

## ANALYSIS

### Item 6: Public Defense Services Commission HB 5030 (2021) Reorganization/Financial Update

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**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.

#### Compliance with Budget Note and Other Direction

PDSC's report did not include many of the reporting elements included in the budget note, with the exception of providing an updated financial forecast. In addition, the General Government Subcommittee of the Emergency Board in June of 2022 requested that PDSC report to the Emergency Board in September with a comprehensive plan to address the issues facing by the agency. The Subcommittee was assured by the former Director that such information would be included in September's report; however, PDSC's report did not include the requested plan. In the absence of complete PDSC reporting, the Legislative Fiscal Office (LFO), in this analysis, will attempt to provide an overview of the status of the some of the elements included in the budget note.

#### PDSC's Financial Update Report

The Emergency Board in June of 2022 allocated a \$100 million special purpose appropriation for public defense to PDSC and approved an agency-requested rebalance of General Fund, as well as approved other General Fund allocation requests. The combination of these actions increased PDSC's 2021-23 legislatively approved budget to \$456.5 million total funds, which includes \$438 million General Fund

and \$18.5 million Other Funds. The approved budget includes 113 positions (107.56 FTE). The total funds budget is \$89.4 million (or 24.3%) more than the 2019-21 legislatively approved budget.

PDSC currently forecasts expending \$422.5 million out of \$438 million General Fund. PDSC forecasts expending only \$1.4 million out of \$18.5 million Other Funds, \$17 million less than approved expenditures. The combined total of General and Other Fund savings equals \$32.5 million. PDSC's report states "...release of SPA funding to the PDSC is the main driver for the agency to reflect a projected total funds savings of approximately \$32 million dollars..." PDSC's report offered no explanation as the specific causation of the material overfunding or underfunding across each appropriation or division. In addition, some reported savings will likely not materialize, as PDSC's projections neglected to account for known expenditures. There also continues to be significant issues with the coding or mis-coding of expenditures between appropriations. Forecasted deficit spending of \$9.1 million in the Court Mandated Expenses Division is of special concern given the importance of such payments.

PDSC's report requires further qualification. Although not included in PDSC's financial forecast, the Commission has pre-authorized the expenditure of over \$9.5 million in General Fund savings to address the unrepresented defendant issue (discussed in more detail below). Since forecasted General Fund savings fall outside the appropriation for which expenditures may now be incurred, PDSC's budget will need to be rebalanced for a second time this biennium; however, PDSC's report was not accompanied with a rebalance plan. The Commission's pre-authorization of expenses prior to a formal rebalance plan, or legislatively approved rebalance plan, risks the double-counting of any savings estimate as current programmatic savings are not being sequestered by the agency and under the assumption that PDSC has accurately forecasted the agency's expenditures for the remainder of the biennium.

In addition, the following are other issues not included in the agency's financial projections, but that would have a material impact on the forecasted amounts presented in the report: (1) projections exclude the impact of a \$52.7 to \$58 million estimated General Fund liability for nonroutine expenses; (2) there is a revenue shortfall with the Application Contribution Program of an estimated \$3 million, which is resulting in both PDSC and the Oregon Judicial Department having to backfill the shortfall with General Fund; and (3) PDSC continues to await the receipt of \$14 million in Title IV-E Federal as Other Funds from the Oregon Department of Human Services, in order to realize General Fund savings.

### Unrepresented Defendants

In the fall of 2021, PDSC initially became aware of a growing issue with unrepresented defendants; however, the agency undertook little formal action until early 2022, when at the urging of Chief Justice of the Oregon Supreme Court, the Governor, and Legislative Leadership, PDSC proposed a plan to address the issue. The 2022 Legislature funded PDSC's plan by appropriating \$12.8 million General Fund, on a one-time basis, for the procurement of indigent defense counsel in Multnomah, Washington, Marion, and Lane counties. The appropriation was meant to address the current backlog of unrepresented defendants in the four counties and provide increased attorney capacity for the remainder of the biennium.

Since early 2022, the unrepresented defendant issue, for both in-custody and out of custody, and both adults and juvenile defendants, has worsened and spread beyond the four original counties to now include Coos, Curry, Douglas, Jackson, Klamath, and Wasco counties. The current estimate of unrepresented defendants totals 39 in-custody and up to 1,313 out of custody (as of September 2, 2022). In addition, PDSC was unable to implement the agency's unrepresented defendants plan as

originally conceived. It is unclear what PDSC has implemented with this funding, as there has been no revised plan submitted. Of the original \$12.8 million, PDSC is forecasting that \$4 million will be unexpended or unobligated, and therefore available for alternative use. In addition to the action of PDSC, other public safety system partners, have undertaken actions aimed at alleviating, either temporarily or permanently, the unrepresented defendant issue.

The Commission did approve the following supplemental actions to address the growing unrepresented defendant issue, which total at least an estimated \$9.5 million General Fund. These actions were done with the explicit Commission understanding that the actions could be fully absorbed or self-funded within PDSC 2021-23 legislatively approved budget and that no supplemental funding would be required of either the Emergency Board or the legislature; however, as noted previously, these actions are premised on either the Emergency Board or the legislature rebalancing General Fund savings in order to legally pay for such unbudgeted expenditures. The Commission limited the effective timeframe of these action to sunset on June 30, 2023 or at the conclusion of the current biennium. The Commission-approved actions are:

1. Non-contract Hourly Rate Increase for Private Attorneys: Match the federal hourly rate of \$158 per hour for in-custody defendants with a “soft-cap” reimbursement of \$10,000, which may be exceeded, if good cause is shown by the public defender. Standard hourly rates for all other activities remain at \$75/ for felony cases and \$105/hour for murder cases (Cost: \$2 million General Fund).
2. Supervision, Training, and Investigation Cost: Reimburse public defender offices for the cost of supervision, training, investigation (Cost: \$7.5 million General Fund).
3. Expand the Non-contract Hourly Rate Increase for Private Attorneys: expand the hourly rate of \$158 per hour for in-custody defendants to also include providers who are at less than one Maximum Attorney Caseload/FTE (Cost: \$TBD; no cost estimate has been made available).

### Governance

After a short period of stabilization, the governance of PDSC changed with the reconstitution of the membership of the Commission by the Chief Justice of the Oregon Supreme Court followed by the termination of the executive director. The Commission appointed three employees to jointly serve in the capacity of executive director until an interim executive director could be appointed. The Commission has also begun the process of recruiting for a permanent executive director.

### Restructuring and Modernization

The Commission has been consumed with the unrepresented defendant crisis, discussed below, and completing the Fiscal Year 2023 provider contract cycle. PDSC’s restructuring and modernization efforts have not advanced since agency’s report to the Emergency Board in June. The Commission has developed no plan to address the findings of the Sixth Amendment Center, the American Bar Association/Moss Adams study, the Corragio Group report and risk assessment, or the recently release independent external financial and performance audit, let alone other prior studies of the agency with actionable findings. The Commission has yet to engage in any meaningful discussion related to the financial eligibility of defendants. External efforts examining PDSC’s delivery of public defense services remain underway (i.e., Legislative Workgroup).

### Statutes, Policies and Procedures

The status of PDSC’s updating and or creation of policy and procedures is unknown at this time; however, since the beginning of the biennium, few, if any, of the agency’s policies and procedures have

been reviewed or approved by the Commission. In addition, the Commission has appeared not to have conducted a review of the agency's existing statutes and may have missed the opportunity to propose a legislative concept for the 2023 Legislative Session in a timely manner.

### Procurement Activities

PDSC was able to substantially complete FY2023 contracts, which resulted in significant changes to the procurement of public defense services. The "Appointed Case" model has subsequently been renamed "Maximum Attorney Caseload" model and the agency states it is only a stop-gap model. The new model makes fundamental changes to increase provider compensation, reduce caseload standards, pay for administrative cost support, and adds new reporting standards, among other changes. The new contracts eliminate all urban/rural rate differentials, except for the Parent Child Representation Program. Yet, even with these changes, PDSC's ability to procure public defense services remains below the agency's forecasted needs. Also, PDSC is reporting that adult criminal provider contract contains an estimated \$10.6 million General Fund in what PDSC presumes will be contract vacancies savings or unutilized capacity, as providers are not reimbursed for vacant position costs. Such savings, if they materialize, would be in addition to the \$15.5 million in General Fund savings report to the Emergency Board, as part of this report.

PDSC has reported that the agency was able to procure 591.59 FTE for the Maximum Attorney Caseload model, which includes 397.33 FTE for adult criminal, 91.76 for juvenile, 80.85 for the Parent Child Representation Programs, and 21.65 for other statewide contracts. PDSC's forecasted capacity deficit in terms of FTE is estimated to be approximately 25 FTE.

### Caseload Standards

With the new contracting cycle, PDSC is attempting to make the distinction between a provider attorney's assigned annual *caseload* versus the *workload* or the number of open cases an attorney may carry and still competently represent their clients at any given point in time. The "Maximum Attorney Caseload" model funds attorney work based on forecasted *caseload* rather than workload. The Parent Child Representation Program workload model remains unchanged.

PDSC's caseload "standards;" however, have not been uniformly applied to all situations. For example, the non-contract hourly rate for private attorneys to match the federal hourly rate of \$158 per hour for in-custody defendants was based on the recently American Bar Association/Moss Adams workload study. The Commission has yet to adopt a policy on agency caseload standards.

With the FY2023 contracts, PDSC was able to comply with legislative direction to move Trial Criminal contracts to a fiscal year basis and began 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.

### Caseloads

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. Detailed caseload data is foundational to support the agency's funding requests.

### External Audit Findings

The 2021 Legislature appropriated \$350,000 General Fund for an independent external financial and performance audit of PDSC. The external audit was released in August of 2022 and contained 11 significant audit findings, four observations, and seven process improvement recommendations. PDSC will be reporting to the Interim Joint Legislative Audit Committee with a report on the agency's independent/external financial and performance audit.

### Internal Audit

PDSC has contracted with an external firm for internal audit services. An internal audit plan and framework has been approved by the Commission. PDSC appears to have no immediate plans to fill the two permanent full-time Internal Auditor positions (1.76 FTE) that were approved by the 2021 Legislature. The Commission had established an Audit Committee comprised of a subset of Commission members with quarterly reporting to the full Commission.

### Financial Controls

PDSC financial controls, which will be informed by the findings of the recently released external audit, appear to be improving, as the agency moves to be more in alignment with Oregon Accounting Manual requirements and payment processing times have improved, and appear to be falling within normal 45-day or less payment timeframe for state agencies. 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. PDSC has submitted the requested report (Item #5).

### 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 efforts around performance measurement are unclear and not addressed in the report.

### Human Resource Activities

PDSC has been providing regular reporting to the Legislature and Emergency Board of the agency's compensation plan changes, as required by statute. PDSC continues to work on issues such as collective bargaining negotiations, low employee morale and employee turnover, unbudgeted position actions, and the 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 allowed for the reestablishment of the Information Technology section. Instead of undertaking this action, PDSC has chosen to pursue a hybrid approach, in which base information technology functions are outsourced to the OJD 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, but the progress of which is uncertain.

**Recommendation:** The Legislative Fiscal Office recommends that the Emergency Board acknowledge receipt of the report with the instruction that the Public Defense Services Commission submit a comprehensive plan to address the issues facing by the agency to the Emergency Board in December of 2022, as well as comply fully with the direction of budget note to the agency under HB 5030 (2021).

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Public Defense Services Commission  
Gibson

**Request:** Report on a House Bill 5030 (2021) budget note on financial updates 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 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 third financial update report with financials through June 30, 2022. The report covers current expenditures, caseload forecasts, financial shortfalls, and potential budgetary risks and issues.

The chart below lays out the current PDSC financial status and remaining available budget as of fiscal month ended June 30, 2022.

PDSC Budget, by SCR	Fund Type	Leg. Approved Budget	YEAR 1 Expenditures	YEAR 2 Projections	Total Expenditures + Projections	Budget Variance
Administrative Services Div.*	GF	14,139,812	6,180,965	5,896,147	12,077,112	2,062,700
Special Programs, Contracts & Dist	GF	380,436	424	-	424	380,012
Appellate Div.	GF	24,818,312	10,825,077	9,166,593	19,991,670	4,826,642
Compliance, Audit, & Perf. Div.*	GF	4,904,660	1,494,333	3,057,793	4,552,126	352,534
Executive Div.	GF	3,743,464	1,654,954	1,576,039	3,230,993	512,471
Non-Routine Expenses	GF	50,511,590	29,767,445	14,991,120	44,758,565	5,753,025
Trial Criminal Div.	GF	258,915,757	113,462,758	124,198,871	237,661,629	21,254,128
Juvenile Div.	GF	40,965,293	23,835,434	27,766,272	51,601,706	(10,636,413)
	OF	14,000,000	2,148,871	(2,148,871)	-	14,000,000
	<b>TF</b>	<b>54,965,293</b>	<b>25,984,305</b>	<b>25,617,401</b>	<b>51,601,706</b>	<b>3,363,587</b>
Court Mandated Expenses	GF	39,567,492	12,759,904	35,863,163	48,623,067	(9,055,575)
	OF	4,449,667	1,435,380	-	1,435,380	3,014,287
	<b>TF</b>	<b>44,017,159</b>	<b>14,195,284</b>	<b>35,863,163</b>	<b>50,058,447</b>	<b>(6,041,288)</b>
<b>TOTAL FUND (TF)</b>		<b>456,396,483</b>	<b>203,565,545</b>	<b>220,367,127</b>	<b>423,932,672</b>	<b>32,463,811</b>

( ) = Overage

\* PDSC's financial update contained two Legislatively Approved Budget numbers which needed to be adjusted for accuracy. The Administrative Services Division budget number was adjusted down \$50,000. The Compliance, Audit, and Performance Division budget number was adjusted up \$1.

PDSC's financials reflect a total fund savings of approximately \$32.5 million due mainly to the \$100.0 million special purpose appropriation (SPA) released at the June 2022 Emergency Board. As a Judicial Branch agency, all remaining General Funds at the biennial close will not revert to the General Fund but will roll forward into 2023-25 budget.

**Overview by budget SCR**

Administrative Services Division – The Division's financials reflect a savings of approximately \$2.1 million General Fund. However, the savings are primarily due to position vacancies within

the Division. Additionally, PDSC is currently involved in multiple lawsuits, which creates a risk of eliminating any potential savings.

Special Programs, Contracts, and Distributions – The Division financials reflect a savings of approximately \$0.4 million General Fund. The position allocated to this Division was hired as of July 1, 2022, but not included in PDSC's projections. The inclusion of these costs will neutralize the savings.

Appellate Division – The Division financials reflect a savings of approximately \$4.8 million General Fund. PDSC attributes some of the savings to a budgeted staffing plan developed to increase positions to a higher classification (e.g., from defender to senior defender). Currently, enacting the staffing plan is temporarily on hold due to leadership changes.

Compliance, Audit, and Performance Division (CAP) – The Division financials reflect a minimum savings of approximately \$0.4 million General Fund.

Executive Division – The Division financials reflect a minor savings of approximately \$0.5 million General Fund.

Non-Routine Expenses (NRE) – NRE financials reflect a savings of approximately \$5.8 million General Fund. The savings are due to a budget misalignment. Discovery expenses are budgeted in NRE but realized in Court Mandated Expenses. The savings in NRE offset the overage in Court Mandated Expenses.

Trial Criminal Division – The Division financials reflect a savings of approximately \$21.3 million General Fund. PDSC utilized multiple avenues to increase provider capacity, including issuing 23 contracts authorized under emergency procurement rules. However, increasing provider capacity is limited by the willingness of new providers to enter the public defense system. Additionally, the unspent SPA funds allocated in the 2022 Legislative Session contribute to the overall savings (see new initiatives below for additional information). Also, the current contract levels have over 70 vacancies for contracted attorneys due to recruitment difficulties.

Juvenile Division – The Division financials reflect a savings of approximately \$3.4 million total funds. The \$14.0 million Other Funds represents Title IV-E Federal Funds, transferred to PDSC from the Oregon Department of Human Services as Other Funds. The two agencies are jointly working through an update to the memorandum of understanding (MOU) and expect the funds to begin transferring soon. PDSC will utilize the Title IV-E funding to reimburse the Division for incurred General Fund expenses. Additionally, the updated July 2022 expenditures and projections declined by \$3.6 million resulting in a total estimated savings of \$7.0 million. PDSC has proposed utilizing \$5.8 million of the savings to fund a Parent Child Representation Program expansion into four additional counties.

Court Mandated Expenses – Court Mandated Expenses financials reflect an overage of approximately \$9.0 million General Fund. The \$3.0 Other Funds savings represents pass-through dollars dedicated to the Oregon Judicial Department in support of the Application Contribution Program. Approximately \$0.8 million will remain in PDSC to cover operating expenses. The critical driver is discovery-related expenses, which are budgeted in Non-Routine Expenses but realized in the Court Mandated Expenses budget. Additionally, the billing variance between counties is significant due to a lack of standards identifying allowable expenses. PDSC acknowledges the need for standard allowable discovery expenses.



### ***New Initiatives***

Over the past few months, the Commission has approved new initiatives based on the perceived ability to absorb the costs. The initiatives focus on the immediate issue of unrepresented persons.

- Emergency Funding for increased capacity  
House Bill 5202 (2022) appropriated \$12.8 million General Fund to increase provider capacity for adult criminal, juvenile dependency, and delinquency cases. However, according to PDSC, the addition of new capacity is neutralized by current providers leaving the system. As a result, PDSC estimates spending only \$8.6 million of the funding in 2021-23.
- Increased funding for training, supervision, and support staff  
The Commission approved approximately \$7.5 million to public defender offices across the state. PDSC will utilize the funding to increase training, supervision, and support staff in provider contracts starting August 1, 2022.
- Increased funding for non-contract attorneys  
The Commission approved an increased hourly wage of \$158/hour for non-contract, private bar attorneys, and current contract attorneys with less than 1.0 FTE of availability to represent unrepresented persons in custody. Previously, the hourly rates were \$75/hour for felony cases and \$105/hour for murder cases. The estimated cost to PDSC is approximately \$2.0 million.
- Increased funding for current fiscal year provider contracts  
Contract funding was increased to align contract payments across the state. The increase included aligning costs to rural versus urban providers, additional administration funding, and increased attorney salary compensation based on qualifications. The current PDSC projections assume the impact of this increase.

The Commission continues to consider opportunities to positively impact the provider community and gain additional legal representation capacity. However, what is becoming clear is money alone is not the solution. PDSC has enough savings to increase the number of providers, but the ability to gain additional capacity remains limited by provider choice. Additionally, PDSC has multiple budget risks, including (1) multiple lawsuits, which can negatively impact the budget and (2) outstanding encumbrance liabilities of over \$50.0 million related to current approvals for future reimbursable activities, which have yet to be billed.



# Oregon

## Public Defense Services Commission

*Office of Public Defense Services*  
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August 26, 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**

The purpose of this letter is to provide the Public Defense Services Commissions third financial update of the 2021-23 Biennium to the Joint Emergency Board Subcommittee on General Government.

### **Action Requested**

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

### **Legislation Affected**

No legislation is affected.

Sincerely,

Brian E. DeForest  
Deputy 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

**OFFICE OF PUBLIC DEFENSE SERVICES**

**AY 2023**

**Budget Report by Fund and Program**

As of fiscal month ended June 30, 2022

Biennium percent elapsed: 50.00

	Leg. Approved Budget	Total Expenditures	Total Projections	Total Forecast	Budget Variance
<u>General Fund</u>					
Administrative Services Division	14,189,812	6,180,965	5,896,147	12,077,112	(2,112,700)
Special Progs., Contracts, & Distr.	380,436	424		424	(380,012)
Appellate Division	24,818,312	10,825,077	9,166,593	19,991,670	(4,826,642)
Compliance, Audit, & Perf. Division	4,904,659	1,494,333	3,057,793	4,552,126	(352,533)
Court Mandated Expenses	39,567,492	12,759,904	35,863,163	48,623,067	9,055,575
Executive Division	3,743,464	1,654,954	1,576,039	3,230,993	(512,471)
Juvenile Division	40,965,293	23,835,434	27,766,272	51,601,706	10,636,413
Non-Routine Expenses	50,511,590	29,767,445	14,991,120	44,758,565	(5,753,025)
Trial Criminal Division	258,915,757	113,462,758	124,198,871	237,661,629	(21,254,128)
<b>Total General Fund</b>	<b>437,996,815</b>	<b>199,981,294</b>	<b>222,515,997</b>	<b>422,497,292</b>	<b>(15,499,523)</b>
<u>Other Funds</u>					
Court Mandated Expenses	4,449,667	1,435,380	0	1,435,380	(3,014,287)
Juvenile Division	14,000,000	2,148,871	(2,148,871)	0	(14,000,000)
<b>Total Other Funds</b>	<b>18,449,667</b>	<b>3,584,252</b>	<b>(2,148,871)</b>	<b>1,435,381</b>	<b>(17,014,286)</b>
General Fund	437,996,815	199,981,294	222,515,997	422,497,292	(15,499,523)
Other Funds	18,449,667	3,584,252	(2,148,871)	1,435,381	(17,014,286)
<b>Total Funds</b>	<b>456,446,482</b>	<b>203,565,546</b>	<b>220,367,126</b>	<b>423,932,672</b>	<b>(32,513,810)</b>

**Leg. Approved Budget:** Oregon Laws 2021, Chapter 444; Oregon Laws 2021, Chapter 669; Oregon Laws 2022, Chapter 110; and June 13, 2022, Joint Emergency Board meeting

**Total Expenditures:** Recognized expenditures from July 1, 2021, to June 30, 2022

**Total Projections:** Management's estimate of expenditures from July 1, 2022, to June 30, 2023

**Total Forecast = Total Expenditures + Total Projections**

**Budget Variance (Savings) = Total Forecast - Leg. Approved Budget**

*Note: Other Fund Court Mandated Expenses are mostly pass-through dollars to the Oregon Judicial Department to support the Application Contribution Program and are not a part of the PDSC operating budget, except for approximately \$800,000. The Other Fund Juvenile Division of \$14 million is Title IV-E funding that is expected to be released to the PDSC this biennium.*

The above chart demonstrates the Public Defense Services Commission/Office of Public Defense Services (PDSC OPDS) operating budget report for the period ending June 30, 2022. This report reflects the actions intended by the June 2022 Oregon Legislative Emergency Board which included the release of the monies from the \$100 million special purpose appropriation (SPA) and distributed as follows: \$70,250,989 to Trial Criminal Division; \$14,554,511 to Nonroutine Expenses; \$5,002,135 to Court Mandated Expenses; and \$10,192,365 to Juvenile Division. This release of SPA funding to the PDSC is the main driver for the agency to reflect a projected total funds savings of approximately \$32 million dollars minus the transfer of \$3,591,305 to the

Oregon Judicial Department for Verification Specialists in support of the Application Contribution Program.

The PDSC has prioritized the expenditure of projected savings to address the immediate problem of unrepresented persons. Current budget projections indicate unallocated funds in the general fund. The PDSC will solicit from the provider community potential short-term solutions to resolve the number of unrepresented persons statewide, and further, will prioritize the funding of unallocated monies to programs and/or policy revisions to meet the state’s constitutional obligation to provide legal representation to all eligible persons.

To date, the PDSC has addressed the issues surrounding the problem of unrepresented persons by implementing programs to ameliorate the number of in-custody unrepresented persons and to address retention issues within the non-profit public defender offices to maintain current capacity. The PDSC allocated up to approximately \$7.5 million to nonprofit public defense offices for training, supervision, and staff support (see chart below) beginning August 1, 2022.

Public Defender Offices	
Coos	\$ 458,950
Deschutes	\$ 524,900
Douglas	\$ 571,500
Elkhorn	\$ 378,375
Intermountain	\$ 149,225
Lane	\$ 857,172
Marion	\$ 1,109,175
MDI	\$ 730,950
MPD	\$ 2,208,113
SOPD	\$ 479,204
TOTAL	\$ 7,467,563

The PDSC also authorized the payment of \$158 per hour to non-contract, private bar attorneys, as well as contract attorneys with less than 1.0 MAC, to represent unrepresented defendants currently in custody. The agency proposes the below target of \$2.04 million for this biennium based on the following:

Conflict Cases								
				(ABA Study numbers)				
				10K Cap	plea	trial	avg	
				Hours	63.29	108.85	268.25	148.95
				\$ 10,000	\$ 17,198	\$ 42,384	\$ 23,534	
	Per hour	Cases						
22-Jun	\$ 158	39		\$ 390,000	\$ 670,734	\$ 1,652,957	\$ 917,830	
22-Jul		4		\$ 40,000	\$ 68,793	\$ 169,534	\$ 94,136	
22-Aug		4		\$ 40,000	\$ 68,793	\$ 169,534	\$ 94,136	
22-Sep		4		\$ 40,000	\$ 68,793	\$ 169,534	\$ 94,136	
22-Oct		4		\$ 40,000	\$ 68,793	\$ 169,534	\$ 94,136	
22-Nov		4		\$ 40,000	\$ 68,793	\$ 169,534	\$ 94,136	
22-Dec		4		\$ 40,000	\$ 68,793	\$ 169,534	\$ 94,136	
23-Jan		4		\$ 40,000	\$ 68,793	\$ 169,534	\$ 94,136	
23-Feb		4		\$ 40,000	\$ 68,793	\$ 169,534	\$ 94,136	
23-Mar		4		\$ 40,000	\$ 68,793	\$ 169,534	\$ 94,136	
23-Apr		4		\$ 40,000	\$ 68,793	\$ 169,534	\$ 94,136	
23-May		4		\$ 40,000	\$ 68,793	\$ 169,534	\$ 94,136	
23-Jun		4		\$ 40,000	\$ 68,793	\$ 169,534	\$ 94,136	
		87		\$ 870,000	\$ 1,496,252	\$ 3,687,365	\$ 2,047,467	
<i>39 cases based on input from analyst on 7/11, showing need as of 7/8</i>								

## Contract Update

The purpose of the below charts is to provide our most current reconciliation of where the agency is currently at with contracts, and where there is additional funding that could be used to fund the agency’s proposed plans to address the unrepresented persons crisis. It is important to note that this information is not a reflection of the entire agency budget as it is division specific. The chart considers the actual contracted dollars that are projected and expended against the legislatively approved budget, without the consideration of the \$12.8 million Emergency Fund dollars. The below chart shows a projected savings in Trial Adult of approximately \$14,145,528 and Trial Juvenile of approximately \$1,997,398, which is in part a result of the SPA. In PCRP there is a \$7,034,803 projected overage which will reflect an approximate savings of \$6,965,197 once the Title VI-E is received and applied.

Contract Summary	Trial Adult	Trial Juvenile	PCRP	Total
General Fund Appropriations	212,310,921	46,604,836	40,965,293	299,881,050
General Fund Expenditures (July 31, 2022 projected) (minus)	100,346,593	22,168,149	25,713,384	148,228,126
Emergency Funding (minus)	10,518,383	2,281,617		12,800,000
General Fund Remaining (w/o e-funding)	101,445,945	22,155,070	15,251,909	138,852,924
Contracts projected remaining (August 15, 2022) (minus)	87,300,417	20,157,672	22,286,712	129,744,801
General Fund Remaining	14,145,528	1,997,398	(7,034,803)	9,108,123
Other Funds (IV-E)	-	-	14,000,000	14,000,000
<b>Total Available</b>	14,145,528	1,997,398	6,965,197	23,108,123

The following chart displays the status of the Emergency Funding. The below chart demonstrates that as of July 31, 2022, the Agency expects to expend \$686,946 to vendors. The Agency's contract process is committed to fund attorneys who meet the criteria for these dollars. As of August 15, 2022, for 2022-23 there are approximately \$3,558,562 under contracted with various providers (see chart below). There is another \$4,380,670 planned to increase attorney capacity, specifically in the metropolitan area, with new attorneys that are forecasted to be under contract during the 2022-2023 contract cycle. Introducing these new attorneys into the system will help to increase much needed capacity system-wide.

<b>Emergency Fund Summary</b>		
General Fund Appropriations		12,800,000
General Fund Expenditures (July 31, 2022) (minus)		686,946
Current Contracted Dollars (August 15, 2022) (minus)		3,558,562
Forecasted Contracted Dollars (minus)		4,380,670
General Fund Remaining		4,173,822

This next chart displays the actual contract amounts and the recipients associated with the \$12.8 million emergency funding:

<b>AY23 County</b>	<b>LEGAL NAME</b>	<b>Total Jul 2022 to Jun 2023</b>
		-
Marion	Marion County Association of Defenders Ltd	405,679.00
Marion	Mark G Obert Attorney PC	166,441.00
Washington	Metropolitan Public Defender Services Inc	217,958.00
Multnomah	Multnomah Defenders Inc	535,954.00
Multnomah	Portland Defense Consortium	170,297.00
Marion	Public Defender of Marion County Inc	638,348.00
Lane	Public Defender Services of Lane County	1,037,878.80
Multnomah	Schaleger Philpott PC	227,063.00
Washington	Vicki R Vernon	158,944.00
		-
		<b>3,558,562.80</b>

All the above information suggests that there is approximately up to \$20.3 million dollars (\$14,145,528 + \$1,997,398 + \$4,173,822) that could be used towards funding other agency initiatives such as the \$7.5 million for supervision, staffing and training and the \$2.1 million for unrepresented clients at \$158 per hour.

## Summary

The Public Defense Services Commission is extremely committed and focused on addressing the immediate crisis of unrepresented individuals in custody and out of custody. The PDSC has instructed the agency to meet with a group of providers, to include nonprofit public defender offices and consortia, their legislative representatives, and private firms, to discuss what is needed to begin addressing and ultimately creating a plan for resolving the immediate crisis in the near term. The goal of these discussions is to receive input from providers regarding what they believe will provide the most immediate and sustainable way to handle the growing crisis and to develop a plan to implement quickly and efficiently using any unobligated funds that are currently available in the agency. The PDSC intends to report back to the Legislature in a future meeting on the results of these meetings, the plans for moving forward and the unobligated funds the agency will be using to target the effort.

The agency anticipates that it will need to request a rebalance at future meeting of the Joint Legislative Committee on Ways and Means. While there is a projected savings overall during the current budget cycle, there remains an unquantifiable number of contract amendments, some of which are anticipated to increase attorney capacity and, accordingly, additional funding to contract providers. Court Mandated Expenses are currently showing an overage of approximately \$9 million with more expected to come as this is where the recently approved \$158 per hour expenses for unrepresented people in custody will be realized. While there is currently a savings being projected in the Nonroutine expense (case support services), this savings will erode as more people are represented and as attorneys accept appointments at \$158 per hour. The agency financials have some growth capacity built into the projections, but with projected savings in the program areas and administrative areas, and barring any extraordinary unforeseen circumstances, the agency expects to remain within its legislatively approved authority.