

ANALYSIS

Item 1: Public Defense Services Commission HB 5030 (2021) Reorganization

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 Emergency Board Direction

The Emergency Board (September 2022 - Item #6) directed PDSC to "...submit a comprehensive plan to address the issues facing 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)."

Report Summary

PDSC's report represents a major improvement over prior agency reporting, with the agency making strides to comply with the direction of the Emergency Board and the budget note. PDSC's report provides: updates structured around the requirements of the HB 5030 (2021) budget note; an initial *draft* planning document; a status report on the agency's Financial and Case Management System information technology project; and an external audit.

Highlights of PDSC's report include: instability of agency governance and leadership; organic statutes that have not been reviewed or updated; missed legislative deadlines; 200 policies and procedures that either need updating or that do not exist; two consecutive years of substantive changes to provider contracts; data collection, analysis, and analytical deficiencies; unfilled permanent full-time internal

auditor positions; needed updates to Key Performance Measurements; and information technology and financial management practice deficiencies, among others.

PDSC's report, for the first time, includes an initial *draft* planning document that outlines the following categories of initiatives, along with start and completion dates.

- Agency Five-Year Plan (September 2022 to November of 2022)
- Unrepresented Plan (September 2022 to November of 2022)
- Policy Development (September 2022 to 2022-2023)
- Key Performance Measures (September 2022 to 2024)
- Compliance, Audit, and Performance Management (September 2022 to 2024)
- 31-40% Attorney Caseload Standard (September 2022 to 2023-25)
- Quick Response Plan (September 2022 to 2023-25)
- Trial Criminal/Juvenile Separation (September 2022 to 2023-25)
- Parent Child Representation Program Expansion Plan (September 2022 to 2023-25)
- Data/Research (September 2022 to 2026)
- Pilot Delivery Model (September 2022 to 2026)

Analysis

PDSC's efforts to resolve the agency's issues have been to-date mostly unorganized and unprioritized and with little sense of urgency to resolve. While PDSC is putting into place a planning process, planning remains to be fully scoped, lacks specificity, and lacks a clear nexus to the quality representation of financially eligible defendants. There continues to be a lack of transparency into the specific issues within the agency that need to be addressed. PDSC's draft plan conflates the resolution of the systemic issues with new, unrelated initiatives. Thus far, PDSC has had little direct, external engagement related to the draft plan. The agency's continued practice of making a distinction between, or sometimes even equating, PDSC (i.e., the Commission) with the Office of Public Defense Services, is an unfitting bifurcation of the agency that, if continued, will lead to the sub-optimal resolution of issues, as PDSC is a singular agency.

Furthermore, there exists no comprehensive planning document that connects PDSC's current *draft* plan with all of the 2021 Legislature's concerns outlined in the budget note(s), 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. Absent a well-formulated and comprehensive plan that seeks to resolve the systemic issues facing the agency, and that can be informed and modified based on the recommendations and actions of the Three Branch Workgroup and the Legislature, PDSC will remain in crisis management.

While some good progress has been made, PSDC has lost valuable time since July 1, 2021 in identifying and resolving the systemic issues that exist within the agency, as *draft* plan initiatives reflect only beginning in September of 2022. However, executive leadership and Commission turnover have delayed the agency's progress. PDSC's efforts, again while improving, are behind schedule and the agency appears less-than-prepared for the upcoming 2023 legislative session and the 2023-25 biennium.

The Legislative Fiscal Offices notes that the Commission's future planning and reporting efforts could be improved by identifying the following:

1. Issue - identify each specific issue with a concise problem statement.
2. Priority - assign each issue a priority.
3. Evidence of Concern - identify evidence supporting the existence of the issue.
4. Objective - identify what objective the agency is trying to achieve through the resolution of the issue.
5. Best Practice(s) - identify what best practices exist related to the resolution of the issue, which can be used to benchmark the options available as well as the recommended option.
6. Options to resolve the issue - identify what specific options exist to resolve the issue.
7. Recommended Option - identify which is the agency's recommended option to resolve the issue, and on what basis was the option selected.
8. Timeframe - identify the timeframe for implementing the recommended option.
9. Fiscal Impact - identify the cost of implementing the recommended option.
10. Expected Outcome - identify what outcome is expected from the recommended option and how will it be measured.

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

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Public Defense Services Commission
Gibson

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

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

Discussion: The Public Defense Services Commission (PDSC) submitted a plan to address the issues PDSC currently faces, in compliance with the House Bill 5030 (2021) budget note. The letter provides a current state summary of the unrepresented persons crisis, noting 44 unrepresented defendants in custody as of October 21, 2022.

Collectively in this letter, PDSC provides the following documents:

1. *Draft action plan.*
The plan addresses the contextual background, history of the unrepresented persons crisis, and upcoming planned action items.
2. *Draft planning charter.*
The charter outlines the project objectives, scope, sponsors, and risks; however, the document does not yet indicate a proposed budget, steering committee membership, or identified stakeholders.
3. *Planning status report.*
The September 2022 status report utilizes a green-yellow-red status rating to show where the project is experiencing difficulties. Four of the five project categories – overall status, scope, schedule, and risk – are indicated in red, meaning help is needed. The fifth category, budget, is not yet assigned.
4. *High-level planning outline.*
The planning outline indicates project deliverables through 2029.
5. *Audit report.*
The audit report was conducted on the financial management and overall performance of the PDSC.
6. *Financial and Case Management System project status report*
The status report, dated September 2022, utilizes a green-yellow-red status rating to show where the project is experiencing difficulties. Four of the five project categories – overall status, scope, schedule, and risk – are indicated in yellow, meaning PDSC may need help. The fifth category, budget, is noted as on track.



Oregon

Public Defense Services Commission

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October 24, 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 report on the Budget Note from HB 5030 (2021).

The HB 5030 Budget Note reads:

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

Agency Action

The Public Defense Services Commission (PDSC) requests to submit a comprehensive plan to address the issues facing the agency and to comply fully with the direction of the HB 5030 (2021) budget note.

PDSC Actions to Address the Unrepresented Persons Crisis

It has always been the case that, at any given point in time, there will be at least a few persons entitled to court-appointed counsel in Oregon who do not have a lawyer. That is due to a number of factors, including ethical conflicts and lack of sufficient capacity amongst local providers. Typically, that circumstance lasts, at worst, only a few days for any particular person as agency staff work to locate counsel qualified and willing to take on representation.

Over the last year, however, the lack of sufficient attorney capacity to provide competent public defense services in Oregon has resulted in significant increases in both the number of persons who do not have the court-appointed counsel to which they are entitled and the average number of days in which that circumstance continues. The problem with unrepresented persons presents unique challenges as Oregon's current public defense services delivery system is complex and involves many competing interdependencies and diverse interests. There is no single solution. Despite multiple efforts that have largely prevented the problem from becoming significantly worse, the PDSC has been unable to fully solve the problem. The PDSC recognizes that the state is in a very precarious situation and that, although it has an obligation to ensure that representation is available for all financially eligible individuals in need, at this time it cannot meet that obligation. This inability to meet the need is not for lack of trying, as the agency has and will continue to dedicate numerous hours towards the effort of securing representation for these individuals. The reality, though, is that there is an alarming need for qualified attorneys who do not currently exist in this state.

The current estimate of unrepresented defendants in custody, as of October 21, 2022, totals 44 individuals. Since November 2021, the PDSC has been able to secure attorneys to represent 386 individuals who need counsel and for whom the normal channels have proven unsuccessful in locating counsel. To assist with the increase of unrepresented persons, the 2022 Legislature, through HB 5202 (2022), provided \$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 funding was intended to address the backlog of unrepresented defendants in the four counties by increasing attorney capacity and providing specific administrative support positions for the remainder of the biennium. To date, the agency has contracted for approximately \$6.9 million dollars for additional contract attorney capacity and paid out \$1.5 million, with \$5.4 million remaining and leaving a working balance of approximately \$5.8 million.

AY23 County	LEGAL NAME	Total Jul 2022 to Jun 2023
		-
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	989,118.00
Multnomah	Metropolitan Public Defender Services Inc	1,079,623.00
Multnomah	Multnomah Defenders Inc	571,146.00
Multnomah	Portland Defense Consortium	223,085.00
Marion	Public Defender of Marion County Inc	1,350,069.00
Lane	Public Defender Services of Lane County	1,725,903.00
Multnomah	Schaleger Philpott PC	227,063.00
Washington	Vicki R Vernon	158,944.00
Multnomah	Juvenile Advocates of Clackamas	17,596.00
		6,914,667.00

Emergency Fund Summary - HB 5202		
General Fund Appropriations		12,800,000
General Fund Expenditures (FY 2022) (minus)		474,690
General Fund Expenditures (FY 2023) (minus)		1,034,554
Forecasted Contracted Dollars (minus)		5,405,423
General Fund Remaining		5,885,333

The PDSC has approved additional actions to supplement the HB 5202 funding to further address the growing unrepresented persons issue, placing an end-of-biennium constraint on any funding issues. The PDSC realizes that it will require presenting a rebalance request to the Legislature to remain within each appropriation’s legal authority.

First, the PDSC authorized and increase of the non-contract hourly attorney rate to \$158 per hour for appointments to cases in which the defendant is in custody and without a lawyer. Initially, this increased rate was available to only private (non-contract) attorneys but was subsequently to include attorneys currently under contract but with less than a full 1.0 Maximum Attorney Caseload (MAC). OPDS located counsel for 98 incarcerated individuals and 150 cases since the PDSC increased the hourly rate. Although the average daily number of in-custody individuals without counsel continues to generally hover between 35 and 45, comparing data from the Oregon Judicial Department against appointment data from OPDS reveals that this number is roughly one-third of what it would be absent the increased rate to \$158 per hour.

The agency initially estimated that it would cost approximately \$2 million this biennium to cover the action, and while subsequent projections have remained consistent, a significant number of the assigned cases will take up to 36 months to resolve, which will carry the costs into future biennia. Best estimates indicate that the attorney costs for FY23 should be around \$2.5 million, for FY24 \$2.3 million, for FY25 \$2.3 million and an additional \$0.9 million for FY 26.

Projections for Court Mandated Expenses have been increased to capture the projected costs for this program and which will increase an already existing and growing budget deficit. One additional data point to consider is there will be additional costs for this representation that will be recognized through Case Support Services and Court Mandated Expenses.

Recognizing that although this first action is helping, further actions were necessary, the PDSC has taken the following additional actions to increase capacity to address the increasing unrepresented persons' issue:

The PDSC approved the allocation of \$7.5 million within the existing budget authority to fund supervision, training, additional staff, and investigators in non-profit public defender offices. To date, the PDSC has allocated approximately \$7 million of the funding to amend contracts with non-profit public defender offices as follows:

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 has also taken additional action, this time focusing on the recruitment of additional contract attorneys to increase capacity. The PDSC will provide an incentive payment of up to \$40,000, to any entity within the targeted areas of identified need, who hires or adds a full-time attorney to their contract, which will be payable in two 90-day increments. This action will be in effect for the remainder of the current biennium, and all costs will not exceed the current biennium. There are 14 targeted counties with a total MAC needed of 51.51. If all 51.51 MAC is filled, the cost of the additional funding for this incentive payment would range between \$2.06-\$2.4 million. The cost of adding these contract attorneys for 8 months starting November 1, 2022, at the major felony rate of \$216,250, would range between \$7.5-\$8.6 million, and is already within the existing budget authority. The total cost for all 51.51 MAC, starting November 1, 2002, would range between \$9.5-\$11.1 million.

Finally, the PDSC has taken action to increase the rate of pay for investigators from the standard OPDS rate of \$40 per hour to \$75 per hour for those cases that qualify for the \$158 per hour attorney rate, for the duration of each case. These costs are currently projected to add an additional expense of approximately \$300,000.00 in the current biennium based on the current

caseload composition. These costs will be realized in the Case Support Services appropriation, which despite being very volatile, is projected to be within budgeted authority.

Although the PDSC remains laser focused on the unrepresented issue, including the 700 plus individuals who are currently out of custody, the reality is this issue will not go away soon. For the PDSC, a large part of this issue is related to rightsizing the caseloads to a manageable level and providing adequate and comparable compensation and resources for attorneys and firms within public defense. The unrepresented persons issue, however, is bigger than the PDSC and will only be solved through true system reform and a concerted effort between all system elements including: the PDSC, Oregon State Police, Oregon Department of Justice, Oregon Judicial Department, Oregon Department of Corrections, Oregon Youth Authority, Oregon Health Authority, Oregon Department of Human Services, district attorneys, cities, counties, and the Oregon Legislature.

Governance

The PDSC/OPDS experienced a tremendous amount of turmoil in August and September 2022. The PDSC was disbanded and reconstituted, and the OPDS Executive Director was let go. OPDS has continued daily operations with three significant priorities: address and mitigate the ongoing unrepresented persons crisis; hire a new Executive Director; and write an overall plan for direction and actions. The Commission also instructed that all significant personnel changes be reviewed by the Commission. The activities of OPDS fall into this rough timeline:

Oct – Dec 2022

- Hire Executive Director
- Training and Governance
 - New Commissioner training and orientation
 - Confirm Governance model
- Present and implement additional representation crisis mitigation efforts, request funding as necessary
- Begin writing policies (program and administrative) under new writing discipline and process

Jan – Mar 2023

- Jointly confirm Mission, Goals and Objectives
- Establish Guiding Principles
- Prepare and present the 2023-25 Agency Request Budget
- Continue work with Three Branch Workgroup
- Continue representation crisis mitigation efforts
- Request budget “rebalance” as necessary to mitigate representation crisis and necessary budget adjustments
- Present F/CMS project planning and prep for anticipated RFP release
- Begin process of adopting necessary policies under new governance model

Apr – June 2023

- Prepare 2023-24 Provider contracts with necessary adjustments

- Work cooperatively to complete 2023-25 Biennial Budget

On October 13, 2022, the reconstituted PDSC announced it would extend an offer to a new Executive Director candidate, Jessica Kampfe. Until the new ED comes on board, the agency will continue to be guided by Laurie Bender, Chief Criminal Trial Counsel, and Shannon Flowers, Chief Juvenile Trial Counsel for all legal services delivery matters. On the Operational and Administrative Services side of the house, direction and leadership will come from Brian DeForest, Deputy Director.

OPDS also anticipates a period of significant organizational change management, as it goes through programmatic, operational and administration stabilization. There may also be a maturation process for the “new” Commission, agency management, staff, agency infrastructure and even service providers as governance are more clearly defined at detail levels. A confirmation of Mission, Goals, Objectives, and Guiding Principles to achieve constitutional requirements and mandates will help unify each group toward achieving long-term goals. Future strategic planning soundly rooted in the Mission, Goals, Objectives, and Guiding Principles will position the PDSC and OPDS to take advantage of new opportunities and more efficiently meet the needs of qualifying clients during these crisis circumstances and through a transition to any future service delivery changes. Collaboration and cooperation with the whole of state government, via the Three Branch Workgroup, can best strengthen the PDSC and OPDS while also maintaining appropriate independence as the leader in defense services.

Restructuring and Modernization

Over the last several months Executive leadership at the Office of Public Defense Services have been tirelessly reviewing many bodies of work that sit before the Public Defense Services Commission. In August 2022, PDSC named three members of the Executive team as Co-Directors of the agency. The Co-Directors quickly formed a workgroup with the purpose of addressing agency direction and planning efforts. In September 2022, the Co-Directors began meeting with members of the workgroup which encompasses several divisions facing critical changes, as well as certified project managers to assist with overall planning efforts and organization.

The Planning Workgroup meets on a weekly basis, and has identified the following bodies of work to be immediately addressed:

- PDSC Five-Year Plan
- Unrepresented Plan
- Policy Development
- CAP
- KPMs
- Quick Response Plan
- Attorney Caseload
- Separation of Trial Criminal and Juvenile
- PCRPs Expansion
- Data and Research
- Pilot Delivery Model

This group has organized the above body of work on a biennial timeline and is working to understand all workflows that will be imperative to successfully addressing each item. Once those workflows have been understood, resources that are required to complete the work will be identified and allocated accordingly.

The Workgroup will utilize prioritization and risk matrices to further identify which bodies of work are most critical and create mitigation plans/strategies to ensure timely completion of each task is defined and understood. The project team will support this group by maintaining an agency portfolio that monitors task assignment, status, and resource availability, and providing a weekly and monthly status update. To assist in effective project management, OPDS has purchased 15 user licenses for the Asana platform. This platform provides the ability for division leaders to review daily assigned work, task progress, and resource availability, as well as communicate with the project team and other division leaders that are working on cross functional work products. *(See 2023-25 Planning Document, charter document, current progress report and timeline at Appendix A.)*

Statutes, Policies and Procedures

The PDSC has not conducted a full review of the agency's existing governing statutes and additionally has missed the normal timeframes to propose a legislative concept for the 2023 Legislative Session. Given the tremendous amount of turnover on the commission and the removal and recruitment of the executive director, the commission may need to plan for such a review as it works on governance, onboarding, and future planning. This will assuredly be a top priority for the PDSC.

The PDSC is currently reviewing and cataloging its existing policies and procedures to triage those that need immediate attention and identifying owners of each for future work. The agency has appointed a manager to serve as the main contact for updating and creating all agency policy and procedures and ensuring that the agency's policies and procedures have been reviewed or approved by the Commission as necessary in accordance with ORS 151.216. In addition to the supervising manager, the agency has approximately 2.0 FTE, in limited duration positions, to develop the agency policy and procedures, many of which have never been fully developed and reduced to writing. Currently the policy team has identified over 200 policies and procedures that need attention or development. These policies will drive and change new and existing policies and procedures as the agency is realizing the magnitude of the work it faces.

Procurement Activities

The PDSC has executed 50 contract amendments that have created a net increase of approximately \$10.8 million in additional contracted dollars since the beginning of the 2022-23 contract cycle. The amendments have also created a net change of approximately 23.06 additional MAC, as transactions include new contracts, changes in attorney capacity and qualifications, and the disbursement of the training and supervision allocated funding that was approved by the PDSC in September 2022.

The PDSC has met the HB 5030 (2021) budget note requirement of separating juvenile and criminal trial level contracts. Currently, the PDSC has three separate contracts: one each for attorneys providing criminal representation, juvenile representation, and representation through

the Parent Child Representation Program (PCRP). The 2023-25 Agency Request Budget proposes to move all budget and expenditure authority for juvenile expenses to the juvenile appropriation.

As of October 14, 2022, the PDSC reports contracted Maximum Attorney Caseload (MAC) to be 617.54. This includes 381.33 for adult criminal, 93.26 for juvenile, 82.70 for the Parent Child Representation Program, and 34.35 for other statewide contracts. In this total the PDSC has also added an additional 25.9 MAC in four counties (Lane, Marion, Multnomah, and Washington) with the \$12.8 million of Emergency Funding that was provided in the 2022 Legislative Session.

Even with these changes, the PDSC remains unable to ensure representation for all financially eligible individuals, not only below the current forecast but to keep step with the increasing number of unrepresented persons in custody in certain jurisdictions that seems to be a result of the societal and political actions related to the current pandemic but does not excuse the urgent need to reexamine the current service delivery model.

Caseload Standards

Caseload standards were updated for the 2022 contracting cycle and approved by the PDSC. While the standards are not ideal and the agency is still working on creating policies and procedures, they represent a move forward and rely upon some information contained in *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards*, the study published by the American Bar Association and the accounting firm Moss Adams from January 2021. The caseload standards are set out in the charts below:

Adult Criminal Caseload Standards

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

Juvenile Caseload Standards -Changes to Non-PCRP Delinquency Standards

Delinquency Case Type	Old Standard	New Standard
Non-PCRP Murder	<i>4.6</i>	6
All Other non-PCRP Delinquency Cases	<i>230</i>	132

PCRP and Non-PCRP Dependency Standards – No Change

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

The agency is currently beginning to plan for the next contracting cycle which will begin July 2023. For the current contracts cycle and the creation of the 2023-25 CSL and Agency Request Budget, the agency created a methodology to forecast caseload. The caseload forecast was created on a statewide basis for budget purposes, and only case-driven growth in FTE was considered. This process was distinct from the county-by-county basis used for contracting, and implicitly ignored some variability in contract-MAC such as rounding that is done when counties have expected fractional MAC needs.

The basic methodology for estimating cases in the 2023-25 biennium is to start with the caseload or caseload-based MAC forecast made for contracting for fiscal year 23 and extend it to fiscal years 2024 and 2025 by looking at historical data to estimate growth. We used historical data alone to predict cases as there do not seem to be other quantitative factors that can be relied on to help predict future cases. Trends and any causal relationships that caseloads have with other observable data have been obscured by the impacts of, and reactions to, the COVID-19 pandemic.

After caseload is projected for 2024 and 2025, change in costs driven by caseload changes that require MAC changes are calculated. As our processes mature and pandemic effects stabilize in the data, we may find other forecast data (e.g., population, income, or DHS caseload expectations) that can help PDSC caseload forecasts. While future iterations may have more quantitative backing, it's not clear that other methods will be more robust than methods based on historical data. We will continue to examine different methods and test their results for future biennia.

The PDSC will continue to make a distinction between 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, which remains undefined. The Parent Child Representation Program workload model remains unchanged. The agency is working hard to develop and document the basic framework of the agency's delivery systems and programs. Once completed, this work will allow the agency's research and budget staff to work with program staff to create a workload model. The workload model will identify the ideal mix for effective representation.

The Criminal Appellate Section provides in-house representation to more than 95% of referred cases for direct appeal, reverting cases to the attorneys on the Criminal Appellate Panel when the Appellate Division has a conflict under the Oregon Rules of Professional Conduct. The Criminal Appellate Section provides in-house representation to all non-conflict cases referred for appeal unless lack of capacity puts OPDS defenders at risk of defaulting on an appeal by not filing briefs within the time extensions the appellate courts would allow.

Similarly, the Juvenile Appellate Section provides in-house representation in all non-conflict cases that are referred for appeal to the extent that it has capacity to do so. Juvenile dependency and termination of parental cases are expedited for appeal, so unlike the Criminal Appellate Section, the Juvenile Appellate Section cannot retain referred cases on a backlog. In fiscal year

ending June 30, 2022, the Juvenile Appellate Section provided in-house representation in 65% of the non-conflict cases that were referred for appeal.

Both the Criminal Appellate Panel and the Juvenile Appellate Panel employ a modified flat-rate payment system, which has the potential to disincentivize providers from spending the time necessary for rigorous appellate representation after filing the opening brief (for example, filing a reply brief, presenting oral argument, and seeking review in the Oregon Supreme Court). The agency, at the urging of the Appellate Division, would like to see the PDSC review and revise the Criminal Appellate Panel and Juvenile Appellate Panel rates to eliminate or mitigate those disincentives.

External Audit Findings

PDSC will be reporting to the Interim Joint Legislative Audit Committee with a report on the agency's independent/external financial and performance audit that was performed by Kernutt Stokes. The objective of this audit was to conduct a review of the financial management and overall performance of the Oregon Public Services Defense Commission and the Office of Public Defense Services (OPDS). The audit focused on the efficiency and effectiveness of policies and procedures surrounding accounts payable, case support services expenses, contracting, and procurement. The audit produced 11 findings, 4 observations and 7 instances of process improvement, none of which came as a surprise and many that were already being worked on by staff. Overall, Management concurred with each of recommendations and is actively taking steps to mitigate risks. *(See Audit Report at Appendix B.)*

Internal Audit

PDSC has contracted with an experienced external firm for internal audit services. An internal audit plan and framework has been approved by the Commission. The Commission has established an Audit Committee comprised of a subset of Commission members, external and internal members who report quarterly to the full Commission. There have been two additional internal audit reports that have been published to date. The PDSC plans to create a strategy for filling the two permanent full-time Internal Auditor positions (1.76 FTE) that were approved by the 2021 Legislature, before the current contract expires.

Financial Controls

The PDSC has been working continuously to improve its financial controls and has taken into consideration the findings from the recently released external audit. The overall agency goal for finance and accounting is to be more in alignment with Oregon Accounting Manual requirements and industry best practices. Of note is the improved payment processing times, that are well within normal 45-day or less payment timeframe for state agencies and have remained under 30 days for several months. The agency has been working specifically on the Non-Routine Expenses (now called Case Support Services) unfunded liability and building a biennial billing model beginning with the 2023-25 biennium.

Quality Management

The agency is continuing to work on developing a comprehensive program plan for the Compliance, Audit, and Performance Division (CAP) and was directed to submit the plan to the Legislature during the 2023 legislative session. The agency continues to work on this plan.

Performance Metrics

The PDSC did update its current Key Performance Measures as instructed. The agency has not done any work towards creating new measures, as it is still building the basic agency infrastructure that is necessary to create effective measures. While 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, without the creation of a basic infrastructure any agency efforts around performance measurement yield nothing of value. As the agency continues with the process of modernization and restructuring it will be better able to identify performance indicator and measurements.

Human Resource Activities

The PDSC has been providing regular reporting to the Legislature and Emergency Board of the agency's compensation plan changes, as required by statute. The 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.

Below is the report of Human Resources activities including Agency vacancies, status of new positions, and recruitment practices. There are no additional compensation or classification changes, nor unbudgeted positions actions to report. HR will continue to advocate for infrastructure to advance HR initiatives that support workforce development to improve employee morale and address organizational change management as addressed in the previous report to the legislature in April 2022.

The Appellate Division currently has deputy defender underfills in four of the Juvenile Appellate Section's seven senior deputy defender positions. All defender positions in the Juvenile Appellate Section are funded at the senior deputy defender level because the Juvenile Appellate Section does not handle a dependency case type equivalent to misdemeanor and simple felony case types—the work assigned to deputy defenders in the Criminal Appellate Section. Therefore, every defender in the Juvenile Appellate Section ideally would have the skills and experience of a senior deputy defender. However, with adequate guidance, training, and oversight by the Juvenile Appellate Section Chief Defender, a deputy defender can provide representation in cases referred to the Juvenile Appellate Section, while that attorney builds the skills and experience necessary for promotion to the senior deputy defender classification. A newly hired deputy defender may need five years to attain the skills and experience necessary for promotion to the senior deputy defender classification. The Appellate Division anticipates that, absent additional turnover, the current underfill incumbents will be promoted to senior deputy defender as they gain the requisite skills and experience throughout the next biennium.

Agency Vacancies

Below is a chart showing position vacancies within the agency through October 12, 2022, by Division, showing how many positions have been filled, current vacancies, vacancies created by turnover, and the reason for the separation since April 11, 2022.

Division	Filled positions	Current Vacancies	Turnover
Appellate Division	5	1	1 agency transfer 1 retirement

Executive Division	0	2	1 termination
Compliance, Audit and Performance Division	2	1	1 resignation
Administrative Services Division	8	1	1 agency transfer

New Positions

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

Classification	Disposition	Reason not filled
Deputy General Counsel (Trial Criminal)	Not Filled	Position to be filled in November
Internal Auditor (2)	Not Filled	Multiple failed recruitments

Recruitment Practices

All vacancies filled since the last report to the legislature in April of 2022 have all been filled by open competitive recruitments.

Information Technology Section

During the 2022 Oregon Legislative Session, House Bill (HB) 5202 (2022) Section 188; PDSC was appropriated \$743,588 for the Administrative Services Division for the planning phase of a financial and case management information technology system. This authorized on a one-time basis the establishment of two positions (1.26 FTE) for the re-initiation of the planning phase of the Financial and Case Management information technology project with the following budget note:

The Public Defense Services Commission is directed to report to the Joint Legislative Committee on Information Management and Technology and the Joint Committee on Ways and Means during the 2023 legislative session on the status of the re-initiation of the planning phase of the Financial/Case Management System (F/CMS) information technology project. The report shall include: a detailed business case, project timeline, and cost estimates. The Commission is to follow the Stage Gate, or a similar disciplined process related to information technology projects, including development of key artifacts and independent quality assurance oversight.

As of May 2, 2022, PDSC hired two Project Management Institute® (PMI) certified project managers to oversee the re-initiation efforts of the F/CMS (*known as FCMS*) project. The project team initiated a Governance body to oversee the project body of work and provide decision making authority of project deliverable completion. As of August 15, 2022, PDSC through the FCMS Governance Committee approved the project governance plan, business case, scope document, high-level initial project timeline. The full project timeline and cost estimates cannot be fully known until the project has entered into stage two of the stage gate process and has hired on a system vendor.

The project team provided the Governance Committee with the Quality Assurance (QA) Request for Quote (RFQ) in August 2022. The Committee approved the release of the RFQ, which was later released on September 9, 2022. The RFQ was open for four (4) weeks, closing on October 7, 2022, and received two (2) quotes from potential vendors. The Governance Committee is

currently reviewing quotes from the potential vendors and are scheduled to convene with their results October 14, 2022. During the October 14th review the Governance Committee will determine if a vendor can then be selected or if the RFQ will need to be re-released for a larger pool.

Once a QA vendor has been selected, the FCMS project will undergo the following reviews:

- Risk Assessment
- Quality Management Planning
- Quality Control
- Quality Assurance
- Independent Solution Testing

It is expected that the QA process will move through the review processes in two iterations, with the first iteration focusing upon the risk assessment, quality management planning, quality control, and quality assurance. The project team has projected that the quality assurance review be completed by December 31, 2022. During this review process the project team will work on drafting a System Vendor Request for Proposal (RFP) and other project documentation and processes per the Department of Administrative Services (DAS) Enterprise Information Services (EIS) Project Artifact document.

Although funding will not be secure for a System Vendor at the beginning of 2023, PDSC plans to release a System Vendor Request for Proposal (RFP) which will be released first quarter of 2023 once the QA review has been completed with the disclaimer that the selected vendor will proceed if/when project funding is approved by the Oregon Legislature during the 2023 Legislative Session.

The FCMS project if approved, is planned to be implemented internally to the Office of Public Defense Services Business and Appellate operations, as well as early adopters by mid-2024. It is expected that a full roll out will be fully operational by the close of the 2023-25 Biennium. *(See current progress report and timeline at Appendix C.)*

PDSC's Financial Update Report

The PDSC's 2021-23 legislatively approved budget is currently \$456.5 million total funds, which includes \$438 million General Fund and \$18.5 million Other Funds for the period ending September 30, 2022.

PDSC currently forecasts expending \$422 million out of \$438 million General Fund and to expend all \$18.5 million Other Funds, unless there is an unexpected revenue shortfall. The combined projected total of General and Other Fund savings equals \$16.3 million of General Fund. The agency is currently forecasting a deficit of \$11.8 million in the Court Mandated Expenses Division, which is of concern as this is where the payments for the non-contract attorneys, \$158 per hour specifically, are recognized. Prior to the 2021 biennium this division did not exist, so some natural adjustment is expected and may continue for a few more cycles before it normalizes without unexpected expenditures.

The PDSC is submitting its second rebalance request for the 2021-25 biennium in a subsequent letter to the December 2002 Joint Emergency Board. The agency has done an efficient job of managing within its legislative authority in most areas, however due to the nature of how the agency budget has been constructed and the fact that the agency has not developed a clear understanding of how all mandated caseload expenditures are realized consistently, some areas are destined to overspend, without the ability to rebalance as a response to external forces.

Investment decisions and actions of the Legislature and the Commission have prompted the agency to increase projections in several divisions specifically the Trial Criminal Division, Court Mandated Expenses, and Case Support Services. Fortunately, these actions have currently only created a problem in Court Mandated Expenses. Positive variances exist in other parts of the agency that can help mitigate these projected overages. The requested rebalance is necessary because the Court Mandated Expense appropriation is projected to exceed its budgeted authority by February of 2023; thus, the agency will lose its ability to pay expenses for non-contracted attorneys, discovery and other vendor expenses.

The agency will seek to move \$12 million General Fund to Court Mandated Expenses from the following divisions: Appellate (\$2 million), Trial Criminal (\$1 million), Case Support Services (NRE) (\$5 million) and Juvenile (\$4 million). There are several risks associated with these moves most importantly the Title IV-E funding (\$14 million other funds) which is still awaiting actions from the Department of Human Services and the Federal Government; the revenue shortfall in the Application Contribution Program and the volatility associated with the timing and materialization of expenses in Case Support Services to include the unfunded liability.

Action Requested

The Public Defense Services Commission requests acknowledgement and receipt of this report during the September 2022 Emergency Board.

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

**Public Defense Services Commission &
Office of Public Defense Services**

2023-25 Biennium Planning Document

Introduction

OPDS is established as an independent state agency located within the Judicial Branch. Independence of the public defense system is essential. Public defense providers are generally in an adversarial relationship with government bodies and agents, which is critical in providing a robust defense and ensuring a well-functioning justice system. As the state agency that provides for public defense services in Oregon, OPDS operates both within the public defense community and the community of state government. This is a delicate and sometimes difficult balance to maintain.

The PDSC and OPDS present unique, but not unusual challenges. The agency has experienced communication problems and a complete restructuring of the budget and accounting, as the agency's credibility and the public's confidence in the agency have waned. OPDS is currently navigating a maturation process, due at least in part to the lack of written policies and procedures, restructuring of agency operations, and the addition of new program staff, many of whom are seasoned public defense providers but new to the administration of the statewide public defense system. Staff across divisions of the agency have been working together to plan for the future of public defense in Oregon and refine and develop needed policies and procedures with the guidance and support of agency staff who have brought a wealth of knowledge and experience of effective state government practices.

This planning effort could not be accomplished from only an administrative or operational perspective, which often occurs within state agencies. OPDS' planning effort takes into consideration multiple views, perspectives, experiences, and passions from multiple stakeholders. OPDS's programs are administered and managed by a team of individuals with many cumulative years of experience over thousands of cases. The future of public defense will be guided by these staff, who work to ensure positive outcomes for clients in the protection of their rights which ultimately leads to a safer Oregon for all.

The operations and administrative management staff add another 90+ years of IT, contracting, project management, accounting, and budgeting experience in state government. Much of this combined experience has been spent rebuilding and re-tooling executive branch agencies. This team has experienced the implementation of every existing enterprise system including budget, accounting, human resources, risk management, project management and IT stage gate processes. The team has also experienced the overhaul and restructuring of both major and minor state agencies which included profound program delivery changes in the case of both PERS and DHS/OHA.

The early stages of this planning effort will focus on fundamental government and business practices—i.e. “The Basics”—necessary for a solid infrastructure and conduct of business. Later stages will enhance and focus on the delivery of program services. The efforts of all public defense providers ensure the protection of constitutional rights and liberty interests and that due process within the justice system can be administered in a fair and balanced manner. Again, independence of the public defense system is essential.

The Commission and OPDS staff are unified in their dedication to the continual improvement and sustainability of the public defense profession for the benefit of all individuals, residents and visitors of Oregon.

Overview

This multi-year Planning Document is one of several documents guiding the programs, operations and policies of the Office of Public Defense Services in the delivery and support of public defense services within the State of Oregon. To best understand the context of these planning efforts, the reader is encouraged to review several other previously published items. This provides a well-rounded history and context of discussions and decisions. Not all history and context will be presented or discussed within this document and may leave the reader with many questions. Reviewing the documents listed below may answer many of the questions you may have as a reader.

- HB5030 (2021) and the 2021-23 Legislatively Adopted Budget including Budget Reports and Notes
- Formal responses and presentations in response to HB5030 (2021)
- SB 2003 and formal responses to requirements of SB 2003 (2021)
- The Sixth Amendment Center analysis and report
- The ABA Study

This document contemplates a fundamental roadmap for future development and expansion of the PDSC and public defense service delivery in Oregon; essentially this is a plan-to-plan, plan-to-execute, execute, measure lessons learned, repeat. A legislative work group was formed in early 2022 that anticipates recommending legislative changes and profound service delivery changes during the future legislative sessions. As such, the goals, objectives and recommendations within this document and the 2023-25 Agency Request Budget, published in September 2022, solidify the infrastructure and operations of the PDSC and move forward with early and partial solutions to the challenges the current public defense delivery system has experienced. All recommendations and requests are designed to contribute toward future changes and allow for broad flexibility in implementation of any changes which the workgroup recommends, and the legislature adopts. Planning efforts are built upon and discussed in more detail how the Agency should proceed for the remainder of the 2021-23 biennium and requested budgeting for the 2023-25 biennium.

First, a brief history of the agency.

History

The Public Defense Service Commission (“PDSC”) was created by SB 145 (2001) following recommendations by HB 3598 (1999). The agency’s primary obligation is to ensure financially eligible individuals entitled to court-appointed counsel receive access to competent counsel (public defense services) in Oregon’s trial and appellate courts. The PDSC carries out its statutory mandate through the Office of Public Defense Services (“OPDS”). ORS Chapter 151, the governing statutes of the PDSC, had remained largely unchanged since its inception until the passage of HB 2003 in mid-2021.

HB 2003 (2021) made several substantive changes to ORS Chapter 151 as a roadmap for modernizing the state's public defense system. Those amendments did not change the relationship between the PDSC and OPDS. Rather, the amendments modified the membership and composition of the PDSC, and they provided specific direction to the PDSC on the types of polices it needs to adopt to modernize trial level public defense services. Those policy areas include:

- Public defense contracting systems
- Public defense compensation and resources
- Data collection
- Training
- Equity and Inclusion

The policy areas listed above are the focus of the Commission and OPDS as it navigates new challenges during the 2021-23 biennium and works to transform itself into a higher functioning state agency, all while continuously improving the delivery of public defense services.

Historically, the PDSC had no caseload standards, which meant that attorneys could represent as many public defense clients as they chose. Contracts were written in such a way that taking on more cases was an unintended incentive. With the caseload/FTE contracting model established in 2021, the PDSC adopted caseload standards for misdemeanor and felony criminal cases, as well as juvenile cases based on already established NAC standards. In 1973, National Advisory Council ("NAC") on Criminal Justice Standards recommended a caseload standard of 400 misdemeanor cases per year or 150 felony cases per year.

HB 2003 (2021) recommended caseload standards that "are in accordance with national and regional best practices." The 1973 NAC standards are no longer considered a national best practice. OPDS could not afford to implement those standards in 2021, so the PDSC adopted a caseload standard of 115% of NAC standards, which again are outdated, elevating the caseload limit to 460 misdemeanors per year or 173 felony cases per year.

On January 21, 2022, the American Bar Association and accounting firm Moss Adams issued a report, following a two year study that was funded by the legislature, recommending Oregon-specific caseload standards and concluding that Oregon had 31% of the needed public defense providers to address the statewide caseload.

OPDS currently delivers defense services with just over 550 contracted providers. The ABA study, based on its own recognized staffing model, would increase the number of contracted attorney providers by slightly less than 1,300 providers. In rough terms, it would quadruple the size and complexity of OPDS and is far too much for the Agency to accomplish in a single biennium even if it received sufficient funding to do so.

Planning for the Future of PDSC/OPDS

Addressing and “fixing” just 10% of the defined need would cost approximately \$35-\$80 million and add two to four additional permanent staff members to the Agency to support the additional administrative workload. Because of phase-in timing to ramp up an additional 20% of current capacity, the ongoing biennial costs would approach \$100-\$150 million.

Complicating these circumstances has been one crisis after another in providing representation to all eligible individuals and turmoil within the PDSC and OPDS. Fallout from the COVID pandemic exposed supply gaps and problems throughout many industries including the public defense sector. The pandemic also left a wave of unresolved cases on contracted providers. Too few qualified attorneys and providers are available for the accumulated caseloads and new cases coming in the door. This contributed to an unacceptable number of persons who do not have competent counsel, sometimes for weeks or months, including those in custody.

Staff have had to focus on the ongoing crisis and have been challenged in finding time to plan for the future of the agency. Tensions and communication gaps within the Commission and agency expanded and came to head during the summer of 2022 exposing a lack of defined governance and collaborative communications. The Commission was dissolved and reconstituted and a search for a new Executive Director began in September 2022. Long-term planning and system reform took a back seat to ensuring constitutional rights and required services were preserved.

Available Resources

This section is intended to describe the resources available to the Commission and OPDS in fulfillment of its mission, goals, and objectives in the short-term, the remainder of the 2021-23 biennium. Where necessary to fulfill future goals and objectives, resources will be requested through the established legislative process including the 2023-25 requested budget, 2023 legislative session, 2023-25 interim work groups and the 2024 short legislative session.

HB 5030 was the agency’s budget bill for the 2021-23 biennium, and it made structural changes to the agency’s budget that will help drive the PDSC’s modernization efforts:

- It redistributed the agency’s budget along eight appropriations that rationally relate to the agency’s operations. Previously, more than 95% of the agency’s budget was placed in the Professional Services Account, which was used to fund criminal and juvenile contract attorneys, criminal and juvenile non-contract attorneys, and all case-related expenses. The new budget alignment will better allow the agency to work with LFO in tracking and projecting costs.
- It created a new division for OPDS—the Compliance, Audit, and Performance Division (“CAP”)—which will have responsibility for administering trial level services, quality assurance, and the measuring of agency key performance measures. New positions were authorized to implement this division, and the agency has been directed to submit a comprehensive CAP plan by September 2022.

Planning for the Future of PDSC/OPDS

- It redistributed the agency's staff into four distinct divisions—the Executive Division, the CAP Division, the Administrative Services Division, and the Appellate Division.
- It authorized and established new agency positions, including a deputy director, attorney positions to fill out the CAP Division, auditors, research and data analysts, a chief information officer, and additional information technology staff.
- It required an external audit and establishment of an internal audit function.
- It withheld \$100 million dollars from the agency's appropriation to be placed in a Special Purpose Appropriation. The legislature's release of that funding has been critical for the PDSC to maintain operations throughout the biennium.

Because many of the above provisions came with budget notes providing specific direction regarding operations, HB 5030 plays a significant role in the agency's modernization efforts.

Available resources include 108 authorized positions and direction to make recommendations to grow, modernize and mature the OPDS as a state agency. Also available as resources are Oregon Revised Statutes, particularly Chapter 151; Public Meetings Laws; the PDSC and any established sub-committees; the American Bar Association and Oregon State Bar; 550+ contracted defense providers; countless case support service providers; and, of course, the experiences and perspective of current and former clients.

Public Defense Contracting Systems

Due to the criticisms of the former case-credit contracting model, and arguably the existence of constitutional problems inherent in that model, the PDSC directed OPDS to develop a new contracting model. That new model was implemented on January 1, 2021. It is a Full-Time Equivalent ("FTE")/Caseload contract model. Rather than paying entities to cover an unlimited number of cases with a fixed fee per case, with this change the agency was funding entities based upon the number of FTE attorneys under contract to cover a projected caseload. During the 2022 contracting cycle the agency replaced the term FTE with Maximum Attorney Caseload (MAC). For non-PCRPP contracts, MAC corresponds with the total number of court appointments a contract attorney is expected to accept over the course of the contract period. For PCRPP contracts, MAC corresponds to the total number of open cases an attorney carried each month.

It is important to note that PDSC/OPDS does not provide direct trial level services. Client representation is provided by the "provider community" in one of several forms depending on the case, client, and geographic location. PDSC/OPDS contracts with the provider community and relies on non-profit public defender offices, consortia providers and/or direct sole attorney providers to determine the best representation necessary to fulfill the state's constitutional requirements under the U.S. and Oregon constitutions.

The provider community is the employer for public defense attorneys and as such, is responsible for adherence to employment laws including laws related to leaves and compensation. The contracted Public Defense offices are often represented union shops

with their own internal bargaining agreements. PDSC/OPDS supplies the primary source of funds to provider entities so they can carry out their contractual obligations.

The number of attorneys in this contracting model is determined by dividing the state's projected total caseload need by the PDSC's caseload standard policies, with the result being the number of attorneys the agency needs to fund under contract.

HB 2003 requires the PDSC's contracting system to be transparent and to include stakeholder engagement. To that end, OPDS spells out in detail the amount of funding available per contracted provider, as well as the specific financial amount for administrative costs. It's also a requirement that all provider entities working pursuant to the contract have an opportunity to review the contract before it takes effect, so that the providers have transparent information on the amount of funding in the contract.

OPDS is the primary employer for appellate defense services and as such has a staff of attorneys whose sole function is to represent clients on appeal. In cases where there is a conflict, OPDS will turn to panels of attorneys to handle the cases. These working relationships are not generally part of compensation issues as this side of the organization has already gone through compensation adjustment, rebalancing and pay parity. Non-appellate representation has not been part of the compensation parity adjustments.

Public Defense Compensation and Resources

Public defense compensation and resources are among the biggest challenges facing the agency. Per the ABA report, the state lacks sufficient attorney resources to address the number of clients in need of public defense services. And the agency's inability to ensure adequate compensation for public defense attorneys has inhibited attorney recruitment and development of a needed workforce.

The agency needs to engage in significant work to develop attorney caseload and workload models that include price points for attorney compensation, support staff compensation, support staff ratios, and administrative costs, as well as all overhead costs such as rent, utilities, IT, bar dues/CLE costs, etc. Because the agency relied upon the case credit model since 1983, none of this work has been done prior to 2020, when the agency began developing the FTE contract model.

There has been some recent work toward the goals of HB 2003. As previously mentioned, the Contracts Enhancement Workgroup began exploring workloads, staffing ratios, and other administrative costs. And the ABA has published its recommended caseload standards. But it will take time for the agency to build out new models, in both structure and budget, to meet the obligations of HB 2003.

One important note here: there are structural issues regarding compensation. To the extent the PDSC relies exclusively upon independent contractors, the PDSC is legally prohibited from directing entities on how they distribute their funds or compensate individual employees of the provider. The agency can be transparent about how much funding is in the contract, but it cannot direct an independent contractor on how to

Planning for the Future of PDSC/OPDS

compensate its members or employees. Recent changes to the contract structure, for contracts effective July 1, 2022, provide a structured tiering of compensation by case type. That is to say, if the provider employs felony-qualified or murder-qualified staff, OPDS will pay a larger amount for a felony caseload than for a misdemeanor caseload. This recognizes that not all attorneys have equal standing in the court system and that felony cases typically require more time and effort. It also incentivizes public defense providers to advance their qualifications within the system and handle more complex cases.

Data Collection

The agency has not historically gathered helpful data to ensure contract compliance, monitor system performance, or make financial asks to ensure the agency receives adequate funding. For instance, the number of hours necessary for a provider to defend the “average” felony case is unknown because time spent on a case is not methodically collected. This fundamental, yet critical, type of data collection prevents accurate measures of historic and existing caseloads and makes measuring contemporary problems like case backlog difficult. The lack of robust data was highlighted in both the Sixth Amendment Center’s and the ABA’s reports on public defense in Oregon and is a problem that pre-dates the COVID-19 pandemic.

The MAC contracting model provides more information than before on individual attorney caseloads and compensation. But the agency needs significant improvements to data capacity in a host of areas, ranging from attorney qualifications, case assignments, caseloads, and work completed in public defense cases, to budget tracking and auditing. OPDS currently lacks software programs that would allow for the meaningful collection of much of this data, and the agency will continue to work with LFO on acquiring such programs. A robust IT project was contemplated in the previous biennium but was subsequently put on hold until the Agency can demonstrate credibility to manage such a project and develop a comprehensive and sustainable restructure plan.

Training

The PDSC has a constitutional responsibility to ensure eligible individuals have timely access to competent counsel. Yet, the PDSC lacks a statewide training program for attorneys focused on public defense, nor is it funded to provide such robust training. Some of the training can be provided by the PDSC/OPDS, but other types of training critical to public defense is within the realm of other entities. For instance, investigation is a critical and required element of every felony case. However, training for investigators is supplied through other systems and institutions.

Additionally, PDSC is not the direct service provider for client representation. Thus, individual employers are best suited to provide for direct training and/or request development of training programs from which they can send employees. It is incumbent on the Agency to assist, develop and fund training programs that will benefit the contracted providers and ultimately provide benefit to the represented clients.

Some public defense entities do provide training, but many do not. Most public defense attorneys receive continuing legal education (“CLE”), primarily through the Oregon

Criminal Defense Lawyer’s Association and the Oregon State Bar. But these CLEs do not always provide the foundation for a career in public defense work, nor do they aid in workforce development in a post-COVID economy.

HB 5030 (2021) authorized positions for a newly created *Compliance, Audit, and Performance Division*, which will include a Criminal Trial Chief, and Juvenile Trial Chief, with several deputies assigned to each. The agency is currently in the process of filling these roles, and this Division will assume the agency’s role of developing training requirements and programs.

Equity and Inclusion

HB 2003 directs the agency to “establish operational and contracting systems that allow for oversight, ensure transparency and stakeholder engagement and promote equity, inclusion, and culturally specific representation.” Since then, OPDS created an intra-agency Equity Workgroup composed of a cross-divisional representation of agency staff. The workgroup is charged with creating an equity framework, which requires the agency to align on its commitment to equity, core concepts, values, and approach for future actions.

The equity framework will help inform the Commission’s strategic planning process, which will further define how the agency and commission will operationalize that commitment internally and in its external-facing policies and practices, including contracting. It also brings the agency and commission into alignment with the State of Oregon Diversity, Equity, and Inclusion Action Plan, released September 2021.

Planned but not achieved

The Commission and OPDS did not begin the 2021-23 biennium with a written set of planned goals and objectives. There were no documented guiding principles; no “North Star” to unite and focus the staff and available resources toward a common goal or aspirational outcomes.

2022 Unrepresented Persons Crisis

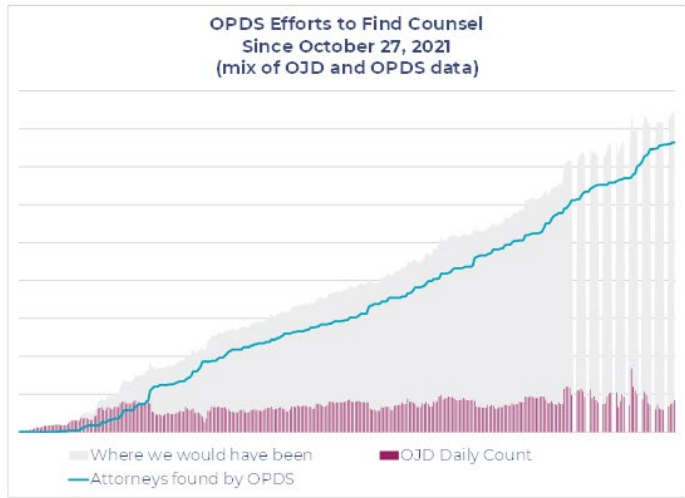
Not unlike other workforce systems around the nation, Oregon’s public defense workforce is facing a shortage of qualified attorneys to meet the need for court-appointed counsel for financially eligible persons entitled to a constitutionally adequate defense. Addressing the crisis of unrepresented persons in Oregon without an infusion of significant additional funding will require creative solutions for increasing the pool of qualified counsel available to accept court appointments. In July 2022, the Commission authorized an increase to the Hourly Rate Program to incentivize non-contract hourly attorneys to assist with the growing number of unrepresented persons in certain jurisdictions.

This graph shows the agency’s efforts to find counsel since October of 2021.

SURGE CAPACITY EFFORTS

OPDS Efforts to find Counsel

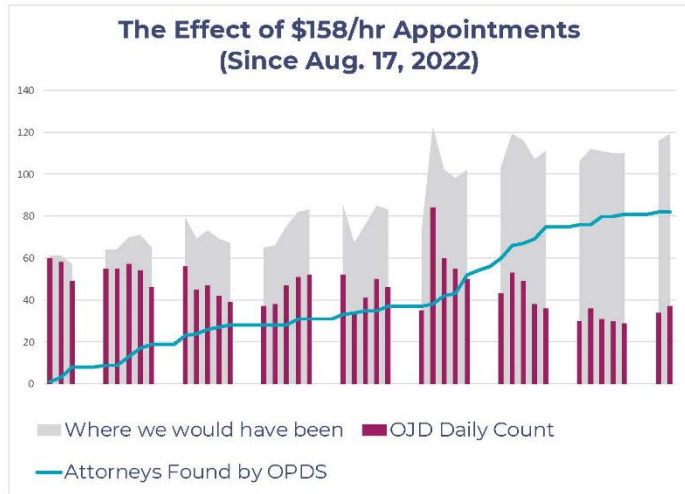
Since October 2021, OPDS Program Analysts have worked to assign quailed counsel to the unrepresented court-appointed cases.



Below is a graph showing the impact of the increase in hourly rates in relation to where the agency would have been if this increase hadn't been instituted.

SURGE CAPACITY EFFORTS

\$158 Impact



Goals for Improving Public Defense Services

Planning for the Future of PDSC/OPDS

This section will contemplate goals and objectives to improve public defense services. None of the items discussed will accomplish the goal of a “fixed” system by itself, nor will enough be accomplished in a single biennium to create a sustainable system. This process will likely take many biennia of continual investment to satisfy the requirements of the U.S. and Oregon constitutions. It is important to note that the agency also has limitations on the capacity to implement new programs and ideas, and the marketplace in the post-Covid economy may not have enough resources (i.e., qualified attorneys, paralegals, investigators, etc.) required to accomplish every goal. A steady, well-planned and sustained roll out of resources will best ensure the long-term improvement and success of public defense in Oregon.

Contract Provider Compensation

The PDSC maintains a commitment to bringing compensation parity to public defense services and providers on par with comparable jurisdictions and justice system functions. This may prove to be a difficult task and will require a great deal of research and analysis which will be assigned to the Research unit. Among state operated public defense programs, Oregon is one of the most unique. Oregon administers a greater number and wider breadth of services than any other state.

Contracted defense attorney providers have been operating at the current rates for a long period of time and are at a point where the industry feels broken, devalued and left behind. Other outside factors have not helped. In 2019, prior to the COVID pandemic, the job market was already tightening and putting upward pressure on wages with only a 3% inflation provision for contracted services contemplated in the 2021-23 legislatively adopted budget. Meanwhile, providers took note of legislative funding for government employee compensation at higher rates.

In 2020, the COVID pandemic began to wreak havoc as courts needed to shut down or significantly modify activity in response to the public health crisis. This increased workload pressures in ways that could not have been foreseen. It also required attorneys to carry open cases for much longer than normal as court activities slowed way down.

As the country anticipated an end to the pandemic, which had been constantly shifting for two years, a phenomenon affectionately called “the great resignation” also had an impact on the provider community. Providers now move from one public defense entity to another chasing better compensation and lighter workloads. In some cases, attorneys are leaving public defense altogether and moving into other areas of the law such as prosecution. An expanding imbalance in compensation due to location, individual caseloads, employers or experience is fueling provider movement and creating instability in representation for clients.

For simplicity’s sake, compensation will be discussed generically with a bent toward adult criminal defense. Variations and greater detail will have to include services that are not provided by other state including juvenile dependency and guardianships, the Parent/Child Representation program, and civil services such as guardianship and conservatorships. Examples provided and discussed do not represent all services and rates at a detail level.

Planning for the Future of PDSC/OPDS

Rather, examples are illustrative in nature and provide context to emphasize the lack of compensation parity.

Anecdotally, Attorney compensation varies from one jurisdiction to the next and from caseload to caseload. Misdemeanor qualified attorneys will earn less than felony qualified attorneys; complex felony attorneys will earn more than lower-level felony qualified attorneys. In the case of non-profit public defender offices, the PDSC compensates approximately \$211,000 per attorney per year; however, this compensation model includes supportive services within the yearly compensation. Examples of supportive services can include administrative support, supervision, investigations, etc. This model is most prevalent in non-profit public defender offices

As noted above, the current compensation difference for hourly types of defense services is less per hour for state defenders vs. than for federal defenders. The illustrative difference, often accepted as gospel during testimony, signifies that state funded public defenders are paid 35-40% below rates paid to federal public defenders. Recognizing this, the PDSC put forward a policy package that would increase public defense provider compensation for the 2023-25 biennium and a commitment to define pay parity and index against an accepted benchmark. This evaluation and recommendation will come out of the CAP division and be included in the 2025-27 agency request budget.

The Agency, specifically the Research unit, will review and make recommendations to further modify the current caseload modeling and compensation to balance and stabilize compensation as a factor in parity with appropriate agencies and organizations. Research will evaluate compensation rates in relation to the breadth and depth of services provided. This research, process and implementation will be similar to the research and implementation that occurred when the Oregon Health Authority developed and implemented regional coordinated care organizations. Furthermore, the revised budget staff in OPDS will better utilize budget instructions to request the highest allowable inflation for contracted providers, currently at 8%. This is a practice that has not been exploited by the OPDS budget staff in the past. While this may not achieve the goal of parity within a single biennium, it will accelerate the pace toward pay parity and equity for the industry.

These efforts will be reviewed and modified in subsequent contract cycles to better tailor incentives to emerging employment trends.

Capacity Expansion, Workload Reduction & Workforce Retention

The PDSC remains committed to program expansion that results in the best public defense services possible within the adopted and approved budget. To reach that goal the PDSC will request resources to expand attorney capacity, balance workload capacity to better serve clients, and support workforce retention by creating a desirable environment in which providers no longer feel they are drowning in their caseloads.

The Agency, specifically the Research unit, will review and make recommendations to further modify the current caseload modeling and compensation to:

Planning for the Future of PDSC/OPDS

- Provide incentive to attract and retain graduating law students into the public defense field
- Provide incentive for new misdemeanor attorneys to become felony qualified
- Provide incentive to attract attorneys to the more rural parts of Oregon
- Research different delivery models, including but not limited to state run PD offices, and make recommendations as to piloting a program in the 2023-25 biennium; especially as it applies to rural areas and jurisdictions where recruitment and retention are historically difficult.
- Research and make recommendations for a balanced mix of private practice, non-profit PDs and consortia to best represent clients across the diversity of jurisdictions in Oregon. This becomes an ongoing planning task each biennium.
- Research and evaluate how additional compensation and contractual incentives influence the ability to recruit and retain providers in the industry given perpetual changes in the workforce and economic environment.

Many of these ideas require further discussion and input with stakeholder groups. There is also much research among other states that will take place. However, this author has noted, after discussion with counterparts in other states, that Oregon is still recognized as an innovation leader among state governments. There will be many ideas and suggestions to be immediately implemented. Some of those should be moved forward, but only after consideration of how they move forward the goal of improvements to the overall justice system unless the initiative can produce immediate and sustainable results.

Propose Immediate Enhancements to Improve CAP

Need for executive leadership and planning. Need for leadership for data, research and program design. Additional deputy general counsel in adult criminal and juvenile programs to focus on core functions: policy development, training, contract development and administration, audit and accountability, and performance. Deputy general counsel positions will also have a geographic/regional functional area similar to contract administration. The agency is also in need of dedicated policy writers to facilitate the development of policy and procedure throughout all areas of agency operations. The audit conducted over the summer of 2022 outlined the need for policy and procedure as well as other programmatic documentation to be developed.

Financial and Case Management Project

PDSC is continuously working towards the implementation of a financial and case management system (FCMS project) that is expected to be used systematically by Oregon's public defense providers and internal agency staff by the end of the 2023-25 Biennium. This project is expected to provide the agency, providers, and key stakeholders with critical real time data, case management tools, and financial payment processing functionalities, which will drastically streamline the overall success and outcomes awareness of Oregon's public defense system.

PDSC, like many public defense agencies around the country, is failing to achieve its mission of providing competent and timely public defense services, and the system in which this failure is occurring lacks sufficient transparency, oversight, and accountability.

Planning for the Future of PDSC/OPDS

Over the last three years PDSC has received several reviews of current business practices, capabilities, and public defense performance. The Sixth Amendment Center (6AC) published their report in 2019 which primarily focused upon governance, service delivery models, and internal practices, whereas the American Bar Association (ABA) published a report in 2022 describing the deficit of available public defenders and the need for proper data management and analysis. The ABA pointed directly to the need for the agency to acquire a centralized data system with the purpose of capturing basic, critical public defense information¹.

In June 2022, Governor Kate Brown (Oregon) addressed her support of public defenders in Oregon, noting the work conducted by each lawyer and public safety stakeholder is critical to the success of Oregon's public defense. Brown specifically stated her support regarding the need for change with the following statement:

“The current crisis in Oregon’s public defense system has many contributing causes and few immediate cures. To attract and retain lawyers to do this necessary work, caseloads must be reasonable, and salaries must be higher than they currently are. And the entire public defense system must be accountable for the public funds invested in it.”²

PDSC understands that this is a systemic issue, however, it is further fractured by the current inadequate technical solutions to process, analyze and report public defense outcomes. Without proper reporting capabilities PDSC is left with little useful information to effectively support not only recipients of public defense, but those who administer the work. Currently, all data acquired for analyses is provided through contractual requirements or data share agreements with partner agencies. These data sources are not always consistent and often do not offer accurate or reliable data elements.

On June 1, 2022, PDSC presented before the Joint Emergency Board Subcommittee on General Government during a work session regarding agency reports. It was during this meeting that a Co-Chair noted the dire need for multiple agency plans. With many organizational changes from HB 5030 (2021) PDSC has implemented several workgroups to better understand the requirements of HB 5030, as well as begin to align critical agency practices. As part of this identification and internal analysis PDSC continues to find among its top priorities the implementation of the FCMS project. The agency has developed critical data elements and system requirements to bring before public defense stakeholders.

¹ The American Bar Association and Moss Adams. 2022. *The Oregon Project An Analysis of the Oregon Public Defense System and Attorney Workload Standards*. Pg. 5. Retrieved from: https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-or-project.pdf

² Governor Brown (Oregon). (2022, June 3). Response Letter to the Past Presidents of the Oregon Criminal Defense Lawyers Association.

Planning for the Future of PDSC/OPDS

As indicated in the last few sections, PDSC has many factors to consider in their efforts when looking at resolutions. However, the agency is dedicated to move forward with ensuring public defense is improved upon in Oregon and will be accomplished through the careful considerations of business transformations. PDSC desires to employ a system that will allow internal staff to more accurately monitor attorney caseloads to ensure compliance with national best practice standards,³ and report on the impact of public defense services to stakeholders through detailed data. Financial accountability will be met through the ability to produce detailed financial reports, deliver payments to providers per the Oregon Accounting Manual⁴ processing timelines, and manage/audit requests for attorney case support service (CSS). The solution will also sustain data collection for analysis and evaluation purposes, reporting, and contract agreements. With an integrated financial and case management system PDSC will be able to provide the Oregon Legislature, Governor's office, stakeholders, and others with information and data on Oregon's public defense best practices, contract projections, and key performance measure indicators.

In addition to the integration needs, the solution will include technical and configuration training support services, and in-depth user training support services. The Request for Proposal (RFP) will become the basis for negotiations which leads to a vendor contract designated to provide the services described in this business case. The main objectives that PDSC will accomplish through this project are an increase in internal efficiencies, elimination of redundant and manual processes through workflow and electronic document management, contract management through effective and efficient data collection supported by integration capabilities, and internal and external data exchange to produce reports on caseloads and outcomes.

PDSC has implemented a few small programs over the last several decades. As priorities advance and reformation of the Oregon Public Defense System sits at the forefront of the judicial process, PDSC must instill a deeper more purposeful approach to manage the many bodies of work in which it is responsible for. PDSC plans to bring an element of leadership and direction to all programs, projects and bodies of work that are defined within the agency's overall portfolio (or in this case the Five-Year Plan). While there are many disciplines that can support such endeavors, PDSC will be utilizing the Project Management Body of Knowledge (PMBOK) overall framework for managing all programs and projects within the agency's portfolio.

It is imperative that a full understanding of the differences between Projects, Programs, and Portfolios be defined. In figure "x" below organizational project management is represented in its three distinct functions and the values attributed to each. PDSC through OPDS plans to manage the agency's portfolio with the following principles:

³ New York Office of Indigent Legal Services. (2016). *A Determination of Caseload Standards pursuant to § IV of the Hurrell-Harring v. the State of New York*.

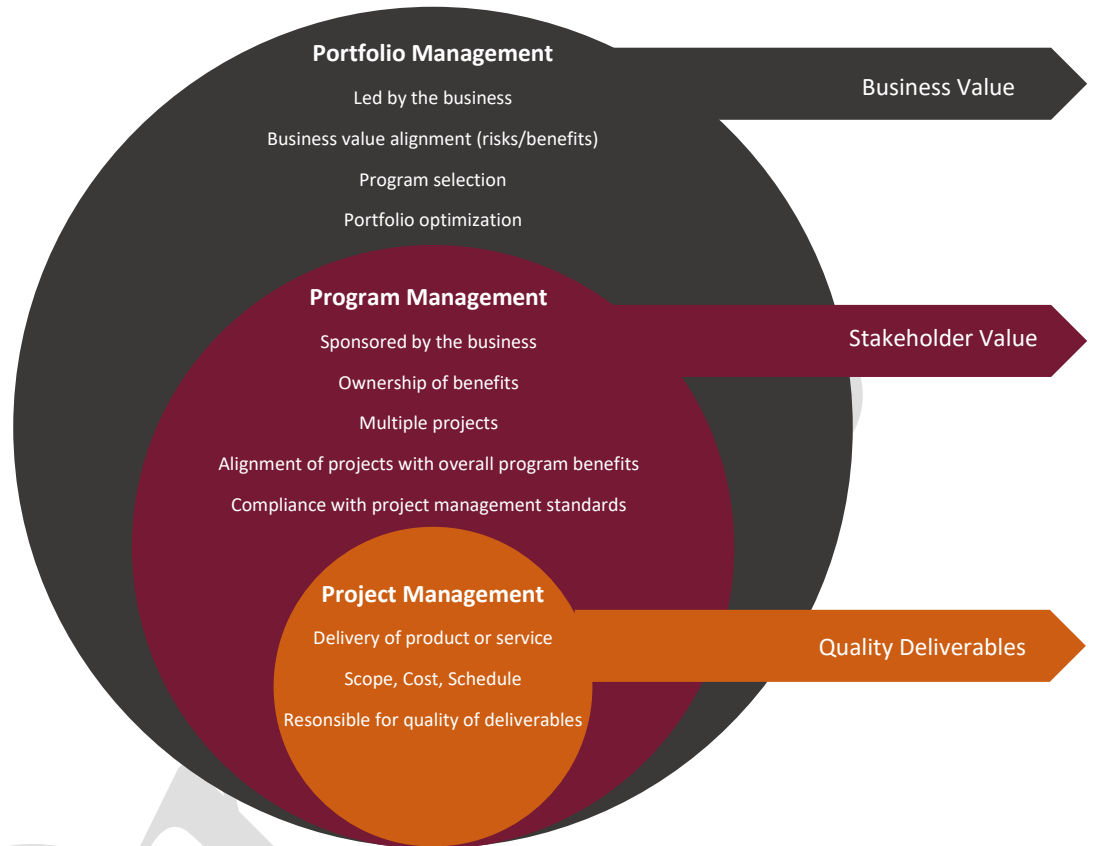
⁴ Department of Administrative Services. (2019). *Oregon Accounting Manual*. Chapter 15. Salem, Oregon. Retrieved from <https://www.oregon.gov/das/Financial/Acctng/Documents/15%20Accounting%20and%20Financial%20Reporting%20search.pdf>.

Planning for the Future of PDSC/OPDS

- Make sure the Project(s) align to strategy
- Have a strong process for shutting down projects early
- Lead the change
- Get comfortable with risk
- Promote transparency at all levels

OPDS has been implementing with a methodical approach the aforementioned principles with the support of certified project management staff and the use of a new tracking and reporting tool, ASANA©. Asana supports the agency in helping structure portfolio management in the following areas:

- Set goals & objectives
- Group related projects
- Create milestones
- Set dependencies
- View roadmap
- Balance resources
- Track portfolio progress
- Analyze & present reports
- Collaborate with stakeholders



- Figure “x” Organizational Project Management (Portfolio, Program, and Project Management)
- The strategies defined here will be critical in continuing to propel the agency forward in support of the modernization efforts of the Oregon public defense system. Internal to OPDS, several members of the executive team known as project sponsors have initiated an initial work group that identifies the many bodies of work that are planned, projected, and desired. Once the overall agency plan has been established, it will be imperative that proper governance is implemented to ensure effective oversight is present and capable of supporting the functions before the agency.
- To further support the efforts of organizational project management is the need for organizational change management. This effort would support the people side of change that will be directly correlated to the processes set out in portfolio, program, and project management activities that are facing the agency. With change comes resistance, fear, and challenges. However, PDSC sees the process of change as an opportunity to rebuild the organization with effective leadership, staff engagement,

and bring forth new opportunities for innovative responses to the current environment.

Stabilize IT Services and Operational Support

Final design and balanced service provision to support daily operations and a focused IT project. Expand project management to provide oversight to multiple agency projects. Focused procurement with a Designated Procurement Officer. Shift contract administration function into the Adult Criminal and Juvenile program areas where daily contact with providers can be more closely linked into the CAP division yet separate from the research function. Maintain a focused procurement position in ASD and re-task the current management position to Organizational Development, both internally with program, administration and appellate staff and externally with service providers. Organizational development will also be the designated Chief Cultural Change Officer tasked with diversity, equity and inclusion initiatives. An internal equity workgroup and an external service delivery group will work together to ensure policies, procedures and program delivery.

Recommended path for future development

- **Modernization and Cultural Maturity**
 - Programmatic, Operational and Administration stabilization
 - Cultural maturation for the Commission, agency management, infrastructure, and service providers
 - More clearly define the governance and relationships between the Commission, Agency and provider communities
 - Confirmation of Mission, Goals, Objectives and Guiding Principles that achieve constitutional requirements and mandates while also responsibly serving all Oregonians and their diverse perspectives
 - Strategic planning soundly rooted in those Mission, Goals, Objectives, and Principles to better prepare the Commission and Agency to take advantage of new opportunities and more efficiently meet the needs during crisis circumstances
 - Collaboration and cooperation with the whole of state government; utilize the strengths of others to overcome internal weaknesses while also maintaining appropriate independence as the leader in defense services
- **Capacity and Compensation**
 - Make initial recommendations and requests to “move the dial” on compensation to accelerate the conversation and progress toward equity.
 - Define “parity” for contracted providers and provider organizations given roles, responsibilities, scope of work and contractual requirements relative to comparable industry standards.
 - Address capacity needs and availability of potential resources (money and workforce) to best serve the client base

Planning for the Future of PDSC/OPDS

- Determine if additional support services (i.e., paralegals, legal secretaries, case managers, supervisors) can better manage workloads and decrease caseloads on existing contracted providers
- Research and develop “staffing standards” across multiple jurisdictions
- Research and recommend other alternatives that can reduce individual caseloads within existing resources
- Recommend adjustments to service delivery models
- Address recruitment and retention resources necessary to sustain service provider model(s) given the geographic and economic diversity of Oregon
- Make additional data-informed recommendations to stabilize and appropriately grow public defense services to meet the constitutional needs of Oregon into the future
- **Infrastructure investments**
 - Administrative functions and support for the agency and contracted services that further the objectives of program and lead to data-informed decision making
 - Technology functions and support to gather appropriate levels of data while simultaneously providing independence for the provision of services
 - Update contract provisions with providers to more efficiently provide services, process payments, and most importantly enhance the provision of a robust public defense system
 - Create an environment that is attractive to the workforce of the future and focuses on information exchange and a practice of continual improvement
 - The agency will request positions to fully implement the CAP functions.
- **Future state**
 - Participate with the legislatively led workgroup to craft long-term solutions and plans to “overhaul” the public defense services provided in Oregon
 - Address the concerns, requirements and recommendations of the Sixth Amendment study and ABA study given limited capacities and availability of resources (General Fund and provider community).
 - By the fall of 2023, OPDS will review planned goals for the 2023-25 biennium and formally report on goals and objectives that were not achieved.
 - OPDS is also committed to renewing Operational Plans at the beginning of each biennium following the long session, but prior to beginning budget development for the subsequent biennium.

Operational planning will support the mission, goals and objectives as established in Strategic Planning efforts of the Commission and Agency and any priorities or deliverables mandated by the Legislative Assembly. All planning efforts and activities will include stakeholder outreach including, but not limited to, the provider community, other state agencies, legislative assembly, former clients and adults in custody. While some of this has occurred, it has not been timely and not as extensive as planned. PDSC also learned

more effective ways to plan and reach out more strategically. Improvements will be made, and efforts are underway, to collect experiential data annually.

Insert Biennial outline

2021-23 (remainder)

Oct – Dec 2022

- Hire Executive Director
- Training and Governance
 - New Commissioner training and orientation
 - Confirm Governance model
- Present and implement additional representation crisis mitigation efforts, request funding as necessary
- Begin writing policies (program and administrative) under new writing discipline and process

Jan – Mar 2023

- Confirm Mission, Goals and Objectives
- Establish Guiding Principles
- Prepare and present 2023-25 Agency Request Budget
- Continue work with Three Branch Workgroup
 - Adapt according to workgroup output
- Continue representation mitigation efforts
- Request budget “rebalance” as necessary to mitigate representation crisis and necessary budget adjustments
- Present F/CMS project planning and prep for anticipated RFP release
- Begin process of adopting necessary policies under new governance model

Apr – June 2023

- Prepare 2023-24 Provider contracts with necessary adjustments
- Work cooperatively to complete 2023-25 Biennial Budget

2023-25 Agency Request Budget

July – Dec 2023

- Establish Strategic Plan based on 2023-25 Adopted Budget and informed by Three Branch Workgroup
- Implement 2023-24 provider contracts based on 2023-25 LAB
- Implement F/CMS project with vendor and application selection
- Complete data gathering and stakeholder outreach to inform analysis and recommendations for compensation and staffing parity
- Complete data gathering and outreach to establish recommended caseload standards for 2024-25 contracting cycle
- Research and identify regional and national best practices
- Develop policy and procedure for pilot programs that may come from the 2023 legislative session.

Jan – Dec 2024

Planning for the Future of PDSC/OPDS

- Revise and implement new provider contracts with new data gathering, compensation and staffing standards
 - Stabilize public defender environment for enhance recruitment and retention
 - Gather and analyze new data being gathered
- Continue work with Three Branch Workgroup and implement any changes that emerge from the Workgroup and/or 2024 Legislative Session
- Develop and submit 2025-27 Agency Request Budget reflecting future goals, objectives and desired outcomes
- Evaluate of successful pilot programs and plan for eventual growth of these programs in future budget requests.
- Provide training of F/CMS for provider community, contractors, hourly attorneys and court supported service vendors

Jan – Jul 2025

- Fully implement F/CMS system with enhanced data gathering and analysis
- Revise and/or complete legislative changes
- Prepare and implement provider contracts for future state delivery

2025-27 Goals and Implementation

- The agency is established as a well-informed data driven agency.
- CAP functions are fully established, and the agency is stable and driving outcomes established by the legislature and the PDSC.

2027-29 Aspirational Goals

- The agency uses its lens to inform changes to other areas of Judiciary such as sentencing guidelines and other reforms that enhance systematic outcomes.

Closing Statement

Rights of all Oregonians are protected and enforced with a strong public defense system. Executive functions such as law enforcement and prosecution are held in check and an effective defense and appellate process will result in a visible reduction in overreaching actions and activities. Push for more appropriate responses that balance social needs vs. criminal prosecution needs. Victims have more assurance that crimes are more thoroughly investigated, and that prosecution is not trying the wrong person and allowing space for appropriate grief rather than a roller coaster of emotions when asked, “did we prosecute the right person.” When found guilty, the client is assured of a fair and balanced sentence that aligns with the crime committed and that sentences are aligned with societal goals, objectives, and standards.

PROJECT CHARTER

1. Project Information				
Project Name:	OPDS Project Planning			
Project Description:	Provide Project Management support for critical agency work products.			
Proposed Budget: * Expected Biennial Budget	Hardware	Software	Services	Total
	\$0.00	\$0.00	\$0.00	\$0.00
2. Project Team				
Role	Name(s)			
Project Sponsor(s):	Brian Deforest, Deputy Director Shannon Flowers, Trial Chief Juvenile Laurie Bender, Trial Chief Criminal			
Project Lead:	Brandi Meyer, Project Manager Krystal Styles, Project Manager			
Division Sponsor:	Ralph Amador, Finance Manager Heather Pate, Policy Manager Jim Conlin, Chief Information Officer Eric Deitrick, General Counsel			
3. Stakeholders				
Role	Name(s)			
Steering Committee Decision Members:	Yet to be determined			
Steering Committee Interested Party; Non-Decision:	Yet to be determined			
4. Project Scope Statement				
4.1 Project Purpose/Business Justification				
<p>The Project Team is to assist the Planning Workgroup with the identification of all urgent and long-range needs for the agency. This will be achieved by utilizing the Project Management Body of Knowledge (PMBOK) framework. These areas focus on initiating, planning, executing, monitor/control, and closing. At a deeper level these efforts will be achieved through integration management, scope management, time management, quality management, communications management, and risk management.</p> <p>Some of the anticipated deliverables will be agency plans, policy development, and ongoing research of agency needs. These processes will provide the agency with critical knowledge and awareness of actual work, potential work, resource availability, as well stronger tools to conceptualize future organizational capacity.</p>				
4.2 Objectives				
<ul style="list-style-type: none"> • Project Team will provide this workgroup with weekly/monthly status updates on project progress. • Project Team will assist the workgroup with facilitating meetings with subject matter expert (SME) from the agency divisions to collect work product requirements, timelines, identify and assign tasks and determine deliverables. • Workgroup will meet weekly to respond or work through potential issues, project needs, or concerns. • Work directly with workstream leads and team members to keep tasks on time and understood. 				
4.3 Scope				

In-Scope

- Develop Agency Five-Year Plan
- Plan for Unrepresented persons
- Policy Development
- CAP Plan
- Meet with workstream leads to develop work products
- Create Work Breakdown Structure (WBS)
- Develop Portfolio Schedule
- Develop Status Reports
- Manage Deliverables and Schedule
- Schedule meetings with appropriate stakeholders
- Communications Plan
- Change Management
- Agency Modernization
- RACI Chart

Out-of-Scope

- PM Team is not responsible for producing work as it relates to workstream deliverables

4.4 Milestones and Deliverables *Start and end dates for milestones, like project phases and corresponding deliverables “products” will be created (e.g., technical manual, test scripts) with the support of the procured Quality Assurance vendor (QA vendor selection expected to be made mid-March).*

MS	Del	Task	Start Date:	End Date:
	Y	Agency Five Year Plan	9/1/2022	11/1/2022
	Y	Unrepresented Plan	9/1/2022	11/1/2022
	Y	Policy Development	9/1/2022	2022-2023
	Y	KPMs	9/1/2022	2024
	Y	CAP	9/1/2022	2024
	Y	31-40% Attorney Caseload Standard	9/1/2022	2023-25
	Y	Quick Response Plan	9/1/2022	2023-25
	Y	Trial Criminal/Juvenile Separation	9/1/2022	2023-25
	Y	PCR Expansion Plan	9/1/2022	2023-25
	Y	Data/Research	9/1/2022	2026
	Y	Pilot Delivery Model	9/1/2022	2026

4.5 Major Known Risks (including significant Assumptions)

Risk Description	Risk Rating (Hi, Med, Low)
<ul style="list-style-type: none"> • Deliverable definitions are incomplete 	High
<ul style="list-style-type: none"> • Work product requirements not clear 	High
<ul style="list-style-type: none"> • Scope Creep- Unplanned work that must be accommodated 	High
<ul style="list-style-type: none"> • Resistance to Change 	High
<ul style="list-style-type: none"> • Integration – between workstreams 	High
<ul style="list-style-type: none"> • Resource – Staff availability 	High

<ul style="list-style-type: none"> Disputes – Internal disagreement not resolved timely 	High		
<ul style="list-style-type: none"> Research – Solutions found in a timely manner 	High		
<ul style="list-style-type: none"> Schedule – Quick timelines and turnaround on deliverables, not well understood 	High		
<ul style="list-style-type: none"> Tasks ran in parallel could increase risk of delay 	Medium		
Assumptions			
<ul style="list-style-type: none"> The PM Team will have the resources they need to complete their individual tasks on time, and keep the Portfolio schedule on time All resources will be understanding of the project timeline and need for efficient and effective communication The scope of the Portfolio will not change during this brief iteration All resources will be available and willing to assist the Portfolio to meet all deliverables 			
4.6 Constraints			
<ul style="list-style-type: none"> The Portfolio timeline Scope of Work Resource availability External availability to discuss PD related matters 			
4.7 External Dependencies			
<ul style="list-style-type: none"> Findings from PD offices as it relates to Contract requirements 			
5. Communication Strategy			
<ul style="list-style-type: none"> Status Reports Status Briefing Email, Teams Chat 			
6. Sign-off			
Role	Name	Signature	Date
Project Sponsor:	Brian Deforest		
Project Sponsor:	Shannon Flowers		
Project Sponsor:	Laurie Bender		
Department Sponsor:	Jim Conlin		
Department Sponsor:	Ralph Amador		
Department Sponsor:	Eric Deitrick		
Department Sponsor:	Heather Pate		
Project Lead:	Brandi Meyer		
Project Lead:	Krystal Styles		
6.1 Project Charter Feedback			

Planning Status Report – September 2022

Project Status Report for:	OPDS Agency Planning	Week/Month Ending:	September 30, 2022
Project Sponsor(s):	Brian Deforest, Shannon Flowers, and Laurie Bender	Program/Project Manager(s)	Brandi Meyer Krystal Styles
Project Purpose:	Identify agency needs to implement effective planning, organization, and legislative requests.		
Project Budget		Funds Expended to Date:	
Project Schedule:	Start Date:	September 2022	Est. Completion Date: TBD
Time Period Covered in Status Reports:	September 1, 2022 – September 30, 2022		

Item	Current Status	Prior Status	Status Notes
Overall Project Status	R	R	The OPDS Interim Co-Directors have organized a planning team to ensure the agency is identifying the immediate, short term, and long-range operational needs.
Scope	R	R	OPDS must provide a Five-Year Plan to the Oregon Legislature by the December Eboard hearing in December 2022. This will require several cross functional bodies of work be identified and analyzed for relevancy. In addition to the Five-Year Plan, the agency must also immediately respond to Oregon's Attorney Capacity, which has resulted in persons in custody not having representation. OPDS is working on creating a plan to effectuate positive advancements and solutions. Outside of the aforementioned plans, the agency will be working diligently on writing policy for all divisions and programs currently implemented, as well as identifying less urgent bodies of work that should be considered for future planning.
Schedule	R	R	The schedule has not been defined to the detail for stringent tracking. The Project Team will utilize the Asana platform to track all project deliverables and schedules as soon as dates and resources are identified. This tool will provide real time access to the schedule status as well as resource availability.
Budget			There is no budget assigned to the portfolio.
Project Risk	R	R	The largest risk to this project at this time is the lack of understanding around project scope, resource availability, and timelines. Once these are fully understood and full project management methodologies are applied the project risk will drastically improve.
Legend			
G	Project scope, budget and schedule on track. No help needed.	Y	Project Scope, Budget, and/or Schedule at Risk. Plan in place to mitigate, help may be needed.
		R	Project Scope, Budget and/or Schedule Impacted. Help is needed.

SCHEDULE in Days (Data capture in-process)		BUDGET	
Schedule Status – R/Y/G	Y	Budget Status – R/Y/G	
Start Date:	September 1, 2022	Approved Budget \$:	
Actual Days (Work) Expended:	30	Actual Cost to Date:	
Scheduled Days (Work) Remaining:	TBD	Funds Remaining:	
Projected End Date:	TBD	Estimate to Complete:	

Planning Status Report – September 2022

Key Accomplishments

Area	Accomplishment /Activity
Governance	This team is comprised of the following staff and maintain voting/decision authority: <ul style="list-style-type: none"> Deputy Director General Counsel Chief Trial Criminal Chief Trial Juvenile Finance Manager Policy Manager CIO
Project Management	The OPDS project team will be assisting the Governance team in documenting; analyzing resource availability, timelines, and organizational project needs; as well as structuring meetings that follow proper project management methodologies as defined in the Project Management Body of Knowledge (PMBOK) framework.
Communications	At this time communications will be managed using the following methods: <ul style="list-style-type: none"> Weekly meetings – Governance and PM teams are required to be in attendance. Email correspondence – Will be utilized to share quick communications, updates, and to share information as it is identified. Communications external to this team will be through the Governance body to key stakeholders (Commission and Legislature).
Procurement	N/A
Data Conversion	N/A
Training	N/A
Change Management	Change Management has not yet been identified as far as the level of execution that will need to occur organizationally. However, the need for change management has been identified and will be considered in longer range planning efforts.
Quality Management	N/A

Upcoming Activities

Target Date	Actual Date	Completion Date	Current Status	Activities
11/1/2022			Y	Agency Five Year Plan
11/1/2022			Y	Unrepresented Plan
2022-2023			Y	Policy Development
2024			R	KPMs
2024			R	CAP
2023-25			R	31-40% Attorney Caseload Standard
2023-25			R	Quick Response Plan
2023-25			R	Trial Criminal/Juvenile Separation
2023-25			R	PCRPs Expansion Plan
2026			R	Data/Research
2026			R	Pilot Delivery Model

Key Issues/ Risks

There are many factors this team faces pulling them in a multitude of directions, making it difficult to focus on planning requirements. Many of these issues consist of time constraints, email correspondence, and managing several bodies of work that are cross functional with little understanding of the roles and responsibilities. Until the agency's body of work and proper roles and responsibilities are identified, the agency plan has the potential to be delayed and considerable scope creep.

The short timeline for the Agency Five Year Plan will consist of several cross functional work streams that will require resources and subject matter experts be available to discuss and effectively plan agency needs and required bodies of work.

Planning Status Report – September 2022

Deliverables

The December Eboard hearing will require that the agency provide a Five-Year Plan, and a plan for the unrepresented persons. These two bodies of work will encompass several subtasks to achieve these milestones. The subtasks have yet to be fully defined, this presents risks that must be mitigated. The Project Team will address these at the next planning meeting scheduled for October 4th, 2022.

Key Project Decisions

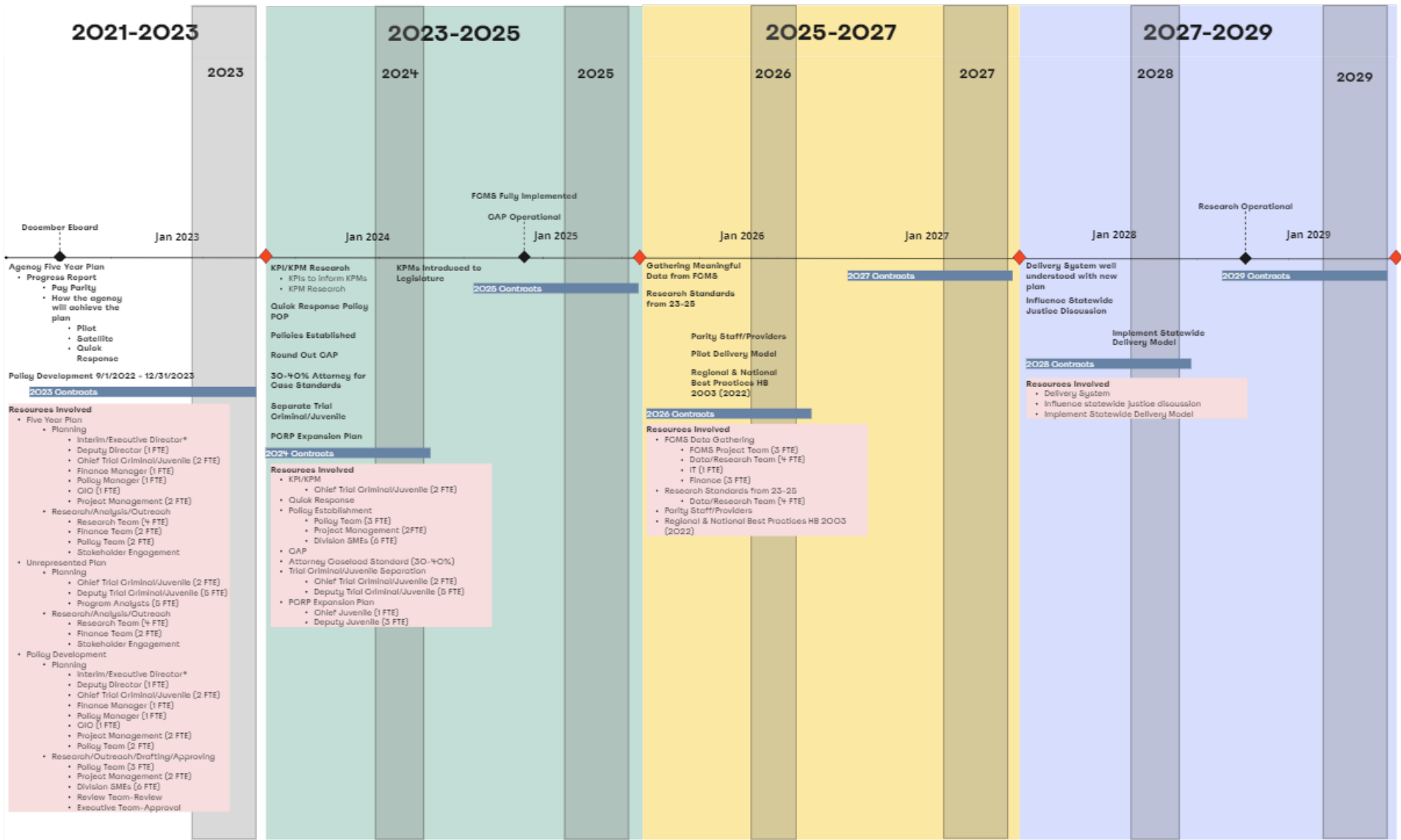
The first three prioritized areas of focus for planning currently are as follows:

- Agency Five Year Plan
- Agency Policies
- Unrepresented plan

After these plans have been well defined then the Governance team will focus on longer range planning.

Points for Management Attention

Roles and Responsibilities for this group need to be defined. This will provide a framework for engagement, knowledge of duties, and the requirements surrounding this body of work.



◆ Biennial Milestones

◆ Milestones



**State of Oregon
Office of Public Defense Services
Audit Report
August 8, 2022**

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EXECUTIVE SUMMARY

The objective of this audit was to conduct a review of the financial management and overall performance of the Oregon Public Services Defense Commission, Office of Public Defense Services (OPDS). Our audit focused on the efficiency and effectiveness of policies and procedures surrounding accounts payable, case support services expenses, contracting, and procurement. Through substantive and detail testing, control testing, and interviews with staff, we identified multiple opportunities for improvement with a focus on the following areas:

- **Policies and Procedures** – Review and evaluate current policies and procedures in place throughout the agency and determine whether they are clear and appropriate or require enhancement.
- **Accounts Payable** – Review and test purchases made in the ordinary course of business to ensure purchase orders and payment remittances are timely, recorded correctly, and have appropriate authorization.
- **Case Support Services (CSS)** – Review and test CSS expenses to determine that proper review and authorization is in place, proper remittance accounting is being performed, and that costs are reasonable in accordance with contract terms.
- **Attorney Contracts** – Review and test attorney contracts to determine that contract creation, authorization, execution, and emendation follow effective and efficient processes.
- **Service Contracts** – Review and test service contracts to determine that contract creation, authorization, execution, and emendation follow effective and efficient processes.
- **Procurement** – Review and test expenditures made by the agency to determine appropriate approval and proper documentation of transactions are in place in accordance with current policies and procedures.

Results of the audit are classified into three categories. The categories are defined below, ranking from most consequential to least:

- **Finding** – Most serious in nature, a finding is an instance of a breakdown or partial breakdown, leading to a potential failure of OPDS objectives. A finding requires immediate corrective action.
- **Observation** – An instance of a minor deviation from an otherwise well-implemented process. An observation should be evaluated and corrected as resources and time allow.
- **Process Improvement Recommendation (PIR)** – An instance of a potential improvement opportunity. A recommendation does not require action, but is encouraged for improvement.

Audit Area	Page	Findings	Observations	PIRs
Policies and Procedures	5	3	-	-
Accounts Payable	8	-	2	2
Case Support Services	12	1	1	2
Attorney Contracts	15	2	1	2
Service Contracts	19	2	-	1
Procurement	22	3	-	-
Total		11	4	7

BACKGROUND, SCOPE, AND METHODOLOGY

Background

The OPDS in the State of Oregon ensures that eligible individuals have timely access to legal services consistent with Oregon and national standards of justice.

The OPDS is governed by the Public Defense Services Commission (PDSC). The PDSC's primary charge is to establish "a public defense system that ensures the provision of public defense services consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice".

The PDSC appoints the Executive Director for the OPDS. The OPDS is comprised of nine interconnected entities which include the Executive Division, the Compliance, Audit and Performance Division, the Appellate Division (including the Juvenile Appellate Section) the Trial Criminal Division, Non-routine Expenses, Court Mandated Expenses, the Juvenile Division, the Administrative Services Division and Special Programs, Contracts and Distributions.

The vision of OPDS is to maintain a sustainable statewide public defense system that provides quality representation to eligible clients in trial and appellate court proceedings.

Scope and Methodology

To achieve the audit objectives, the audit team reviewed applicable policies and procedures at OPDS regarding operating expenses, CSS expenses, contracts, procurement, and supporting documentation for the fiscal years 2018, 2019, 2020, 2021, and the six-month period ending December 31, 2021. The audit team also interviewed individuals from all major areas of the OPDS, performed walkthroughs to better understand the practices in place at the time of the audit, and performed detailed testing on certain aspects of OPDS expenditures and contracting.

Our audit was conducted in accordance with the guidelines set forth in the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*. The standards set criteria for internal audit departments in the areas of independence, professional proficiency, scope and performance of audit work, and management of the internal auditing department.

RESULTS AND RECOMMENDATIONS

Policies and Procedures

Review and evaluate current policies and procedures in place throughout the agency and determine whether they are clear and appropriate or require enhancement.

Findings	3
Observations	-
PIRs	-

1	FINDING	OPDS policies are outdated, incomplete, unorganized, and require enhancement.
	RECOMMENDATION	Develop updated policies and review these at least annually to identify and address changes in statutes, best practices, or other issues identified during use.
	MANAGEMENT RESPONSE	Management concurs with the recommendation and is actively taking steps to mitigate risks. OPDS has hired a second policy writer and recently went through a prioritization process on which policies to write and modify and in which order.

According to ORS 151.216, the duties of the PDSC include the adoption of policies, procedures, standards, and guidelines regarding:

- (A) The determination of financial eligibility of persons entitled to be represented by appointed counsel at state expense;
- (B) The appointment of counsel;
- (C) The fair compensation of counsel appointed to represent a person financially eligible for appointed counsel at state expense;
- (D) Appointed counsel compensation disputes;
- (E) Any other costs associated with the representation of a person by appointed counsel in the state courts that are required to be paid by the state under specified ORS, or any other provision of law that expressly provides for payment of such compensation, costs, or expenses by the commission;
- (F) Professional qualifications for counsel appointed to represent public defense clients;
- (G) Performance for legal representation;
- (H) The contracting of public defense services;
- (I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses only if in-state expert witnesses are not available or are more expensive than out-of-state expert witnesses; and
- (J) Any other matters necessary to carry out the duties of the commission.

Many of the policy documents are dated as late as 2015 that are still being used as current OPDS policy. The agency has undergone significant changes and restructuring since that time

causing many of the policies that are still in place and being used to no longer be applicable, redundant, or ineffective. The development and implementation of policy should be a continuous process that requires constant update and review. Existing policies should be periodically reviewed to identify and address changes in statutes, best practices, changes to business practices, or other issues identified by stakeholders. We recommend the OPDS prioritize the review and updating process of all current policies and procedures. It is our understanding that OPDS management is aware of this need and is actively working to mitigate this issue.

2	FINDING	It is a duty of the PDSC to determine the financial eligibility of persons entitled to be represented by appointed counsel at state expense, but the Oregon Judicial Department (OJD) is currently determining these criteria.
	RECOMMENDATION	To best serve defendants, the PDSC should take a more proactive role in determining financial eligibility criteria.
	MANAGEMENT RESPONSE	Management concurs with the recommendation. Management will work during the 2023-25 biennium to take a more active role in partnership with OJD. This will include knowledge transfer of current methodologies and developing an agreement on how the agencies will cooperatively develop any necessary policy and statutory changes for future improvements. This discussion may also be part of the “Legislative Work Group” which has stated intentions of statutory changes occurring during the 2024 session.

Oregon Revised Statute (ORS) 151.485 states that the responsibility to determine the financial eligibility standards to determine when persons are entitled to be represented by appointed counsel at state expense belongs to the PDSC. Currently, the OJD is taking the active role in determining financial eligibility criteria and the PDSC has tacitly adopted OJD’s decision-making by not affirmatively developing policy in this sphere. The PDSC should take a more active and controlling role in annually determining the criteria for financial eligibility that the OJD would then be responsible for enforcing.

3	FINDING	Technology systems and data storage used by the OPDS are outdated, lacking in sophistication, and need immediate attention in order to meet strategic goals.
	RECOMMENDATION	Identify and obtain a new financial case management system that is appropriate for OPDS operations.
	MANAGEMENT RESPONSE	Management concurs with the recommendation. OPDS has worked to stabilize the current environment(s) with an eye toward modernization. The Agency has prepared a policy option package to be included in the 2023-25 biennial budget to develop and implement a comprehensive financial/case management system. The initial business case for the F/CMS anticipates implementation of the new system by June 2025.

The technology system and data storage currently being utilized by the OPDS are reliant on one person in the IT department to function, which creates a high level of risk to the ongoing operations for the agency and is unsustainable beyond its short-term needs. SQL and Microsoft Excel files are used to store highly sensitive information related to cases and clients. While SQL databases are a recent update from a more antiquated form of data storage, further progress to update and improve these systems is necessary until a new technology system can be obtained for the OPDS.

Accounts Payable

Review and test purchases made in the ordinary course of business to ensure purchase orders and payment remittances are timely, recorded correctly, and have appropriate authorization.

Findings	-
Observations	2
PIRs	2

1	OBSERVATION	Vendors cannot be removed from the current vendor listing due to technology constraints.
	RECOMMENDATION	Vendor listings should be updated so that vendors no longer authorized are categorized as inactive and are made unavailable to users.
	MANAGEMENT RESPONSE	Management concurs with the recommendation. OPDS has worked to stabilize the current environment(s) with an eye toward system replacement and modernization. The Agency has prepared a policy option package to be included in the 2023-25 biennial budget to develop and implement a comprehensive financial/case management system. As the agency develops system requirements, efficiency in data management, such as inactivating unused data elements, will be a strategy to mitigate future risks.

Two of the 95 Accounts Payable (AP) transactions tested were paid to vendors with “DO NOT USE” included in the Vendor Name. The OJD manages the vendor list used by the OPDS. If there are any changes to the vendor information such as a change of address or change in business name, the ODPS must send this information to the OJD to update, resulting in a new instance of that vendor instead of an edit the existing vendor. After review of additional supporting documentation, the audit team was able to determine these transactions were made to approved vendors at the time of transaction. The AP Department data was pulled as of the date of this audit, which included the updated Vendor Name for the two vendors that had been updated with the OJD.

Although these transactions appear to have been completed appropriately, there is a risk for the AP Department to use vendors that should have been removed from the vendor listing. We recommend all instances of “DO NOT USE” vendors be made inactive, and a control be added to the current technology system that will not allow the use of these vendors.

2	OBSERVATION	Manual entry and processing of data creates the opportunity for errors to exist in the data set.
	RECOMMENDATION	Design and implement edit checks for all data inputs.
	MANAGEMENT RESPONSE	Management concurs with the recommendation. OPDS has worked to stabilize the current environment(s) with an eye toward modernization. The Agency has prepared a policy option package to be included in the 2023-25 biennial budget to develop and implement a comprehensive financial/case management system. As the agency develops system requirements OPDS will look to mitigate risks by “catching” errors on front end data input rather than on the back end. This strategy is a tool in most modern systems that mitigates risks and uniformly enforces state policies

As part of our AP testing, the number of days between invoice date until remittance of payment was reviewed. For one of these selections, the stamp date was input into the accounts payable system incorrectly such that the year 2015 was hand-keyed in while the actual stamp stated the year to be 2018. Based on the data, it appeared three years were required to process the payment. After further inquiry it was determined the payment had been remitted timely, but the data entry error still remained in the system. In multiple instances, data was messy, misspelled, or lacking formal presentation. There appear to be no controls in place to prevent these manual entry errors from occurring. We have recommended a more sophisticated technology system be put in place. In the meantime, we recommend the OPDS design and implement edit checks for all its data inputs. We also recommend cleaning up existing errors in data before transferring historical data into the new software once it has been obtained.

3	PIR	At the time of testing, it was taking the OPDS between 45 and 50 days to remit payments due to a significant backlog of payment requests in the department responsible for this process.
	RECOMMENDATION	Until a new technology system is in place, the current processes should be reviewed and improved to tighten the timeline and decrease remittance closer to 30 days.
	MANAGEMENT RESPONSE	Management concurs with the process improvement recommendation. At the time of this response OPDS has reduced the backlog from 49 days in June 2022 to 38 processing days as of July 2022. OPDS anticipates these numbers to continue to improve and will soon approach the 30 day target. Ultimately, OPDS anticipates much improved processing times with the implementation of the previously mentioned Financial/Case Management System in the 2023-25 biennium. Modernized systems in state government when properly integrated with the SFMA (state accounting system of record) as well as modernized policies and procedures consistently improve processing times and mitigate risks in an automated fashion.

The audit team completed detail testing for 95 Accounts Payable (AP) transactions. These selections were made across all years under audit, from a variety of case types, vendors, and counties. Testing included, but was not limited to:

- Tying out payment amounts to AP aging, vendor information, review of approvals when applicable,
- Review of payment rates to determine if they are in line with agency payment standards or reasonable if a predetermined rate is unavailable for the expense, appropriate cutoff procedures were applied,
- Tying out AP transaction to supporting documentation, and
- Determining the number of days between invoice date to remittance of payment.

If the department was functioning correctly, with the current technology restrictions, the AP department would be able to get payments out within 30 days. This was used as our threshold while testing these transactions. The results of this test showed that in 2018, all payments tested were made in under 30 days. In 2019, 96.8% of payments tested were made in under 30 days. In 2020, 20% of payments tested were made in under 30 days and in 2021, 18.8% of payments tested were made in under 30 days.

Management believes that there are enough staff to handle the volume of work in the AP department, but they do not have the technology to process the payments efficiently. A more sophisticated technology system needs to be acquired for the agency; however, this could take some time to plan for, procure, and implement. In the meantime, we recommend the current procedures in the AP Department be reviewed and updated where possible to ensure timely remittance of payments.

4	PIR	Manual processes require a significant amount of printing and slow down the AP process.
	RECOMMENDATION	Automate manual processes to the extent possible and eliminate unnecessary steps.
	MANAGEMENT RESPONSE	Management agrees with this process improvement recommendation and has taken steps to eliminate unnecessary procedural steps that add little to no value. This is evidenced by the reduction in the existing backlog and fewer days necessary to process payments. Implementation of a new Financial/Case Management System in the 2023-25 biennium will bring a new opportunity to apply industry standards and best practices to payment processing. The Business Plan for the F/CMS anticipates modifying existing payment policies and practices to optimize the functionality of the modern system.

Many of the current AP processes include printing and manual filing of information received electronically. The time stamp in the previous issue was placed on a printed paper that was completed by hand. There are other examples of this type of processing throughout the AP department and the OPDS as a whole. We recommend automation wherever possible and elimination of any unnecessary steps, such as printing electronic files, hand stamping, and then scanning for electronic storage; many manual processes, such as hand stamps, can be performed electronically.

Case Support Services

Review and test CSS expenses to determine that proper review and authorization is in place, proper remittance accounting is being performed, and that costs are reasonable in accordance with contract terms.

Findings	1
Observations	1
PIRs	2

1	FINDING	CSS authorizations allow for unnecessarily long billing periods.
	RECOMMENDATION	Update CSS authorization policies to better suit the needs of the agency.
	MANAGEMENT RESPONSE	Management agrees with the recommendation. OPDS will work to modernize policies and transition to a reduced timeframe and take the opportunity to “re-age” the accumulated liability going forward. This will improve transaction processing times and provide an opportunity to improve the integrity of financial and expenditure forecasts. Management anticipates placing policy changes in this area near the top of the priority list and expects changes to begin by the June 30, 2023, the end of the current biennium. With that timing it will have a direct impact on the 2025-27 budget preparation and contribute to the successful configuration and implementation of the F/CMS.

Detail testing was performed on 150 CSS expense selections. These selections were made across all years under audit, from a variety of case types, vendors, and counties. Testing included, but was not limited to:

- Tying the amount approved to the amount requested and determining whether the amount approved was in line with the type of service being provided,
- Tying the amount approved to payment support, reviewing support for reasonableness based on case type,
- Reviewing providers for appropriate approval, determining whether payment was made within the OPDS’s required two-year timeframe, and
- Reviewing hourly rates based on contract agreements.

Current policy states CSS authorizations must start within two years of the authorization date of the CSS and must be billed against the authorization within two years of the last date of service. Only 18 of the 150 CSS expenses were released more than six months after the last date of service. None of the CSS expenses tested were released more than one year after the last date of service. Based on these results, the policy to hold CSS expenses open for two years after the last date of service is unnecessary. Having such a lengthy submission period makes it difficult for the OPDS to accurately accrue for these expenses each year and budget for them in future years, and causes funds to be encumbered for long periods of time based on uncertain and high estimates of potential costs. We recommend the OPDS update its policy to have CSS expenses submitted within six months of the last date of service.

2	OBSERVATION	Payments to attorneys for CSS expenses are not timely due to the policy requiring most case types to be closed prior to payment.
	RECOMMENDATION	Attorneys on any case should be allowed, and potentially required, to bill at least quarterly for more timely payment for their services and more accurate case progress data to the OPDS.
	MANAGEMENT RESPONSE	Management agrees with this observation. More frequent payments to vendors will enhance the ability for OPDS to project budgetary needs and outstanding liabilities. It will also better support the vendor cash flow which they need for sustainable operations. This change will require modifying current policy and is expected to be one of the higher priorities, as mentioned in the previous management response. This will in turn have a direct impact on the 2025-27 budget preparation.

Only capital murder cases are allowed to be billed prior to case closure under current policy. All other cases may be billed only after the date of case closure. This policy is outdated and originated at a time when understaffing in the agency was a significant issue. With cases running for multiple years and billings allowed to occur up to two years after the case is closed, payments are not timely, and accruals are often inaccurate based on the significant lack of data and assumptions that have to be made. We recommend the OPDS review this policy and the wording of the attorney contracts to ensure the best process is being used to pay CSS expenses timely for the benefit of both the attorneys and the OPDS.

3	PIR	CSS expense reports are inefficient and the process for review and authorization is cumbersome.
	RECOMMENDATION	Review the current process and make updates where needed.
	MANAGEMENT RESPONSE	Management agrees with this process improvement recommendation. Agency review of CSS expenses in this manner is currently a statutory requirement. OPDS will review and make recommendations for necessary policy and statutory changes to appropriately shift work validation and strengthen financial controls. OPDS anticipates opportunities during the 2023 and 2024 legislative sessions as changes to the delivery of public defense services are in elevated public discussions.

During interviews with management and staff, it was difficult to determine whether the pre-approval process for these types of expenditures is redundant or serves a purpose. The AP department uses some of the data for matching, but the manual processing, which includes monthly reports from attorneys being submitted manually and saved to Microsoft Access, is inefficient and would greatly benefit from enhancement. We recommend this process be reviewed and updated as needed for more efficient processing with an emphasis on removal of redundant and manual processes, potentially eliminating the pre-approval process altogether.

4	PIR	The policies surrounding travel and travel expenses have historically been lenient to nonexistent. The absence of firm, consistently enforced policies creates an opportunity for misuse of travel funds.
	RECOMMENDATION	Formally adopt Department of Administrative Services (DAS) policies and procedures related to travel and travel expenses, or revise them to suit the specific needs of the OPDS.
	MANAGEMENT RESPONSE	Management agrees with the process improvement recommendation and has already adopted DAS travel policies. OPDS recognizes the DAS travel policies as a best practice in government. OPDS will continue to look to revise policies to best meet any unique needs of the PDSC and OPDS and document the necessity of modifications.

During interviews with management and after further review of a recent internal audit report issued by the OPDS's internal auditor, current policies regarding travel expenses have not been updated for at least seven years and have not been consistently followed by the OPDS directors and senior management in the past. The internal audit report found instances of non-compliance with the current OPDS travel policies that included lack of evidence for approval of expenses, use of personal vehicles rather than state pool vehicles, and purchasing airfare at a higher cost than economy or coach. While no current misuse of the travel funds have been identified, there is potential for this if these policies are not updated and enforced.

Attorney Contracts

Review and test attorney contracts to determine that contract creation, authorization, execution, and emendation follow effective and efficient processes.

Findings	2
Observations	1
PIRs	2

1	FINDING	Contracted attorneys are not analyzed or regularly reviewed for the quality of their performance.
	RECOMMENDATION	Develop independent performance measures that establish expectations for each attorney, law office, or consortium that are documented in their contracts annually.
	MANAGEMENT RESPONSE	Management concurs with the recommendation. The current contracting model limits the agency’s ability to change and influence the quality of performance and collect relevant and important data points in a timely manner. The purpose to establishing and developing the “Compliance, Audit and Performance” model by the Legislative Assembly in the 2021 legislative session was to draw attention to this issue. ODPS is requesting enhancement to the agency in policy packages to further strengthen and develop performance measures which will better measure the effectiveness and efficiency of contracted services regardless of delivery strategy.

It is the PDSC’s primary charge to establish a public defense system that ensures the provision of public defense in the most cost-effective manner consistent with the Oregon Constitution, the United States Constitution, and Oregon and national standards of justice. Further included in the duties of the PDSC is the adoption of policies, procedures, standards, and guidelines regarding performance for legal representation. Our audit was unable to evaluate the OPDS’s compliance with this performance requirement as there are no current policies in place that necessitate an evaluation of representation, and the OPDS had no documentation to support whether any evaluations are taking place. We recommend the OPDS establish a metric system in order to evaluate the performance of its agency and its defense attorneys. In developing an evaluation system, attention should be paid to the American Bar Association’s Ten Principles of a Public Defense Delivery System, which constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.

2	FINDING	Attorney caseloads are impossible to track and confirm with the information the ODPS has available.
	RECOMMENDATION	Develop a process for reviewing reported caseloads for each attorney based on case type, time the case will go to trial, and case closure.
	MANAGEMENT RESPONSE	Management agrees that establishing a definition of what case closure means and better measure number of opened and closed cases during the contract period. This will allow OPDS to better define and evaluate open caseload levels among providers.

The OPDS relies on voluntary and periodic reporting from attorneys for caseload management. This leaves the OPDS vulnerable to an uneven allocation of casework and resources based on improperly tracked FTEs. The OPDS should make efforts to define a case count beyond the number of cases assigned in a given period. Case size and duration may vary drastically and OPDS is often not notified when open cases are closed or put on hold.

Previously, the OPDS paid attorneys based on the number of cases assigned. In a Sixth Amendment Center report from 2019, this was determined to be unconstitutional as the emphasis was placed on quantity of service and not quality of service to the defendants. The OPDS rewrote their payment methods to be based on FTEs in an attempt to address this issue, only assigning a certain number of cases to each FTE each year. However, when cases are assigned it is not always commensurate when casework is performed, which can lead to overloading attorneys in later years and a likely reduced level of quality given to their defendants. In order to provide the constitutional right of a quality defense, the OPDS must have insight into when casework is being performed in order to adequately apply their resources and assign cases to the most appropriate attorney.

3	OBSERVATION	A case type was miscoded in the OPDS database indicating an attorney was assigned a case at a level the attorney was not qualified for.
	RECOMMENDATION	Design and implement edit checks for all data inputs.
	MANAGEMENT RESPONSE	Management agrees with the observation and recommendation. As noted in previous responses, implementation of modern technology systems normally have edit checks driven by policy. As OPDS continues with the F/CMS project, edit checks will be part of the system requirements. OPDS looks forward to configuring the system to catch errors on the front end (data input) rather than on the back end (manual audit).

Detail testing was performed on a sub selection of attorneys while performing attorney contract testing. This testing revolved around attorney qualifications and included but was not limited to:

- Confirming the attorney had appropriate active licensing in the state of Oregon for the duration of the contract, and

- Reviewing proper documentation of qualification for case levels assigned.

In one instance of this testing, an error was found in the input for a case type that indicated an attorney had handled a case that they were not qualified for. Based on further inquiry, the OPDS was able to confirm the attorney did not mishandle a case, but the data did not reflect this and at no point was the OPDS aware that an error had occurred in the database. There appear to be no controls in place to prevent these manual entry errors from occurring. We have already recommended a more sophisticated technology system be put in place. In the meantime, we recommend the OPDS design and implement edit checks for all its data inputs.

4	PIR	Every contract process is different, creating a myriad of contract terms to track with individual law firms.
	RECOMMENDATION	Create a more standardized approach to annual contracts made with attorneys. Develop contract templates that favor the OPDS as much as attorneys.
	MANAGEMENT RESPONSE	Management agrees with the recommendation. ODPS will begin the next contracting cycle earlier in the fiscal year and be managed with a project management discipline. Goals and objectives for new contracts will be set earlier in the process and involve adequate stakeholder communication. Having a Designated Procurement Officer will improve uniformity in contracts and uniformity in the ongoing procurement of services. The function of the DPO allows program staff, namely the Chief Trial and Chief Juvenile attorneys to focus on strengthening contract language to the benefit of the clients across the entire state of Oregon.

Detail testing was performed on 60 attorney contract selections. These selections were made across all years under audit, covered private law firms, county defender associations and consortiums, and included both hourly and monthly contracts. Testing included, but was not limited to:

- Confirming the contract was complete and appropriately signed,
- Reviewing for proper documentation of each year under contract and inclusion of any or all amendments in the ODPS support files,
- Ensuring contracted rates are consistent with internal policies, and
- Confirming amounts paid to the attorneys did not exceed the contracted maximum amounts or contracted rates.

This testing covered contracts amounting to approximately \$60 million in payments from the OPDS throughout the years under audit. During review of these contracts, it became clear that there was no consistent application of a standardized contract for attorneys. Through discussions

with employees at the OPDS, we understand that efforts are already being made to improve this issue.

5	PIR	Attorneys appear to be paid below market average. OPDS has noted that attorney turnover is high and development of the next generation of attorneys is proving challenging.
	RECOMMENDATION	Provide higher rates for defense work closer to market rates. Lower attorney turnover will payoff over time as fewer newer attorneys are needed to be recruited and trained annually.
	MANAGEMENT RESPONSE	Management agrees with this process improvement recommendation and is actively working with the Legislature to make changes to bring pay parity to the public defense system. Additional requests and recommendation will be included in the 2023-25 budget.

During interviews with management, it has become apparent that retention of attorneys and coverage of current caseloads has become a problem for the OPDS. Hiring and retaining quality employees has become an issue faced by many industries across the state of Oregon. We agree with management in their determination that the rates being paid out on current attorney contracts appears to be below the market average for attorneys performing similar work. We also agree that high turnover rates can have a drastic effect on future capacity to provide the necessary services to the public. We recommend the ODPS do what it can to close the gap between its current contract rates and market average rates.

Service Contracts

Review and test service contracts to determine that contract creation, authorization, execution, and emendation follow effective and efficient processes.

Findings	2
Observations	-
PIRs	1

1	FINDING	The sole source method of contract creation is used too frequently, particularly given the lack of guidance around when sole source contracts should be made compared to RFPs or competitive bidding.
	RECOMMENDATION	Adopt DAS policies and procedures related to contract procurement, or revise to suit the specific needs of the OPDS.
	MANAGEMENT RESPONSE	Management agrees with the recommendation and has included a policy option package requesting the establishment of a Designated Procurement Officer in OPDS. Position requirements and available training opportunities as well as inclusion of applicable DAS policies and procedures, as appropriately modified for specific OPDS needs, will improve the integrity of OPDS procurements. OPDS recognizes adoption of best practices improves integrity and ultimately conserves valuable resources that can be better used in program delivery.

Detail testing was performed on 8 of the 36 service contracts entered into during the years under audit. Documentation was made available by the OPDS staff. Testing included but was not limited to:

- Confirming the contract was complete and appropriately signed,
- Reviewing for proper documentation of each year under contract and any or all amendments and included in the ODPS support files,
- Ensuring payments to the contracted vendor were made after the start date of the contract,
- Confirming amounts paid to the vendors did not exceed the contracted maximum amounts or contracted rates, and
- Reviewing contract rates for reasonableness.

Further review was completed on each selected service contract for appropriate procurement of services. Sole source method of contract was utilized in all selected contracts, though documentation for this determination was limited or missing entirely. The OPDS is legally exempt from following DAS policies related to procurement. In order to maintain independence from the State related to public defense, the State cannot be the enforcing authority over the OPDS's ability to conduct business. However, the fact that the ODPS is legally exempt from the general procurement process does not mean the procurement process is not a best practice for conducting the agency's procurement needs. Competitive bidding and issuance of RFPs can often create cost

savings and improve final product quality. We recommend the OPDS review and adopt DAS procurement guidelines as a best practice, regardless of legal exemption (also see Policies and Procedures issue 1).

2	FINDING	The position of Executive Recruiter was filled by an individual with a preexisting connection to a board member, potentially circumventing traditional procurement practices that mitigate the risk of improper selection of vendors based on personal biases.
	RECOMMENDATION	Adopt DAS policies and procedures related to contract procurement, or revise to suit the specific needs of the OPDS.
	MANAGEMENT RESPONSE	Management agrees with the recommendation and has previously discussed the finding with the PDSC based on an internal audit. Management does not believe any future actions are necessary for this particular incident. The designation and recruitment of a Designated Procurement Officer and the implementation of procurement best practices directly mitigates risk of findings in the future.

Further review was completed on each selected service contract for appropriate procurement of services. Interviews with management and further review of a recent internal audit report issued by the OPDS’s internal auditor revealed an instance where the Commission selected a vendor in 2021 with whom a Commissioner disclosed a potentially “less-than arms-length relationship”. We recommend the OPDS review and adopt DAS procurement guidelines as a best practice, regardless of legal exemption (also see Policies and Procedures issue 1).

3	PIR	In one service contract tested, lack of available documentation made it unclear whether the correct rates were being paid to the vendor.
	RECOMMENDATION	Ensure proper documentation of any changes to contracted rates with a signed amendment to the contract.
	MANAGEMENT RESPONSE	Management agrees with the recommendation and is working to restructure the procurement, contracting and contract administration process in OPDS. This includes a policy option package requesting a Designated Procurement Officer position and training for contract administrators. This training is already statutorily required in the Executive Branch as an effort to address audit findings such as this, and other contract administration shortfalls, and fulfill the recommendation. OPDS recognizes implementing this best practice mitigates a great deal of future risks.

One service contract entered into with the OJD did not have proper documentation for amendments and the payments made to the OJD did not tie to the contracted rates. The OPDS Operating Payment Request Forms for the three payments made on this contract were reviewed. Included in each form is a detail of the monthly rates that make up the total quarterly payment.

July and August were paid at the agreed upon rate of \$41,293.60 per month. In September, a note was included in the Special Pay Instructions box on the request form stating, "Per HR on 8/23/21, The IT Contract will be reduced by \$6,876 per month for a new cost of \$34,417.00 per month starting September 1. Charged \$34,417.60 for September \$41,293.60 minus \$6,876 = \$34,417.60". In the latest signed version of the contract (Amendment #3), there was a clause allowing a change to the rate: "When OJD is notified in writing that OPDS has assumed the CIO duties, OJD shall adjust the monthly billing rate to reflect the reduction in duties from a CIO to an ITS 4 (Lead). As a result of the change in duties, there will be a corresponding reduction in the per monthly cost". After further discussion with management, it was discovered that this was the reason for the decrease in contracted rates, though there was no documentation of this change in the contract file. We recommend appropriate contract documentation be obtained before contract rates are changed.

Procurement

Review and test expenditures made by the agency to determine appropriate approval and proper documentation of transactions in place in accordance with current policies and procedures.

Findings	3
Observations	-
PIRs	-

1	FINDING	Lack of policies surrounding procurement of operational expenditures creates a risk of potential abuse or error.
	RECOMMENDATION	Adopt and implement DAS policies and procedures related to operational procurement with adjustments made as deemed necessary.
	MANAGEMENT RESPONSE	Management agrees with the recommendation as previously discussed.

The combination of lack of policy and exemption from Oregon statutes has led to an inconsistent process followed by the OPDS. Discussions with management indicate efforts have been made to apply DAS procedures surrounding operational procurement intermittently. Formal adoption of DAS procedures would provide structure and control to the procurement process, protecting both individual employees and the OPDS as a whole (also see Policies and Procedures issue 1).

2	FINDING	The small size of the procurement department reduces the effectiveness of internal controls.
	RECOMMENDATION	Formalize a process to review work and separate incompatible duties for the sake of enhanced internal controls.
	MANAGEMENT RESPONSE	Management agrees with the recommendation. OPDS will establish controls for appropriate separation of duties.

The procurement department currently consists of only one person, the Facilities Manager/Procurement Services position. At times, that person is responsible for both requesting and receiving items needed by the OPDS, which could include things such as laptops and other high-value items. In cases where the Facilities Manager/Procurement Services position requests an item, a second person, such as the Executive Director or Deputy Director, should approve the purchase. When receiving items that were requested by the Facilities Manager/Procurement Services position, a secondary person should review the purchase order, bill of lading, and the physical items received, if possible, to ensure all items requested have been received and accounted for.

3	FINDING	Small service contracts are not being tracked or updated on a regular basis.
	RECOMMENDATION	Review all current service agreements and update those that are outdated. Adopt and implement DAS policies and procedures related to operational procurement with adjustments made as deemed necessary.
	MANAGEMENT RESPONSE	Management agrees with the recommendation and has adopted DAS policies and procedures for operational type procurements. OPDS will appropriately modify policies to best suit the agency's unique needs.

Detail testing was performed on 25 operational expenditure selections. These selections were made across all years under audit and covered all types of operational expenditure accounts. Testing included, but was not limited to:

- Tying the transaction amount to payment support, reviewing support for reasonableness, and
- Reviewing for proper documentation approval according to OPDS policies.

One selection was for janitorial services. For this selection, there was no way to determine how the monthly rate was agreed upon. OPDS had a contract on file that was acquired in 2012 with a monthly set price of \$1,245. The monthly price at time of testing was \$1,705 according to the invoice reviewed. OPDS was unable to provide an updated contract with the service provider, even though they have been under contract with this vendor for 10 years. Based on conversation with management, if OPDS was following the DAS policies and procedures related to operational procurement, the agency should be going through the OregonForward program for janitorial services and contracting with one of their vendors (also see Policies and Procedures issue 1).

ACKNOWLEDGEMENTS

Over the course of this audit, with the assistance of the OPDS, we conducted over a dozen interviews, worked frequently and closely with OPDS staff, and were provided with hundreds of documents. The individuals at OPDS were active, helpful, and eager to explore opportunities for improvement. We appreciate the courtesy and cooperation we received from the management and staff in the OPDS and thank them for the effort and time they extended to provide us with requested information throughout the course of the audit.

We would also like to thank the agency's Internal Auditor for their support surrounding review of the OPDS and facilitation of our audit. The combination of their prior experience with OPDS and assistance familiarizing the audit team with intricacies specific to the agency was instrumental to the timely completion of the audit.



OREGON OFFICE OF
**Public
Defense
Services**

PDSC Financial and Case Management System

Project Status Report – September 2022

Project Status Report – FCMS Project

Project Status Report for:	Project Sponsor	Week/Month Ending:	September 2022
Project Sponsor(s):	Brian Deforest	Program/ Project Manager(s)	Brandi Meyer Krystal Styles
Project Purpose:	Re-initiation of the planning phase of the Financial and Case Management information technology project (HB 5202 (2022)).		
Project Budget	\$ 743,588	Funds Expended to Date:	\$ 94,963.00
Project Schedule:	Start Date: 5/2/2022	Est. Completion Date:	6/30/2023

Item	Current Status	Prior Status	Status Notes
Overall Project Status	YELLOW	YELLOW	<p>The re-initiation efforts for the FCMS Project are on track and being managed with the Project Management Body of Knowledge (PMBOK) framework. The Public Defense Services Commission (PDSC) has hired two certified Project Management Institute (PMI) Project Management professionals to lead the re-initiation efforts. The Project team began project work on May 2, 2022 and began the document refresh process of all previously written project documentation.</p> <p>The Project team has identified members for the Governance Committee and effectively kicked off the project re-initiation with that group on July 11, 2022. The identification of internal and external steering committee members is underway and primarily identified. Additionally, the Project team found it imperative to create an Information Technology Committee with membership directly appointed to Commission members.</p> <p>The refinement of the FCMS Project Documentation was approved by the Governance committee at the August 2022 meeting. The Project team is finalizing all QA RFP documentation with DAS to ensure it meets all necessary requirements and is expected to be released on September 9, 2022.</p>
Scope	YELLOW	YELLOW	The PDSC is to report to the Joint Legislative Committee on Information Management and Technology and the Joint Committee on Ways and Means during the 2023 legislative session on the status of the re-initiation of the planning phase of the FCMS project. The report shall include: a detailed business case, project timeline, and cost estimates. The Commission is to follow the Stage Gate or similar discipline process related to information technology projects, including development of key artifacts and independent quality assurance oversight.
Schedule	YELLOW	YELLOW	Slight delay on the QA RFP release. The RFP will be released one week later than originally anticipated.
Budget	GREEN	YELLOW	On track
Project Risk	YELLOW	YELLOW	The re-initiation efforts of the FCMS project carry a slight risk to the pending approval for the implementation of the new system. Risks that can be directly attributed to future approval of the FCMS project are stakeholder buy-in, scope, budget and schedule. The PDSC is in desperate need for a system that can manage multiple variables of public defense and the timeline in which this solution is needed is quickly approaching. Since there is currently no budget committed to implementation of a new system, that also poses a larger risk to the project moving to the next stage in the stage gate process, further delaying the overall project.
Legend			
G	Project scope, budget and schedule on track. No help needed.	Y	Project Scope, Budget, and/or Schedule at Risk. Plan in place to mitigate, help may be needed.
			R Project Scope, Budget and/or Schedule Impacted. Help is needed.

Project Status Report – FCMS Project

Budget/Schedule Performance <Include narrative and \$/date information regarding planned vs. actual budget/schedule performance for the status reporting period along with information on re-baselining activities including dates>

The budget currently attributed to this project comes from HB 5202 (2022) and is set to be expended by June 30, 2022. As directed by HB 5202 the project budget is planned as follows:

- Two (2) positions (1.26 FTE) for re-initiation of the planning phase of the FCMS Project
- Quality Assurance Oversight

Currently the budget has been allocated to the personnel resources, with an RFP pending to be released September 9, 2022.

PDSC is requesting for the 2023-25 Biennium funding for the Project to be implemented as well as the permanency of the two positions from HB 5202, and the addition of one FTE Information Technology Specialist 4 (1 FTE ITS 4) to provide ongoing project support as well as technical support as the system becomes operational. Upon approval of this request and procurement of a systems vendor the project will go through a re-baselining process.

Key Accomplishments <List key accomplishments for the Week/Month – include key decisions>

Area	Accomplishment /Activity
Governance	Governance Committee has been identified and properly kicked off. The Committee approved all project documentation (Business Case, Scope, and Governance Document) during their August 2022 meeting.
Project Management	The Project Management team has refreshed the Business Case, Governance Plan, and is working on refreshing the Scope document, Project Timeline, and Cost Estimates, as well as drafting the QA RFP.
Communications	The Project team will produce monthly status updates of overall project status for the Governance Committee to approve. All other communications (Governance Committee, IT Committee, and the Steering Committee) will occur through email correspondence, memo's, or verbally during committee meetings.
Procurement	The Project team has completed the refresh phase of critical project documents, so they are available for the procurement process of contracting with a quality assurance vendor.
Data Conversion	N/A at this time
Training	N/A at this time
Change Management	N/A at this time
Quality Management	N/A at this time

Upcoming Activities <List key upcoming activities and target start/completion dates>

Dates	Activities
5/2/2022-8/12/2022	Document Refresh – Business Case, Governance Plan, Scope Document, Project Timeline, and Cost Estimates.
9/9/2022 – 9/30/2022	Release Quality Assurance RFP
8/1/2022 9/1/2022 10/3/2022 11/1/2022 12/1/2022	Monthly Status Reports to: Governance Committee IT Committee Steering Committee Legislative Fiscal Office (LFO) – release for review quarterly.
9/30/2022 10/7/2022	QA RFP Closes
10/7/2022 10/14/2022	QA Contract Decisions
10/14/2022 10/21/2022	QA Contract Signed
10/14/2022-11/1/2022	Project Management team to work with QA vendor on Project Documentation, Project structure, and Upcoming practices to push the project through Stage 1 Initiation to Stage 2 Solution Analysis and Planning.
11/1/2022-1/31/2023	Prepare report for Oregon Legislature's 2023 Session.
TBD	Prepare RFP for System Vendor
TBD	Begin Stage 2 Solution Analysis and Planning

Project Status Report – FCMS Project

Stage Gate Progress <Identify current stage gate status and pending OSCIO endorsement dates>

****UPDATE****

The QA RFQ went out as scheduled on September 9th with the expected close date of September 30th. Procurement gave a status on Monday the 26th that only one vendor had proposed, and that one other had reached out requesting if there was any consideration on pushing out the due date. As this had no immediate threat to project schedule, the Project team agreed that pushing out the due date to close October 7, 2022 would allow for the time needed for more requested to be submitted.

The FCMS Project is in the early stages of Stage 1 Initiation with the project refresh. The team projects that the project will be ready for endorsement to Stage 2 by December 1, 2022. Although, a budget has not been adopted for the implementation process of the FCMS project, the Project team believes that all pertinent documentation and progress will be sufficient to bring before the Legislative Committee on Joint Ways & Means during the December 2022 Emergency Board hearing.

With all project documentation approved by the Governance committee, the Project team will be ready to release the QA RFP by September 9, 2022. This is one week later than the previously predicted timeline as the project team became aware of a document (Statement of Work) that is required for QA RFP submission. This document was completed on August 25, 2022 and will be sent to DAS procurement for final review by September 6th, 2022.

Key Issues <List the key issues from the issues log that leadership needs to be aware of and/or may be involved in resolving>

None at this time

Risks <List any risks from the Risk log that could impact scope, schedule, budget, quality or impact the success of the project>

None at this time

Independent Quality Assurance Report <Include overall assessment of project health from most recent QA report and list (in bulleted form) the top 3-5 risks identified in that report>

None at this time

Defect Tracking (if applicable)

Milestones <List status of project deliverables and milestones >

Milestones and Deliverables – Plan and Architect Stages		Status (RYG)	Baseline Due date	% Complete	Date Delivered	Review Due
S1.1	Governance Plan	G	8/15/2022	100%	8/15/2022	8/12/22
S1.2	Business Case	G	8/15/2022	100%	8/15/2022	8/12/22
S1.3	Scope Plan	G	8/15/2022	100%	8/15/2022	8/12/22
S1.4	Cost Estimate	G	8/15/2022	100%	7/29/22	8/12/22
S1.5	Project timeline	R	8/15/2022	95%		8/12/22
S1.6	QA Vendor Selection	R	9/16/2022	50%		8/12/22

Legend

S1.X - Stage Gate 1

S2.X - Stage Gate 2

S3. X - Stage Gate 3

S4.X - Stage Gate 4

Key Project Decisions <identify any key project decisions made and approved (or not approved) during the review period by project sponsors, management, and governance.>

Project Status Report – FCMS Project

No.	Key Decision	Review Period	Approved/Not Approved	Approving Committee
1.	Cost Estimate to be reevaluated	7/11/22-8/12/22	Approved	Governance
2.	Provider Involvement for project will be highly requested	7/11/22	Approved	Governance
3.	Enterprise Information Services involvement in stage gate process/approvals	7/11/22 – 8/9/22		Governance
4.	Change Management is a critical component moving forward and will need to involve Wendy Heckman (HR) in the process	7/11/22	Approved	Governance
5.	Add Eric Deitrick to Governance Committee to represent General Counsel.	7/11/22	Approved	Governance

Points for Management Attention <identify any issues, risks, variations, and/or actions that will require action by project sponsors or governance.>

Continued support of project work to ensure timelines are met and not delayed.
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