

## 2025-27 Budget Review

### Public Defense Commission

	2021-23 Actual	2023-25 Legislatively Approved *	2025-27 Current Service Level	2025-27 Governor's Budget
General Fund	433,471,652	594,333,409	624,416,420	686,355,727
Other Funds	15,540,114	22,352,949	20,769,678	33,732,605
<b>Total Funds</b>	<b>449,011,766</b>	<b>616,686,358</b>	<b>645,186,098</b>	<b>720,088,332</b>
Positions	114	192	172	313
FTE	107.81	163.30	171.80	279.46

\* Includes legislative and administrative actions through December 2024.

#### PROGRAM DESCRIPTION

The Public Defense Commission (PDC), by statute, 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.”

Eligible persons are entitled to adequate legal representation in state court, at state expense, under provisions of the Oregon and federal constitutions and Oregon statutes. Public defense representation is not limited to criminal cases. Other constitutional and statutory provisions include: the right to appointed counsel in court proceedings involving life, liberty, and property, including habeas corpus, post-conviction relief, contempt, juvenile dependency, delinquency, and termination of parental rights, civil commitments for the mentally ill or developmentally disabled, and parole and probation violation proceedings. The U.S. Supreme Court has also held that the right to appointed counsel includes related costs such as expert witness and investigation expenses.

Day-to-day operations of PDC have been carried out by a Commission-appointed executive director who is responsible for hiring and managing agency staff. Under the reconstituted Commission, the Commission will appoint an executive director to a four-year term of office. The executive director and Commission members will serve at the pleasure of the Governor; however, beginning July 1, 2027, the executive director will again serve at the pleasure of the voting members of the Commission, but no longer subject to Senate confirmation.

PDC is a state government supported system and predominately funded by General Fund. Other Funds revenues includes Federal as Other Funds from Title IV-E moneys as reimbursement from the Department of Human Services and the Application Contribution Program from defendants for the payment of administrative costs of determining their eligibility and a contribution amount toward the anticipated cost of their state defense.

## BUDGET ENVIRONMENT

The budget environment for PDC is unstable and the agency and the state's public defense system remain entrenched in crisis, which poses serious risk to financially eligible defendants/persons, public safety, as well as the state's budget.

**Unrepresented Defendant Persons Crisis:** In overall numbers, the crisis has reached a record high. The crisis remains most severe in Multnomah, Jackson, Marion, Washington, Douglas, and Coos counties and is anticipated to continue into the 2025-27 biennium.

**Temporary Hourly Increase Program (THIP):** THIP was developed in response to the unrepresented defendant/persons crisis. The program serves as a mechanism to increase attorney and investigator capacity through enhanced hourly rates of pay above standard hourly scheduled rates of pay. The program is limited to in-custody defendants on the Oregon Judicial Department's (OJD) unrepresented/defendant/persons list and has not been expanded to out-of-custody defendants released under a federal court ruling. While existing caseload costs will carryforward into the 2025-27 biennium, the program itself is slated to sunset on June 30, 2025.

**Governor's Workgroup:** In the fall of 2024, the Governor convened a public defense workgroup. As of the date of this analysis, the workgroup has under consideration a number of short, intermediate, and legislative proposals directed at addressing the unrepresented defendant/persons crisis.

**Executive Branch Transition:** On January 1, 2025, PDC will be transferred from the judicial branch to the executive branch of government and become subject to most of the statutory requirements of executive branch agencies and fall under the control of the Governor. The autonomy PDC has been afforded since becoming an independent agency within the judicial branch in 2001 will be replaced by the construct of statute, policies, procedures, and oversight that govern executive branch agencies with the exception of state personnel relations law for which the agency remains exempt. PDC has been reporting to the Emergency Board, as well as the Governor's Office, that the transition is within scope, on schedule, and within budget and that the agency was fully prepared to transition to executive branch control. One notable exception is that PDC's information technology transition is not scheduled to be completed until June 30, 2025. A General Fund appropriation of \$500,000 was provided for a contractor to assist the PDC with the transition.

**Remediation Plan:** PDC has regularly reported to the Emergency Board on the Commission's restructuring and modernization efforts, including a comprehensive remediation plan. While PDC has continued to make progress remediating the agency's issues, work remains to be completed and will carryforward as the agency transitions from the judicial to the executive branch of government.

**Service Delivery Model:** PDC's current service delivery model, the Maximum Attorney Capacity (MAC), is coming under increased scrutiny as a viable provider contract model. PDC's efforts to replace MAC with a caseload/workload model with new caseload standards will reduce the state's public defense capacity, at a material increase in cost, and therefore also raises a number of concerns as to the new model's viability as a replacement for MAC even if the proposed changes are implemented over a three biennium timeframe. Two specific concerns are that there may not be enough qualified public defenders to meet the workload/caseload model (let alone the MAC model) and that PDC's proposed changes include going from a four-tier qualifications-based pay structure to a single pay structure. If a new provider contract model is approved, this will be the fifth major provider contract change since 2021. In

March of 2025, the Commission began to consider retaining, but then modifying, the MAC model for the 2025-27 contract period.

**Ethical Capacity:** Oregon Rules of Professional Conduct for attorneys require an attorney to not accept cases or to withdraw from cases that would materially limit their representation of other clients. Due to independent contractor law, once an attorney determines they have an ethical conflict and cannot take on any more cases, PDC is limited in the agency's ability to both evaluate or question an attorney's decision-making or to direct an attorney to exceed their "ethical capacity." PDC makes no adjustment (i.e., reduction) to a provider's contracts based on contracted vs. ethical capacity. This complicates the determination of actual attorney capacity, as PDC has no way of pre-determining an attorney's ethical limit.

**Caseload Forecasting:** A 2023 legislative reform requires the Department of Administrative Services - Office of Economic Analysis (DAS-OEA) to conduct caseload forecasting of future public defense services. The first forecast was produced in the spring of 2024. A fall 2024 forecast was produced and was used to develop the 2025-27 Governor's budget. Refinements to the forecast model continue to be made. Data for the model came almost exclusively from the Judicial Department rather than PDC. A third forecast will become available during the 2025 session and will form the basis of the 2025-27 legislatively adopted budget. This forecast will provide the ability to evaluate the caseload, assumptions, and resourcing of HB 4002 (2024) and the recriminalization of certain drug offenses.

PDC contracted with an outside entity to conduct an independent survey and economic analysis on the minimum hourly pay for appointed counsel otherwise referred to as the "Assigned Counsel Program." Once adopted, the rate of hourly pay of panel counsel is to be adjusted by the percentage amount of any positive cost of living adjustment granted to employees in the management service in other executive branch agencies. The survey produced materially higher hourly rates from what is currently budgeted. Additionally, the methodology behind the survey, and the factors comprising various rates, merits review. PDC has yet-to-identified how panel attorneys will be overseen and how their performance will be measured.

**Elimination of the Consortia Model:** Consortia of public defense attorneys work under a single public defense contract that is managed by an administrator. Consortia provided an estimated 48% of the state's public defense services. SB 337 (2023) directed PDC to contract directly with providers (operative July 1, 2025) who will be prohibited from subcontracting for services with an exception for nonprofits (operative July 1, 2027). This change further impacts the procurement of public defense services.

**Capacity Investments:** There have been a number of initiatives to increase public defense capacity beyond PDC's current service level budget, which include: (1) increases in provider compensation; (2) added funding to bring MAC to meet available supply of contract providers; (3) state-employed attorneys and staff Regional Pilot program; (4) Supervised Civil Bar Attorney Program for civil or private bar attorneys to provide uncompensated legal representation in misdemeanor cases; and (5) funding for law schools to provide training and supervision of court certified law students to undertake misdemeanor cases; among other investments in public defense. Besides THIP, there has also been investment to increase standard hourly rates for attorneys, investigators, and other hourly providers. Further requests for increases to provider contracts, state-employed attorneys and staff, and hourly rates of pay persist.

**Regional Pilot Programs:** Legal representation on criminal matters for eligible persons at the appellate court level is primarily handled by state employees; however, beginning in 2023, the Legislature established regional pilot programs and authorized the hiring of state employees for trial-level defense. Regional pilot program offices were established in Western Oregon (Washington, Multnomah, and Clackamas counties), Southern Oregon (Jackson, Douglas, and Klamath counties), and Central Oregon (Willamette Valley/statewide). Work of the regional offices is limited to the unrepresented defendant/persons crisis and were located in areas of the state where the crisis was most acute. This effort was consistent with the 2023 reforms, which directed the Commission to hire trial-level employee attorneys (operative January 1, 2024) and transition to a model of at least 20% state employees and 80% contract providers (January 1, 2031) and then later achieve at least 30% state employees and 70% contract providers (January 1, 2035). The regional office's mission was later expanded to account for the recriminalization of certain drug offenses. It is still unclear how the caseload productivity, outcomes, and cost of these offices compare to provider contracts.

**Performance Measurement/Quality Management:** For the third biennium in a row, and after repeated direction being provided by two Legislatures, PDC has not updated the agency's Key Performance Indicators and Key Performance Measurements and the Commission itself has had little to no substantive discussion surrounding the quality of representation. A Quality Management Plan prepared by PDC does not outline specific indicators for measuring and improving the quality-of-service delivery in public defense, including what to measure, how to measure, when to measure, against what best practice or standard and what training or remedial action needs to be undertaken in instances of sub-optimal performance. PDC's establishment of meaningful performance measures and standards of quality for public defense are important to the functioning and funding of the public defense system by ensuring that eligible defendants/persons are being adequately represented and approved resources are used effectively and efficiently to achieve the desired outcome(s) for financially eligible defendants/persons.

**Financial/Case Management System (FCMS):** PDC is attempting to acquire a cloud-hosted commercial-off-the-shelf solution and has four major components: case management, financial management, timekeeping, and reporting. PDC is undertaking this major information technology initiative on an expedited timeline targeting a July 1, 2025, implementation date.

**Data Collection:** To-date, PDC has not required providers to report on case-specific timekeeping and therefore is unable to determine the actual time per case, which is data essential not only for the costing of cases, but for effective oversight of providers. PDC states the agency will mandate providers use the financial management module of FCMS, but the case management module will be optional. This approach means PDC will continue to be unable to determine the amount of time spent on each provider-assigned case.

**SB 578 (2021) Implementation:** In 2021, the Legislature enacted SB 578 which allows for the payment of court-appointed counsel at state expense for qualified individuals when the estate of the protected person is insufficient to pay the expense of a private counsel. PDC has yet to adopt any policies or procedures related this program, including those needed to determine the financial eligibility requirements for participation.

**Title IV-E Reimbursement:** Federal policy allows for the reimbursement of costs associated with legal representation of a child or parent in foster care proceedings as well as the training of contract legal

service providers. The reimbursement of Title IV-E expenses across the agency are received by PDC as Other Funds from the Oregon Department of Human Services. The budgeting of eligible Title IV-E funding helps to offset General Fund expenditures. PDC's practice around seeking reimbursement could be improved.

## CURRENT SERVICE LEVEL

The 2025-27 current service level budget (CSL) totals \$645.2 million, which includes \$624.4 million General Fund and \$20.8 million Other Funds. The budget includes 172 positions and 171.80 FTE. The CSL is \$28.5 million, or 4.6%, more than the 2023-25 legislatively approved budget of \$616.7 million.

The CSL budget includes standard base and essential package budgetary adjustments. PDC's CSL includes inflation adjustments, which are predominately related to non-state employee personal service cost (\$34.5 million General Fund and \$10 Other Funds). PDC phased-in several relatively nominal ongoing costs associated with previously approved ongoing requests (\$527,122 General Fund). Major phase-outs of the budget included: THIP (\$4.8 million General Fund); Financial Case Management System (\$7.2 million General Fund); an OJD information technology contract (\$929,270 General Fund); select provider incentive payments (\$8.6 General Fund); nonunanimous jury convictions (\$2.3 million General Fund); payments to law schools (\$2.1 million General Fund); executive branch transition (\$500,000 General Fund); an expedited case resolution in Multnomah county (\$386,136 General Fund); Edward G. Byrne Memorial Justice Assistance Grant (\$1 million Other Funds); and a Marion County reimbursement for discovery costs (\$583,281 Other Funds).

PDC's CSL is estimated to be \$15.5 million General Fund short of expenditures due to errors in phasing-in and phasing-out expenditures, including phasing expenditures out of the incorrect program. These errors have resulted in an incorrect calculation of inflation.

PDC's mandated caseload adjustment is based on the DAS-OEA public defense forecast from October 2024 and totals \$31.4 million General Fund, which includes the Trial Criminal Division (\$14.7 million), Preauthorized Expenses (\$10.2 million), and Court Mandated Expenses (\$6.5 million). Neither the Juvenile Criminal Division nor the Parent Child Representation Program received a mandated caseload adjustment. PDC's new methodology for calculating the mandated caseload adjustments merits further review, as the methodology does not follow the standard pricing model for case-types and neglected to include any Title IVe Federal as Other Funds adjustment. For the 2025-27 legislatively adopted budget, the mandated caseload may be updated based on the DAS-OEA public defense forecast in the spring of 2025.

The CSL budget includes a number of technical adjustments that moved budget and position/FTE authority between the Executive, Compliance, Audit, and Performance Management, Trial, Preauthorized, Court Mandated Expenses, Parent Child Representation Program, and Administrative Services divisions. These changes merit further review.

## GOVERNOR'S BUDGET SUMMARY

The 2025-27 Governor's budget totals \$720.1 million, including \$686.4 million General Fund and \$33.7 million Other Funds. The budget includes 313 positions and 279.46 FTE. The budget is \$103.4 million, or

16.8%, more than the 2023-25 legislatively approved budget of \$616.7 million, and includes 121 additional positions (116.16 FTE). This is the first Governor's budget for PDC upon the agency's entry into the executive branch of government.

In addition to adjustments for statewide Attorney General and DAS service charges, the budget includes eight policy packages.

- Pkg. 101 Financial and Case Management System (\$2.8 million General Fund and \$13.9 million Other Funds; eight positions and 7.40 FTE). Funding for the project includes a shift to Article XI-Q bonding, with associated General Fund debt service.
- Pkg. 103 Direct Representation Investment (\$27 million General Fund; 113 positions and 84.07 FTE).
- Pkg. 104 Service Provider Rate Stabilization (\$38.9 million General Fund increase and a \$952,073 Other Funds decrease).
- Pkg. 106 Robust Agency Support Investment (\$4.4 million General Fund; 15 positions and 13.20 FTE)
- Pkg. 107 Temporary Hourly Increase Program Carryforward (\$26.9 million General Fund)
- Pkg. 081 Emergency Board (May 2024) (\$547,963 General Fund; two positions and 2.00 FTE). This package includes funding for two permanent positions approved by the Emergency Board, including an Information Technology Specialist 2 for desktop support and an Information Technology Specialist 1 for a triage specialist to support incoming calls and routing of tickets.
- Pkg. 082 Emergency Board (Sept. 2024) (\$0; three positions and 0.99 FTE). This package includes the position authority for three permanent full-time Program Analyst 4 positions in the Administrative Services Division for procurement and contacting activities that were approved by the Emergency Board. Of note is that this package neglected to include the 2025-27 rollup costs of this action totaling \$1.2 million General Fund and 3.00 FTE.
- Pkg. 090 Department of Administrative Services - Chief Financial Office Analyst Adjustments includes a \$57.5 million General Fund reduction. In addition to this reduction, the package provides funding for a six-month extension of the THIP from July 1 to December 31, 2025, for \$18.9 million General Fund. The Governor's budget appears to have included no provision for THIP case costs that will continue to be incurred beyond December 31, 2025.

The General Fund reductions in the Governor's budget span across all but one of PDC's major programs and merits further analysis as to their impact on the delivery of public defense services and related activities.

## OTHER SIGNIFICANT ISSUES

For the 2023-25 biennium, total THIP's estimated costs are \$47.1 million General Fund, and with a current budget of only \$20.4 million. More detail from PDC is required to determine if the deficit can be funded through a rebalance action, or if additional supplemental funding will be needed during the 2025 session to fund the program for the remainder of the biennium.

PDC was instructed in a budget note (SB 5532, 2023) 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).

## KEY PERFORMANCE MEASURES

A copy of the Public Defense Commission's Annual Performance Progress Report can be found on the LFO website: [KPM - View Report](#)

### **Contact Information**

John Borden, Principal Legislative Analyst

### **Legislative Fiscal Office**

900 Court Street NE, Room H-178, Salem, Oregon 97301

Oregon State Capitol | (503) 986-1828 | [www.oregonlegislature.gov/lfo](http://www.oregonlegislature.gov/lfo)