

## ANALYSIS

### Item 5: Public Defense Services Commission Financial Update and Rebalance

---

**Analyst:** John Borden

**Request:** Acknowledge receipt of a financial update report and approve a rebalance.

**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.

PDSC is providing a report on the financial status of the agency as well as the transfer of appropriations between programs ("rebalance"). PDSC has chosen to report separately on the agency's financial update for the 2021-23 biennium.

The genesis of the budget note was the Legislature's desire to be kept apprised of PDSC's efforts to restructure and modernization and concern for the effective delivery of state public defense services. The first such report was submitted to the Legislature in 2022; however, the rebalance request was deferred so as to be taken into consideration along with a request for the release of a \$100 million special purpose appropriation (Emergency Board Item #7 PDSC Special Purpose Appropriation).

The Legislature in 2021 undertook a number of key actions, including, but not limited to: (a) restructuring the agency's appropriation measure along cost centers to increase the transparency of budgeted activities and to impose a heightened level of financial discipline and accountability on the agency; (b) reorganizing the agency's budget structure along lines of business; (c) adding an internal audit function; and (d) augmenting operational staffing in key areas of the agency, including agency management, financial management, and procurement.

#### 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 in executing Legislative expectations regarding the restructuring, modernization, financial controls, quality management, performance metrics, and governance of the agency.

#### Financial Projection and Qualifications

PDSC reports that according to the agency's current financial projection, PDSC is forecasted funding allocation from the SPA of \$80.8 million General Fund, which leaves a \$19.2 million General in unallocated SPA funding that would remain with the Emergency Board.

The financial projection require qualification to avoid misinterpretation, as the following, which are not included in the agency's projections, would have a material impact on the forecasted amounts presented in the report. These qualifications are: (1) projections were based on the legislatively adopted (July 2021) rather than the legislatively approved (February 2022) budget; (2) actual expenditures are only through February of 2022; (3) projections exclude the agency's requested rebalance (discussed below); (4) projections exclude the impact of fiscal year 2022 (preliminary) contract changes approved by the Commission; (5) rate increases for non-contract/hourly attorneys; and (6) projections exclude the impact of a \$52.7 to \$58 million estimated General Fund liability for nonroutine expenses (discussed in more detail under the Nonroutine Expenses Division).

#### Trial Criminal Division

The Trial Criminal Division has a 2021-23 legislatively adopted budget of \$186.5 million General Fund with 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.

#### Nonroutine Expenses

Nonroutine Expenses (NRE) has a 2021-23 legislatively adopted budget of \$43.7 million General Fund with PDSC forecasted funding requirement of \$61 million General Fund, which leaves a \$17.3 million deficit. The SPA for NRE totals \$14.6 million General Fund.

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 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.

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 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. PDSC reported no change to the \$14 million Federal as Other Funds for Title IV-E received by the agency from the Oregon Department of Human Services. This is noteworthy in that Title IV-E revenue for PDSC results in General Fund savings.

Appellate Division

The Appellate Division has a 2021-23 legislatively adopted budget of \$24.9 million General Fund with PDSC forecasted funding requirement of \$22.1 million General Fund, which leaves a \$2.8 million General Fund surplus. The Appellate Division’s budget was not subject to the General Fund holdback (i.e., SPA).

Executive Division

The Executive Division has a 2021-23 legislatively adopted budget of \$3.6 million General Fund with PDSC forecasted funding requirement of \$3.3 million General Fund, which leaves a \$305,986 General Fund surplus. The Executive Division budget was not subject to the General Fund holdback (i.e., SPA).

Compliance, Audit, and Performance Division

The Compliance, Audit and Performance Division (CAP) has a 2021-23 legislatively adopted budget of \$4.7 million General Fund with PDSC forecasted funding requirement of \$4.8 million General Fund, which leaves a \$109,619 General Fund deficit. The CAP budget was not subject to the General Fund holdback (i.e., SPA).

Administrative Services Division

The Administrative Services Division (ASD) has a 2021-23 legislatively adopted budget of \$12.3 million General Fund with PDSC forecasted funding requirement of \$11.6 million General Fund, which leaves a \$660,290 million General Fund surplus. The ASD budget was not subject to the General Fund holdback (i.e., SPA).

Special Contracts

PDSC has undertaken a number of one-time contracts for 2021-23 biennium which are being funded from the legislative adopted budget, as there has been no request for supplemental General Fund. The contracts are summarized in the following table:

Vendor	Purpose	Amount
Coraggio Group	Reorganization consultant	\$296,990
Department of Justice	Legal costs	\$100,000

Latham Stack Auditing	Auditing services	\$252,000
Strategies 360	Media/communications consultant	\$120,000
Elyon Enterprise Strategies	Information technology study	\$49,342
Craig Cowen	Labor relations consultant	\$30,000
Rochella Ann Thorpe	Executive recruitment consultant	\$25,000
Harrang Long Gary Rudnick	Legal services	\$13,000
Sue Wilson	Leadership Team consultant	\$5,000
Judy Snyder	Legal services	\$4,000
		\$895,332

**Requested Rebalance Actions**

PDSC is requesting the transfer of appropriations between programs to realign General Fund appropriations with expenditure activities. Commonly referred to a “rebalance,” the net result of these actions is zero and therefore is a legally allowable action that may be undertaken by the Emergency Board. The PDSC rebalance request includes the following transfers:

- Transfer non-contract/hourly attorney charge budget from the Criminal Trial Division to the Court Mandated Expenses (\$10,602,500 General Fund)
- Transfer court-directed (as opposed to defense expert psychiatric evaluations) psychiatric fees from the Criminal Trial Division to the Court Mandated Expenses (\$7,706,454 General Fund)
- Transfer hourly attorney charge budget for conflict attorneys from the Appellate Division to the Court Mandated Expenses (\$250,000 General Fund)
- Transfer transcription and disposition services budget from the Appellate Division to the Court Mandated Expenses (\$1,000,000 General Fund)

**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 the rebalance be ongoing and included in PDSC’s 2023-25 budget.

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

5  
Public Defense Services Commission  
Gibson

**Request:** Report on the financial update and rebalance request by the Public Defense Services Commission and the transfer of appropriations made to Trial Criminal Divisions, Court Mandated Expenses, Appellate Division, and Nonroutine Expenses for purposes of rebalancing the budget.

**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 financial reporting budget note requirement by providing the Agency’s second financial update report with financials through February 2022. The report covers current expenditures, caseload forecasts, financial shortfalls, and potential budgetary risks and issues.

In addition to the financial update, PDSC is submitting a net zero rebalance request to realign the Agency’s budget.

**PDSC FINANCIAL STATUS** *(as of February 2022)*

PDSC is reporting a current General Fund need of \$77.1 million across all divisions to cover projected expenditures for the 2021-23 biennium. The Agency had \$100.0 million General Fund heldback in a Special Purpose Appropriation (SPA) allocated to the Emergency Board, which PDSC is requesting in a separate request to the Emergency Board.

**2021-23 GENERAL FUND (GF) IN PDSC’S LEGISLATIVELY ADOPTED BUDGET** *(as of 2/2022)*

Agency Division	GF Allocated	Current Biennial Projections	Variance*	Additional GF held in SPA
Trial Criminal Div.	186,458,931	225,857,275	39,398,344	70,250,989
Nonroutine Expenses	43,663,533	60,986,655	17,323,122	14,554,511
Court Mandated Exp.	15,006,403	29,817,469	14,811,066	5,002,135
Juvenile Div.	30,577,095	39,845,880	9,268,785	10,192,365
Executive Div.	3,600,361	3,294,375	(305,986)	--
Compliance, Audit and Performance Div.	4,656,251	4,765,870	109,619	--
Appellate Div.	24,925,503	22,124,745	(2,800,758)	--
Admin. Services Div.	12,296,098	11,635,808	(660,290)	--
<b>PDSC GF TOTALS</b>	<b>\$ 321,184,175</b>	<b>\$ 398,328,077</b>	<b>\$ 77,143,902</b>	<b>\$ 100,000,000</b>

\* () indicates savings

**PDSC REBALANCE REQUEST**

PDSC is requesting net zero, technical adjustments within their current budget structure to realign expenditures with the budget.

### **Trial Criminal Division**

The Trial Criminal Division is budgeted to cover contracted service providers for public defense services. PDSC is requesting two technical adjustments to rebalance the budget.

- Move \$10,602,500 Professional Services to Court Mandated Expenses for non-contract hourly trial attorney charges. These charges were previously budgeted in the Trial Criminal Division, but the expenditures are realized in the Court Mandated Expenses Division.
- Move \$250,000 Professional Services dollars to Court Mandated Expenses to pay for appellate attorney charges. These expenditures are directly resulting from attorney appointments made by the courts due to capacity or conflict issues with PDSC appellate attorney staff. The expenses of these appointments are realized in the Court Mandated Expenses Division.

### **Nonroutine Expenses Division**

The Nonroutine Expenses Division is budgeted to cover expenditures related to case support services. PDSC is requesting one technical adjustment to rebalance the budget.

- Move \$7,706,454 of professional services to Court Mandated Expenses to properly account for the court appointed psychiatric fees.

### **Appellate Division**

The Appellate Division is budgeted to cover expenditures related to appellate cases. PDSC is requesting one technical adjustment to rebalance the budget.

- Move \$1,000,000 Service and Supplies to Court Mandated Expenses to cover expenditures related to transcription and deposition services in appellate matters.

### **Court Mandated Expenses Division**

The Court Mandated Expenses Division is budgeted to cover expenditures related to trial and appellate representation by attorneys who are court appointed as well as other general court mandated expenses. PDSC is requesting:

- Move \$10,602,500 of professional services from Trial Criminal Division for non-contract hourly trial attorney charges. These charges were previously budgeted in the Trial Criminal Division, but the expenditures are realized in the Court Mandated Expenses Division.
- Move \$250,000 of professional services dollars from Trial Criminal Division to pay for appellate attorney charges. These expenditures are directly resulting from attorney appointments made by the courts due to capacity or conflict issues with PDSC appellate attorney staff. The expenses of these appointments are realized in the Court Mandated Expenses Division.
- Move \$7,706,454 of professional services from Nonroutine Expenses Division to properly account for the court appointed psychiatric fees.
- Move \$1,000,000 of service and supplies from Appellate Division to cover expenditures related to transcription and deposition services in appellate matters.

**Financial Summary of Rebalance Request**

Trial Criminal Division	(10,602,500)
	(250,000)
Nonroutine Expenses Division	(7,706,454)
Appellate Division	(1,000,000)
Court Mandated Expenses	10,602,500
	250,000
	1,000,000
	7,706,454

*Financial Impact: Net zero*

**Legal Reference:**

Transfer General Fund appropriations made by chapter 444, section 1, Oregon Laws 2021, for the 2021-23 biennium as follows:

<u>Subsection</u>	<u>Amount</u>
(3) Appellate Division	\$ - 1,000,000
(4) Trial Criminal Division	\$ -10,852,500
(5) Nonroutine Expenses	\$ -7,706,454
(6) Court Mandated Expenses Division	\$+19,558,954



# Oregon

## Public Defense Services Commission

*Office of Public Defense Services*  
198 Commercial St. SE, Suite 205  
Salem, Oregon 97301-3489  
Telephone: (503) 378-2478  
Fax: (503) 378-4463  
[www.oregon.gov/opds](http://www.oregon.gov/opds)

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. The purpose of this letter is to provide the agency's second financial update and first rebalance request for the 2021-2023 biennium.

### **Action Requested**

The Public Defense Services Commission requests that the committee acknowledge receipt of this report and approval of the rebalance actions requested in the report.

### **Legislation Affected**

See report Attachment A.

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



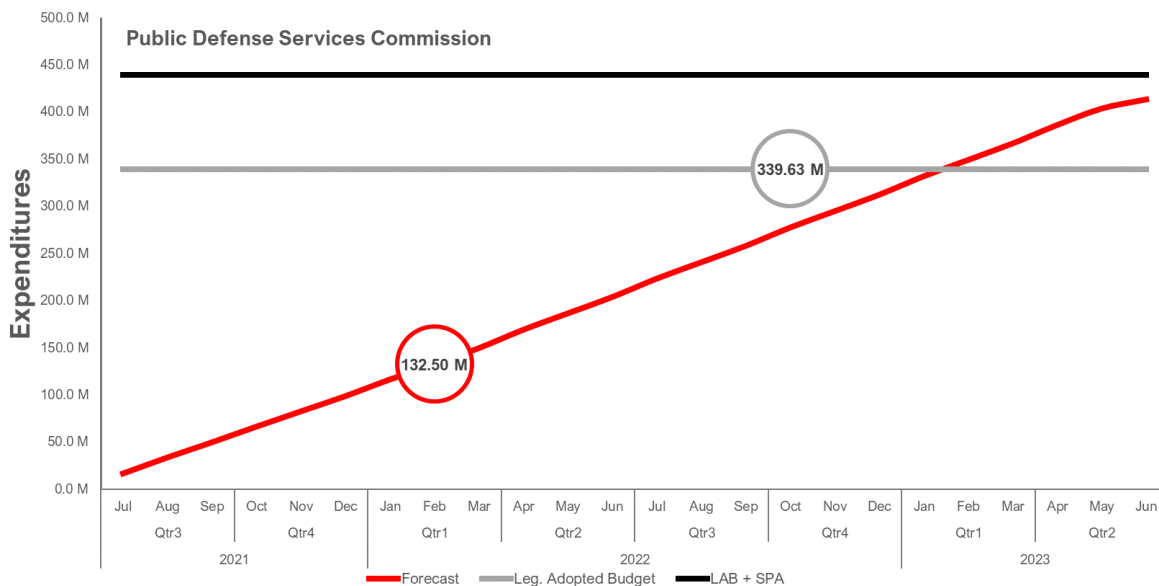
# Public Defense Service Commission Financial Update and Rebalance Request to June 2022 Joint Emergency Board

## Executive Summary and Nature of Request:

The Public Defense Services Commission (“PDSC” or “the commission”) is submitting its second financial update and first rebalance report for the 2021-23 biennium to the June 2022 Joint Emergency Board. This report will include a request to rebalance funding in certain divisions. This rebalance action will ensure that as the PDSC formally requests monies from the special purpose appropriation (“SPA”) that was established in House Bill 5030 (2021), the PDSC does so with clarity to ensure the money goes to the appropriate division. The agency will be informing the committee of proposed rebalance actions that will need to be taken in order to position the agency to request inflationary rate increases and other forms of relief to contracted providers. This report demonstrates the monthly financials for the period ending on February 28, 2022. The agency requests that the Joint Emergency Board approve the rebalance adjustments listed at the end of this report.

## 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.



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

The following sections of this report will describe the current state and the various issues the agency faces. 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. The second table shows the projected savings in non-SPA related program administrative areas. Overall, the issues presented show that the PDSC currently has a projected General Fund need of \$77.1 million, when considering all areas.

### General Funds – 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
<b>Total General Fund</b>	275,705,962	356,507,280	80,801,318

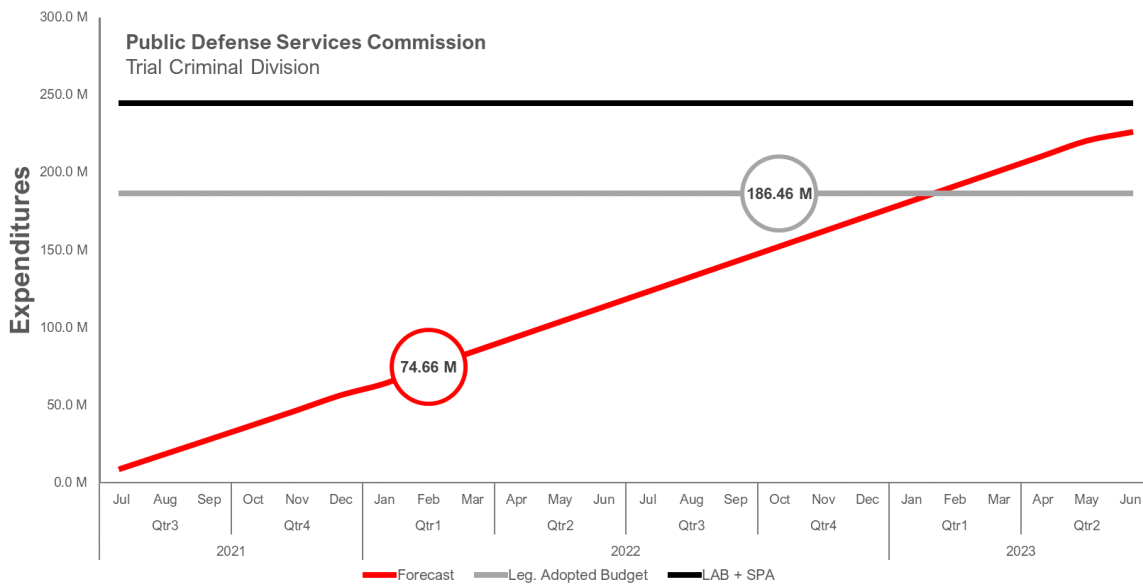
### General Funds – Program Administration Areas

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)
<b>Total General Fund</b>	45,478,213	41,820,798	(3,657,415)

## Program Areas

The Program areas are the divisions that deliver the service for the commission. All of this funding goes directly out to the community partners, providers and vendors for services. These divisions are Trial Criminal, Case Support Services, Court Mandated Expenses and Juvenile. All of these programs are SPA related and will need the additional investment to continue to deliver services through the rest of the biennium.

### Trial Criminal Division



General Fund	LAB	Expenditures	Projections	Forecast	Variance
Services & Supplies	186,458,931	74,663,547	151,193,728	225,857,275	39,398,344
<b>Total Funds</b>	<b>186,458,931</b>	<b>74,663,547</b>	<b>151,193,728</b>	<b>225,857,275</b>	<b>39,398,344</b>

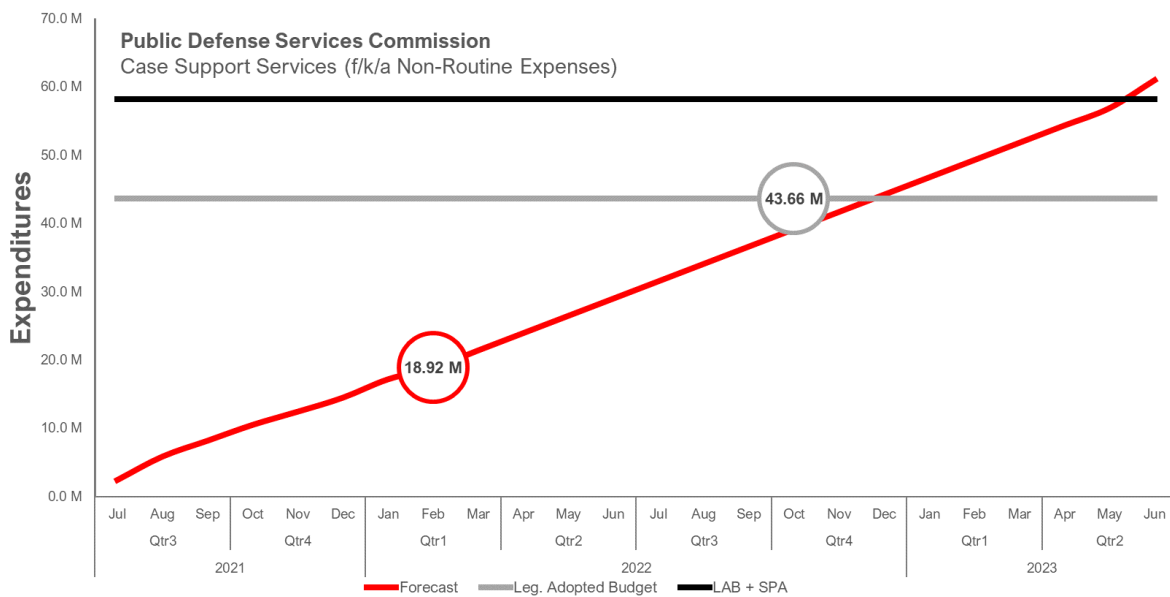
The Trial Criminal Division is a mandated caseload that provides funding to contracted service providers to include non-profit public defender offices, law firms, consortia of attorneys and sole practitioners. The division is currently presenting a \$39.3M shortfall; however, it is spending in accordance with the commission approved contracts and their amendments. The division has \$70,250,989 allocated in the SPA which should result in savings after the execution of the technical adjustments. The commission is currently rewriting its provider contracts which will result in higher costs in anticipation of the release of funds currently being held in the SPA. The anticipated increases are mainly inflationary, to cover forecasted caseload increases, and to try to capture as much of the caseload as possible within contracts in order to decrease the use of hour rate attorneys to handle emergency backlogs at the back end which is the most expensive and inefficient service delivery system. It also includes the use of new, tiered pay scale to increase compensation to attorneys capable and willing to handle more serious and complex cases which are most important to the other system stakeholders and community. This incentivizes those

attorneys to prioritize those cases and allows contract entities to incentivize the retention of more experienced attorneys.

The agency is actively working to make improvements to the provider contracts that will be in effect from July 2022 through June 2023, based on input from the Commission and the provider community. Not all issues raised will be addressed during this contract cycle, but planned improvements in non-policy related areas coupled with a forecasted increase in FTE should help with capacity issues. The agency’s efforts to provide inflationary relief will be realized through improved compensation for wages for attorney providers and additional money to help providers meeting the increased reporting requirements that are being asked for by the commission. The Legislature is also providing emergency funding in the 2022 Legislative session to allow the agency to work with providers in four areas (Multnomah, Washington, Marion and Lane counties) where there is an immediate problem with representation due to capacity issues.

There are two technical adjustments that need to be made in an effort to align expenditures with budgeted resources. The first adjustment moves \$10,602,500 of professional service to Court Mandated Expenses for noncontract hourly trial attorney charges. Hourly trial attorney charges were budgeted in the Trial Criminal Division however those expenditures are realized in the Court Mandated Expenses Division. Hourly attorneys are appointed by the courts due to capacity or conflict issues with our contracted providers. The second adjustment moves \$250,000 of professional service dollars to Court Mandated Expenses to account for appellate attorney charges. Similar to the hourly trial attorney charges, these attorneys are appointed by the courts due to capacity or conflict issues with PDSC appellate attorney staff and their expense is realized in the Court Mandated Expenses Division.

### Case Support Services (Nonroutine Expenses) Division



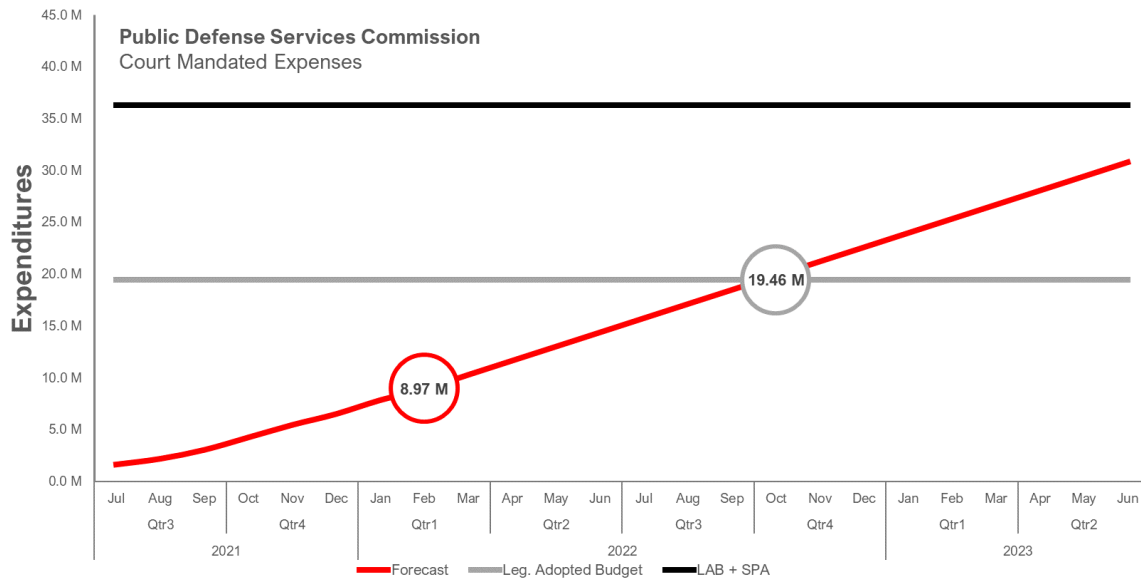
<b>General Fund</b>	<b>LAB</b>	<b>Expenditures</b>	<b>Projections</b>	<b>Forecast</b>	<b>Variance</b>
<b>Services &amp; Supplies</b>	43,663,533	18,917,540	42,069,115	60,986,655	17,323,122
<b>Total Funds</b>	43,663,533	18,917,540	42,069,115	60,986,655	17,323,122

Case Support Services Division’s essential role is supporting adequate trial level representation as a mandated caseload which funds reasonable and necessary case-specific non-attorney services. This division is currently presenting a \$17.3 million shortfall. The division has \$14,544,511 allocated in the SPA which may provide some relief but will not solve the current shortfall. After the addition of SPA funding this division is projected to overspend by \$2.8 million. This shortfall will continue to grow as new caseloads grow and continue to exist without resolution. There is one technical adjustment to move approximately \$7.7 million of professional service from Case Support Services to Court Mandated Expenses to properly account for court appointed psychiatric fees.

In addition, there is another significant issue beyond the current \$17.3 million shortfall. The division is approving authorization requests at levels that are twice the current clearing rate. Over the last three months the division has issued authorizations at a rate of \$4.5 million per month while only paying out invoices at a rate of \$2.2 million per month. The agency currently has approximately \$52.7 million in unpaid authorizations or encumbrances which is expected to continue to grow substantially over the remaining term of the biennium as courts continue to open. The agency’s current policy states that work on Non-Routine Expense (NRE) authorizations must start within two years of the authorization date of the NRE. The authorization must be billed against within two years of the last date of service on the case. This policy is creating indeterminate encumbrances that are rapidly becoming unsustainable.

The division is continuing to review its policies and procedures; working to create better workflows, documentation, and processes; and developing a better understanding of the throughput associated with these elements. The delicacy of this issue must be considered as this is a mandated caseload and is a necessary element of support in the defense of indigent defendants to include criminal, juvenile delinquency, juvenile dependency, termination of parental rights and other practice areas such as civil commitment, post-conviction relief and others relevant cases.

## Court Mandated Expenses Division



General Fund	LAB	Expenditures	Projections	Forecast	Variance
Services & Supplies	15,006,403	7,959,341	21,858,128	29,817,469	14,811,066
Other Funds					
Services & Supplies	858,362	89	0	89	(858,273)
Special Payments	3,591,305	1,006,186	0	1,006,186	(2,585,119)
<b>Total Funds</b>	<b>19,456,070</b>	<b>8,965,616</b>	<b>21,858,128</b>	<b>30,823,744</b>	<b>11,367,674</b>

The Court Mandated Expenses Division is a mandated case load that funds trial and appellate representation by attorneys who are not funded through a provider contract. Those attorneys are often referred to as noncontract or hourly attorneys. The division also funds routine case services that are associated with representation, such as discovery, mileage, travel, postage, copies, basic interpreter services or psychological evaluations, where ordered by a court. Typically, cases are assigned to the contracted providers in the jurisdiction unless there is a capacity issue or an ethical conflict, in which case the agency locates other counsel.

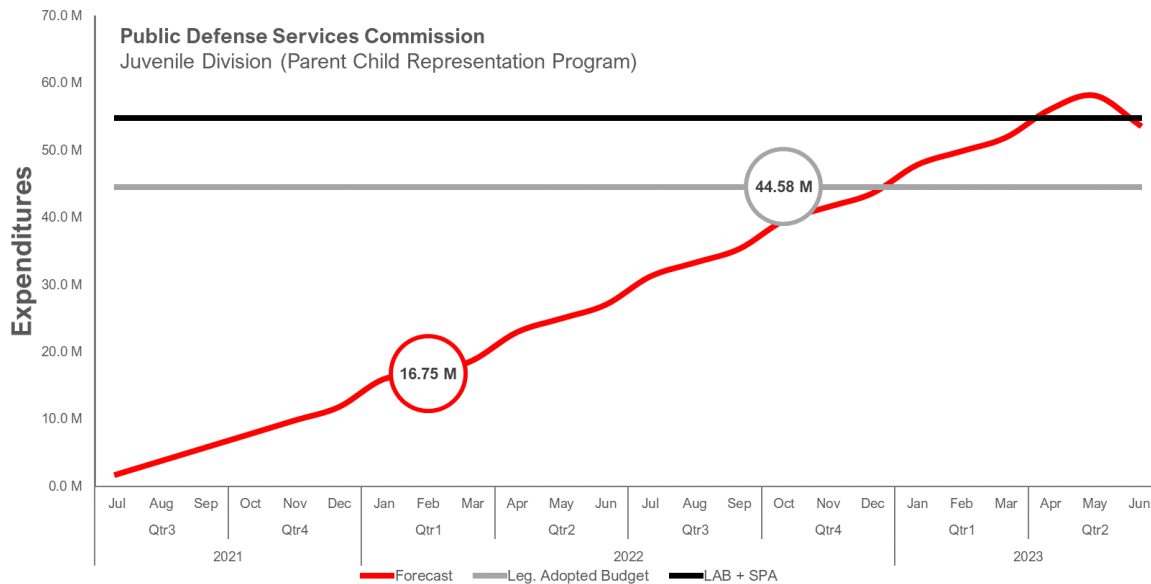
The division is currently presenting a \$14.8 million shortfall. The division has \$5,002,135 allocated in the SPA which may provide some relief but will not solve the current shortfall. Further relief will come from the technical adjustments from the Trial Criminal Division that moves \$10.6 million of professional service to Court Mandated Expenses to account for hourly trial attorney charges. The second adjustment moves \$250,000 of professional service to Court Mandated Expenses to account for hourly compensating the appellate panel as necessary for conflicts and due to the lack of capacity in the PDSC Appellate Division. There is additional technical adjustment from the Appellate Division moving one million of professional service dollars to Court Mandated Expenses to pay for funding transcription and deposition services expenses. The final technical adjustment is a net zero move of approximately \$7.7 million of

professional service from Case Support Services to Court Mandated Expenses to properly account for court appointed psychiatric fees. Court appointed psychiatric evaluations are a court mandated expense. When the divisions were initially defined the budget and the expenditures were improperly put in Case Support Services and they belong in Court Mandated Expense. These expenses are not to be confused with defense expert psychiatric evaluation requests which are a defense request and do need to be captured in the Case Support Services Division. The anticipated relief from the SPA and the technical adjustment will resolve the current situation, but this shortfall will continue to grow as new caseloads increase and older cases remain unresolved.

There remains a certain level of difficulty with attempting to forecast this area, as conflicts are not immediately known, and capacity issues are still evolving. To further complicate things, the current agency policy for submitting invoices for this work allows providers sixty days to bill after completion of services, unless approved for interim billing that allows a provider to submit invoices monthly and no less than quarterly. The current method of forecasting continues to rely on historical payment of expenses; however, as the newly developed research section matures there will be a more focused effort to better track the number of cases that are being appointed to non-contracted attorneys and any deviations to the standard hourly rate. Current work by the agency to increase compensation and capacity at the contract provider level will hopefully discourage the use of hourly providers.

The division also accounts for other funds associated with the Application Contribution Program (ACP). The ACP revenue supports a special payment to the Oregon Judicial Department for program staff and a portion is to cover some of PDSC's court mandated expenses. Expected revenue is not materializing at the projected rate and at the current rate the Other Funds balance will run out as soon as May 2022. The agency has prioritized the special payment to OJD for staff and will transfer all funds except for the money that explicitly allocated to PDSC to offset the Court Mandated expenditures.

## Juvenile Division



General Fund	LAB	Expenditures	Projections	Forecast	Variance
Services & Supplies	30,577,095	14,596,227	25,249,653	39,845,880	9,268,785
Other Funds					
Services & Supplies	14,000,000	2,148,871	11,851,129	14,000,000	0
<b>Total Funds</b>	<b>44,577,095</b>	<b>16,745,098</b>	<b>37,100,782</b>	<b>53,845,881</b>	<b>9,268,786</b>

The Juvenile Division is not a mandated caseload but does provide trial level representation to parents and children in cases of delinquency, dependency, and termination of parental rights in jurisdictions in which the Parent Child Representation Program (PCRP) has been implemented and those jurisdictions in which it has not. This division is currently spending as expected. The Juvenile Trial Division has \$10,192,365 in the SPA which the division plans to request. This will provide relief and allow the division to spend within its budgeted authority, however as courts continue to open, children return to school and normal activity returns any increase over what is currently projected will create an urgent request for funding.

PCRP providers and Case Managers are a part of the agency efforts to improve the provider contracts. In order for the agency to maintain parity and equity among providers any changes to contract providers in the Trial Criminal Division will need to be shared with Juvenile providers as well. These contract enhancements may call for a need to rebalance some of the SPA funding in the Trial Criminal Division to the Juvenile Division at a later date.



The Title IV-E funding in the division is represented as other funds and is also projected to spend out completely. There will continue to be an application of reimbursement of General Funds to cover expenses that are eligible and future reimbursements which are built into the forecasts of Court Mandated Expenses, Trial Criminal Division, Juvenile Trial Division, Juvenile Appellate Section and Case Support Services.

## Program Administration Areas

### Executive Division

General Fund	LAB	Expenditures	Projections	Forecast	Variance
Personal Services	3,031,923	819,725	1,969,678	2,789,403	(242,520)
Services & Supplies	568,438	295,459	209,513	504,972	(63,466)
<b>Total Funds</b>	<b>3,600,361</b>	<b>1,115,184</b>	<b>2,179,191</b>	<b>3,294,375</b>	<b>(305,986)</b>

This Executive Division consists of the director, deputy director, executive assistants, general counsel, government relations, and policy analysts. The division is currently projected to remain within budgetary authority. Included in this forecast are several contracts to assist the agency with restructuring and the strategic planning efforts and legal representation, which were not originally anticipated when the budget was developed. The agency will take the necessary management actions to remain within budgetary authority.

Contracts	Purpose	Contract Amount
Coraggio Group (Corragio Group, LLC)	Modernization, Reorganization & Planning	296,990.00
Sue Wilson	Leadership Team Facilitation	5,000.00
Rochella Ann Thorpe	Executive Director Recruitment	25,000.00
Strategies 360	Media and Communications	120,000.00
Harrang Long Gary Rudnick PC	Legal Services	13,000.00
Judy Snyder	Legal Services	4,000.00
Department of Justice	SAAG - Workplace Solutions NW	100,000.00

The division expects to receive \$143,103 General Fund from the Special Purpose Appropriation to State Agencies for state employee compensation as a result of HB 5202 (2022).

### Compliance, Audit and Performance Division (CAP)

General Fund	LAB	Expenditures	Projections	Forecast	Variance
Personal Services	4,176,464	827,756	3,380,292	4,208,049	31,585
Services & Supplies	479,787	54,067	503,754	557,821	78,034
<b>Total Funds</b>	<b>4,656,251</b>	<b>881,823</b>	<b>3,884,046</b>	<b>4,765,870</b>	<b>109,619</b>

The CAP Division is showing a slight overage which is a forecasting issue. The division is actually currently experiencing a slight savings in personal services due to the difficulty in hiring audit staff. This savings should start to show as time goes by. The division is currently in the recruitment process for the Criminal Trial deputy general counsel and Juvenile Trial deputy general counsel as funding becomes available. Included in this forecast are several contracts to assist the agency with restructuring, and the strategic planning efforts and audit professional with whom it has contracted to perform audit services. These contracts were not anticipated when the budget was developed.

<b>Contracts</b>	<b>Purpose</b>	<b>Contract Amount</b>
Coraggio Group (Corragio Group, LLC)	Modernization, Reorganization & Planning	296,990.00
Latham Stack Auditing LLC	Agency Internal Auditing Services	252,000.00

There are a couple of invoices incorrectly coded in the expenditures, but they will be corrected, and the expenditures will be moved to the appropriate area.

The division expects to receive \$248,409 General Fund from the Special Purpose Appropriation to State Agencies for state employee compensation, as a result of HB 5202 (2022).

### **Appellate Division**

<b>General Fund</b>	<b>LAB</b>	<b>Expenditures</b>	<b>Projections</b>	<b>Forecast</b>	<b>Variance</b>
Personal Services	23,341,841	7,165,975	14,810,265	21,976,241	(1,365,600)
Services & Supplies	1,583,662	33,167	115,337	148,504	(1,435,158)
<b>Total Funds</b>	<b>24,925,503</b>	<b>7,199,143</b>	<b>14,925,602</b>	<b>22,124,745</b>	<b>(2,800,758)</b>

The Appellate Division is a mandated caseload and is currently experiencing projected vacancy savings due to the temporary assignment of one senior deputy defender in the division's Juvenile Appellate Section to act as the interim juvenile trial general counsel in CAP Division. There are also several senior deputy defender positions that are underfilled in the Criminal Appellate section and two in the Juvenile Appellate Section until incumbents are identified who meet the qualifications of a senior deputy defender.

There is one technical adjustment to be made which will transfer authority from the Appellate Division. The transfer is a movement of one million dollars of services and supplies to Court Mandated Expenses to defray the cost of transcription and deposition services in appellate matters.

The division expects to receive \$750,390 General Fund from the Special Purpose Appropriation to State Agencies for state employee compensation, as a result of HB 5202 (2022). The division also expects to receive \$135,221 General Fund in carry forward funds from 2019-21 and \$259,969 General Fund and one full time position in the Juvenile section to support increased caseload.

## Administrative Services Division

General Fund	LAB	Expenditures	Projections	Forecast	Variance
Personal Services	7,910,418	2,608,831	5,664,785	8,273,616	363,198
Services & Supplies	4,385,680	1,399,804	1,955,875	3,355,679	(1,030,001)
Capital Outlay	0	6,513	0	6,513	6,513
<b>Total Funds</b>	12,296,098	4,015,148	7,620,660	11,635,808	(660,290)

The Administrative Services Division provides agency-wide administrative support and central services through the following sections: Administration, Budget, Accounting/Accounts Payable, Human Resources, Procurement, Facilities, and Information Services. The division is currently presenting a shortfall in personal services due to a position that was abolished in the budget build, and the inheritance of reclassification that was approved in a previous biennium but was never completely processed on the budget side. The agency has an additional request of the Joint Emergency Board to request funding. Fortunately, the majority these issues should be resolved with salary funds, and the division will continue to mitigate them through management actions.

Included in this forecast are several contracts to assist the agency with operational issues in relation to labor relations services and to fulfill instruction given by the 2022 legislature to obtain an assessment of OPDS IT services. These contracts were not anticipated when the budget was developed.

Contracts	Purpose	Contract Amount
Craig Cowen	Support and Consultation - Labor Relations	30,000.00
Elyon Enterprise Strategies, Inc.	Assessment of OPDS IT Services	49,342.00

The division expects to receive \$475,739 General Fund from the Special Purpose Appropriation to State Agencies for state employee compensation, as a result of HB 5202 (2022). The division also expects to receive \$132,450 General Fund in carry forward funds from 2019-21 and \$743,588 General Fund and two limited duration positions in the Information Technology Services section to support the planning phase of the Financial and Case Management information technology project.

## 2022 Legislative Session

February 2022 Legislative Session HB 5202			
Appropriation	Division	Description	Amount
84000	Trial Criminal Division	Emergency Funding, GF Carry Forward	12,808,337
85000	Juvenile Division	PCR Family Treatment Court Position	195,833
81000	Executive Division	Salary Pot	143,103
82000	Compliance, Audit, & Perf. Division	Salary Pot	248,409
83000	Appellate Division	Salary Pot, GF Carry Forward, Position	1,145,580
86000	Administrative Services Division	Salary Pot, GF Carry Forward, 2 Positions	1,333,777
87000	Special Program, Contracts, Dist	Civil Protective Proceeding and Position	380,436
	TOTAL		16,255,475

The agency is expecting to have a General Fund and positions added to the LAB as a result of HB 5202 from the 2022 Legislative Session. Highlights are:

- \$12.8 million Emergency Funding to the Trial Criminal Division for indigent defense council in Multnomah, Washington, Marion and Lane counties to address current backlog of unrepresented clients.
- \$743,588 and two limited duration positions to Administrative Services Division for the planning phase of the Financial and Case Management information technology project.
- \$380,436 and one limited duration position to implement SB 578 (2021) and payment of counsel.
- \$259,969 and one full time position to the Juvenile Appellate Section to support caseload growth.
- \$198,833 and one full time position to the Juvenile Division to support Family Treatment courts and the Parent Child Representation Program.

### Rebalance Actions

The agency requests the following net rebalance actions which result in a net zero effect to the General Fund budget as demonstrated on attachment A:

- Move \$10,602,500 from the Trial Criminal Division to the Court Mandated Expenses to account for the hourly attorneys that are not under contract and who are appointed due to conflict or capacity issues. This should have been done at budget build but was overlooked in the development of the current budget structure that was developed for the 2021-23 biennium.
- Move \$250,000 from the Trial Criminal Division to the Court Mandated Expenses to account for the hourly appellate attorneys that are not under contract and who are appointed due to conflict or capacity issues. This should have been done at budget build but was overlooked in the development of the current budget structure that was developed for the 2021-23 biennium.

- Move \$1,000,000 from the Appellate Division to the Court Mandated Expenses. This will match budget to where the actual expenditures are being realized. This was noted at a previous Joint Emergency Board but was not corrected in the 2021-23 budget build.
- Move \$7,706,454 from Non-Routine Expenses to Court Mandated Expenses for court ordered psychiatric fees. This is to match budget dollars to where the court ordered expenditures are being realized. Additional and unnecessary paperwork needs to be generated internally to balance expenditures to budget. However this creates further opportunity for error and consistent with accounting best practices, the agency would like to avoid doing this.

## **Risks**

PDSC is working diligently to continue to implement and meet the expectations outlined in HB 5030 and HB 2003. There are significant risks that are high on the agency's radar and need to be highlighted.

- Finance and Case Management system – This is imperative to the future success of the agency and the indigent population that it serves.
- Nonroutine Expenses/Case Support Services – The agency is working to review the current policies and procedures to better manage this process. However until there is movement of cases, the liability of approved expenditures will continue to grow so long as additional new cases are assigned to counsel.
- Contract Providers – The contracted providers are rapidly reaching capacity if not currently at capacity. The increased workload will eventually take its toll on the system and attorneys may leave causing further strain on existing capacity.
- Hourly providers – When ethical conflicts and capacity become an issue with the contracted providers, hourly providers are looked at to handle the overflow. This creates problems with the average cost per case increasing and exhaustion of hourly-provider capacity.
- Rate increases – All providers are asking for rate increases which puts further strain on all levels. Contract providers want inflationary rate increases, parity with attorneys representing the state, and additional funds for administration and investigation. The risk of not acting will create stress on the system as attorneys may leave for opportunities elsewhere.
- Appellate Panel – Panel attorneys are also requesting inflationary increases to move close to parity with state employed attorneys. The Appellate Division, especially the Juvenile Appellate Section, depends greatly on maintaining the relationship with these attorneys.

## **Conclusion**

PDSC looks forward to working with the Legislature to address the budget issues outlined in this report and any other outstanding issues to ensure that the Legislature has the information it needs to make decisions about this financial update and requests.

**Public Defense Services**  
**Commission**  
**2021-2023 Financial Update/June 2022 Joint**  
**Emergency Board**  
**APPROPRIATION AND LIMITATION**  
**ADJUSTMENTS**  
**ATTACHMENT A**

PROGRAM	PROPOSED LEGISLATION / SECTION	APPR #	FUND TYPE	ADJUSTMENTS	REQUEST FROM SPA	NET ADJUSTMENTS
<b>Non- Routine Expenses</b>	ch. 444, sec 1 (5)	84250	General	(7,706,454)		(7,706,454)
						-
<b>Appellate Division</b>	ch. 444, sec 1 (3)	83000	General	(1,000,000)		(1,000,000)
<b>Trial Criminal Division</b>	ch. 444, sec 1 (4)	84000	General	(10,602,500)		(10,602,500)
	ch. 444, sec 1 (3)	83000	General	(250,000)		(250,000)
						-
<b>Court Mandate Expenses Division</b>	ch. 444, sec 1 (6)	84500	General	7,706,454		7,706,454
	ch. 444, sec 1 (6)	84500	General	10,602,500		10,602,500
	ch. 444, sec 1 (6)	84500	General	1,000,000		1,000,000
	ch. 444, sec 1 (6)	84500	General	250,000		250,000
<b>TOTALS</b>				-	-	-