff resources to accomplish administrative tasks and communication roles. This has included website enhancements, use of a caseload management system, and building a comprehensive template library for commonly used forms. These latest initiatives continue this effort.

WHY THIS IS IMPORTANT

One of BCOPD's foundational commitments is that of fiscal accountability. With increased caseloads and administrative responsibilities (such as performance standards monitoring, training, and mentoring) the emphasis will always be on finding ways to "do more" with existing resources or even sometimes with reduced resources.

Maximizing the utilization of digital tools has been found to be one of the best ways to enhance fiscal accountability.

GOAL DETAILS

Currently, the Performance Standards Monitoring program uses data and information (including public defender court-observation evaluation information) from a variety of sources. The wide variety in sources and time-intensive manual entry of data is a drain on personnel resources and can make reporting this data and information unwieldy. This strategic goal will create a database-driven program for collecting and reporting Performance Standards Monitoring data and information. Every effort will be made to centralize the data, minimize unnecessary manual entry (especially any duplicative manual entry) and make reporting in a variety of formats quick and easy.

GOAL #5 - MENTORING PROGRAM AND CONTRACTING CRITERIA

Goal #5 - Mentoring Program and Contracting Criteria

SUMMARY

This Goal will establish a mentorship program for new District Court contract defenders to bolster talent retention and to create a more predictable track to the Superior Court or Juvenile Court units, and will also establish criteria and tools by which to consistently recruit District Court public defenders (both staff and contract) who have ultimate aspirations in Superior Court or Juvenile Court work.

DELIVERABLES

1. Working with the Mentorship Supervisor (see [Goal #3](#) for details), establish a mentorship program for District Court contract public defenders with defined roles, expectations and a promotion track to the Superior Court or Juvenile Court defense units. **By September 30, 2016**
2. Recruit Superior Court and Juvenile Court defenders with requisite amount of experience to serve as mentors for starting District Court contract public defenders. **By December 31, 2016**
3. Working with the District Court Supervisor and Mentorship Supervisor, establish recruitment criteria and tools in order to consistent recruit District Court public defenders (both staff and contract) with ultimate aspirations in Superior Court or Juvenile Court work. **By September 30, 2016**

BACKGROUND

Caseload increases and anticipated turnover in the Superior Court defense unit has underscored the need to have a reliable recruitment plan for felony-qualified contract and staff public defenders. Experiences with promoting from within to fill these slots have been quite successful whereas efforts to fill these slots with outside candidates have not been so successful. As such, the focus has now been shifted to our recruitment and mentorship practices in District Court to ensure that we always have a group of District Court defenders that are upwardly motivated and receiving the professional development to move into Superior Court (or juvenile court) if and when the need arises.

WHY THIS IS IMPORTANT

It has been increasingly difficult to recruit public defenders especially for contract positions and especially for Benton County Superior Court. This difficulty has come from state-wide caseload standards (that make it more difficult for contract public defenders to also maintain a private practice) as well as recruiting from competing public defense agencies in the region (including other tri-cities agencies, namely Pasco Municipal Court and now Franklin County). To address this problem it is important to have better mentorship and professional growth resources for public defenders and also to have a pre-defined growth and advancement track to keep an available pool of public defenders ready for the harder-to-fill Superior Court and Juvenile Court defense units (essentially treating the District Court unit like a “farm team”).

GOAL #6 - INFORMATION COORDINATION WITH INTERNAL CUSTOMERS

Goal #6 - Information Coordination with Internal Customers

SUMMARY

This goal involves developing strategies to improve coordination of information and workflow with other criminal justice stakeholders with whom BCOPD routinely works.

DELIVERABLES

1. Finalize a Memorandum of Understanding with the Benton County Sheriff's Office and Benton County Prosecutor's Office to establish the way jail furloughs will be handled. **By June 30, 2016**
2. Identify other departments or internal customers with whom regular information coordination is necessary. **By July 31, 2016**
3. Work with IT Services to develop an intranet portal or similar tool by which to coordinate information with internal customers. **By September 30, 2016**
4. Develop appropriate reference documents to use with internal customers through intranet portal. **By end of year**

BACKGROUND

OPD regularly works with a number of fellow criminal justice system stakeholders, collectively referred to here as "Internal Customers." Internal Customers range from jails and law enforcement agencies to courts and clerks offices. In the course of doing business with Internal Customers, a large amount of data and documentation is regularly exchanged and updated, some of which is transactional and some of which is more reference-oriented. This Goal will involve a multi-step process of identifying the full range of Internal Customers and what is involved in the interactions with each, identifying the documents or data involved, designing reference documents to facilitate the process, and integrating everything into one central digital source of information whether in the form of a reference document with hyperlinks, or a dedicated web page or other cloud-hosted solution.

WHY THIS IS IMPORTANT

Information coordination with Internal Customers is extremely important. Information gaps lead to bad results for represented and potentially represented clients. Furthermore, the administrative workload from staff having to address many routine tasks (such as providing contact information for public defenders or providing reference documents) related to inquiries by Internal Customers can take away from their ability to fill other necessary administrative functions. Creating a more systematic way of coordinating with Internal Customers will better serve clients and will also free up staff to work on other more pressing administrative duties.

GOAL #7 - MENTAL HEALTH EVALUATION RESOURCES

Goal #7 - Mental Health Evaluation Resources

SUMMARY

This goal will seek to simultaneously improve the availability of experts for competency and capacity evaluations and reduce the cost of these evaluations to the County.

DELIVERABLES

1. Enter into a memorandum of understanding with a mental health expert willing to provide public defense competency and capacity evaluations at reduced cost (ideally with cost for competency evaluations not much higher than the maximum of \$800 in reimbursement from the State) in return for a high and predictable volume of evaluations. **Already done in first quarter of 2016**
2. Develop an in-house system of accounting for reimbursement-qualified competency evaluations and submitting them to State DSHS for reimbursement. **Already done in first quarter of 2016**
3. Gauge effectiveness of mental health evaluation system by tracking following metrics for the year **(by end of the year)**:
 - a. Number of evaluations done
 - b. Cost savings vs previous costs paid
 - c. Amount received from State in reimbursements
 - d. Percentage of evaluations done within two weeks of request for evaluation being received
4. Develop a professional relationship with at least one additional mental health forensic expert in the area including negotiating a public defense rate schedule and seeking his/her services for mental health related in-service training. **By September 30, 2016**

BACKGROUND

As mentioned earlier in the “trends” section of this report, the need for mental health forensic evaluations is anticipated to be a significant and growing trend in public defense cases in 2016. The Tri-Cities region is at a significant disadvantage to other larger metropolitan areas in the state because a lack of evaluators has made evaluation costs extremely high. To make matters worse, the State reimbursement rate for competency evaluations is indexed to typical private evaluation rates in large metropolitan areas such as Seattle or Tacoma. At \$800 per evaluation, this is often not enough for Tri-Cities area evaluators who have, historically, charged upward of \$2,000 per evaluation.

This Goal seeks to address these problems with a more systematic and goal-oriented approach than simply seeking out experts in the market. A similar problem with the high cost and sometimes variable quality of investigative services in 2008-9 was solved with a like approach.

GOAL #7 - MENTAL HEALTH EVALUATION RESOURCES

WHY THIS IS IMPORTANT

Addressing mental health issues is critical in effective public defense representation. This is the case with Superior Court felonies as well as seemingly less serious misdemeanors in District Court. Without effective mental health evaluation resources, clients simply cannot be effectively represented and the County can be held liable for this ineffective representation.

GOAL DETAILS

To effectively provide for the mental health expert needs of BCOPD's public defense cases, two issues must be addressed. First, a larger pool of available experts must be located who are willing to conduct evaluations in the Tri-Cities on public defense cases (including in the jail, where some private evaluators balk at evaluations or charge exorbitant fees). Second, whether by economics of scale (grouping evaluations together), negotiation, or both, reasonable rates should be established. Finally, an additional issue that is not critical but would be quite beneficial, would be to locate a mental health expert or experts who are willing to be included as a speaker in BCOPD's in-house training program.

GOAL #8 – TRAINING AND PROFESSIONAL DEVELOPMENT

Goal #8 – Training and Professional Development

SUMMARY

BCOPD will provide at least 12 hours of local, free continuing legal education training to its public defenders. Separate from this training, a trial advocacy clinic will be offered and legal financial obligation (“LFO”) defense resources will be developed and provided for defenders to use.

DELIVERABLES

1. Provide at least 12 hours of local, free, continuing legal education training for public defenders. **By end of the year**
2. Hold a Trial Advocacy Clinic for public defenders with 1-3 years of experience with the goal of significantly improving their trial skills. **By end of the year**
3. Develop a set of resources, guidelines and tools by which all public defenders can best advocate for clients on LFO matters both at sentencing and collection phases. **By July 31, 2016**

BACKGROUND

As previously stated in every previous Strategic Plan ever written for this office, training and professional development is a top priority of this office. One of the ways this office stands out from others in the state is through its in-service training program which regularly features attorneys, public defense support professionals, and experts, all of whom agree to teach and train at no cost to the County or to participating public defenders.

WHY THIS IS IMPORTANT

Providing on-going training at no cost to the County is among the best ways to continue to foster quality representation by public defenders, while also being highly responsible fiscally. Special emphasis will be placed on trial advocacy skills and LFO advocacy and defense. Trial advocacy training is very important because public defenders who are skilled at trial and who won't hesitate to try cases are necessarily much more effective defenders of their clients. The relative lack of realistic, hands-on trial advocacy training either in law school or available through public defense organizations has made this a weak point for most defenders. LFO advocacy and defense has been, as previously mentioned, a hot topic in Washington following the Supreme Court's case in *State v. Blazina*. Therefore it is important to provide training and tools to help public defenders be as effective as they can with LFO issues.