

ANALYSIS

Item 1: Public Defense Services Commission Comprehensive Remediation Plan

Analyst: John Borden

Request: Acknowledge receipt of a report on a comprehensive remediation plan.

Analysis: The budget report for HB 5532 (2023), 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 Interim Joint Committee on Ways throughout the fall of 2023, the Joint Committee on Ways and Means during the Legislative Session in 2024, and quarterly thereafter to the Legislative Emergency Board, on the Commission's restructuring and modernization efforts, including updated caseloads, financial forecasts, and procurement activities including contract amendments and the alignment of contracting with the biennial budget process.

In addition, reporting by the Commission is to include, and be based upon, a comprehensive remediation plan adopted by the Commission and that includes the following elements: (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; and (10) Expected Outcome – identify what outcome is expected from the recommended option and how will it be measured.

The genesis of the budget note was the Legislature's desire to understand and support PDSC's efforts to restructure and modernize the agency. A modern and well-functioning administrative agency is essential to the effective delivery of state public defense services. A comprehensive remediation plan has been requested both formally and informally during the past two legislative sessions and at multiple meetings of the Legislative Emergency Board.

PDSC's current report is comprehensive and well considered and stands in marked improvement over prior efforts. The Commission is planning to adopt the remediation plan framework at the Commission's October 26, 2023 meeting.

PDSC faces four competing categories of planning and implementation efforts, which are:

1. Remediation Plan - address administrative and governance deficiencies of the agency;
2. Unrepresented Defendant/Persons Crisis Plan (SB 337, 2023) - resolution of the crisis;

3. System Reform Plan (SB 337, 2023) - reform of the current public defense system; and
4. Public Defense System Long-term Plan - begin to address other outstanding issues related to modernizing the public defense system (e.g., caseload standard, recruitment, retention, compensation, etc.).

The current version of PDSC's comprehensive remediation plan marks the first critical step in a long-overdue defining of the administrative and governance issues and challenges facing the agency. PDSC's report outlines, in four categories, 25 of the agency's top issues to be remediated. These issues are framed by an overarching "unified goal:"

...to restore credibility in the Commission as an efficient and effective administrator of Oregon's public defense system by stabilizing agency administration. Ensuring constitutionally competent and effective legal representation for persons eligible for a public defender.

The categories span from Oversight and Leadership, Agency Remediation, Efficiency and Effectiveness, to Accountability and Transparency. PDSC's efforts to develop a remediation plan are being complemented by an ongoing internal management review and the state's leadership training program. PDSC states that the remediation plan will begin going through future iterations, as the agency works to both complete the remaining elements of the plan and then begin implementing the plan. The Legislature can expect an updated plan to be reported to the Joint Interim Committee on Ways and Means in January of 2024.

PDSC has developed a framework that articulates the breadth of the systemic issues facing the agency and leaves no misunderstanding about the changes that are required. Decisive action by PDSC will be needed once solutions are identified. Competing planning and implementation efforts will challenge, but should not impede, the more urgently needed remediation of the agency's administrative and governance issues, as such remediation is a prerequisite to the success of all other initiatives.

Recommendation: The Legislative Fiscal Office recommends that the Joint Interim Committee on Ways and Means acknowledge receipt of the report.

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Public Defense Services Commission
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Request: Report on a Senate Bill 5532 (2023) Budget Note on the comprehensive remediation plan 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 report addressing the Commission's restructuring and modernization efforts, in compliance with a Budget Note included in the Budget Report for Senate Bill 5532 (2023).

In this report, PDSC takes the first step towards a comprehensive remediation plan by identifying core areas of planning focus for the agency: stabilization of the agency and its primary administrative functions; the unrepresented persons crisis; systemic reform; and setting long-term goals for the Commission.

PDSC identifies 25 issues the Commission considers to be the highest priority for remediation and resolution. These are framed by what the Commission is setting as its "unified goal," which is to restore the Commission's credibility as "an efficient and effective administrator of Oregon's public defense system" and to "ensur[e] constitutionally competent and effective legal representation for persons eligible for a public defender."

This framework provides a useful map to guide PDSC's development as they implement the wide-ranging changes directed by the Legislature in Senate Bill 337 and continue to navigate the unrepresented defendant's crisis ongoing in Oregon.



Oregon

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October 13, 2023

Senator Elizabeth Steiner, Co-Chair
Representative Tawna Sanchez, Co-Chair
Interim Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairs:

Nature of the Request

The budget report for SB 5532 includes Budget Note #1: Comprehensive Remediation Plan

The Public Defense Services Commission (PDSC) is directed to report to the Interim Joint Committee on Ways and Means throughout the fall of 2023, the Joint Committee on Ways and Means during the Legislative Session in 2024, and quarterly thereafter to the Legislative Emergency Board, on the Commission's restructuring and modernization efforts, including updated caseloads, financial forecasts, and procurement activities including contract amendments and the alignment of contracting with the biennial budget process.

In addition, reporting by the Commission is to include, and be based upon, a comprehensive remediation plan adopted by the Commission and that includes the following elements: (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; and (10) Expected Outcome - identify what outcome is expected from the recommended option and how will it be measured.

Agency Action

PDSC have identified the top issues for the Commission's comprehensive remediation plan. The attached report outlines those issues, discusses the process the Commission took to arrive at these issues, and the next steps the Commission will take to submit a full report to the Legislature during January 2024 Legislative Days.

Action Requested

The Public Defense Services Commission requests acknowledgment and receipt of the attached report.

Legislation Affected

No legislation is affected.

Sincerely,

A handwritten signature in grey ink, appearing to read 'JK', is positioned below the 'Sincerely,' text.

Jessica Kampfe
Executive Director

Cc:

Amanda Beitel, Legislative Fiscal Officer
John Borden, Principal Legislative Analyst, LFO
Kate Nass, Chief Financial Officer
Lisa Fox, Policy and Budget Analyst, CFO

Public Defense Services Commission
Remediation Plan I
October 13, 2023

The Legislature has repeatedly requested that the Public Services Defense Commission provide a remediation plan. However, the Commission has not yet provided the Legislature with this plan. During September 2023 Legislative Days, the Commission provided a report outlining the agency's proposed reporting structure and a process by which the Commission would provide a remediation plan. PDSC believes that this report represents tangible progress toward achieving the direction of the budget note. As the budget note states, 'reporting by the Commission is to include, and be based upon, a comprehensive remediation plan.' To accomplish this, the Commission must first have a remediation plan. Rather than providing an updated version of the last report, the agency and the Commission Chair have worked closely to develop a remediation plan. The remediation plan is a living document, for version control, this is named version I.

PDSC is facing four categories of planning efforts. First, the Remediation Plan focuses on stabilizing the agency. By addressing the steps that need to happen to become a standard, fully functioning agency. Second, the Unrepresented Persons Crisis addresses what is happening to ensure representation for all persons eligible for public defense services. Third, systemic reform is how the Commission implements public defense system reforms, primarily those outlined in SB 337 (2023). Fourth, setting long-term goals for the Commission. It is apparent that the Commission has been conflating these four planning areas, which is one of the barriers preventing the creation of a remediation plan.

Looking at PDSC's issues through this framing, issues that need addressing in the remediation plan are more easily identified. It also becomes clear that there are some major themes that these issues fall into: oversight and leadership, agency remediation, efficiency and effectiveness, and accountability and transparency.

Oversight and leadership are predominantly about agency governance through the Commission. Has the Commission adopted a strategic plan? Is the Commission providing oversight to the agency? Is the Commission taking responsibility for the issues within public defense?

Agency remediation is whether the agency is operating in conformity with the standard practices of state government. For instance, is the agency following standard budgeting practices? Does it have standard HR recruitment and hiring processes? Does the agency regularly review, and the Commission approve updated policies and procedures that govern the agency?

Efficiency and effectiveness mean that all people eligible for public defense services receive effective counsel, while also being good stewards of taxpayer dollars. Are programs and activities coordinated and operated efficiently and effectively? Has PDSC fully implemented a Compliance, Audit, and Performance function to ensure quality within the system? How is PDSC improving its data metrics so it can make data-informed decisions?

Accountability and transparency relate to how transparent, open, and accountable the Commission's actions and processes are. Is the Commission adhering to Legislatively adopted budgets and policies? What does the complaint and reporting process look like? Is the agency following the authority of the Commission?

These are the overarching themes that the Commission will look toward when identifying future remediation topics, as well as identifying issues and setting direction for the agency. These issues work towards a unified goal: to restore credibility in the Commission as an efficient and effective administrator of Oregon's public defense system by stabilizing agency administration. Ensuring constitutionally competent and effective legal representation for persons eligible for a public defender.

Below are the top 25 issues identified for the Commission's Remediation Plan grouped by theme and listed in priority order. Please note that many of these priorities are addressed simultaneously, so giving numerical ranking to the issues is impractical. CAP issues are also identified separately under the Efficiency and Effectiveness theme, as they are an entirely separate process.

Oversight and Leadership

- Cultivate a unified relationship between the Commission and the agency with clearly defined roles and authority.
- Provide Commission oversight in addressing issues within the public defense system.
- Demonstrate decisive leadership and decision-making.

Agency Remediation

- Perform a gap analysis to assess where goals are being met and identify needs (i.e., positions/expertise, IT deficiencies, agency coordination).
- Review and update statutes, policies, and procedures that govern the commission and agency.
- Adhere to standard budgeting, financial management, and accounting practices.
- Adhere to hiring and human resource management professional standards, including providing an accurate and updated organizational chart, competitive recruitments, up-to-date job descriptions, and performance reviews.
- Adhere to state government procurement practices, including competitive contracting processes.
- Improve agency culture and morale to become an employer of choice.

Efficiency and Effectiveness

- Ensure programs and activities are coordinated and operated efficiently and effectively.
- Procure and implement a financial and case management system that allows for more efficient financial processing and collection of statewide data relating to caseloads and case-related activities.

- Use data for forecasting, procurement, budgeting, quality control, and performance management in a manner that allows quantitative decision-making.
- Ensure vendor payments are accurate and timely to meet state standards.
- Develop and adopt a mission-driven strategic plan centered on a regulatory agency focused on persons eligible for public defense services.
- Develop processes for internal quality control reviews and auditing capabilities.
- Implement internal data analytics capability beyond reporting to include research and complex data analysis.
- Evaluate current data security and independence.
- Evaluate the current IT structure and identify needs.

Compliance, Audit, and Performance

- Develop a Compliance, Audit, and Performance program plan that can independently monitor, measure, and report on the quality of public defense being provided by PDSC.
- Develop standards for public defense providers based on national best practices and take into consideration meaningful measurement of representation quality and performance.
- Develop processes for external quality control reviews and auditing capabilities.
- Employ processes to enforce quality control measures and provide remediation to those below standards, including training and policy review.

Accountability and Transparency

- Demonstrate accountability for taxpayer money by adhering to a legislatively approved budget and following legislative direction.
- Build relationships and break down silos with public safety partners, stakeholders, and other state agencies.
- Create a standard, transparent and accountable complaint process.

Issue identification is the first step in PDSC's remediation plan. The agency will develop a 10-step problem identification framework for the above issues and present them to the Commission at the November 16th meeting for approval. The Commission will then present PDSC Remediation Plan II to the Legislature in January. This plan is essential to provide the Legislature a clear picture of Commission's progress and future needs. The Commission will use the remediation plan to prioritize needs, evaluate current resources, and make requests to the Legislature for resources that may be required to implement the remediation plan.