

ANALYSIS

Item 7: Public Defense Services Commission Special Purpose Appropriation

Analyst: John Borden

Request: Allocate from the special purpose appropriation made to the Emergency Fund for the Public Defense Service Commission \$100 million.

Analysis: The Public Defense Services Commission (PDSC) is requesting the allocation of a \$100 million special purpose appropriation (SPA) appropriated to the Emergency Board for public defense services.

Special Purpose Appropriation

The 2021-23 legislatively adopted budget for PDSC includes a holdback of funding in the amount of \$100 million General Fund, which is placed in a special purpose appropriation (SPA) to the Emergency Board. The SPA is related exclusively to the agency's current service level funding and no provision was made for enhanced programmatic funding. The SPA reduced only select appropriations so as to not impede PDSC's modernization efforts. The release of the holdback is contingent upon the Commission's satisfactory progress, as determined by the Legislature and/or the Legislative Emergency Board, in executing Legislative expectations regarding the restructuring, modernization, financial controls, quality management, performance metrics, and governance of the agency.

PDSC has minimally met the release requirements for a portion of the SPA that can be reasonably justified by PDSC (Emergency Board Item #4 PDSC HB 5030 (2021) Reorganization Report). Any unallocated SPA amounts remain dedicated to PDSC by Oregon Law until December 2022, which allows PDSC two further opportunities (September and December) to submit Emergency Board requests to resolve outstanding budgetary issues related to the SPA (e.g., 2022 negotiated contracts).

Agency-Wide

The following Legislative Fiscal Office (LFO) recommendation is based on PDSC financial update and rebalance request (Emergency Board Item #5 PDSC Financial Update and Rebalance) the combination of which supports a total SPA allocation of \$63.2 million and which is summarized in the following table:

PDSC Appropriation/ Division (in millions)	SPA	LFO Recommended Allocation	Unallocated Balance
Trial Criminal Division	\$70.3	\$39.4	\$30.9
Nonroutine Expenses	\$14.6	\$14.6	--
Court Mandated Expenses	\$5.0	--	\$5.0
Juvenile Division (PCRPP)	\$10.2	\$9.3	\$0.9
Cumulative Total	\$100.0	\$63.2	\$36.8

If the LFO recommended allocations are approved by the Emergency Board, PDSC's legislatively approved total funds budget would be \$419.1 million for the 2021-23 biennium, of which \$400.7 million

would be General Fund and \$18.5 million Other Funds. The General Fund budget would be \$63.2 million (or 18.7%) more than the 2021-23 legislatively approved budget (February 2022).

Trial Criminal Division

The Trial Criminal Division has a 2021-23 legislatively adopted budget of \$186.5 million General Fund with a PDSC forecasted funding requirement of \$225.9 million General Fund, which leaves a \$39.4 million deficit. The SPA for the Trial Criminal Division totals \$70.3 million General Fund. The recommendation is to allocate \$39.4 million of the SPA, which would leave an unallocated balance of \$30.9 million.

Nonroutine Expenses

Nonroutine Expenses (NRE) has a 2021-23 legislatively adopted budget of \$43.7 million General Fund with a PDSC forecasted funding requirement of \$61 million General Fund, which leaves a \$17.3 million deficit (and which does not account for the \$52.7 to \$58 million estimated General Fund liability discussed below). The SPA for NRE totals \$14.6 million General Fund. The recommendation is to allocate the entire \$14.6 million SPA.

Currently, PDSC is reporting an outstanding and unbudgeted liability for obligated NRE expenses of between \$52.7 and \$58 million General Fund. How much of this obligation will need to be paid and when is uncertain at this time; however, PDSC is required to budget and account for expenditures in the biennium for which the expense is incurred (i.e., an agency may not carryforward into the next biennium current biennium expenditures).

Court Mandated Expenses

The Court Mandated Expenses Division has a 2021-23 legislatively adopted budget of \$15 million General Fund and \$4.5 million Other Funds with a PDSC forecasted funding requirement of \$29.8 million General Fund and \$1 million Other Funds, which leaves a \$14.8 million General Fund deficit and a \$3.4 million Other Funds revenue shortfall. The SPA for Court Mandated Expenses totals \$5 million General Fund. The recommendation is not to allocate the SPA as this time because the rebalance, which shifts \$19.6 million into the program, results in an overfunding of the division based on current forecasted financial projects.

PDSC reports a potential Other Funds revenue shortfall in the Application Contribution Program (ACP) beginning in April of 2022. PDSC notes that the significant shortfall in this program is likely due to courthouse closures during the pandemic. The ACP provides judges the authority to order those who apply for court-appointed counsel to pay the administrative costs of determining their eligibility and a “contribution amount” toward the anticipated cost of the public defense prior to conclusion of the case. ACP revenues for the 2021-23 biennium were originally estimated to total \$4.4 million Other Funds. Of that amount, \$3.6 million is to be transferred to the Oregon Judicial Department (OJD) to fund the verification specialist positions. PDSC notes that the agency is prioritizing payments to OJD over PDSC’s court-mandated expenditures, and that any revenue shortfall may need to be backfilled with General Fund, if revenues do not recover, as courts fully reopen.

Juvenile Division

The Juvenile Division has a 2021-23 legislatively adopted budget of \$30.6 million General Fund and \$14 million Other Funds with a PDSC forecasted funding requirement of \$39.9 million General Fund and \$14

million Other Funds, which leaves a \$9.3 million General Fund deficit. The SPA for the Juvenile Division totals \$10.2 million General Fund. The recommendation is to allocate \$9.3 million of the SPA, which would leave an unallocated balance of \$923,580.

2023-25 Biennial Budget

An approved, ongoing (i.e., not one-time) Emergency Board action after the April of even numbered years has implications to an agency's budget for the following biennium, as any approved actions would be in addition to, rather than included as part of, an agency's current service level budget. The recommendation is that the allocation of the SPA be ongoing and included in PDSC's 2023-25 budget.

Recommendation: The Legislative Fiscal Office recommends that the Emergency Board allocate from the special purpose appropriation made to the Emergency Fund for the Public Defense Service Commission \$39,398,344 for the Criminal Trial Division, \$14,554,511 for Nonroutine Expenses, and \$9,268,785 for the Juvenile Division to support public defense services.

7
Public Defense Services Commission
Gibson

Request: Allocate \$100 million General Fund from the Special Purpose Appropriation made to the Emergency Board for the Public Defense Services Commission Trial Criminal Division, Nonroutine Expenses, Court Mandated Expenses and Juvenile Division.

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

Discussion: The 2021-23 biennial budget for Public Defense Services Commission (PDSC) was established in House Bill 5030. The bill contained a provision which held back \$100 million of the Agency's General Fund in a Special Purpose Appropriation (SPA):

“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.”

PDSC provided an update on progress related to restructuring, modernization, financial controls, quality management, performance metrics, and governance during the 2022 Legislative Session and submitted an updated progress report for the June 2022 meeting of the Emergency Board.

The Agency hired new leadership positions in the past year including the PDSC Director, Deputy Director, and Finance and Budget Director. The new leadership has been working with external consultants to evaluate the Agency's current state and develop plans for a more efficient and streamlined approach to running the Agency. The consulting group also assisted PDSC in capturing the voice of their internal staff and external partners to ensure input opportunities for future changes.

The largest financial impact of PDSC's anticipated changes is adjustments to provider contracts. PDSC made key adjustments to future provider contracts to standardize the contracts across all providers, incentivize provider participation, and streamline the contracting process. The Agency is currently in the process of reissuing provider contracts for the 2023 Fiscal Year with the following changes included:

- Collapsing the previously tiered inflation rates based on urban or rural location into a singular inflation rate (10 percent) across all contracts.
- Adding standard five percent administrative funding.
- Adjusting FTE payment rate based on highest attorney qualification.
- Increasing contract capacity to caseload projections.

The financial impact to implement these changes is an estimated \$15.6 million.

Below is a table outlining the current General Fund allocated to PDSC compared to the Agency's projected expenditures.

Agency Division	GF Allocated in 21-23 LAB	GF Added in 2022 Session	GF held in SPA	Total GF (if full SPA released)	Current Biennial Projections	Variance*
Trial Criminal Div.	186,458,931	12,808,337	70,250,989	269,518,257	225,857,275	(43,660,982)
Nonroutine Expenses	43,663,533	-	14,554,511	58,218,044	60,986,655	2,768,611
Court Mandated Exp.	15,006,403	-	5,002,135	20,008,538	29,817,469	9,808,931
Juvenile Div.	30,577,095	195,833	10,192,365	40,965,293	39,845,880	(1,119,413)
Executive Div.	3,600,361	143,103	--	3,743,464	3,294,375	(449,089)
Compliance, Audit, and Performance Div.	4,656,251	248,409	--	4,904,660	4,765,870	(138,790)
Appellate Div.	24,925,503	1,145,580	--	26,071,083	22,124,745	(3,946,338)
Admin. Services Div. & Special Prog. Contracts	12,296,098	1,714,213	--	14,010,311	11,635,808	(2,374,503)
PDSC GF TOTALS	321,184,175	16,255,475	100,000,000	437,439,650	398,328,077	(39,111,573)

* () indicates savings

The Agency is projecting to utilize all the current General Fund appropriated, by January 2023, and is requesting the full \$100.0 million General Fund SPA be released for continued operations. The cumulative budget impact of all the proposed changes within PDSC is not accounted for in the Agency's projections, which is expected to increase expenditures.

Additionally, PDSC reports risk of outstanding liabilities for current encumbrances hitting the budget at any time. This is due to current provider approvals for reimbursement on future anticipated case expenses including experts, investigators, and interpreters. The providers often do not bill for reimbursement of these approved expenses until the case is closed, which can be across biennial budgets. The Agency is unable to accurately estimate which of these encumbrances will be financially realized in 2021-23 versus future biennia.

Legal Reference: Allocation of \$70,250,989 from the Special Purpose Appropriation made to the Emergency Board by chapter 444, section 3(1)(a), Oregon Laws 2021, to supplement the appropriation made by chapter 444, section 1(4), Oregon Laws 2021, for the Public Defense Services Commission, Trial Criminal Division for the 2021-23 biennium.

Allocation of \$14,554,511 from the Special Purpose Appropriation made to the Emergency Board by chapter 444, section 3(1)(b), Oregon Laws 2021, to supplement the appropriation made by chapter 444, section 1(5), Oregon Laws 2021, for the Public Defense Services Commission, Nonroutine Expenses for the 2021-23 biennium.

Allocation of \$5,002,135 from the Special Purpose Appropriation made to the Emergency Board by chapter 444, section 3(1)(c), Oregon Laws 2021, to supplement the appropriation made by chapter 444, section 1(6), Oregon Laws 2021, for the Public Defense Services Commission, Court Mandated Expenses for the 2021-23 biennium.

Allocation of \$10,192,365 from the Special Purpose Appropriation made to the Emergency Board by chapter 444, section 3(1)(d), Oregon Laws 2021, to supplement the appropriation made by chapter 444, section 1(7), Oregon Laws 2021, for the Public Defense Services Commission, Juvenile Division for the 2021-23 biennium.



Oregon

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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 a provision that held back \$100 million of General Fund and placed it in a special purpose appropriation, appropriated to the Emergency Board for PDSC.

“The holdback was reflective of an inordinately high degree of uncertainty related to procurement cost. The release of the special purpose appropriation to the Commission is contingent up the Commission’s satisfactory progress, as determined by the Legislature and/or 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.”

The purpose of this letter is to request that the Joint Emergency Board release the funds held in the Special Purpose Appropriation (SPA) to the Commission.

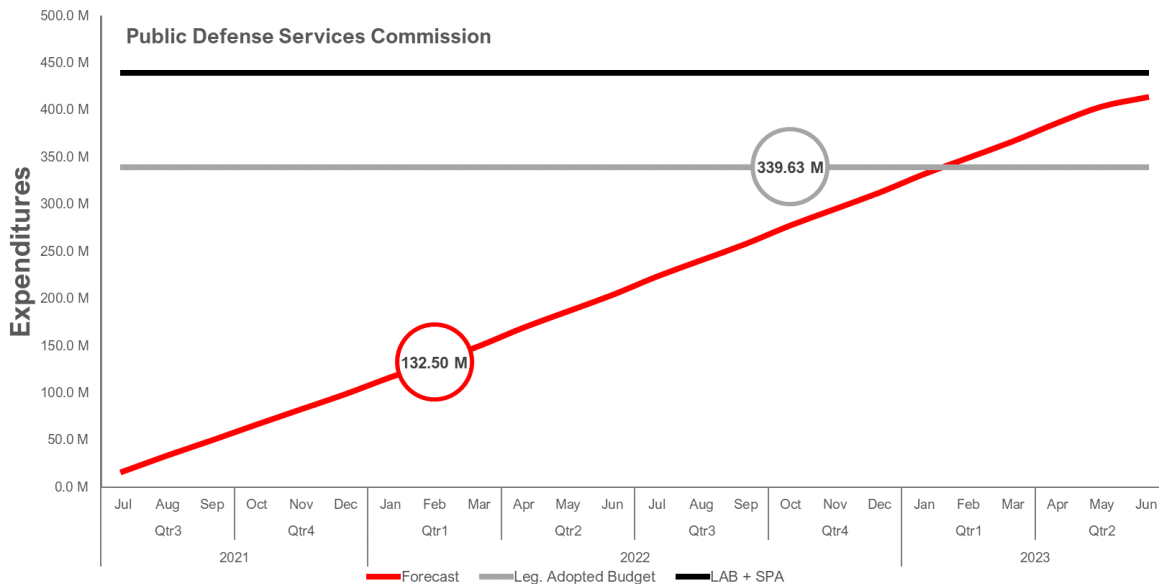
Agency Action

In evaluating the budget note, PDSC focused on three primary areas: restructuring and modernization, procurement, and human resource activities. The first area of focus is 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.

Legislative Expectations. 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 with 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 Agency has provided a more detailed report as a concurrent submission to the Joint Emergency Board that highlight these efforts and accomplishments to-date. The report sets out progress on the development of the CAP Division and its program plan, modernization improvements to information technology, methods used for caseload forecasting for the 2022-23 contracts and a financial forecast. The below chart below shows where the agency stands for the period ending February 28, 2022.



Without the additional investment represented by the \$100 million SPA and based on current spending patterns the Agency will likely exhaust its budget authority by January 2023. Items of concern are in the Case Support Services Division where spending is projected to exceed the current budget even 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 attorneys. The agency has also provided a more detailed financial update and rebalance request in a separate and concurrent report to this Joint Emergency Board.

Procurement Activities. The Agency is currently under an amendment to the 2021 provider contracts and is currently working to produce new contracts for the 2022-23 contract year. With

those new contracts, the PDSC endeavors to achieve the following goals: 1) more accurately project its actual caseload and resulting attorney FTE needs through June 2023; 2) move closer to aligning with recently published, Oregon-specific guidance on attorney workload standards; 3) promote the efficient allocation of attorney resources throughout the state; 4) accommodate the enhanced reporting requirements for its criminal and non-PCRJP juvenile contractors anticipated with the build out of the CAP Division in 2022; 5) separate adult criminal and juvenile trial level contracts; and 6) better align the contracts with the biennial budget process. The Agency is working diligently with stakeholder to achieve these goals. The changes associated with the improvements in caseload standards, reimbursement methodologies, increased workloads and administrative burdens associated with enhanced reporting will result in increased costs to the Trial Criminal Division of approximately \$16 million and to the Juvenile Division of approximately \$2 million.

Providers whose services are under contract are more cost efficient than the use of hourly rate attorneys. Hourly rate attorneys may be necessary to address capacity and conflict issues that may arise. Improvements in forecasting and contractual provisions for the fiscal year 2022-23 contracts are designed to help alleviate the stress that is currently affecting the court mandated expenses division by bringing a higher percentage of cases within the contracts. The new, tiered reimbursement rates are being implemented to help incentivize, retain, and attract attorneys into public defense. The PDSC recognizes that the current solutions are limited by the legislatively approved budget and that future policy changes may require substantial investments in the subsequent contracts.

Human Resources Activities. The Human Resources section has been working diligently to ensure that through an open-competitive recruitment process every vacancy is filled in a timely manner and that all new positions are hired when funding is available. The Agency only has one unbudgeted position, which is being addressed in a concurrent request to this Joint Emergency Board. The collective bargaining process has been completed and is waiting only for final signature and for the final approval of the commission on non-economic issues, which again will be presented under another report to this Joint Emergency Board. All classification changes have been made and presented and the section is actively involved in the employee morale efforts that are currently under way to include and employee survey and bimonthly all staff meetings to ensure all employees are aware of the transformational changes that are occurring within the Agency. Finally, the section is developing a Workforce Development strategy to address employee development and workforce opportunities to include equity and inclusion, onboarding, training and continued education, succession planning, career enrichment, outreach, and talent acquisition.

Action Requested

The Public Defense Services Commission requests acknowledgement of receipt of this request and requests the recommendation of the Legislative Fiscal Office to the Joint Emergency Board to release of the entire amount of the special purpose appropriation, as provided in Oregon Laws 2021, Chapter 444, Section 3, which is inclusive of \$100 million of General Fund authority.

Legislation Affected

Oregon Law 2021 Chapter 444, section 1 (4). \$70,250,989

Oregon Law 2021 Chapter 444, section 1 (5). \$14,554,511

Oregon Law 2021 Chapter 444, section 1 (6). \$5,002,135

Oregon Law 2021 Chapter 444, section 1 (7). \$10,192,365

Oregon Law 2021 Chapter 444, section 3 (1)(a). (\$70,250,989)

Oregon Law 2021 Chapter 444, section 3 (1)(b). (\$14,554,511)

Oregon Law 2021 Chapter 444, section 3 (1)(c). (\$5,002,135)

Oregon Law 2021 Chapter 444, section 3 (1)(d). (\$10,192,365)

Sincerely,



Stephen I. Singer
Executive Director

cc:

Amanda Beitel, Legislative Fiscal Officer

John Borden, Principal Legislative Analyst, LFO

George Naughton, Chief Financial Officer

Wendy Gibson, Policy and Budget Analyst, CFO