

**SB 337 B BUDGET REPORT and MEASURE SUMMARY**

**Joint Committee On Ways and Means**

**Prepared By:** Wendy Gibson, Department of Administrative Services

**Reviewed By:** John Borden, Legislative Fiscal Office

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**Public Defense Services Commission**

**2023-25**

**Judicial Department**

**2023-25**

PRELIMINARY

**Budget Summary**

	2021-23 Legislatively Approved Budget	2023-25 Current Service Level	2023-25 Committee Recommendation	Committee Change from 2021-23 Leg. Approved	
				\$ Change	% Change
<b>Public Defense Services Commission</b>					
General Fund	\$ -	\$ -	\$ 39,999,591	\$ 39,999,591	100.0%
<b>Judicial Department</b>					
General Fund	\$ -	\$ -	\$ 2,136,070	\$ 2,136,070	100.0%

\* Excludes Capital Construction expenditures

**Position Summary**

**Public Defense Services Commission**

Authorized Positions	0	0	30	30
Full-time Equivalent (FTE) positions	0.00	0.00	24.75	24.75

**Judicial Department**

Authorized Positions	0	0	30	30
Full-time Equivalent (FTE) positions	0.00	0.00	8.13	8.13

**Summary of Revenue Changes**

The measure is supported by General Fund; however, a portion of the General Fund provided by this measure supports the Public Defense Services Commission’s (PDSC) expenditures related to the legal representation of a child or parent in foster care proceedings. These expenditures may increase the amount of federal Title IV-E reimbursements passed through as Other Funds from the Oregon Department of Human Services resulting in General Fund savings.

**Summary of Public Safety Subcommittee Action**

The Subcommittee approved General Fund appropriations for PDSC and the Oregon Judicial Department (OJD) totaling \$42.1 million General Fund and authorizing the establishment of 36 limited duration (14.13 FTE) and 24 permanent full-time positions (18.75 FTE).

The measure is split into two key sections: (1) the reform of the public defense system and (2) seeking to address the unrepresented defendant/persons crisis. The measure declares an emergency and is effective on passage; however, the measure includes various operative dates, including the repeal of select provisions.

## **PUBLIC DEFENSE SYSTEM REFORM**

The measure modifies the makeup of the current PDSC (or newly formed Oregon Public Defense Commission) to include appointments or recommendations from each branch of government (operative January 1, 2024); abolishes the Office of Public Defense Services; transfers the Commission from the Judicial Branch to the Executive Branch (operative January 1, 2025); and provides that until July 1, 2027, the executive director and commission members serve at the pleasure of the Governor; beginning July 1, 2027, the executive director serves at the pleasure of the voting members of the Commission and Commission members may be removed by the Governor only for inefficiency, neglect of duty or malfeasance in office; and disallows economic incentives or disincentives in the pay structure that could interfere with the ability of appointed counsel to provide effective assistance of counsel and prohibits flat fee model (operative July 1, 2025). The measure also requires the Commission to hire trial-level employee attorneys (operative January 1, 2024); directs the Commission to contract directly with providers, making the Commission responsible for selecting, appointing, paying, and supervising the individual attorneys appointed to represent indigent defendants (operative July 1, 2025); prohibits subcontracting with an exception for nonprofits (operative July 1, 2027); requires the Commission to promulgate and enforce standards, provide oversight and supervision, collect specific data, and regularly report to the Legislative Assembly on progress and needs (operative January 1, 2024). Additionally, the measure requires the Commission issue payment of invoices submitted to the Commission within 45 days of receipt or in accordance with statewide accounting policies established by the Oregon Department of Administrative Services (DAS); establish an external advisory group to assist in developing the standard operating expectations for persons and entities providing public defense services; enter into contracts or interagency agreements with DAS for the purpose of supporting state public defense population forecasts and other related forecasts; among other provisions.

### **Public Defense Services Commission**

The Subcommittee approved a General Fund appropriation totaling \$34.5 million and authorized the establishment of six limited duration (6.00 FTE) and seven permanent full-time positions (4.38 FTE) to support the reform of the public defense system. The funding supports the following investments:

- Increases in hourly rates of pay for attorneys, investigators, and interpreters: \$14.7 million General Fund for Services and Supplies for Professional Services.
- One-time incentive compensation for the retention of both recently hired contract providers as well as experienced contract providers: \$9.9 million General Fund for Services and Supplies for Professional Services.
- Continued funding of a financial and case management system: \$7.9 million General Fund.

This investment includes one limited duration Information Technology Specialist 4 (1.00 FTE), two limited duration Operations and Policy Analyst 2 positions (2.00 FTE), two limited duration Operations and Policy Analyst 3 positions (2.00 FTE), and \$6.7 million in associated Services and Supplies.

- Augments the staffing by establishing eight positions: \$1.6 million General Fund. This investment includes \$163,345 in associated Services and Supplies support the following new positions:
  - One limited duration Program Manager 3/Project Manager (1.00 FTE) to plan and implement the transition of the agency to the executive branch of government;
  - One Operations and Policy Analyst 4 (0.75 FTE) and one Operations and Policy Analyst 3 (0.75 FTE) for policy, procedure, and rule development;
  - One Deputy General Counsel to service as a statewide training coordinator (0.88 FTE); and
  - One Accountant 4 (0.50 FTE), one Accountant 1 (0.50 FTE), one Accounting Technician 3 (0.50 FTE), and one Program Analyst 2 (0.50 FTE) for financial management.
- Contract funding for an outside entity to conduct an independent survey and economic analysis on the minimum hourly pay for appointed counsel (\$250,000 General Fund for Services and Supplies and Professional Services).
- Increased compensation for commission members: \$112,234 General Fund.
- Contract funds for DAS, Office of Economic Analysis to provide caseload forecasting services: \$35,508 General Fund Services and Supplies for Professional Services.

Other costs associated with transferring the Commission from the Judicial Branch to the Executive Branch should be minimized, given that PDSC has been expected to operate in reasonable conformity with all other state government agencies. However, a special purpose appropriation to the Emergency Board will be established in the end of session omnibus bill for unanticipated expenses related to the transfer of the Commission to the Executive Branch.

The provisions of the measure related to calculating and adjusting the hourly pay rate for panel counsel by the percentage amount of increased cost of living adjustments granted to management services employees within the Executive Branch are indeterminate at this time. The Commission may need to return to the Legislature or the Emergency Board for supplemental funding.

### **Judicial Department**

The Subcommittee approved, on a one-time basis, \$283,504 General Fund and one limited duration Project Manager position (0.88 FTE) to support the transfer of the Commission from the Judicial Branch to the Executive Branch of government. The funding includes \$22,210 in associated Services and Supplies.

## **UNREPRESENTED DEFENDANT/PERSONS CRISIS**

The measure directs each presiding judge of a judicial district to develop and implement a coordinated public safety unrepresented defendant crisis plan and submit the plan to the Oregon Criminal Justice Commission (CJC) as soon as practicable but no later than September 1, 2023. Presiding judges of judicial districts with a population over 100,000 shall convene a crisis team comprised of at least the presiding judge, district attorney(s), and the Executive Director of the PDSC or the director's designee, to coordinate the development and implementation of a public safety unrepresented defendant crisis plan. The Chief Justice may issue orders related to resolving the unrepresented defendant crisis. Presiding judges may enter standing orders related to resolving the unrepresented defendant crisis consistent with the orders of the Chief Justice. CJC shall conduct a review of each judicial district's coordinated public safety unrepresented defendant crisis plan and report to the Legislature by no later than October 1, 2023. PDSC shall promulgate and disseminate guidance related to the development of the judicial district's coordinated public safety unrepresented defendant crisis plans by no later than August 1, 2023, and develop a training plan for public defense providers specific to the unrepresented defendant crisis, in consultation and cooperation with public defense provider associations and organizations, by no later than September 1, 2023. Provisions of this section of the measure repeal on June 30, 2025.

### **Public Defense Services Commission**

The Subcommittee approved a General Fund appropriation totaling \$5.5 million and authorized the establishment of 17 permanent full-time positions (14.37 FTE) in response to the unrepresented defendant/persons crisis. The funding includes \$1.2 million in associated Services and Supplies.

Pilot Program for Trial-Level Appointed Counsel. The Subcommittee approved a General Fund appropriation of \$4.3 million and authorized the establishment of 17 permanent full-time positions (14.37 FTE) for a pilot program to hire state employees to serve as trial-level appointed counsel along with supporting staff. The pilots will focus in two geographic regions of the state to respond to the unrepresented defendant/persons crisis. The priority of the state attorneys and staff are those unrepresented defendants in-custody followed by those defendants out-of-custody. In addition, \$286,998 General Fund is provided for associated Services and Supplies.

Positions established as part of the pilot program include the following:

- Program Administration: One Chief Deputy Defender/Pilot Program Administrator (0.92 FTE) with \$16,882 in associated Services and Supplies. The program administration position starts September 1, 2023.
- Western Oregon Regional Pilot: Five Senior Deputy Defenders (4.40 FTE), one Legal Secretary (0.88 FTE), one Paralegal (0.88 FTE), and two Program Analysts/Investigators (1.76 FTE). These positions are established with \$151,940 in associated Services and Supplies and start on October 1, 2023.

- Southern Oregon Regional Pilot: Three Senior Deputy Defenders (2.37 FTE); one Legal Secretary (0.79 FTE); one Paralegal (0.79 FTE); and two Program Analysts/Investigators (1.58 FTE). These positions are established with \$118,176 in associated Services and Supplies and start on December 1, 2023.

The Legislature will evaluate the long-term need for the pilot program positions to provide routine trial-level work after resolving the unrepresented defendant/persons crisis.

Expedited Resolution Case Docket. The Subcommittee approved, on a one-time basis, a General Fund appropriation of \$368,316 for Services and Supplies and Professional Services related to an expedited resolution case docket in the Fourth Judicial District, Multnomah County Circuit Court.

Training Program. The Subcommittee approved, on a one-time basis, a General Fund appropriation of \$545,000 for Services and Supplies and Professional Services related to the creation of a training program for independent contractors, including nonprofit public defender offices, consortia of attorneys or law firms, private law firms, or individual attorneys as well as hourly paid attorneys and investigator. The funding includes \$150,000 for the acquisition or development of the training program, \$375,000 for the delivery, and \$20,000 for program expenses.

### **Judicial Department**

The Subcommittee approved, on a one-time basis, a General Fund appropriation of \$1.9 million and authorized the establishment of 29 limited duration positions (7.25 FTE) to respond to the unrepresented defendant/persons crisis.

Circuit Courts. The Subcommittee approved, on a one-time basis, a General Fund appropriation of \$1.7 million and authorized the establishment of 27 limited duration positions (6.75 FTE) to support the development of each judicial district's unrepresented defendant/persons crisis plan. The funding includes \$171,335 in associated Services and Supplies. This will be accomplished through crisis teams, that will consider efforts to improve the timely processing of the cases of unrepresented defendants/persons, such as expanding jail visitation times for public defenders to meet with their clients, establishing agreed upon deadlines for the timely release of discovery, targeted docketing of court appearances, requests for hearings, remote hearings, and potentially the scheduling of omnibus hearings, and establishing agreed upon and reasonable deadlines for the acceptance of plea offers or consideration of the elimination of plea deadlines for certain case-types and circumstance.

Central Administrative Support/Office of the State Court Administrator. The Subcommittee approved, on a one-time basis, a General Fund appropriation of \$144,270 and authorized the establishment of two limited duration positions (0.50 FTE) to provide central program and data analysis support in the development of judicial district's unrepresented defendant/persons crisis plans. The funding includes \$12,692 in associated Services and Supplies.

**DETAIL OF JOINT COMMITTEE ON WAYS AND MEANS ACTION**

Public Defense Services Commission, Judicial Department  
 Wendy Gibson -- 971-900-9992

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE
			LIMITED	NONLIMITED	LIMITED	NONLIMITED			
2021-23 Legislatively Approved Budget at Jan 2023 *	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0	0.00
2023-25 Current Service Level (CSL)*	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0	0.00
<b>PUBLIC DEFENSE SYSTEM REFORM</b>									
<u>SUBCOMMITTEE ADJUSTMENTS</u>									
<b>Public Defense Services Commission</b>									
<b>SCR 100 - Executive Division</b>									
Personal Services	\$ 384,404	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 384,404	1	1.00
Services and Supplies	\$ 30,388	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 30,388		
<b>SCR 200 - Compliance, Audit and Performance Division</b>									
Personal Services	\$ 728,903	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 728,903	3	2.38
Services and Supplies	\$ 72,177	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 72,177		
<b>SCR 400 - Adult Trial Division</b>									
Services and Supplies	\$ 7,406,190	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,406,190		
<b>SCR 415- Juvenile Trial Division</b>									
Services and Supplies	\$ 1,234,365	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,234,365		
<b>SCR 450 - Court Mandated Expenses</b>									
Services and Supplies	\$ 14,656,343	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14,656,343		
<b>SCR 500 - Parent Child Representation Program</b>									
Services and Supplies	\$ 1,234,365	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,234,365		
<b>SCR 600 - Administrative Services Division</b>									
Personal Services	\$ 1,662,444	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,662,444	9	7.00
Services and Supplies	\$ 6,802,986	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,802,986		
<b>SCR 700 - Special Programs Contracts and Distributions</b>									
Services and Supplies	\$ 285,508	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 285,508		
<u>SUBCOMMITTEE ADJUSTMENTS</u>									
<b>Judicial Department</b>									
<b>SCR 102 - Administration and Central Support</b>									
Personal Services	\$ 261,294	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 261,294	1	0.88
Services and Supplies	\$ 22,210	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 22,210		

PRELIMINARY

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE
			LIMITED	NONLIMITED	LIMITED	NONLIMITED			
<b>UNREPRESENTED DEFENDANT/PERSONS CRISIS</b>									
<u>SUBCOMMITTEE ADJUSTMENTS</u>									
<b>Public Defense Services Commission</b>									
<b>SCR 400 - Adult Trial Division</b>									
Personal Services	\$ 4,301,204	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,301,204	17	14.37
Services and Supplies	\$ 655,314	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 655,314		
<b>SCR 700 - Special Programs Contracts and Distributions</b>									
Services and Supplies	\$ 545,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 545,000		
<u>SUBCOMMITTEE ADJUSTMENTS</u>									
<b>Judicial Department</b>									
<b>SCR 100 - Trial Courts</b>									
Personal Services	\$ 1,536,961	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,536,961	27	6.75
Services and Supplies	\$ 171,335	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 171,335		
<b>SCR 102 - Administration and Central Support</b>									
Personal Services	\$ 131,578	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 131,578	2	0.50
Services and Supplies	\$ 12,692	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,692		
<b>TOTAL ADJUSTMENTS</b>	<b>\$ 42,135,661</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 42,135,661</b>	<b>60</b>	<b>32.88</b>
<b>SUBCOMMITTEE RECOMMENDATION</b>	<b>\$ 42,135,661</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 42,135,661</b>	<b>60</b>	<b>32.88</b>

PRELIMINARY