

Public Defense Services Commission

| | 2011-13 Actuals | 2013-15 Leg. Approved | 2015-17 CSL LFO | 2015-17 Agency Request |
|--------------------|--------------------|-----------------------|--------------------|------------------------|
| General Fund | 230,208,646 | 249,684,307 | 265,595,131 | 318,059,416 |
| Other Funds | 3,799,452 | 4,474,644 | 5,033,764 | 3,841,565 |
| Total Funds | 234,008,098 | 254,158,951 | 270,628,895 | 321,900,981 |
| Positions | 76 | 76 | 76 | 78 |
| FTE | 75.23 | 75.79 | 75.11 | 77.11 |

* includes Emergency Board and administrative actions through December 2014.

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, with 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.

The agency is organized into three divisions:

- **Appellate Division** (\$15.0 million, 57.11 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 through the use of staff attorneys. The division is the state counterpart to the Oregon Attorney General’s appellate division.
- **Professional Services Account** (\$251.1 million, no FTE) consists of the funding for contract defense services, including attorneys, investigators, and expert witnesses, primarily at the trial court level.
- **Contract and Business Services Division** (\$4.4 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. The Division also houses agency employees administering the Parent Child Representation Program, which was established in the 2013-15 biennium.

CSL Summary and Issues

There is a \$1.2 million funding shortfall in the 2015-17 biennium current service level budget. That is, an additional \$1.2 million General Fund appropriation above CSL is needed to maintain current services (with some small adjustments as described below).

Approximately 93% of the agency budget is allocated to the Professional Services Account, which pays for contracted public defense services, primarily at the trial level. The remaining portion of the budget funds the operations of the Office of Public Defense Services, including the state-agency staff who manage the contracts and who provide most appellate-level services.

General Fund supports approximately 98% of the PDSC budget. The remaining 2% 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. Program revenues are accruing below forecast. The CSL calculation is calculated to retain the GF/OF split in the 2013-15 biennium legislatively approved budget, but Other Funds revenues are projected to be \$1.2 million below the level needed to retain the existing fund split.

The PDSC adopted compensation plan changes that will increase salary rates for 47 agency positions, effective January 1, 2015. This will increase 2015-17 biennium personal services costs by \$428,395 above the CSL. Unless the Legislature adds funds to cover these costs, the agency will have to rely on its carryforward of unspent General Fund appropriations from the prior biennium, or hold positions vacant or reduce services & supplies expenditures below CSL.

Policy Issues

The agency is requesting \$50.2 million of General Fund above CSL. This includes \$1.2 million of General Fund to offset the Other Funds revenue shortfall, and \$49 million for program enhancements. The program enhancements consist of \$21.6 million for contractors to reduce the differential between non-profit public defense provider staff and district attorney office salary levels and to reduce caseloads, \$9.6 million to increase pay for hourly-paid attorneys and investigators, \$7.5 million to increase compensation specifically for contracted private attorneys and consortia groups, \$6.0 million and two full-time staff to improve trial-level representation in juvenile cases by expanding the Parent Child Representation Program to Clackamas and Multnomah Counties, \$4.6 million to improve the capacity for public defense contract administrators to monitor and improve services, \$0.8 million to eliminate salary differentials between PDSC staff and staff performing comparable activities in other state agencies, and \$448,117 for additional office space.

Other Significant Issues and Background

Professional Services Account costs have exceeded forecast due to higher-than-forecast caseloads. The Joint Committee on Ways and Means approved approximately \$3 million of additional funding for the 2013-15 biennium to address this issue.

The PDSC presented a number of reports during the 2014 session and the interim, including two compensation plan change reports, and a report on Key Performance Measures. One set of the compensation plan changes largely mirrored the compensation plan changes approved for executive branch employees. The other compensation plan change report addressed the compensation increases the Commission approved for 47 of the agency's 76 positions, including 40 deputy defender positions. These compensation increases were projected to cost the agency approximately \$120,000 General Fund in the 2013-15 biennium and \$735,000 General Fund in the 2015-17 biennium. These costs were not included in the 2015-17 biennium current service level. The agency is requesting to use General Fund carry forward monies from its 2013-15 biennium appropriation to finance these costs.

There was one budget note approved with the agency budget to clarify an adjustment in the 2013-15 biennium legislatively adopted budget. The General Fund appropriation was reduced by \$3.2 million to remove funding for certain 2013-15 biennium costs expected to be paid in 2015-17. It was understood that without these funds in the 2013-15 biennium appropriation, the agency's 2015-17 biennium General Fund appropriation would need to be increased to cover these costs. To this end, \$3.4 million of General Fund was added to the 2015-17 biennium Professional Services Account appropriation in Package 021. The budget note language is set forth below:

Budget Note

The Subcommittee reduced General Fund for Professional Services by \$3,200,000 General Fund to eliminate funding in the current service level for expenses that would not be paid until after the 2013-15 biennium ends. The appropriation amount approved in the 2013-15 biennium budget for Professional Services shall be utilized solely for expenses incurred and paid during the 2013-15 biennium.

Co-Chairs' Budget Framework Discussion

The Co-Chairs' Budget Framework includes funding for the Commission to maintain current levels of case processing and court system access. This includes an additional \$1.2 million of General Fund above the amount in the current service level to replace a shortfall in Application/Contribution Program revenues.