

**SB 5532 A BUDGET REPORT and MEASURE SUMMARY**

**Carrier:** Rep. Evans

**Joint Committee On Ways and Means**

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**Action Date:** 06/09/23

**Action:** Do Pass the A-Eng bill.

**House Vote**

**Yeas:** 8 - Evans, Gomberg, Holvey, McLain, Pham K, Sanchez, Smith G, Valderrama

**Nays:** 4 - Breese-Iverson, Cate, Lewis, Reschke

**Senate Vote**

**Yeas:** 8 - Anderson, Campos, Dembrow, Frederick, Gelser Blouin, Hansell, Sollman, Steiner

**Nays:** 2 - Findley, Knopp

**Exc:** 1 - Girod

**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**

**2021-23**

**Emergency Board**

**2023-25**

**Budget Summary\***

	2021-23 Legislatively Approved Budget <sup>(1)</sup>	2023-25 Current Service Level	2023-25 Committee Recommendation	Committee Change from 2021-23 Leg. Approved	
				\$ Change	% Change
General Fund	\$ 448,160,372	\$ 368,774,821	\$ 514,717,456	\$ 66,557,084	14.9%
Other Funds Limited	\$ 18,449,667	\$ 17,937,116	\$ 20,769,668	\$ 2,320,001	12.6%
Total	\$ 466,610,039	\$ 386,711,937	\$ 535,487,124	\$ 68,877,085	14.8%

**Position Summary**

Authorized Positions	114	104	113	(1)
Full-time Equivalent (FTE) positions	107.81	103.80	112.80	4.99

<sup>(1)</sup> Includes adjustments through January 2023

\* Excludes Capital Construction expenditures

**Emergency Board**

	2021-23 Legislatively Approved Budget <sup>(1)</sup>	2023-25 Current Service Level	2023-25 Committee Recommendation	Committee Change from 2021-23 Leg. Approved	
				\$ Change	% Change
General Fund	\$ -	\$ -	\$ 3,000,000	\$ 3,000,000	100.0%
Total	\$ -	\$ -	\$ 3,000,000	\$ 3,000,000	100.0%

**2021-23 Budget Actions**

	2021-23 Legislatively Approved Budget <sup>(1)</sup>	2023-25 Committee Recommendation	Committee Change from 2021-23 Leg. Approved	
			\$ Change	% Change
General Fund	\$ -	\$ (3,809,706)	\$ (3,809,706)	(100.0%)
Total	\$ -	\$ (3,809,706)	\$ (3,809,706)	(100.0%)

**Summary of Revenue Changes**

The Public Defense Services Commission (PDSC) is primarily supported by General Fund. Other Funds revenues are received through transfers from the Department of Human Services (DHS) from the federal Title IV-E program, as well as from fees associated with the Application Contribution Program (ACP). In 2019, a revision in federal policy allowed Oregon to claim Title IV-E funds for administrative reimbursement of costs associated with legal representation of a child or parent in foster care proceedings. The revision also covered the training of contracted

legal service providers. In the 2023-25 biennium, PDSC anticipates \$16.3 million Federal as Other Funds for Title IV-E as reimbursement for state expenses.

Other Funds revenue for ACP is collected in accordance with ORS 151.487, which provides judges the authority to order those who apply for court-appointed counsel to pay the administrative costs of determining their eligibility and a “contribution amount” toward the anticipated cost of the public defense before the conclusion of a case. The Oregon Judicial Department (OJD) verification specialists assist the courts in determining whether a person must pay these costs. This revenue is deposited in the Public Defense Services Account and used to fund the operating expenses of the ACP. Anticipated ACP revenue for the 2023-25 biennium is approximately \$4.5 million Other Funds, of which nearly \$3.6 million will transfer to OJD.

In addition to establishing the 2023-25 budget for PDSC, Senate Bill 5532 establishes a special purpose appropriation of \$3,000,000 General Fund to the Emergency Board. This appropriation to the Emergency Board is supplemental funding for the Adult Trial Division or Juvenile Trial Division for caseload costs the Commission is unable to mitigate during the interim legislative periods.

### **Summary of Public Safety Subcommittee Action**

PDSC is responsible for establishing and maintaining a public defense system that ensures the provision of public defense services in the most cost-efficient manner, consistent with the Oregon Constitution and the United States Constitution, as well as state and national standards of justice. The Chief Justice of the Oregon Supreme Court appoints nine members who demonstrate a record of supporting public defense to serve on the Commission.

The 2023-25 recommended budget includes two financial realignments to provide better transparency, program management, and oversight of the caseload expenses. The first realignment addresses juvenile dependency and delinquency funding. The recommended budget structure separates the funding into two distinct divisions: the Juvenile Trial Division, and the Parent and Child Representation Program. The second realignment addresses funding used to reimburse counties for discovery costs. The recommended budget structure moves this funding into the Special Programs and Contracts Division. Additionally, the recommended budget renames the Trial Division to the Adult Trial Division, and Non-routine Expenses to Preauthorized Expenses.

The Subcommittee recommended a budget of \$535,487,124 total funds, comprised of \$514,717,456 General Fund, \$20,769,668 Other Funds expenditure limitation, and 113 positions (112.80 FTE). The recommended total funds budget is a 14.8 percent increase from the 2021-23 Legislatively Approved Budget and a 38.5 percent increase from the 2023-25 Current Service Level budget.

## **Executive Division**

The Executive Division provides the leadership function and governance structure of the agency under the Commission and includes staff to support the Commission, the Executive Director, General Counsel, and Communications and Legislative Affairs.

The Subcommittee recommended a budget of \$3,748,644 General Funds and eight positions (8.00 FTE). The recommended budget includes the following packages:

Package 108, Limited Duration Positions. This package increases General Fund by \$546,768 and establishes two permanent full-time positions (2.00 FTE). The two positions, an Operations and Policy Analyst 4 and an Operations and Policy Analyst 2, were authorized in 2021-23 as limited duration until the long-term need for these positions could be assessed. The positions provide policy analysis and advice, recommend systems and organizational improvements, conduct project management, evaluate forms and record systems, track legislation, respond to complaints, and review and revise policy and procedure manuals. The positions are being recommended to continue as to provide operational stability to the agency. The need for these positions in the long-term will be re-evaluated during the 2025 Legislative Session.

Package 801, LFO Analyst Adjustment. This package contains the following budget note:

### **Budget Note: Comprehensive Remediation Plan**

The Public Defense Services Commission is directed to report to the Interim Joint Committee on Ways throughout the fall of 2023, the Joint Committee on Ways and Means during the Legislative Session in 2024, and quarterly thereafter to the Legislative Emergency Board, on the Commission's restructuring and modernization efforts, including updated caseloads, financial forecasts, and procurement activities including contract amendments and the alignment of contracting with the biennial budget process.

In addition, reporting by the Commission is to include, and be based upon, a comprehensive remediation plan adopted by the Commission and that includes the following elements: (1) Issue – identify each specific issue with a concise problem statement (2) Priority – assign each issue a priority; (3) Evidence of Concern – identify evidence supporting the existence of the issue; (4) Objective – identify what objective the agency is trying to achieve through the resolution of the issue; (5) Best Practice(s) – identify what best practices exist related to the resolution of the issue, which can be used to benchmark the options available as well as the recommended option; (6) Options to resolve the issue – identify what specific options exist to resolve the issue; (7) Recommended Option – identify which is the agency's recommended option to resolve the issue, and on what basis was the option selected; (8) Timeframe – identify the timeframe for implementing the recommended option; (9) Fiscal Impact – identify the cost of implementing the recommended option; and (10) Expected Outcome – identify what outcome is expected from the recommended option and how will it be measured.

### **Compliance, Audit and Performance Division**

The Compliance, Audit and Performance (CAP) Division strengthens the Agency's program management, performance, and oversight. The Division is organized into the following sections: Administration, Trial Criminal Compliance, Juvenile/Parent Child Representation Program Compliance, Research, and Internal Audit, which reports directly to the Commission. The Division provides mutually inclusive services for vendor contract compliance, auditing of expenditures related to vendor contracts, internal auditing of agency expenditures, research and analysis, and development and maintenance of performance measures, including Key Performance Measures and supporting Key Performance Indicators.

The Subcommittee recommended a budget of \$5,599,837 General Fund and 14 positions (14.00 FTE). The recommended budget includes the following packages:

Package 082, September Eboard. This package provides \$419,056 General Fund and establishes one permanent, full-time General Counsel position (1.00 FTE) to serve as the Division Chief of the CAP Division. This action was approved by the September 2022 Emergency Board, as an ongoing adjustment to the 2023-25 budget.

The position was determined to be needed to redress the material deficiencies noted in the CAP Division, as reported to the Emergency Board and to manage and supervise the existing resources within the Division. The Commission reports that this position will be filled on June 12, 2023.

Package 108, Limited Duration Positions. This package provides \$479,016 General Fund and establishes two permanent, full-time Operation and Policy Analyst 2 positions (2.00 FTE) in the Research Section of the CAP Division.

The two positions were previously authorized as limited duration until the long-term need for these positions could be assessed. The positions are for data analysis and reporting. The positions support one existing permanent full-time Research Analyst 4 position for Adult Trial Division and one existing permanent full-time Research Analyst 4 position for the Juvenile Trial Division and the Parent Child Representation Program.

The package contains the following budget note:

**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.

Package 801, LFO Analyst Adjustments. This package reduces General Fund by \$380,800 in Services and Supplies for Professional Services. During the 2021-23 biennium, the Commission received, on a one-time basis, \$350,000 in General Fund to contract for an external financial and performance audit of the agency. The audit was completed; however, the funding was not phased-out during building of the 2023-25 biennial budget. An additional inflation amount of \$30,800 is also removed.

The package contains the following budget note:

**Budget Note: Internal Audit Function**

The Public Defense Services Commission is directed to report to the Joint Committee on Legislative Audits and the Joint Committee on Ways and Means prior to the Legislative Session in 2024 on internal audits and audits of provider contracts completed after June 30, 2021, as well as audit plans for the 2023-25 biennium. The report is to include an update on the hiring of internal audit staff and the reporting structure of internal audit staff to the Commission.

**Appellate Division**

The Appellate Division provides state and federal appellate court defense for financially eligible defendants. This includes appellate representation for financially eligible parents and children in cases of juvenile dependency, as well as termination of parental rights cases. The Appellate Division, Criminal Appellate section, serves a mandated caseload and is budgeted based on anticipated caseload changes for state constitution or court actions.

The Subcommittee recommended a budget of \$24,491,812 General Funds and 58 positions (57.80 FTE). The recommended budget includes the following packages:

Package 081, June 2022 Emergency Board. This package reduces General Fund by \$1,360,000 in Services and Supplies. The reduction represents a transfer of budget to Court Mandated Expenses. This rebalance action was approved by the June 2022 Emergency Board as an ongoing adjustment to the 2023-25 budget.

The package includes the following General Fund reductions:

- (a) Hourly attorney charge budget for conflict attorneys - \$250,000
- (b) Transcription and disposition services - \$1,000,000
- (c) An inflation adjustment of 8.8 percent - \$110,000

Package 801, LFO Analyst Adjustments. This package reduces General Fund by \$141,171 for unexpended General Fund carried forward from the 2019-21 biennium. As a Judicial Branch agency, the Commission is allowed by statute to retain unexpended General Fund appropriations from the previous biennium. These carryforward amounts are one-time expenditures in 2021-23 and should have been phased-out during the 2023-25 budget build. This package removes the carryforward amount of \$135,221 and the associated inflation amount of \$5,950.

### **Adult Trial Division**

The Adult Trial Division, formerly named the Trial Criminal Division, funds trial-level public defense for financially eligible adult defendants in criminal cases, civil commitments, and contempt cases. Contract services are provided by non-profit public defender offices, law firms, consortia of attorneys, and sole practitioners. The Division is organized into the following sections: Administration, Appellate, and Trial Level. The Adult Trial Division is subject to a mandated caseload and is budgeted based on anticipated caseload changes for state constitution or court actions.

The Subcommittee recommended a budget of \$255,217,575 General Fund, and no position authority. The recommended budget includes the following packages:

Package 081, June 2022 Emergency Board. This package provides a net \$56,061,891 General Fund to procure trial-level criminal defense for eligible defendants through contracts with independent contractors, including nonprofit public defender offices, consortia of attorneys or law firms, private law firms, or individual attorneys. The June 2022 Emergency Board approved this action as an ongoing adjustment to the 2023-25 budget.

The General Fund increase reflects the following actions:

- (a) The release of a special purpose appropriation by the Emergency Board in June of 2022 - \$70,250,989
- (b) An inflation adjustment of 8.8 percent on (a) - \$5,249,068
- (c) A mandated caseload adjustment - \$4,922,288
- (d) A rebalance action transferring the non-contract and hourly-attorney charges from the Adult Trial Division to the Court Mandated Expense Division - \$10,602,500 (reduction)

- (e) The transfer of the special purpose appropriation portion attributable to juvenile caseload into the Juvenile Trial Division - \$13,757,954 (reduction)

Package 082, September Eboard. This package provides \$399,975 General Fund for Family Treatment Court provider contracts in Clackamas and Josephine counties. The September 2022 Emergency Board approved this funding increases to Services and Supplies, Professional Services as an ongoing adjustment to the 2023-25 budget.

Package 801, LFO Analyst Adjustments. This package reduces General Fund by \$1,846 for unexpended General Fund carried forward from the 2019-21 biennium. As a Judicial Branch agency, the Commission is allowed by statute to retain unexpended General Fund appropriations from the previous biennium. These carryforward amounts are one-time expenditures in 2021-23 and should have been phased-out during the 2023-25 budget build. This package removes the carryforward amount of \$1,697 and the associated inflation amount of \$149.

Package 803, Caseload Adjustments. This package provides \$17,793,000 General Fund to the Adult Trial Division to fully fund the 466.35 Maximum Attorney Capacity (MAC) needed to support PDSC's forecasted 2023-25 caseload. The funding adds an additional 36.98 MAC for county provider contracts and 2.56 MAC for statewide appeals contracts.

### **Juvenile Trial Division**

The Juvenile Trial Division, formerly part of the Adult Trial Division, provides trial-level representation for financially eligible parents, children, and youth in juvenile dependency, termination-of-parental-rights, juvenile delinquency, and contested adoption cases. The Division also provides guardians ad litem for parents whose rights the juvenile court determines need protection because they have a mental or physical disability preventing them from understanding or assisting counsel in a dependency or termination-of-parental-rights case. The cases within the Juvenile Trial Division are separate and distinct from the juvenile cases within the 10 counties participating in the Parent Child Representation Program.

The Subcommittee recommended a budget of \$49,122,335 General Funds, \$4,352,000 Other Funds expenditure limitation, and no position authority. The recommended budget includes the following packages:

Package 081, June 2022 Emergency Board. This package provides \$13,757,952 General Fund to procure trial-level juvenile defense for eligible defendants through contracts with independent contractors, including nonprofit public defender offices, consortia of attorneys or law firms, private law firms, or individual attorneys. The June 2022 Emergency Board approved this action as an ongoing adjustment to the 2023-25 budget.

This package formally establishes the Juvenile Trial Division within PDSC. The Legislature directed PDSC to begin procuring trial-level representation for parents in juvenile dependency cases and termination of parental rights cases as contracts separate and distinct from adult



criminal defense contracts. The new independent Division will be overseen by the Chief Juvenile Defender and allow for juvenile defense activities to be tracked discretely from the Parent Child Representation Program and adult defense activities.

The General Fund increase is composed of the following:

- (a) The release of a special purpose appropriation by the Emergency Board in June 2022 - \$12,645,177
- (b) An inflation adjustment of 8.8 percent - \$1,112,775

Package 801, LFO Analyst Adjustments. This package provides \$34,617,383 General Fund and increases Other Funds expenditure limitation by \$4,352,000 for Services and Supplies. Additionally, the package continues the establishment of the Juvenile Trial Division.

The General Fund increase is composed of the following:

- (a) Base amount - \$31,892,079
- (b) An add inflation adjustment of 8.8 percent - \$2,806,503
- (c) Less the inflation factor on the Title IV-E receipts - \$352,000 (reduction)
- (d) Reconciliation - \$270,801

The Other Funds revenue source is Title IV-E Federal Funds, passed through as Other Funds, from DHS. The funding reimburses the state for expenses incurred related to juvenile defense activities. This package establishes Other Funds expenditure limitation for the new Division. The package consists of \$4,000,000 Title IV-E Other Funds plus the standard 8.8 percent inflation adjustment of \$352,000, resulting in a net Other Funds expenditure limitation of \$4,352,000.

Package 803, Caseload Adjustments. This package provides \$747,000 General Fund to the Juvenile Trial Division to fully fund the 100.37 MAC needed to support PDSC's forecasted 2023-25 caseload. The funding adds an additional 1.66 MAC for county provider contracts.

### **Preauthorized Expenses**

The Preauthorized Expenses Division, formerly known as the Non-Routine Expenses Division, funds "reasonable and necessary" public defense related case costs, including transcriptionists, investigators, interpreters, mitigators, social workers, psychologists, polygraph examiners, and forensic experts, such as firearm experts, arson experts, deoxyribonucleic acid (DNA) experts, and medical experts. The Division is organized into the following sections: Administration, Appellate, Trial Level, and Juvenile. As with expenditures in the Appellate and Adult Trial Divisions, preauthorized expenses are driven by a mandated caseload; therefore, the Division is budgeted based on anticipated caseload changes for state constitution or court actions.

The Subcommittee recommended a budget of \$54,837,645 General Fund, \$1 Other Funds expenditure limitation, and no position authority. The placeholder of \$1 is a technical action, which will allow the Emergency Board to adjust the expenditure limitation in a future rebalance action. The recommended budget includes the following packages:

Package 081 June 2022 Emergency Board. This package provides a net \$7,450,686 General Fund for Preauthorized Expenses to pay for reasonable and necessary non-attorney expenses. The June 2022 Emergency Board approved this action as an ongoing adjustment to the 2023-25 budget.

The amount reflects the following actions:

- (a) The release of a special purpose appropriation by the Emergency Board in June of 2022 - \$14,554,511
- (b) An inflation adjustment of 8.8 percent - \$1,280,797
- (c) Less a rebalance action to transfer from Nonroutine (Preauthorized) Expenses to the Court-Mandated Expenses - \$7,706,454 (reduction)
- (d) Less the associated 8.8 percent inflation on the transferred amount - \$678,168 (reduction)

Package 083 December E-Board 2022. The package provides \$665,026 General Fund for the unrepresented defendant/persons crisis. Funding for this request is from a disappropriation of General Fund in the 2021-23 biennium.

The package increases funding for the following:

- (a) Increase in hour rate for investigators from \$40 to \$75 for unrepresented defendant/persons crisis cases only - \$251,466
- (b) Increase in Nonroutine (Preauthorized) Expenses - \$413,560

In December of 2022, PDSC requested \$10.0 million in supplemental General Fund to address an urgent funding need related to the unrepresented defendant/persons crisis in the 2021-23 biennium. The Emergency Board, after allocating the \$10.0 million General Fund to PDSC on a one-time basis, directed that the Commission, prior to the obligation or expenditure of a \$10.0 million allocation, to provide to the Senate President and the Speaker of the House a written report detailing the Commission's plan to expend the \$10.0 million to resolve the crisis. The Emergency Board approved funding for the 2021-23 biennium with \$3.4 million (or 34 percent) needed for the 2023-25 biennium. This amount was disappropriated from the 2021-23 biennium and repurposed to provide funding for this package.

Package 801 LFO Analyst Adjustments. This package reduces General Fund by \$6,528,000 in Services and Supplies for Professional Services and adds \$1 Other Funds expenditure limitation. The reduction represents a transfer of \$6,000,000 General Fund plus the standard 8.8 percent inflation of \$528,000 from the Preauthorized Expenses Division into the Special Programs, Contracts, and Distributions Division. The transfer is intended to increase the budgetary transparency of discovery costs paid by the Commission to counties.

Additionally, the package adds a \$1 Other Funds expenditure limitation as a placeholder in anticipation of eligible expenses being paid from Other Funds. The Other Funds are Title IV-E Federal Funds, transferred as Other Funds, from DHS for reimbursement of state expenses. In 2019, federal policy was revised, allowing Oregon to claim Title IV-E funds for administrative reimbursement of costs associated with legal representation of a child or parent in foster care proceedings. Reimbursement for training of contracted legal services providers is also included. Receipt of this Other Funds revenue from the Title IV-E revenue results in General Fund savings.

Package 804, Unrepresented Defendant Crisis. This package provides \$480,000 General Fund, on a one-time basis, for the unrepresented defendant/persons crisis for Preauthorized Expenses.

Package 805, Nonunanimous Jury Convictions. This package provides \$720,000 General Fund, on a one-time basis, for the Commission's response to the *Watkins v. Ackley* court decision (December 30, 2022) on nonunanimous jury convictions.

The *Watkins v. Ackley* applies the U.S. Supreme Court ruling in *Ramos v. Louisiana* retroactively to nonunanimous jury convictions, which allows for post-conviction relief of cases challenging their nonunanimous jury conviction. Persons with felony convictions resulting from a nonunanimous jury have up to two years from the date of the *Watkins v. Ackley* court decision to challenge their conviction.

At present, PDSC estimated there are 225 to 250 existing post-conviction relief cases, with approximately 83 possibly returning for a new trial in the next 60 days. The total number of post-conviction case, and their timing, is unknown currently. The total could be up to 2,000 cases. The 2023-25 Current Service Level budget for the Commission included \$2.1 million General Fund for the U.S. Supreme Court ruled in *Ramos v. Louisiana* for those persons currently in custody.

### **Court Mandated Expenses**

The Court Mandated Expenses Division funds trial and appellate representation for the provision of attorney services not funded through a normal provider contract. Additionally, the Division provides funding for expenses associated with discovery, interpreter services, medical, school, Oregon Department of Transportation - Department of Motor Vehicles, and other similar records (up to \$300), 911 recordings and Emergency Communication Recording Logs, telephone charges, photocopying and scanning, facsimile charges, routine mileage and parking, postage, service of process; and the payment of lay witness and mileage. The Division is organized into the following sections: Administration, Appellate, Trial Level, Juvenile, and the ACP. The Court Mandated Expenses Division is subject to a mandated caseload and is to be budgeted based on anticipated caseload changes for state constitution or court actions.

The Subcommittee recommended a budget of \$51,554,603 General Fund, \$4,449,667 Other Funds expenditure limitation, and no position authority. The recommended budget includes the following packages:

Package 081, June 2022 Emergency Board. This package provides a net \$26,722,465 General Fund for Court Mandated Expenses. The June 2022 Emergency Board approved this action as an ongoing adjustment to the 2023-25 budget.

The second type of expense is for private bar hourly rate attorney services not billed under a provider contract. Such services are necessary to avoid conflicts of interest in multi-defendant cases, to fill the gap needed by contractors being at capacity, or to fill gaps when contract attorneys lack the requisite qualifications needed to handle a case.

The General Fund increase in this package reflects the following actions:

- (a) The release of a special purpose appropriation by the Emergency Board in June of 2022 - \$5,002,135
- (b) Inflation adjustment of 8.8 percent for item (a)20 - \$440,218
- (c) A rebalance action transferring from the [Adult] Trial Criminal Division to the Court Mandated Expense Division non-contract/hourly attorney charges - \$10,602,500
- (d) Inflation associated with the transferring amount in (c) - \$933,020
- (e) A second rebalance action transferring General Fund from the [Adult] Trial Criminal to the Court Mandated Expense Division for court-directed psychiatric fees - \$7,706,454
- (f) Inflation associated with the transfer in (e) - \$678,138
- (g) A third rebalance action transferring from the Appellate to the Court Mandated Expenses Division for hourly attorney charge budget for conflict attorneys - \$250,000
- (h) Inflation associated with the transfer in (g) - \$22,000
- (i) A fourth rebalance action transferring from the Appellate to the Court Mandated Expenses Division for transcription and disposition services - \$1,000,000
- (j) Inflation associated with the transfer in (i) - \$88,000

Package 083, December E-Board 2022. The package provides \$2,696,555 General Fund, on a one-time basis, for the unrepresented defendant/persons crisis. Funding for this request is from a disappropriation of General Fund from the 2021-23 biennium.

The package increases funding for the following:

- (a) \$200 per hour for murder and Jessica's Law cases - \$2,085,028
- (b) \$175 per hour for Ballot Measure 11 and felony sex offense cases - \$611,527

In December of 2022, PDSC requested \$10.0 million in supplemental General Fund to address an urgent funding need related to the unrepresented defendant/persons crisis in the 2021-23 biennium. The Emergency Board, after allocating the \$10.0 million General Fund to PDSC on a one-time basis, directed that the Commission, prior to the obligation or expenditure of a \$10.0 million allocation, to provide to the Senate President and the Speaker of the House a written report detailing the Commission's plan to expend the \$10.0 million to resolve the crisis. The Emergency Board approved funding for the 2021-23 biennium with \$3.4 million (or 34 percent) needed for the 2023-25 biennium. This amount was disappropriated from the 2021-23 biennium and repurposed to provide funding for this package.

Package 801, LFO Analyst Adjustments. This package increases Other Funds expenditure limitation by \$512,551 for the ACP Account.

ACP was created with the intent to avoid some taxpayer costs related to providing court appointed counsel at public expense by an assessment of advance payment from people who could afford to make a monetary contribution toward the cost of representation and the administrative costs of determining their eligibility. The court may order all applicants to pay an application fee. Pursuant to ORS 151.487, an application fee shall be ordered even if the applicant is ultimately determined to be ineligible for appointed counsel, the case is dismissed, or the case type is changed to one where there is no authority to appoint counsel. The application fee amount established by the Commission is currently \$20. This fee is collected by the courts and distributed to PDSC for deposit into the Public Defense Services Account.

The purpose of this package is to reverse an incorrect budget entry in Essential Package 021, which phased-out revenue and expenditure limitation for the Application Contribution Account. Forecasted revenue shortfalls for programs are to be entered in Policy Package 070 - Revenue Shortfalls. The adjustment now aligns the Commission's budgeted revenues with the transfer by OJD of \$4,449,667. Of this amount, the Commission will transfer \$3,591,305 back to OJD to operate the ACP. The remainder of \$858,362 will be used to fund the Commission's Court-Mandated Expenses.

Package 804, Unrepresented Defendant Crisis. This package provides \$1,520,000 General Fund, on a one-time basis, for the unrepresented defendant/persons crisis and to continue enhanced hourly pay for attorneys.

Package 805, Nonunanimous Jury Convictions. This package provides \$2,280,000 General Fund, on a one-time basis, for the Commission's response to the *Watkins v. Ackley* court decision (December 30, 2022) on nonunanimous jury convictions.

The *Watkins v. Ackley* applies the U.S. Supreme Court ruling in *Ramos v. Louisiana* retroactively to nonunanimous jury convictions, which allows for post-conviction relief of cases challenging their nonunanimous jury conviction. Persons with felony convictions resulting from a nonunanimous jury have up to two years from the date of the *Watkins v. Ackley* court decision to challenge their conviction.

At present, PDSC estimated that there are 225 to 250 existing post-conviction relief cases, with approximately 83 possibly returning for a new trial in the next 60 days. The total number of post-conviction case, and their timing, is unknown currently. The total could be up to 2,000 cases. The 2023-25 Current Service Level budget for the Commission included \$2.1 million General Fund for the U.S. Supreme Court ruled in *Ramos v. Louisiana* for those persons currently in custody.

The package includes the following budget note:

**Budget Note: Nonunanimous Jury Conviction Reporting**

The Public Defense Services Commission is instructed to report to the 2025 Legislature on the Commission's trial and appellate caseloads and costs, including a caseload projection for the 2025-27 biennium, related to nonunanimous jury convictions under the U.S. Supreme Court decision in *Ramos v. Louisiana* (2020) and the Oregon Supreme Court decision in *Watkins v. Ackley* (2022).

**Parent Child Representation Program**

PDSC provides trial-level representation to financially eligible parents and children in cases of juvenile delinquency, juvenile dependency, and those involving the termination of parental rights. These services are provided through two models: PCRCP provider contracts, and trial-level contracts in the non-PCRCP counties.

The PCRCP model is an interdisciplinary legal representation model focused on maintaining reasonable caseload standards and compensation for providers, including social work case managers on the legal team, and increased oversight and support by PDSC's Office of Public Defense Services. Currently 10 Oregon counties participate in the PCRCP, including Linn and Yamhill (2014); Columbia (2016); Coos and Lincoln (2018); Multnomah, Benton, Clatsop, Douglas, and Polk (2020). PCRCP contracts include attorneys and social work case managers serving as agents of the attorneys in select cases. Currently, trial-level contracts for counties not participating in the PCRCP are budgeted under the Juvenile Trial Division.

The Subcommittee recommended a budget of \$47,475,727 General Fund, \$11,986,000 Other Funds expenditure limitation, and 1 position (1.00 FTE). The recommended budget includes the following packages:

Package 081, June 2022 Emergency Board. This package provides \$11,089,293 General Fund to procure trial-level juvenile defense for eligible defendants through contracts for the Parent Child Representation Program. The June 2022 Emergency Board approved this action as an ongoing adjustment to the 2023-25 budget.

The General Fund increase reflects the following actions:

- (a) The release of a special purpose appropriation by the Emergency Board in June 2022 - \$10,192,365

(b) An inflation adjustment of 8.8 percent - \$896,928

Package 801, LFO Analyst Adjustments. This package reduces General Fund by \$35,001,383 and Other Funds expenditure limitation by \$2,032,000. Additionally, this package renames the Summary Cross Reference the Parent Child Representation Program.

The net General Fund reduction includes the following discrete adjustments:

- (a) Transfers out non-PCRCP provider contract funding to the newly established Juvenile Trial Division - \$34,969,383
- (b) Reconciliation - \$32,000

The net Other Funds reduction includes the following discrete adjustments:

- (a) Transfers out non-PCRCP provider contract funding to the newly established Juvenile Trial Division - \$4,000,000 (reduction)
- (b) Adds an inflation adjustment of 8.8 percent to the \$10,000,000 remaining Current Service Level Other Funds expenditure limitation, which should have been inflated by PDSC during the budget build process – \$880,000
- (c) Increases Other Funds expenditure limitation to align revenues with the Commission’s reported Title IV-E Federal Funds, transferred as Other Funds, from the Oregon Department of Human Services for reimbursement of state expenses - \$1,000,000
- (d) Adds and inflation adjustment of 8.8 percent to the increase in (c) - \$88,000

Package 803, Caseload Adjustment. This package provides \$2,705,261 General Fund to PCRCP for a projected growth in program caseloads. This adjustment is in addition to other standard budgetary adjustments (e.g., an 8.8 percent inflationary increase to all Professional Service contract funding).

The 2023 Legislature is deferring further PCRCP expansion until the systemic issues facing PDSC and the public defense system are redressed. Currently, PDSC is faced with the more urgent priority of addressing the unrepresented defendant crisis.

### **Administrative Services Division**

The Administrative Services Division provides agency-wide administrative support and central services for the agency. The Division includes the following sections to support the delivery of public defense services: Administration, Budget, Accounting/Accounts Payable, Human Resources, Procurement, Facilities, and Information Services.

The Subcommittee recommended a budget of \$16,141,278 General Fund and 32 positions (32.00 FTE). The recommended budget includes the following packages:

Package 107, OJD ETS Services. This package appropriates \$929,270 General Fund, on a one-time basis, for Information Technology Professional Services. This package funds the continuation of an existing technology services contract with OJD to provide servers, network, infrastructure, and related technology services to the Commission.

Package 108, Limited Duration Positions. This package provides \$943,320 General Fund and authorizes the establishment of three permanent full-time positions (3.00 FTE) in the Administrative Services Division. The positions were previously authorized as limited duration until the long-term need for the positions could be assessed. The positions include: two Human Resources Analyst 2 positions (2.00 FTE) to support the Commission's human resources function, and one Program Analyst 4 position (1.00 FTE) to provide additional support for procuring and administering provider contracts.

Package 109, CSS Position. This package provides \$235,394 General Fund and authorized the establishment of one permanent full-time Program Analyst 1 position (1.00 FTE) to review Preauthorized Expenses, formerly Nonroutine Expenses. The package includes \$30,388 of related Services and Supplies.

Preauthorized Expenses include transcriptionists, investigators, interpreters, mitigators, social workers, psychologists, polygraph examiners, and forensic experts, such as firearm experts, arson experts, deoxyribonucleic acid experts, and medical experts that fall outside regular, routine case-mandated expenses.

Package 801, LFO Analyst Adjustments. This package reduces General Fund by \$138,278 for unexpended General Fund carried forward from the 2019-21 biennium.

As a Judicial Branch agency, the Commission is allowed by statute to retain unexpended General Fund appropriations from the previous biennium. These carryforward amounts are one-time expenditures in 2021-23 and should have been phased-out during the 2023-25 budget build. This package removes the carryforward amount of \$132,450 and the associated inflation amount of \$5,828.

### **Special Programs and Contracts Division**

The Special Programs and Contracts Division contains specialty programs and funding for the purposes of transparent budgeting. In the 2021-23 biennium, this Division contained one-time funding for the Guardianship Program. In the 2023-25 biennium, the Division contains funding associated with reimbursements to counties for expenses associated with discovery activities.



The Subcommittee recommended a budget of \$6,528,000 General Fund and no position authority. The recommended budget includes the following package:

Package 801, LFO Analyst Adjustments. This package increases General Fund by \$6,234,802 for Services and Supplies and includes the elimination of current service level expenditures and the transfer of county discovery costs from Nonroutine Expenses. The transfer of county discovery costs is intended to increase the budgetary transparency of the funding paid by the Commission to the counties as a reimbursement of expenses accrued.

This package contains the following General Fund adjustments:

- (a) Reduce the base budget for services and supplies to remove one-time funding from 2021-23, which should have been phased-out of the budget - \$269,980 (reduction)
- (b) Remove the Essential Package 031 inflation adjustment correlated with (a), for which the one-time funding was ineligible - \$23,218 (reduction)
- (c) Increase the budgetary transparency of discovery costs paid by the Commission to counties by discretely budgeting the cost - \$6,000,000
- (d) An inflation adjustment of 8.8 percent for the transfer in (c) - \$528,000

### **2021-23 Budget Actions**

The Subcommittee recommend two adjustments to the 2021-23 biennial budget to account for unrepresented defendant/persons crisis expenses. These expenses are no longer expected to occur until the 2023-25 biennium. The actions include a reduction to Nonroutine Expenses by \$413,560 General Fund and a reduction to Court Mandated Expenses by \$3,396,146 General Fund.

### **Summary of Performance Measure Action**

See attached Legislatively Adopted 2023-25 Key Performance Measures form.

## DETAIL OF JOINT COMMITTEE ON WAYS AND MEANS ACTION

Public Defense Services Commission  
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 *	\$ 448,160,372	\$ -	\$ 18,449,667	\$ -	\$ -	\$ -	\$ 466,610,039	114	107.81
2023-25 Current Service Level (CSL)*	\$ 368,774,821	\$ -	\$ 17,937,116	\$ -	\$ -	\$ -	\$ 386,711,937	104	103.80
<b>SUBCOMMITTEE ADJUSTMENTS (from CSL)</b>									
<b>SCR 100 - Executive Division</b>									
Package 108: Limited Duration Positions									
Personal Services	\$ 546,768	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 546,768	2	2.00
<b>SCR 200 - Compliance, Audit and Performance Division</b>									
Package 082: September Eboard									
Personal Services	\$ 419,056	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 419,056	1	1.00
Package 108: Limited Duration Positions									
Personal Services	\$ 479,016	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 479,016	2	2.00
Package 801: LFO Analyst Adjustments									
Services and Supplies	\$ (380,800)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (380,800)		
<b>SCR 300 - Appellate Division</b>									
Package 081: June 2022 Emergency Board									
Services and Supplies	\$ (1,360,000)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (1,360,000)		
Package 801: LFO Analyst Adjustments									
Services and Supplies	\$ (141,171)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (141,171)		
<b>SCR 400 - Adult Trial Division</b>									
Package 081: June 2022 Emergency Board									
Services and Supplies	\$ 56,061,891	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 56,061,891		
Package 082: September Eboard									
Services and Supplies	\$ 399,975	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 399,975		
Package 801: LFO Analyst Adjustments									
Services and Supplies	\$ (1,846)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (1,846)		
Package 803: Caseload Adjustment									
Services and Supplies	\$ 17,793,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 17,793,000		
<b>SCR 415 - Juvenile Trial Division</b>									
Package 081: June 2022 Emergency Board									
Services and Supplies	\$ 13,757,952	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,757,952		

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE
			LIMITED	NONLIMITED	LIMITED	NONLIMITED			
Package 801: LFO Analyst Adjustments Services and Supplies	\$ 34,617,383	\$ -	\$ 4,352,000	\$ -	\$ -	\$ -	\$ 38,969,383		
Package 803: Caseload Adjustment Services and Supplies	\$ 747,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 747,000		
<b>SCR 425 - Preauthorized Expenses</b>									
Package 081: June 2022 Emergency Board Services and Supplies	\$ 7,450,686	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,450,686		
Package 083: December E-board 2022 Services and Supplies	\$ 665,026	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 665,026		
Package 801: LFO Analyst Adjustments Services and Supplies	\$ (6,528,000)	\$ -	\$ 1	\$ -	\$ -	\$ -	\$ (6,527,999)		
Package 804: Unrepresented Defendant Crisis Services and Supplies	\$ 480,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 480,000		
Package 805: Nonunanimous Jury Convictions Services and Supplies	\$ 720,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 720,000		
<b>SCR 450 - Court Mandated Expenses</b>									
Package 081: June 2022 Emergency Board Services and Supplies	\$ 26,722,465	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 26,722,465		
Package 083: December E-board 2022 Services and Supplies	\$ 2,696,555	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,696,555		
Package 801: LFO Analyst Adjustments Special Payments	\$ -	\$ -	\$ 512,551	\$ -	\$ -	\$ -	\$ 512,551		
Package 804: Unrepresented Defendant Crisis Services and Supplies	\$ 1,520,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,520,000		
Package 805: Nonunanimous Jury Convictions Services and Supplies	\$ 2,280,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,280,000		
<b>SCR 500 - Parent Child Representation Program</b>									
Package 081: June 2022 Emergency Board Services and Supplies	\$ 11,089,293	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,089,293		
Package 801: LFO Analyst Adjustments Services and Supplies	\$ (35,001,383)	\$ -	\$ (2,032,000)	\$ -	\$ -	\$ -	\$ (37,033,383)		

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE
			LIMITED	NONLIMITED	LIMITED	NONLIMITED			
Package 803: Caseload Adjustments Services and Supplies	\$ 2,705,261	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,705,261		
<b>SCR 600 - Administrative Services Division</b>									
Package 107: OJD ETS Services Services and Supplies	\$ 929,270	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 929,270		
Package 108: Limited Duration Positions Personal Services	\$ 730,604	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 730,604	3	3.00
Services and Supplies	\$ 212,716	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 212,716		
Package 109: CSS Position Personal Services	\$ 205,006	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 205,006	1	1.00
Services and Supplies	\$ 30,388	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 30,388		
Package 801: LFO Analyst Adjustments Services and Supplies	\$ (138,278)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (138,278)		
<b>SCR 700 - Special Programs Contracts and Distributions</b>									
Package 801: LFO Analyst Adjustments Services and Supplies	\$ 6,234,802	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,234,802		
<b>TOTAL ADJUSTMENTS</b>	<b>\$ 145,942,635</b>	<b>\$ -</b>	<b>\$ 2,832,552</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 148,775,187</b>	<b>9</b>	<b>9.00</b>
<b>SUBCOMMITTEE RECOMMENDATION *</b>	<b>\$ 514,717,456</b>	<b>\$ -</b>	<b>\$ 20,769,668</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 535,487,124</b>	<b>113</b>	<b>112.80</b>
% Change from 2021-23 Leg Approved Budget	14.9%	0.0%	12.6%	0.0%	0.0%	0.0%	14.8%	(0.9%)	4.6%
% Change from 2023-25 Current Service Level	39.6%	0.0%	15.8%	0.0%	0.0%	0.0%	38.5%	8.7%	8.7%

\*Excludes Capital Construction Expenditures

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE
			LIMITED	NONLIMITED	LIMITED	NONLIMITED			
<u>Emergency Board</u> Special Purpose Appropriation: Caseload Costs	\$ 3,000,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,000,000		
<b>TOTAL ADJUSTMENTS</b>	<b>\$ 3,000,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,000,000</b>		

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE
			LIMITED	NONLIMITED	LIMITED	NONLIMITED			
<u>2021-23 Budget Action</u>									
<b>SCR 425 - Preauthorized Expenses</b>									
Services and Supplies	\$ (413,560)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	(413,560)	
<b>SCR 450 - Court Mandated Expenses</b>									
Services and Supplies	\$ (3,396,146)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	(3,396,146)	
<b>TOTAL ADJUSTMENTS</b>	<b>\$ (3,809,706)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>(3,809,706)</b>	

# Legislatively Approved 2023 - 2025 Key Performance Measures

Published: 6/8/2023 7:54:15 PM

**Agency:** Public Defense Services Commission

**Mission Statement:**

Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

Legislatively Approved KPMs	Metrics	Agency Request	Last Reported Result	Target 2024	Target 2025
1. APPELLATE CASE PROCESSING - Median number of days to file opening brief.		Approved	210	180	180
2. CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	Timeliness	Approved	57%	95%	95%
	Accuracy		64%	95%	95%
	Availability of Information		46%	95%	95%
	Overall		46%	95%	95%
	Helpfulness		60%	95%	95%
	Expertise		60%	95%	95%
3. BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.		Approved	73%	100%	100%
4. 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.[1] [1] Case types listed in the 2014-2015 Public Defense Legal Services Contract General Terms are: criminal cases, probation violations, contempt cases, civil commitment cases, juvenile cases, and other civil cases.		Approved	69%	90%	90%
5. 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.[1] [1] For a discussion on determining decision-making capacity, see The Obligations of the Lawyer for Children in Child Protection Proceedings with Action Items and Commentary, Oregon State Bar, Report of the Task Force on Standards of Representation in Juvenile Dependency Cases (2014).		Approved	20%	95%	95%

**LFO Recommendation:**

The Commission's most recently reported Key Performance Measure (KPM) outcomes exhibit suboptimal performance being reported across-the-board with the exception of the Appellate Division.

The Commission was directed by the 2021 Legislature (HB 5030) "...to work with the Legislative Fiscal Office to undertake a comprehensive review and restructuring of the Commission's KPMS, targets, and data to align with the new programmatic structure of the agency. Proposed KPM and target changes are to be submitted to the Legislature in 2023, based on the routine schedule for submission of KPM changes."

Over the course of almost two-years, the Commission has undertaken little discernable effort to comply with the direction of the Legislature. In addition, the Commission itself has had little to no substantive discussion surrounding the quality of representation. The absence of meaningful performance measures and standards of quality for public defense should be deemed unacceptable by both the Commission and the Legislature given the state's obligations to provide public defense to financially eligible defendants/persons as well as to ensure that the material financial commitment made by the legislature to fund public defense is being effectively and efficiently used to achieve the desired outcome(s) for financially eligible defendants/persons.

The Legislative Fiscal Office recommends approval of the Commission's existing Performance Measurements and targets with direction that the Chair and the Executive Director of the Public Defense Service Commission report to the 2024 Legislative Session on the Commission's Key Performance Measures and Targets.

**SubCommittee Action:**

The Public Safety Subcommittee approved the Legislative Fiscal Office recommendations.