

ANALYSIS

Item 4: Public Defense Services Commission HB 5030 (2021) Reorganization Report

Analyst: John Borden

Request: Acknowledge receipt of the report.

Analysis: The budget report for HB 5030 (2021), the primary budget measure for the Public Defense Services Commission (PDSC), included the following budget note:

The Public Defense Services Commission is directed to report to the Joint Committee on Ways and Means during the Legislative Session in 2022, and quarterly thereafter to the Legislative Emergency Board, on the Commission's restructuring and modernization efforts. The release of special purpose appropriation to the Commission is contingent upon the Commission's satisfactory progress, as determined by the Legislature and/or the Legislative Emergency Board, in executing the Legislative direction in HB 5030 budget report, and as related to Legislative expectations regarding the restructuring, modernization, financial controls, quality management, performance metrics, and governance of the agency. Reporting is to also include, but is not limited to, updated caseload and financial forecasts; procurement activities, including contract amendments and the alignment of contracting with the biennial budget process as well as the separation of adult criminal and juvenile trial-level contracts; and human resources activities, including the hiring of positions, staff turnover, unbudgeted position actions, compensation plan changes, and staff morale.

The genesis of the budget note was the Legislature's desire to be kept apprised of PDSC's efforts to restructure and modernize the agency due to the number of systemic issues identified with the agency's governance, operations, financial management, budget and out of concern for the effective delivery of state public defense services.

Executive Summary

While a significant amount of effort is underway at PDSC around restructuring and modernization, and some good progress has been made, the Commission continues to operate without a prioritization of the problems faced by the agency and the public defense system, the range of potential solutions, the desired or optional outcomes, associated best practices, and recommended solutions. Instead, the Commission continues to make ad hoc tactical decisions outside of a strategic plan. Ultimately, the question becomes whether such changes will serve to stabilize the state's public defense system or compound the many problems currently faced by system.

Restructuring and Modernization

PDSC's restructuring and modernization effort is underway. There are also other external efforts examining PDSC's delivery of public defense services (i.e., Legislature Workgroup). In addition, these efforts are able to benefit from recently completed studies, including: Sixth Amendment Center, the American Bar Association/Moss Adams study, and various Corragio Group studies.

Financial Controls

PDSC financial controls appear to be improving, as the agency moves to be more in alignment with Oregon Accounting Manual requirements. The Commission has established an Audit Committee comprised of a subset of Commissions members with quarterly reporting to the full Commission.

PDSC will be reporting to the Interim Joint Legislative Audit Committee in June 2022 with a report on the agency's internal audit program and in September 2022 with the findings of an independent/external financial and performance audit of the agency. The agency's Internal Audit Section is currently being outsourced and the two internal auditors authorized by the Legislature remain vacant.

The Legislature in 2021 instructed PDSC to move Non-Routine Expenses to a biennial billing model beginning with the 2023-25 biennium. At present, PDSC continues to work on this instruction.

Quality Management

The Commission was directed by legislative budget note to develop a comprehensive program plan for the Compliance, Audit, and Performance Division (CAP) and was directed to submit the plan to the Legislative Emergency Board in September of 2022. This is a key legislative initiative to bring a heightened level accountability to Oregon's public defense system in general, and PDSC in particular, and to improve public defense outcomes through a robust monitoring of the quality of service delivery at all levels of public defense. While this effort is underway, CAP was designed to allow for independent reporting to the Commission of the agency's performance and financial management outcomes. CAP is also not meant to manage programs, establish nor enforce policy, procedure, or guidelines, as CAP's purpose is oversight.

Performance Metrics

The Commission was directed to develop Key Performance Indicators and Key Performance Measurements and report to the Legislature (i.e., Emergency Board) prior to the Legislative Session in 2023. The agency has begun undertaking this effort.

Governance

The governance of PDSC has stabilized. Membership of the Commission was recently expanded from seven to nine members (HB 2003, 2021) and all positions have been appointed. The Commission has been meeting on a regular basis and agendas have been focused on efforts to modernize the agency, including a much needed strategic planning effort. The Commission has been relying on outside consultant(s) expertise to guide its efforts.

Caseload

PDSC continues to be faced with the difficulty of understanding and forecasting the agency's caseloads. The agency's primary focus has been on adjusting caseload standards for provider contracts. PDSC's report did not include overall caseloads by case-type.

Financial Forecasts

PDSC has provided a report on the financial status of the agency as well as the transfer of appropriations between programs (Emergency Board Item #5 Financial Update and Rebalance). While PDSC financial reporting appears to be an improvement over prior biennia, work is needed to continue to improve the agency's financial forecasting model.

Procurement Activities

Changes to PDSC's procurement of public defense services are significant. The agency has abandoned the Legal Representation Unit contract methodology that was put into place on January 1, 2021 and which was in response to the release of the Sixth Amendment Center report that was highly critical of the Case Credit or flat or fixed fee procurement model. In its place, the agency has moved to a new "Appointed Case" procurement methodology, which the agency states is only a stop-gap model. The "Appointed Case" model makes fundamental changes to provider compensation, caseload standards, adjacent jurisdiction requirements, administrative cost support, and reporting standards.

The Legislature in 2021 instructed PDSC to move Trial Criminal contracts to a biennial, or biennial fiscal year, contracting model beginning with the 2023-25 biennium. The agency has historically let procurement contracts on a two-calendar year basis, which has resulted in a misalignment with the biennial budget. PDSC is expected to satisfy this instruction beginning with the fiscal year 2022 contract cycle and proceeding forward into future biennia.

In addition, by July 1, 2022, PDSC was instructed to begin the procurement of trial-level representation to parents in juvenile dependency cases and termination of parental rights cases as contracts separate and distinct from Trial Criminal procurement which heretofore were commingled. PDSC is expected to satisfy this instruction beginning with the fiscal year 2022 contract cycle; however, PDSC will then need to request from either the Emergency Board or the Legislature the transfer of Juvenile contract budget authority to the Juvenile Division, as was the intent of the Legislature when establishing the Juvenile Division budget structure.

Human Resource Activities

PDSC has been providing regular reporting to the Legislature and Emergency Board, as required by statute, of the agency's compensation plan changes. PDSC continues to work on issues such as collective bargaining negotiations, low employee morale and employee turnover, unbudgeted position actions, and the competitive hiring of positions.

Information Technology Section

The Commission recently voted to establish an Information Technology Subcommittee of the Commission to help oversee the agency's information technology efforts.

The Legislature in 2021, as part of an overall reorganization of PDSC, directed the reestablishment of the Information Technology Section with the explicit understanding that PDSC's contract with the OJD would be terminated on June 30, 2021 (HB 5030). Instead of undertaking this action, PDSC has chosen to pursue a hybrid approach, in which base information technology functions are outsourced to the Oregon Judicial Department while IT new development functions are insourced to PDSC.

The Legislature in 2022 appropriated \$743,588 General Fund and authorized two positions (1.26 FTE) for the re-initiation of the planning phase of the Financial and Case Management information technology project, which is currently underway.

Recommendation: The Legislative Fiscal Office recommends that the Emergency Board acknowledge receipt of the report.

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Public Defense Services Commission
Gibson

Request: Report on a House Bill 5030 (2021) budget note by the Public Defense Services Commission.

Recommendation: The Public Defense Services Commission is not under Executive Branch budgetary authority.

Discussion: The 2021-23 biennial budget for the Public Defense Services Commission (PDSC) was established in House Bill 5030 (2021). The bill contained four budget notes requiring ongoing reporting requirements. PDSC is fulfilling the budget note requirement by providing an update on the reporting requirements regarding the restructuring, modernization, financial controls, quality management, performance metrics, and governance of the Agency.

Budget Note

The Public Defense Services Commission is directed to report to the Joint Committee on Ways and Means during the Legislative Session in 2022, and quarterly thereafter to the Legislative Emergency Board, on the Commission's restructuring and modernization efforts. The release of special purpose appropriation to the Commission is contingent upon the Commission's satisfactory progress, as determined by the Legislature and/or the Legislative Emergency Board, in executing the Legislative direction in HB 5030 budget report, and as related to Legislative expectations regarding the restructuring, modernization, financial controls, quality management, performance metrics, and governance of the agency. Reporting is to also include, but is not limited to, updated caseload and financial forecasts; procurement activities, including contract amendments and the alignment of contracting with the biennial budget process as well as the separation of adult criminal and juvenile trial-level contracts; and human resources activities, including the hiring of positions, staff turnover, unbudgeted position actions, compensation plan changes, and staff morale.

The PDSC update report focuses on providing information on activities and completed tasks in three targeted areas including (1) legislative expectations, (2) procurement activities, and (3) human resources activities. Below are some of the highlighted activities reported by PDSC.

Legislative Expectations

- Development of a new organizational structure for Compliance Audit and Performance, which includes realignment of work between internal divisions and identification of improvement opportunities.
- Update of the attorney qualification approval process and development of a proposed attorney compensation structure which recognizes the different levels of qualifications (e.g., misdemeanors versus felonies).
- Streamlining the Case Support Services Requests process.
- Increase in stakeholder and partner engagement.
- Establishment of a Data and Research Section.
- Evaluation of attorney contracts, forecasting methodology and budget projections.

Procurement Activities

- Workload analysis to realign workload standards for both adult criminal and non-PCRPP juvenile delinquency cases for July 2022 contracts.
- Altered attorney FTE payment allocation based on highest qualification.
- Modification of contract terms to require prioritization of taking cases based on attorney qualifications, acceptance of conflict and overflow appointments from adjacent jurisdictions, and imposed limits on when attorneys may leave their cases behind during moves between contracted entities.
- Addition of contract capacity due to House Bill 5202 (2022) funding.
- Realignment of contracting with biennial budgeting process and separation of adult criminal and juvenile trial level contracts.

Human Resources Activities

- Analysis of position vacancies and turnover reasons.
- Minimization of recruitment practices utilizing unbudgeted positions and direct appointment methods.
- Completion of compensation plan changes.
- Activities focused on improving employee morale.



Oregon

Public Defense Services Commission

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May 2, 2022

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Dan Rayfield, Co-Chair
Joint Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairs:

Nature of the Request

During the 2021 session, the Oregon Legislature passed HB 5030, which established the Public Defense Services Commission (PDSC) budget for the 2021-2023 biennium. HB 5030 contained four budget notes with reporting requirements throughout the biennium. The purpose of this letter is to provide an update on the reporting requirements regarding the restructuring, modernization, financial controls, quality management, performance metrics, and governance of the agency.

The HB 5030 budget note reads:

The Public Defense Services Commission is directed to report to the Joint Committee on Ways and Means during the Legislative Session in 2022, and quarterly thereafter to the Legislative Emergency Board, on the Commission's restructuring and modernization efforts. The release of special purpose appropriation to the Commission is contingent upon the Commission's satisfactory progress, as determined by the Legislature and/or the Legislative Emergency Board, in executing the Legislative direction in HB 5030 budget report, and as related to Legislative expectations regarding the restructuring, modernization, financial controls, quality management, performance metrics, and governance of the agency. Reporting is to also include, but is not limited to, updated caseload and financial forecasts; procurement activities, including contract amendments and the alignment of contracting with the biennial budget process as well as the separation of adult criminal and juvenile trial-level contracts; and human resources activities, including the hiring of positions, staff turnover, unbudgeted position actions, compensation plan changes, and staff morale.

PDSC requests that the committee acknowledge receipt of the attached report.

Agency Action

In evaluating the budget note, PDSC notices three primary areas of focus. The first area of focus is a status report on Legislative expectations regarding the restructuring and modernization efforts, financial controls, quality management, performance metrics and governance of the agency. The second area is to report on caseload and financial forecasts including procurement activities and the separation of adult criminal and juvenile trial-level contracts. The third area is to report on human resources activities.

During the 2022 Legislative session, PDSC presented a comprehensive restructuring and modernization report that was prepared with the Coraggio consulting group. The consulting group worked closely with the agency executive team to co-create and co-implement multiple workstreams to support its modernization and transformation. Those workstreams include defining the organizational design and functions for a new Compliance, Audit, and Performance (CAP) Division, restructuring the agency to incorporate CAP operations, identifying, and assessing the agency's key risks and high-risk processes, improving internal controls, examining key performance measures and indicators, and improving governance of the agency. Concurrent to and supporting those efforts, the agency also implemented a robust stakeholder engagement process and began to develop an equity framework to support staff in managing these transitions. The enclosed report details the agency's efforts and accomplishments to-date.

Action Requested

The Public Defense Services Commission requests acknowledge receipt of this report.

Legislation Affected

No legislation is affected.

Sincerely,



Stephen I. Singer
Executive Director

cc:

John Borden, Principal Legislative Analyst, LFO
Amanda Beitel, Legislative Fiscal Officer
George Naughton, Chief Financial Officer
Wendy Gibson, Policy and Budget Analyst, CFO

Executive Summary

The purpose of this report is to provide progress the Public Defense Services Commission (PDSC) efforts towards meeting the requirements of the budget note in HB 5030 (2021). The report is broken down into the distinct parts: Legislative Expectations, Procurement Activities and Human Resource Activities.

Legislative Expectations concentrates on several areas. Restructuring describes the work, achievements and plans for the Compliance, Audit and Performance Division. Modernization describes the efforts associated with Information and technology. Financial Controls, Performance Metrics and Governance all describe activities that the agency has employed in those areas. Caseload Forecasting is intended to describe the methodology used to prepare the 2022-23 contracts. Financial forecasting is intended to give a high-level report and refers to the separate Financial Update which is also being presented in a separate report.

Procurement activities is intended to provide an update to the committee on agency procurement activities, including contract amendments, the alignment of contracting with the biennial budget process, and the separation of adult criminal and juvenile trial-level contracts.

Human Resource activities is intended to report the human resources activities including agency vacancies, status of new positions, recruitment practices, unbudgeted position actions, compensation plan changes, new leave provisions, classification changes, employee morale, and HR initiatives.

Legislative Expectations

The purpose of this section is highlight specific legislation expectations that were given to the agency to implement and report on the progress to the legislature.

Restructuring

Compliance, Audit & Performance (CAP) Division Recruitment

One Trial Criminal Deputy General Counsel position was filled by an existing staff member who was serving as Deputy General Counsel under the agency's General Counsel. After competitive recruitment processes, the agency filled the two permanent, full-time General Counsel positions (Chief Criminal Trial Counsel and Chief Juvenile Trial Counsel) in February 2022, as well as one Deputy General Counsel position in the Juvenile Division in February 2022 and one Deputy General Counsel position in the Trial Criminal Division in April 2022. Additionally, the agency has filled the two Research Analyst and two Data Analyst positions.

Trial Criminal and Juvenile Sections

As noted in the agency's January 2022 Restructuring and Modernization Progress Report, the agency worked through the fall of 2021 to develop the organizational structure for Compliance, Audit and Performance (CAP) and to reorganize agency operations to better align with changed workload and to accommodate the new CAP division. As a result, responsibility for the following agency work has been moved from the General Counsel Division to the CAP division:

- Management of the review and approval of attorney qualifications to accept court appointments for specific case types and levels of cases;
- Provision of legal support to the Case Support Services (CSS) ((formerly Non-Routine Expenses (NRE)) team and to the Contracts team; and
- Evaluation of and response to complaints regarding attorneys providing public defense services.

As the agency filled the CAP General Counsel and Deputy General Counsel positions, those individuals worked with the agency's General Counsel to understand existing systems and processes for managing attorney qualifications, complaints, and CSS requests. They are also identifying areas for both immediate and long-term improvement. More recently, CAP has also provided significant legal and data support for the development of proposed contracts for the provision of public defense services from July 1, 2022, to June 30, 2023. This work is vital as the agency implements separate contracts for trial-level representation in criminal and juvenile cases while the state emerges from the COVID-19 pandemic. CAP's work to date is set out in more detail below.

The work of the CAP division in conjunction with the contracts team has resulted in significant improvements in the development of the contracts for fiscal year 2022-23 including: improvements to the forecasting methodologies for projecting expected cases by case types by jurisdiction; improvements to the caseload standards to bring the standards closer to national and regional standards, and reduce the number of cases providers are expected to cover at virtually every case type which will allow providers to improve the quality of representation while still covering the forecasted cases; the creation of a tiered pay scale to incentive attorneys to increase their qualifications to take more serious cases and prioritize the taking of those more

serious cases which are the cases that all stakeholders in the system including judges, district attorneys, and the community agree are the highest priority; equalizing and in most cases increasing reimbursement for administrative expenses including reporting across the board to all contract entities including non-profit public defender offices which previously received no reimbursement for administrative expenses all of which will allow for improved reporting; requirements for more prompt reporting, and the creation and implementation of graduated penalties for reporting delays which will allow the Agency to actually utilize the penalties to incentivize prompt reporting while not impairing the provision of services; increasing the level of compensation to virtually every contract entity in every jurisdiction to help retain current attorney capacity and attract new attorneys to public defense.

Attorney Qualifications

Currently, review and approval of attorney qualifications, although far from an ideal quality assurance tool, is the agency's best available method for ensuring the quality of public defense services. As such, upon assuming responsibility for this work, CAP attorneys worked with Office of Public Defense Services (OPDS) Information Technology Section to set up a dedicated email address for receiving attorney qualification application forms, to which all CAP attorneys have access, to ensure that those submissions are timely delivered to CAP for review. In addition, during the RFQ process for the fiscal year 2022-23 contracts, CAP attorneys are working closely with the contracts team to update OPDS' attorney qualification database to make sure that it is accurate and current as possible.

Also, historically, the agency provided a flat rate of compensation for all attorneys regardless of the level of qualification any attorney. Although the agency does not, and cannot, control the actual pay that individual attorneys receive because they are independent contractors, the agency does control the level of funds it provides to each contract entity out of which each attorney is compensated. The flat rate method of compensation meant that entities were provided the same amount of money to compensate attorneys handling misdemeanors as attorneys handling major felony or homicide cases. A new attorney can handle a misdemeanor caseload while major felonies and murder cases require attorneys with substantial experience and expertise. They should not be compensated at equal rates. The agency is proposing to change the way it pays for services by exploring a differential or tiered reimbursement rate. By providing reimbursement based in the level of compensation the agency hopes to incentivize attorneys to seek higher qualifications and take on more serious cases. These serious cases involve clients who should be prioritized because they are in custody, their cases often have discreet victims, and these cases are of most concern to the courts, district attorneys, and the community.

The Request for Qualifications (RFQ) for the 2022-23 contracts proposes that attorney compensation would be tied to an attorney's level of qualification—that is, an attorney qualified to handle and willing to accept appointments in cases where an individual is charged with murder would be paid at a higher rate than an attorney who is only qualified for or only willing to accept appointments in misdemeanor cases. CAP is working to develop an improved application for attorney qualifications for use in the 2023 contracting process, to ensure consistency and efficiency in approving attorney qualifications, as well as, as indicated above, to update OPDS' attorney qualification database to make sure that it is a accurate and current as possible.

Case Support Services (CSS) Requests

CSS requests submitted to the agency are reviewed by the CSS team and, if they are routine and/or fit squarely within the agency's existing payment policies, are approved without CAP involvement. However, the CSS team refers to CAP any CSS requests that are not clearly allowable under the agency's existing payment policies, request an atypical number of hours for the type of service requested, or are over a certain dollar amount. CAP reviews those CSS requests, consulting with the agency's Budget & Finance Section as needed and determines whether and to what extent the request is for services that are "necessary and reasonable" for investigating, preparing, and presenting a case in court. CAP meets regularly with the CSS team to ensure efficient processes focused on consistency, efficiency, and approval of only fees and expenses authorized by ORS 135.055 and related statutes.

CAP has identified areas of CSS requests where policy development and revision are needed due to increased number of requests and/or increased costs. CAP will work with the Budget & Finance Section on these areas.

Contracts Team Support

CAP attorneys also provide legal support to the Contracts team, responding to questions regarding whether court-appointed counsel is authorized in particular circumstances as they arise and how cases should be counted in reporting from attorney providers. Preliminary information has revealed that many clients awaiting appointment of lawyers have had a series of court-appointed attorneys. In response, CAP attorneys have worked with the agency's Contracts Team to ensure that attorneys follow the Rules of Professional Conduct when seeking to withdraw from client representation. CAP attorneys have also engaged with the judiciary regarding this same issue in an effort to mitigate the current shortage of qualified public defense attorneys. More outreach to judges and public defense providers is necessary in this area. CAP attorneys will continue to work with the Contracts Team to identify and address ongoing issues as they arise. As noted above, the CAP team has also worked closely with the contracts team to improve the fiscal year 2022-23 proposed contracts including coordinating with the research and data team to try to get a higher percentage of cases covered within the contracts rather than have them addressed on the back end through hourly rate contracts when an emergency shortage appears which is the least effective and efficient manner of providing attorney coverage for cases.

Attorney Complaints

CAP attorneys have been evaluating and responding to complaints made to the agency regarding PDSC-funded attorneys. OPDS review of attorney complaints is not meant to duplicate or supplant referrals to the Oregon State Bar (and complaints to OPDS regarding PDSC-funded attorneys may be forwarded to the Bar). Nonetheless, reviewing and responding to attorney complaints provides an opportunity to address concerns about individual provider performance and support improved practice, as needed. Moreover, CAP attorneys may act as mediators to try to support the continuation of an attorney-client relationship, if possible. In addition, fielding complaints about public defense attorneys will assist CAP in identifying issues related to practice statewide and in individual jurisdictions. Notably, the CAP Criminal Trial Chief as recently done an in-depth review of a complaint regarding a public defense attorney with a consortium in

a specific county that was raised by a relatively new judge and trial court administrator. The complaint was thoroughly reviewed in a timely and in-depth manner that would not previously have been possible and is in the process of being completed and finalized.

Stakeholder and System Partner Engagement

CAP attorneys are involved in various workgroups and other stakeholder meetings to coordinate and collaborate with system partners at the state and local levels. This has included being involved with regular, sometimes weekly meetings in Multnomah and Washington counties involving the judiciary, district attorneys, and public defense providers to help address the emergency backlog of unrepresented clients. This involvement allows CAP attorneys to be aware of issues and problems in the public safety arena that could affect agency operations. Engagement with other system partners allows CAP attorneys to develop relationships that will encourage collaborative problem solving in response to emerging issues.

Stakeholder engagement allows CAP attorneys to establish good working relationships with public defense providers that will facilitate increased and efficient cooperation in handling cases and identifying practice and systemic issues. Because the CAP attorneys understand that relationships between the agency and public defense providers (who are independent contractors) have been strained recently, it is the CAP attorneys' collective belief that it is essential that PDSC-funded attorneys view the CAP Division as a resource for support and practice improvement and not merely as a source of corrective or punitive oversight. Accountability needs to occur both within the agency and over PDSC-funded attorneys, and CAP attorneys must be visible within the community to achieve the desired improvement in the provision of public defense services. To that end, CAP attorneys have assisted the agency in facilitating oral and written feedback from providers regarding the 2022-23 contracting process and proposed terms, which has, in turn, been provided to the PDSC.

Data & Research Section

The Data & Research Section was established to support the efforts of CAP. Moving the agency to a data and research-driven entity is a pivotal function of the CAP Division. The Data & Research Section has provided support for developing the 2022-23 contract terms, framework, and Request for Qualifications (RFQ), working collaboratively with both the Trial Criminal and Juvenile Divisions of CAP, as well as the agency's Executive Director, General Counsel, and Contracts Team. The Data & Research Team has utilized data from both public defense providers and the Oregon Judicial Department to assist the agency in estimating caseload needs across the state and improving efforts to collect data from public defense providers. This work has assisted CAP in understanding the limitations of the agency's ability to forecast caseload needs and the challenges and constraints of the current information available to the agency.

To improve agency functioning and support ongoing efforts to improve Oregon's public defense system, the agency must have a robust Data & Research Section that can interact and data-share with the Data & Research sections of other public safety agencies. To achieve efficiencies and facilitate collaborative problem solving, there cannot be "silo-ing" of data and information among public safety community members.

The agency needs to adequately prepare and account for emerging trends that can affect the need for PDSC-funded attorneys or can impact the workload of the current providers. To enhance the quality of PDSC-funded attorneys, CAP intends to review and evaluate the workloads for providers and make recommendations for how to address concerns about Oregon’s public defense system raised by studies such as *The Oregon Project: An Analysis of the Oregon Public Defense System and Workload Standards* (2022) by the American Bar Association Standing Committee on Legal Aid and Indigent Defense and *The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services* (2019) by the Sixth Amendment Center.

Development of the CAP Program Plan

Informed, in part, by knowledge of common research practices that have proven successful in the provision of services in the public health arena, CAP intends to utilize a monitoring, evaluation, and learning framework to identify and collect the evidence needed to support:

- Agency, contract entity, and individual provider accountability;
- Agency, contract entity, and individual provider performance measurement;
- Continuous quality improvement of agency, contract entity, and individual provider service delivery;
- Identification of agency, contract entity, and individual provider best practices; and
- Communication of findings to internal and external stakeholders.

CAP will create logic models for program and contracting functions, mapping out relationships between resources, actions, and activities and their intended outcomes and impact within the public defense system generally and within specific practice areas, (*i.e.*, criminal, juvenile delinquency, juvenile dependency, etc.) and identifying assumptions and risks of implementation and service delivery. CAP will determine the conditions necessary for improved program development, contracting, and service delivery.

Once logic models are created, CAP will formulate high-level, guiding questions based on the models to help frame the analytic activities pertaining to program implementation assessment, compliance monitoring, and performance evaluation. Questions may focus on programmatic and contract implementation, outcomes, cost-effectiveness, and/or fit and relevance.

CAP will identify progress and performance indicators by using the evaluation questions as a guide. These indicators, through regular monitoring, will allow understanding of progress toward program and contract goals as well as risks to implementation identified in developing the logic models.

Once CAP has determined indicators, it will identify the best methods, tools, and/or data sources to collect the necessary and relevant data for each indicator, establishing parameters for how each tool and source can be used ethically to monitor the indicators so indicators are not misrepresented. Examples of possible tools and/or data sources include, but are not limited to, program and contract reporting; invoice and payment documentation; administrative data; surveys; needs assessments; court observations; and interviews and focus groups. For each data collection method or tool that either doesn’t currently exist or requires modification, CAP will

develop a standardized method and/or tool that will allow for consistent collection of data across the entire targeted population.

Ultimately, CAP will implement monitoring activities, utilizing an iterative process to determine the frequency of monitoring for each indicator, the collection of data needed to monitor indicators, and the necessary reporting structure to monitor those indicators.

Modernization

Information Technology modernization efforts

The current IT modernization effort begins with the migration of the Attorney database, NRE/CSS, Appellate Division Criminal and Juvenile Appellate Section databases from an Access back end to a more stable and future proofed SQL database. These efforts will become immediately apparent to all end users in the speed at which the data is accessed. SQL is built with a multi-user design that will allow many users to access the same data at the same time. Reporting tools will now be able to run on the live database at speed without creating any significant impact to end user experience.

Another major improvement is the security and stability. This will allow PDSC to configure access to each database to only those users who have been approved for access and to limit how they can interact or modify the data. Additionally, users should no longer experience database crashes on a regular basis and if an issue does arise, the IT section has upgraded the backup methods to offer a more robust solution and faster response.

Lastly, quality-of-life improvements have been made to the Attorneys database to better capture and report on data. Users can now correctly identify the role and firm type for each contract the attorney has which will help immensely with reportability. Accidental modification has been a problem in the past and is minimized by requiring the user to click an “Edit” button and acknowledge the changed to be made. Search functions have been greatly sped up and simplified into a single search field.

It is important to mention that the 2022 Legislature did make the investment of \$743,588 and two limited duration positions to Administrative Services Division for the planning phase of the Financial and Case Management information technology project. In the 2022 Legislative report the agency indicated it was looking to fill these two positions in April 2022. That recruitment has now been successfully completed and the positions have been filled.

Financial Controls

One of the key areas of concern has been the financial controls of the agency. The agency has taken steps to begin implementing basic financial controls in accordance with Oregon Accounting Manual. Some of the key issues concern the compliance checking of invoices that are submitted to the agency and the process in which invoices are submitted to the agency. Although some of these changes are not popular with the vendor community because it slows the payment of invoices it remains important for the agency to maintain its role as responsible stewards of public funds and meet the legislative expectations of accountability.

The agency has hired two experienced financial analysts who have helped change the way it models and reports expenditure and financial forecasting to take advantage of the resources it currently has available. This will allow managers to become more familiar and gain a better understanding of the resources they need to manage their budgets. Finally, the agency will continue to gain efficiencies as new processes normalize; however, technological limitations will continue to be a concern.

Performance Metrics

To support the restructuring efforts, the agency is conducting a process to identify and establish key metrics (constitutional, statutory, and operational) and measures to drive effective organizational results. This workstream was started in February 2022 and will continue forward in conjunction with and in alignment with the agency's modernization, strategic planning and restructuring efforts.

The agency has started using a multi-step framework that will help guide us through the performance metrics development process. The steps include:

1. Review best practices for performance management and metrics
2. Inventory existing Agency performance metrics
3. Conduct work sessions to:
 - a. Create common and aligned language for performance management and metrics
 - b. Define ownership and performance management decision making and controls
 - c. Define the key performance metrics and measures
 - d. Develop a key performance management dashboard
 - e. Develop training on ongoing performance management

Governance of the Agency

Like many agencies in the State of Oregon, the Public Defense Services Commission (PDSC) has many different programs, policies, and business priorities to manage. PDSC has many critical milestones which are associated with legislative mandates, programs, and operational policies. The Project Management Body of Knowledge (PMBOK®) utilizes three organization project management approaches; *Projects, Programs, and Portfolios* to provide oversight such as scope, change, planning, management, monitoring, and execution. Over the last several years PDSC's resources have been overwhelmed and continue to face a large volume of work that has been difficult to manage and meet legislative requirements. To implement proper project management methodologies PDSC has determined that a portfolio framework would best meet the needs of the current operational structure. Portfolios are a collection of projects, programs, subsidiary portfolios, and operations which are managed as a group to achieve strategic objectives¹.

Over the last month the agency has broken out an overarching body of work encompassed within the portfolio. Although this is an initial breakdown of high-level bodies of work, the agency continues to work towards implementing a formal project management process to ensure the portfolio management methodologies can be applied and effectively monitored. In addition to providing proper management of operations, the portfolio framework will also provide the

¹ Project Management Institute. 2017. A guide to the project management body of knowledge (PMBOK guide)/ Project Management Institute. Sixth Edition.

agency with an additional layer of oversight and adherence to policy, legislative mandates, and operational practices. These benefits are believed to bring PDSC to a place where work, programs, and short-term projects will have the highest rate of success.

Current management of these processes have begun to set awareness and understanding of need, direction, and governance. To date the agency has established several project management tools all stored within a portfolio matrix. These tools manage timelines, decisions, risks, and issues, as well as inform the governing body who is responsible for each task and to what degree. In addition to these tools the executive committee is provided with weekly portfolio status updates where progress of each body of work in the portfolio stands as well as any other key decisions or risks that need to be addressed. In addition to these tools the executive committee is provided with weekly portfolio status updates where progress of each body of work in the portfolio stands as well as any other key decisions or risks that need to be addressed. Those with the most knowledge and experience with project management methodologies are and continue to work with those on the executive committee with less familiarity and ability in project management to build project management capabilities within the executive team and the agency. The agency finds it essential that supporting the agency with proper project management awareness will allow the agency to expand upon and grow this knowledge exponentially.

Caseload Forecast

The following is intended to summarize the methodologies used and policy changes made in creating the 2022-2023 contracts.

I. Adult Criminal Contracts

a. Forecasting Methodologies

We are using the following methodologies for forecasting 2022-23 caseloads for the following case types:

- i. **Murder:** We are using the 2021 OJD pretrial dashboard data as baseline and forecast an increased murder rate of 21%, which reflects the average percentage increase in the murder rate over the last three years. We are using the OJD pretrial dashboard data to account for assignments to hourly attorneys, who would not be reflected in our provider data set.

Consistent with current agency policy, we accounted for co-counsel in all first-degree murder cases and the discretionary appointment of co-counsel (at a rate of 30% statewide) in second-degree murder cases. For unknown reasons this was never previously done which resulted in a substantial undercount of the forecast need of attorney capacity to handle expected murder cases. This resulted in the overuse of hourly pay attorneys which are the least efficient and least cost-effective method of providing counsel for these cases, and which has resulted in a substantial deficit in the Agency's Court Mandated Expenses Division.

- ii. **Jessica's Law, Ballot Measure 11, and Major (A/B) Felonies:** We are using an average of the last 5-years of provider data to project the 2022-23 caseload in serious

felony cases. Charging decisions in serious felony cases have remained fairly consistent notwithstanding the COVID-19 pandemic, and this allows the agency to draw on a larger data set in projecting for 2022-23. Using this methodology, we forecast a 12% increase in Jessica's Law cases, a 5% increase in Ballot Measure 11 cases, and a 12% increase in Major (A/B) Felony cases.

- iii. Minor (C/D/U) Felonies/PVs: We are using 2021 provider data to project the 2022-23 caseload. This is the most current dataset available, and reflects recent changes to the law and, by omitting 2020 data, accounts for the impact of COVID-19. We believe that the number of minor felony cases would be overinflated if we had used a five-year average. Accordingly, we project that minor felony caseloads would remain flat.
- iv. Misdemeanors: We are using an average of four years of provider data (2021, 2019, 2018, and 2017) to project the 2022-23 caseload. Charging decisions in misdemeanor cases were significantly affected by COVID-19. This projects approximately a 25% increase in the misdemeanor cases for 2022-23.
- v. Civil Commitments: We are using an average of five years of provider data to project the civil commitment caseload for 2022-23. Civil commitments were relatively consistent from year to year, and COVID-19 did not have an appreciable impact on those case numbers. Using this methodology, we project approximately a 2% increase from the 2021 caseloads.

b. Standards:

In order to establish standards for all adult criminal case types, the agency began by developing a baseline using national and regional standards from several different jurisdictions across the county, and more heavily weighting regional standards including those from neighboring Washington state to make the standards more relevant to Oregon specific needs and practices. Using this method, the agency developed a baseline standard for misdemeanor cases of 300 cases per FTE attorney. Then the agency is using the workload analysis in the American Bar Association's (ABA) report, *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards*, to assign relative weights for probation violation, misdemeanor, minor felony, major felony, Ballot Major 11, and murder and Jessica's Law Cases. Using this approach with a slight modification for the murder/Jessica's Law standard, we established the following standards for those case types:

- Murder/Jessica's Law: 6 cases/1.0 FTE
- Ballot Measure 11: 45 cases/1.0 FTE
- Major (A/B) Felonies: 138 cases/1.0 FTE
- Minor (C/D/U) Felonies: 165/1.0 FTE
- Misdemeanors: 300/1.0 FTE
- Probation Violations: 825/1.0 FTE

Using the relative weights assigned by the ABA report, the number of murders/Jessica's Law cases per 1.0 FTE would be 12. Because of the severity of these case types if the

agency under contracts for these cases it has an extremely significant effect on the ability to handle these cases in accordance with the rules of professional conduct and national and regional standard. In reviewing the 2021 data for this case type were able to identify that only two thirds of the attorney capacity needed was captured in the contract. Because the prior standard for these cases was four the agency increased the standard to six (or by one third) to both address the ABA workload report and bring almost all these cases within the contract system rather than the hourly system.

The standard for civil commitments, which were not addressed in the ABA report, remain the same as last year, which is 230 cases per 1.0 FTE.

II. Juvenile Contracts

a. Forecasting Methodologies:

- i.** Non-PCRPP Juvenile Delinquency: We are using OJD pretrial dashboard data from 2021 and projected a 50% increase in delinquency filings. This reflects an increase of 43% in juvenile delinquency filings in the first quarter of 2022 compared to the first quarter of 2021, which we attribute to the lessening impact of COVID-19, and changes in the law that preclude the use of older data sets. We project a slightly larger increase than 43% to account for the fact that our data does not include formal accountability agreements.
- ii.** Non-PCRPP dependency/TPR: We are using OJD pretrial dashboard data from 2021 and projected a 5% increase in dependency filings. This reflects the relatively stable or declining numbers of dependency and termination of parental rights cases over the last five years and the challenge in accurately forecast the timing of TPR petitions, which are not tied to external events. We determine that provider expectations that reopening schools would give rise to more dependency filings were not reflected in the 2021 data.
- iii.** We are using PCRPP data to estimate that we would need approximately 2.2 attorneys for each petition filed, which assumes that approximately 70% of cases involve a single child and approximately 30% of cases involve two or more children. It also assumes two TPR petitions for one child.
- iv.** PCRPP Delinquency and Dependency/TPR: We are using PCRPP data to forecast the number of cases for each case type but applied the same (above) assumptions regarding the forecasted increases in filings for those case types (50% for delinquency and 5% for dependency and TPR cases).

b. Standards

- i.** Non-PCRPP Delinquency: We are using the workload analysis in the ABA report to identify the following standards for non-PCRPP delinquency caseloads, again using a baseline that 300 juvenile misdemeanors constitute 1.0 FTE:

- Murder: 6/1.0 FTE – because all delinquency homicide cases result in a prosecution request for a waiver to adult court, and agency policy is to provide for a co-counsel for all delinquency cases where there is a waiver request, the standard of 6:1.0 FTE for these cases actually results in a substantially lower workload per attorney as all of these cases will have a co-counsel.
 - All other delinquency cases: 132/1.0 FTE
- ii. Non-PCRP Dependency: We left the standards for non-PCRP dependency cases unchanged from last year, which is 69 new cases per 1.0 FTE.
 - iii. PCRP: The standard for PCRP is no more than 80 delinquency or dependency cases per 1.0 FTE. That standard remains unchanged.

III. Statewide Contracts

Accurate forecasting with the statewide contracts is particularly challenging because of the small numbers involved in these specialty caseloads. With the exception of the PSRB contract, we kept the expectations in the 2021 contracts in place for 2022:

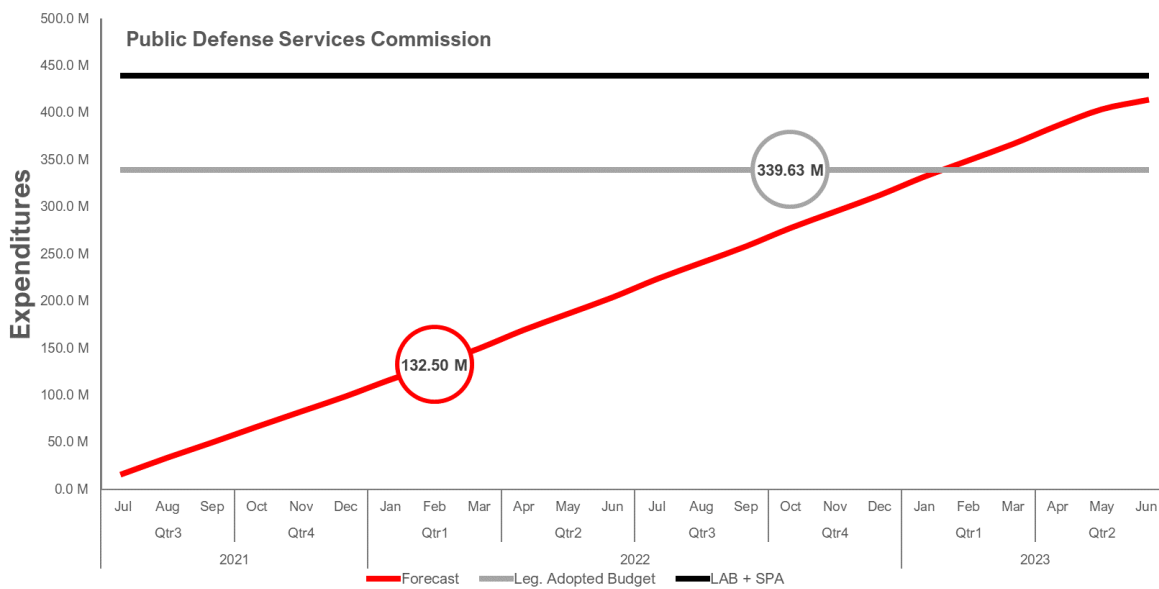
- a. Post-conviction Relief and Habeas—Trial Level:
 - i. Forecasting: We are using the first quarter of 2022 provider-reported data to project caseloads for 2022, which indicates in a slight drop in cases from 420 to 408 for 2022.
 - ii. Expectation: 45 cases per 1.0 FTE (no change from 2021).
- b. Post-conviction Relief Appeals:
 - i. Forecasting: We are using the first quarter of 2022 provider-reported data to project caseloads for 2022. This anticipates a significant decrease from 278 cases in 2021 to 160 for 2022.
 - ii. Expectation: 50 cases per 1.0 FTE (no change from 2021).
- c. Civil Commitment Appeals:
 - i. Forecasting: 120 appeals annually (no change from 2021).
 - ii. Expectation: 60 cases per 1.0 FTE (no change from 2021).
- d. Juvenile Dependency and Delinquency Appeals:
 - i. Forecasting: We are using 2021 provider-reported data to project caseloads for 2022 at 90. This provider reported no cases for February 2022, so the first quarter of data did not seem like a reliable basis for projecting an annual caseload. Further, this contractor takes overflow and conflict cases from OPDS's Juvenile Appellate Section.
 - ii. Expectation: 32 cases per 1.0 FTE (no change from 2021).
- e. Psychiatric Security Review Board (PSRB)

- i. We did not forecast a caseload for this contract, but instead made the decision to treat this contract similar to a specialty court (based solely on FTE) because a significant amount of the legal work was not captured in any projections, which had only captured the work done in annual PSRB hearings but could not account for client-requested six-month review hearings, administrative hearings, and the particularly high needs of clients.

Financial Forecast

Current State of 2021-23 LAB

The chart below shows the current state of the commission budget, for the period ending February 28, 2022. Without the additional investment represented by the \$100 million SPA, based on current spending the agency budget will reach its limit on or around January 2023. Items of concern are in the Case Support Services Division where spending is projected to exceed the current budget inclusive of the SPA investment. Court Mandate Expenses is expected to continue to rise as the current crisis with contracted providers increases the need for hourly contracts.



	LAB	Expenditures	Projections	Forecast	Variance
General Fund	321,184,175	129,347,954	268,980,124	398,328,077	77,143,902
Other Funds	18,449,667	3,155,147	11,851,129	15,006,276	(3,443,391)
Total Funds	339,633,842	132,503,100	280,831,253	413,334,353	73,700,511

The tables below summarize the commission’s General Fund position. The first table which is by program area highlights the need for additional investment of approximately \$80.8 million.

General Fund – Program Areas

February-22	LAB	Forecast	Variance
Trial Criminal Division	186,458,931	225,857,275	39,398,344
Non-Routine Expenses	43,663,533	60,986,655	17,323,122
Court Mandated Expenses	15,006,403	29,817,469	14,811,066
Juvenile Division	30,577,095	39,845,880	9,268,785
Total General Fund	275,705,962	356,507,280	80,801,318

The second table shows the projected savings in non-SPA related program administrative areas. These savings amount to \$3,657,415 as shown in table below. When combined with deficit of \$80,801, 318 from the table above, the PDSC currently has a projected General Fund need deficit of \$77.1 million, when considering all areas, and without the injection of the \$100,000,000 SPA holdback.

General Fund – Program Administration Areas

February-22	LAB	Forecast	Variance
Executive Division	3,600,361	3,294,375	(305,986)
Compliance, Audit, & Perf. Division	4,656,251	4,765,870	109,619
Appellate Division	24,925,503	22,124,745	(2,800,758)
Administrative Services Division	12,296,098	11,635,808	(660,290)
Total General Fund	45,478,213	41,820,798	(3,657,415)

This final chart is divided into two sections to demonstrate the results of projected investments and additional expenditures for the remainder of the biennium. The first section displays the February 28, 2022, period ending number as projecting an overspend of approximately \$73,700,511 in total funds, which does consider the forecasted savings in the Program Administration Areas. This suggests that the application of the \$100 million special purpose appropriation (SPA) investment will leave a surplus of available funds, which is clearly not the case.

The second section displays the reality of projected PDSC budget when considering all factors as a projected biennial ending balance need of approximately \$49 million. This second display takes into consideration the SPA investment, the additional projected expenditures from the changes to the provider contracts and the unbudgeted and growing encumbrance in the Case Support Services division.

Period End 2/28/2022	LAB	Expenditures	Projections	Forecast	Variance
General Fund	321,184,175	129,347,954	268,980,124	398,328,077	77,143,902
Other Funds	18,449,667	3,155,147	11,851,129	15,006,276	(3,443,391)
Total Funds	339,633,842	132,503,100	280,831,253	413,334,353	73,700,511

Projected Investments and Additional Expenditures					
SPA Investment	100,000,000				(100,000,000)
Trial Criminal					
Contracts			15,636,042	15,636,042	15,636,042
Juvenile Contracts			1,584,135	1,584,135	1,584,135
Unbudgeted CSS Issue			58,000,000	58,000,000	58,000,000
Final Projected Totals	439,633,842	132,503,100	298,051,430	488,554,529.95	48,920,688

Additional budget information can be seen in two other documents being submitted to the Joint Emergency Board: The Agency Financial Update and the SPA request.

Procurement Activities

The purpose of this report is to update the committee on agency procurement activities, including contract amendments, the alignment of contracting with the biennial budget process, and the separation of adult criminal and juvenile trial-level contracts.

Caseload projections and changes to July 2022 to June 2023 contracts

The PDSC contracts for the provision of public defense services for eligible individuals in criminal, juvenile dependency, juvenile delinquency, civil commitment, and post-conviction relief cases at the trial level; civil commitment, juvenile delinquency, juvenile dependency, and post-conviction relief appeals; and proceedings before the Psychiatric Security Review Board.

PDSC also manages the Parent Child Representation Program in Benton, Clatsop, Columbia, Coos, Douglas, Lincoln, Linn, Multnomah, Polk, and Yamhill Counties. The program provides trial-level legal services for juvenile dependency and delinquency cases and is premised on, among other things, a workload model, rather than quantifying FTE according to the number of assigned cases an individual attorney receives annually, as is generally the case with the PDSC's other contracts

In building its July 2022 contracts, the PDSC endeavored to achieve four goals: 1) to more accurately project its actual caseload and resulting attorney FTE needs through June 2023, 2) to move closer to aligning with recently published, Oregon-specific guidance on attorney workload standards, 3) to promote the efficient allocation of attorney resources throughout the state, and 4) to accommodate the enhanced reporting requirements for its criminal and non-PCRPP juvenile contractors anticipated with the build out of its Compliance, Audit and Performance (CAP) Division in 2022.

Caseload projections

In December 2021, the PDSC extended the 2021 contracts for an additional six-months, through June 30, 2022. The extensions continued the then-existing contracting model, and there were no additional forecasting, increases, or other changes to the contract in place for each entity at the time of the extension.

To prepare for the upcoming contract cycle, the agency analyzed the Oregon Judicial Department (OJD) pretrial dashboard data from 2017 to the first quarter of 2022; monthly caseload reports provided by providers in 2020 and 2021; and data collected through its PCRPP program to assess overall trends in state charging and petition filing practices; the impact of the COVID-19 pandemic, and recent statutory changes on specific case types. Because state charging and petition filing practices varied significantly across case types, in part due to discretionary decisions the state made in response to the COVID-19 pandemic, the agency employed case-type specific methodologies to project anticipated caseloads for June 2022 to June 2023.

In contrast to past practice, the agency also attempted to account for its existing policy requiring appointment of co-counsel in first-degree murder and allowing discretionary second-degree murder cases in projecting those adult and juvenile delinquency caseloads. The intent in accounting for co-counsel in murder cases is to ensure that a greater proportion of that caseload is included in the

agency’s contracting decisions, which the agency anticipates will result in less need to rely on the appointment of hourly attorneys, which are in short supply and more costly.

Changes to caseload standards

Starting in January 2020, the PDSC has contracted for adult criminal and non-PCRJP juvenile trial level public services by looking to caseload standards for full-time defense attorneys developed by the National Advisory Commission (NAC) in 1973. Those standards were intended to establish maximum caseload standards for full-time attorneys handling criminal, juvenile, and mental health cases with average complexity and with adequate support staff. However, the NAC standards are universally viewed as outdated and inadequate to address the demands on modern defense attorneys, stemming from, among other things, electronic discovery, the need to engage with medical, psychological, forensic, and other experts, and the mental health and other specialized needs of clients.

To cover projected caseloads, the January 1, 2021 to December 31, 2021, contracts required an attorney working 1.0 FTE to carry a maximum caseload of 15% *above* the maximum caseloads established by NAC.

In January 2022, the American Bar Association (ABA) published its report, *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards*, which calculated the amount of time that full-time public defenders should spend, on average, on specific case types to meet minimum standards of representation, which does not include time spent on administration, travel time, and supervision. There are currently insufficient funds available for the PDSC to adopt the ABA’s full workload recommendations.

In the interim, to bring the agency’s contracting model into closer alignment with current national and regional best practices, the agency used the ABA’s workload analysis to assign relative weights for adult criminal and non-PCRJP juvenile delinquency cases.

The agency did not alter its existing caseload standards for civil commitment cases or juvenile dependency cases, and the existing expectations applicable to its statewide contracts for post-conviction relief, post-conviction relief appeals, juvenile appeals, and PSRB cases because those case types were either not addressed in the ABA’s workload study or because the agency could not meaningfully alter those standards and expectations within its existing budget, or both.

The following tables summarize the changes to the standards for the July 2022 contracts:

Adult Criminal Caseload Standards

Old Case Types	Old Standard	New Case Types	New Standard
<i>Murder</i>	4.6	Murder/Jessica’s Law	6
<i>Felony (all types)</i>	172.5	Ballot Measure 11	45
		Major (A/B) Felonies	138
		Minor (C) Felonies	165
<i>Misdemeanors</i>	460	Misdemeanors	300
<i>Probation Violations</i>	460	Probation Violations	825

Juvenile Caseload Standards

Changes to Non-PCRCP Delinquency Standards

Delinquency Case Type	Old Standard	New Standard
Non-PCRCP Murder	4.6	6
All Other non-PCRCP Delinquency Cases	230	132

No Changes to PCRCP and Non-PCRCP Dependency Standards

Contract/Case Type	Standard
PCRCP (per 1.0 FTE)	80 delinquency or dependency open cases
Non-PCRCP Dependency (per 1.0 FTE)	69 cases

More efficient allocation of attorney resources

In its 2021 contracts, PDSC paid between \$190,000 and \$211,150 to entities per attorney FTE regardless of the composition of the caseloads undertaken by those attorneys. For example, at least in some cases, attorneys handling entirely misdemeanor caseloads were receiving the same or even more OPDS funding than attorneys handling major felony and murder caseloads. In addition, a number of jurisdictions are currently in acute crisis with insufficient public defense attorneys available to handle existing caseloads, especially serious case types like major felonies and murder cases. Although the root causes for the deficit of public defense attorneys are multifaceted, those problems were exacerbated by some public defense attorneys moving from one contractor to another in the same jurisdiction and leaving their caseloads behind, which required redistributing those cases to already overloaded attorneys or incurring the inefficiencies inherent in recruiting, hiring, and onboarding new counsel for those cases.

In the 2022 contracts, the PDSC is seeking to address those interconnected issues in several ways. First, the PDSC is seeking to both incentivize lawyers to seek qualification for more serious case types and to retain lawyers who are qualified to take more serious case types by adopting a stepped reimbursement scheme tied to the lawyer's highest-level of qualification. Second, the PDSC is modifying its contract terms to 1) require contractors to prioritize taking cases for which it has qualified attorneys, 2) requiring contractors to accept conflict and overflow appointments from adjacent jurisdictions, 3) and imposing limitations on when a public defense attorney may leave their caseload behind when the attorney moves between contractors but continues to do public defense work funded by the PDSC.

Enhanced reporting requirements for contractors

To accommodate the enhanced data gathering anticipated with the build out of the CAP Division, the 2022 contract general terms require contractors to submit caseload reports for adult criminal and non-PCRCP juvenile within 10 days of the end of each month and timely comply with OPDS requests for other information and data in the form required by OPDS, including reports regarding a contractor's work outside the contract, and impose escalating penalties for late reporting. By requiring more prompt reporting and utilizing escalating penalties, PDSC intends to increase its ability to receive and properly report on work performed by trial division contractors on a timely

basis, and because smaller, escalating penalties can more practically be imposed without impairing the ability of providers to continue to provide services they are more practical to actually impose, and therefore they provide a more realistic incentive for providers to timely provide required reports to PDSC.

Contract Amendments

The COVID-19 pandemic created a backlog of cases in many jurisdictions, creating a need to amend contracts and move resources around the state to cover the additional workload. The adjudication of cases has been slow to return to normal, and there has been an increase in major felonies, homicides, and some other case types in key jurisdictions.”

The anticipated contract term was originally January 2021 – December 2021. With the turn-over of key staff, especially in upper management, including the hiring of a new executive director, filling the newly created position of deputy director, hiring a new finance and budget director, and a new IT manager, it was necessary to extend those contracts for an additional 6 months in order for the new staff to onboard and be in a position to evaluate and make recommendations on improving the contracts. In addition, the budget notes to HB 5030, legislature directed PDSC to align contracts with the Oregon state government fiscal year, and to better align the contracts with biennium budgeting process. For these reasons, in December of 2021 the term of the contracts in place was extended to June 30, 2022, and the next set of contracts are for one year cover fiscal year 2022-23, thereby accomplishing these goals of aligning PDSC contracting with Oregon state government budgeting processes and fiscal year.

The following Public Defense contracts were added or amended during the January 2021 - June 2022 contract term with the reasons for each of the amendments listed in the far-right section of the table.

New Contracts

County	Entity	FTE	Value
Klamath	Justin Wright	1.0	\$123,170
	Janea Bly	1.0	\$123,170
Umatilla	Pendleton Law, LLC	.90	\$132,098

Amendments

County	Entity	1/1/21 FTE	1/1/21 Value	Amendment FTE	Amendment Value	Reason for reduction/increase
Benton	Largent Law, LLC – (PCRP)	.80	\$203,276	1.00	\$330,762	Increased to cover conflict cases in neighboring counties
Clatsop	Clatsop County Defender Association	5.9	\$1,320,532	5.70	\$1,298,150	Unable to fill vacancy
Coos	Southwestern Oregon Public Defender	7.5	\$1,425,000	6.5	\$1,298,334	Unable to fill vacancy

	Services, Inc.					
	Southwestern Oregon Public Defender Services, Inc. (PCRCP)	1.5	\$735,780	1.0	\$654,028	Attorney departure, decrease in caseload
	Coos County Juvenile Consortium (PCRCP)	5.2	\$2,507,960	4.6	\$2,434,628	Attorney departures, decrease in caseload
	Coos County Juvenile Consortium (PCRCP)	4.6	\$2,434,628	3.6		Attorney departures, decrease in caseload
Deschutes	Kollie Law Group	6	\$1,200,000	5	\$1,100,000	Juvenile attorney left, removed juvenile caseload and FTE from contract
	Kollie Law Group	5	\$1,100,000	4.85	\$1,087,500	FTE reduced to account for retained caseload
	Kollie Law Group	4.85	\$1,087,500	3.88	\$1,055,167	Unable to fill vacancy
Douglas	Umpqua Valley Public Defender	8.7	\$1,803,000	8.4	\$1,765,000	Increased capacity to meet caseload
	Umpqua Valley Public Defender	8.4	1,765,000	8.7	\$1,779,250	Moved FTE capacity from PCRCP contract to Adult Criminal contract
	Umpqua Valley Public Defender	8.7	\$2,680,750	9.7	\$2,744,082	Moved FTE capacity from PCRCP contract to Adult Criminal contract
	Umpqua Valley Public Defender (PCRCP)	4.3	\$1,545,935	3.3	\$1,470,607	Moved FTE capacity from PCRCP contract to Adult Criminal contract
Jackson	Jackson Juvenile Consortium	6.7	\$1,457,905	7.66	\$2,255,786	Increased capacity to meet caseload
Klamath	Jeffrey D. Hedlund, PC	.80	\$253,380	1.3	\$279,774	Increase capacity to meet caseload
Lane	Lane County Defense Consortium	6.50	\$1,362,400	7.26	\$1,514,400	Increased capacity to meet increase caseload

	Lane County Defense Consortium	7.26	\$1,514,400	7.86	\$1,574,400	Increased capacity to meet increase caseload
Lincoln	Lincoln Juvenile Defenders (PCRCP)	4.0	\$1,949,305	4.0	\$2,451,063	Amended to add administration for Benton County
Linn	Linn Defenders	14	\$2,920,000	12.85	\$2,747,503	Reduction in FTE unable to fill vacancies
	Linn Defenders	12.85	\$2,747,503	12.11	\$2,722,837	Reduction in FTE unable to fill vacancies
Malheur	David R. Carlson	1.85	\$390,628	.95	\$248,105	Unable to fill vacancy
	Douglas J. Rock	1.50	\$316,725	.75	\$197,960	Unable to fill vacancy
	Renee Dennison	2.00	\$495,800	1.00	\$273,319	Unable to fill vacancy
Malheur/Baker	Eagle Cap Defenders	5.15	\$1,008,110	8.15	\$1,294,525	Amended to include FTE from other entities, to cover the caseload in Malheur
	Eagle Cap Defenders	1.0	\$923,650	1.4	\$1,008,110	Amended to add capacity to cover caseload.
Multnomah	Justice Alliance of Columbia County	1.65	\$313,500	2.15	\$361,000	Increase to cover conflict cases in Multnomah county
Polk	Polk County Conflict Consortium; (PCRCP)	2.5	\$1,045,193	2.75	\$1,066,193	Increased capacity to meet caseload
Statewide	O'Conner Weber	4	\$885,880	4.80	\$1,054,800	Amended for increase caseload
Umatilla	Intermountain Public Defender	10	\$2,087,500	9	\$2,024,168	Reduced FTE unable to fill vacancy
Yamhill	Yamhill Juvenile Group (PCRCP)	4.0	\$2,787,180	3.5	2,740,728	Decreased capacity to meet caseload

New Emergency Funding

During the 2022 short session the agency was given \$12.8 million in additional funding to address a backlog of unrepresented clients in 4 counties, Lane, Marion, Multnomah and Washington. Below is the current list of additional capacity added with this funding.

County	Entity	Amendment FTE	Amendment Value
Lane	Public Defense Services of Lane County	2.0	\$121,740
Marion	Public Defense of Marion County	2.0	\$136,387
Multnomah	Metropolitan Defense, Inc.	2.0	\$107,796
	PDC	1.0	\$52,788

PDSC acknowledges that some providers, particularly those in Multnomah and Washington counties have not been able to add as much additional capacity as hope for with the new emergency funding from the 2022 legislative. This has been due to a combination of the overall labor market, which is currently extremely tight, particularly in the legal field and more specifically public defense, as well as significant levels of attrition suffered by providers in these counties due to market conditions as well as the extremely high workload, low pay and “burnout” issues in public defense. However, more recently providers in these counties have been able to fill vacancies and even add capacity, and it appears there will be significant opportunities to continue to add capacity over the next several months

Alignment of contracting with biennial budget process

The Public Defense Services Commission (PDSC) extended Public Defense contracts, whose terms were set to expire December 31, 2021, through June 30, 2022. This was a six-month extension of the current terms and conditions of the contracts agreed to beginning January 1, 2021. The extensions represent the contracting model in place at the time of extension, there were no increases or changes to the contract in place for each entity at the time of extension. As detailed above, this was done to accommodate onboarding of significant new staff, particularly in upper management, and also to align PDSC contracting with Oregon state government budgeting processes and fiscal year as directed in the HB 5030 budget notes.

The PDSC anticipates having new contracts in place for one year for from July 1, 2022, through June 30, 2023. Below is the 2022 contracting plan and work to date:

- Contract terms and conditions were reviewed and amended by General Counsel and the Compliance Audit and Performance (CAP) team.
- CAP, analysts, data and budget teams, and others developed better caseload forecasts for all case types. The same group also developed improved, differentiated caseload standards for adult criminal case types. .
- Using the above listed forecasts and standards, CAP, analysts, data and budget teams, and others projected the total number of FTE for each case type needed county by county.
- CAP, analysts, data and budget teams, and others evaluated using a tiered reimbursement scale for FTE based on the attorney’s highest-level qualification.
- Budget assessed the financial impact of the above contracting model and metrics.
- At its April 21, 2022, meeting, the PDSC approved the contracting model and methodologies, the general terms and conditions, and release of the RFQ. The RFQ was released April 25, 2022. The RFQ requires all entities to send in attorney qualifications and other pertinent information to allow analysts to verify the level of attorney qualification against the need in each jurisdiction.

- New juvenile contracts will be established in non-PCRCP jurisdictions.
- Contracts will be offered to entities that respond to the RFQ based on the documented need that results from the work completed by the data team with review of the compliance audit and performance team.
- All Contracts will be presented at the June PDSC meeting for approval.

Separation of adult criminal and juvenile trial level contracts

Contracts that have covered both Adult Criminal and Juvenile caseloads in the past will have separate contracts beginning July 1, 2022. Data team's projections of caseload and FTE needs will be used for separating the two work streams of juvenile and adult criminal in all non-PCRCP jurisdictions.

An RFQ was issued April 25, 2022; from the respondents and data teams projections, analysts will produce separate juvenile and adult criminal contracts reflecting the types of caseloads each entity can handle and the FTE funding needed to cover them.

Human Resource Activities

In response to the budget notes for HB 5030, below is the report of Human Resources activities including Agency vacancies, status of new positions, recruitment practices, unbudgeted position actions, compensation plan changes, new leave provisions, classification changes, employee morale, and HR initiatives.

Agency Vacancies

Below is a chart showing position vacancies within the agency through April 11, 2022, by Division, showing how many positions have been filled, current vacancies, vacancies created by turnover, and the reason for the separation since July 1, 2021.

Division	Filled positions	Current Vacancies	Turnover
Appellate Division	2	2	1 voluntary demotion 1 section transfer 2 promotions 1 end temporary assignment
Executive Division	3	2	1 state agency transfer 1 temporary retiree
Compliance, Audit and Performance Division	8	2	2 state agency transfers 1 resignation
Administrative Services Division	14	2	1 termination 2 retirements 2 resignations – move out of state, personal reasons 1 state agency transfer 1 end temporary assignment 1 trial service removal

*Recruiting processes to fill new positions began August of 2021. One of the vacancies will not be filled until July of 2022 when funding for the position becomes available (Deputy General Counsel).

New Positions

The agency was provided new positions in HB 5030. Of the positions received, four remain vacant:

Classification	Disposition	Reason not filled
Deputy General Counsel (Trial Criminal)	Not Filled	Funding available in July 2022
Deputy General Counsel (Trial Juvenile) (2)	1 Filled	Recruitment in progress
Internal Auditor (2)	Not Filled	Multiple failed recruitments

Recruitment Practices

The OPDS personnel policy and collective bargaining agreements require an open-competitive recruitment process. However, there is a provision in the personnel policies that allows the Executive Director to forgo any recruitment processes to direct appointment management service positions. All the positions filled since July 1, 2021, were filled by open-competitive processes, except for two management positions.

- One position was appointed at the discretion of the Interim Executive Director. This appointment was made because the candidate had been working on contract in the same capacity.
- One position was appointed at the discretion of the new Executive Director. This appointment was made because the applicant had applied for a higher-level position but was an ideal candidate for a lower-level position for which there was a vacancy.

Unbudgeted position actions

There has only been one unbudgeted position action to fill a vacancy, through open-competitive recruitment, for a position that was abolished in the 2021-23 budget cycle in the Administrative Services Division, Case Support Services Unit. This action was approved by the Deputy Director. The agency is working with the Legislative Fiscal Office to add this position back as a fulltime position.

There has been overlap in one instance when a new employee was hired to replace an outgoing employee. An Interim Executive Director was appointed by the Commission in June of 2021 as a nation-wide competitive recruitment was conducted by the Commission, with assistance from a contracted recruiter. The new Executive Director was appointed on December 1, 2021, and the Interim Executive Director stayed onboard until December 31, 2021, to ensure a smooth transition of leadership.

Compensation Plan Changes

As agreed in collective bargaining, approved by the Public Defense Services Commission on December 16, 2021, and reported to the legislature on January 14, 2022. The following compensation changes were implemented beginning February 1, 2022.

Employees represented by AFSCME, as well as those in management service, will receive the following adjustments to compensation for the 2021-2023 biennium.

- 2.5 percent cost of living increase on February 1, 2022
- 3.1 percent cost of living increase on December 1, 2022
- One-time lump sum payment, equivalent of two-months cost of living, for December 2021 and January 2022, of 2.5%, provided to all employees, for consistent distribution to remain consistent with the rest of state government.
- Pandemic Recognition Pay: One-time lump sum payment of \$1550.00 to all employees required to work in OPDS offices from March 16, 2020, through June 30, 2021.
- Technical adjustments to attorney classifications in conformance with the adjustments made by Department of Justice to maintain parity with these classifications, effective February 1, 2022. The technical adjustments will be made first, then the cost-of-living increase will be applied.

Deputy Defender PERS Salary Range:

OLD	7886	8282	8688	9102	9532	9993	10477
NEW	7886	8282	8694	9129	9585	10041	10524

Senior Deputy Defender PERS Salary Range:

OLD	10362	10881	11420	11979	12573	13192	13846	14532	15252
NEW	10523	11028	11557	12112	12694	13303	13941	14611	15312

- One step adjustment to the Paralegal salary range, by dropping step 1 and adding a new top step, for parity with Executive Branch. The classification will remain at a nine-step salary range.
- Technical adjustment to the Program Analyst 4 salary range to match the Research Analyst 4 salary range. Both classifications are Range 30, but the steps are not aligned.

New Leave Provisions

As agreed in collective bargaining, approved by the Public Defense Services Commission on April 21, 2022, and reported to the Legislative Emergency Board in May 2022. The following leave provisions were made consistent with Executive Branch and Oregon Judicial Department.

Employees represented by AFSCME, as well as those in management service, will receive the following.

- Pursuant to ORS 187.010 and 187.020, Juneteenth is recognized as a paid holiday.
- If the Governor issues a state of emergency declaration because of a natural disaster and where, because of this natural disaster, an employee's primary residence is deemed lost, found to be uninhabitable or is not accessible, the employee shall be eligible for up to eighty (80) hours of paid administrative leave prorated for part time employees.
- The agency may officially close its offices because of inclement weather, hazardous environmental conditions, or where its offices are inoperable. Inclement weather, hazardous environmental conditions include fire, flood, earthquake, or inclement conditions. An inoperable office is one where essential service are lost because of fire, mechanical failure, accident, or weather, active shooter or threat of violence, or other causes. Under these conditions employees shall receive up to 40 hours of miscellaneous paid leave per biennium.

Classification Changes

New classifications were adopted by the Public Defense Services Commission into the Agency's compensation and classification plan based on the new positions granted to the agency in HB 5030.

The following classifications were adopted by the Public Defense Services Commission on July 13, 2021.

- Fiscal Analyst 1-3
- Chief Information Officer
- Information Technology Specialist 1-4

Employee Morale

In partnership with the Coraggio Group, an employee survey has been conducted to evaluate employee morale. Topics identified in the survey were discussed at an all staff meeting and breakout groups were created to discuss the issues and provide a feedback forum for discussion. Management is committed to addressing employee morale and creating opportunities for improved communication.

An impact to employee morale is the significant organizational change within the agency; new leadership, shift in the organizational team structure, implementation of new programs and technology, adoption of new business models, internal processes changes, policy development, and overall growth. The agency is faced with adaptive and transformational change that impacts every employee. The agency continues to work diligently to improve its ability to address the

capacity of individual employee's ability to adapt to the significant personnel and transformational changes occurring within the agency. The agency recognizes that this is an area in which the agency needs to continue to improve. The agency continues to monitor this dynamic situation to determine whether outside professional assistance would be beneficial and necessary.

As identified above there is need to have assistance with Organizational Change to make the transition successful. Change management does not stop once the transition has been successfully executed. The Human Resources section is developing a Workforce Development Strategy to address employee development and workforce opportunities including equity and inclusion, onboarding, training and continued education, succession planning, career enrichment, outreach, and talent acquisition. This strategy will include continuous assessment of employee morale and outcomes of change, measuring data, training, new methodologies, and business practices conforming with state government, and readjusting goals as necessary. This initiative may be brought forward in the form of a policy option package in the 2023-2025 legislative session.