

Public Defense Services Commission

	2015-17 Actual	2017-19 Legislatively Adopted	2017-19 Legislatively Approved *	2019-21 Current Service Level	2019-21 Agency Request
General Fund	285,082,822	299,983,918	309,985,014	344,173,541	413,937,025
Other Funds	3,234,718	4,954,313	4,967,943	4,170,527	4,742,251
Total Funds	288,317,540	304,938,231	314,952,957	348,344,068	418,679,276
Positions	77	77	77	75	83
FTE	76.23	76.23	76.23	74.80	82.24

* Includes Emergency Board and administrative actions through December 2018.

Program Description

The Public Defense Services Commission (PDSC) was established as an independent state agency in 2001. By statute, the Commission is to “establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution, and Oregon and national standards of justice.” The agency combined the state Public Defender, which provided appellate representation, and the trial court representation function, which had been a division within Oregon Judicial Department since the early 1980s. Prior to the early 1980s, trial level public defense (and Oregon trial courts) was a local government responsibility.

General Fund supports approximately 99% of the PDSC budget. The remaining 1% is funded by revenue from the Application/Contribution Program (ACP). Applicants for state-appointed counsel pay a \$20 application fee unless the fee is waived for financial hardship reasons. In addition, the court may find that individuals are able to pay a contribution towards their defense costs.

The agency is organized into three divisions with Current Service Level funding as shown:

- **Appellate Division** (\$22 million, 56.80 FTE) consists of public defense attorneys who represent eligible persons at the appellate court level. The Appellate Division is responsible for providing appellate representation on criminal matters, juvenile dependency and termination of parental rights cases, and parole cases. This is accomplished primarily using staff attorneys. The division is the state counterpart to the Oregon Attorney General’s appellate division.
- **Professional Services Account** (\$319.6 million, 0.00 FTE) consists of the funding for contract defense services, including attorneys, investigators, and expert witnesses, primarily at the trial court level. Includes funding for the Parent and Child Representation Program.

- **Contract and Business Services Division** (\$6.7 million, 18.00 FTE) is responsible for administering the public defense contracts that provide legal representation for eligible persons, processing requests and payments for non-contract fees and expenses, and the budget and other financial activities of the Commission.

PDSC: CSL Spending by Program

Programs	2019-21 Current Service Level	% of Total
Appellate Division	22,034,633	6.33%
Professional Services Account	319,632,613	91.76%
Contract and Business Services	6,676,822	1.92%
Total Funds	348,344,068	100.00%

CSL Summary and Issues

The all funds CSL budget of \$348.3 million represents an increase of \$33.4 million or 10.6 percent above the 2017-19 legislatively approved budget. General Fund spending is up \$34.2 million or 11.0%. The CSL budget includes adjustments for inflation and state agency service charges. It also includes adjustments for caseloads, contract rates for public defense services, and implementation of HB 5201 (2018).

PDSC: CSL Adjustments by Program

Programs	2017-19 Legislatively Approved	2019-21 Current Service Level	Change +/-	Change %
Appellate Division	19,207,111	22,034,633	2,827,522	14.7%
Professional Services Account	289,679,542	319,632,613	29,953,071	10.3%
Contract and Business Services	6,066,304	6,676,822	610,518	10.1%
Total Funds	314,952,957	348,344,068	33,391,111	10.6%

- Adds \$17.5 million GF for inflation
- Adds \$11.5 million GF for caseloads
- Adds \$4.2 million GF to increase contract rates for public defense services
- Adds \$1.3 million GF for expansion of the Parent Child Representation Program per HB 5201 (2018)
- Phases out \$700,000 shift from GF to OF, thereby adds \$700,000 GF
- Phases out \$450,000 GF provided for a statewide evaluation of public defense services by the 6th Amendment Center

Policy Issues

Professional Services Account. At the December meeting of the Emergency Board, PDSC reported on the status of the Professional Services Account. At the time, indigent public defense claims were trending higher than anticipated. If the trend continues, PDSC estimated it would need an additional \$4 million to \$5 million early in the 2019 session to get through the end of the current biennium. The CSL budget assumes caseload will grow 2.65% in 2019-21 compared to the level funded in the current biennium and includes funds to cover the caseload growth.

Parent Child Representation Program (PCRP). This program works to improve the quality of legal representation for parents and children in juvenile dependency and termination of parental rights cases. PCRP operates with a caseload cap to promote better representation, and contractors receive the funding required to keep attorney caseloads below a cap. In 2016, the Task Force on Legal Representation in Childhood Dependency issued a report recommending PCRP be expanded statewide. At the time, it was operating in Yamhill, Linn and Columbia counties. HB 5201 (2018) provided \$1.3 million GF to begin implementation in Coos and Lincoln counties. The CSL budget includes an additional \$1.3 million to fund a full 24-month program in the two added counties. The agency request budget includes \$12.8 million GF to expand into five additional counties (Clatsop, Deschutes, Douglas, Malheur, and Multnomah).

OPDS Professional and Management Compensation. Office of Public Defender Services' Appellate Division attorneys make less than their Department of Justice (DOJ) counterparts. This affects attorney recruitment and retention and can affect timeliness and effectiveness of services. PDSC has increased its attorney salaries twice since 2015 but has not kept pace with DOJ attorney salaries. It is estimated that the disparity between attorney classes is between 9%-15%. Additionally, OPDS estimates that all other professional and management classifications are trending between 5%-27% lower than like classifications at the Oregon Judicial Department. The agency request budget includes \$1.75 million to fund employee compensation adjustments.

Quality Assurance - Trial Level Public Defense. The agency request budget includes \$50.6 million to increase contract rates for trial level indigent defense.