

ANALYSIS

Item 10: Public Defense Commission Reorganization

Analyst: John Borden

Request: Authorize the transfer of General Fund between budgeted divisions for the Public Defense Commission to implement position actions related to an agency-wide reorganization and authorize the establishment of four permanent positions (1.33 FTE).

Analysis: The Public Defense Commission (PDC) is requesting a series of organizational changes to the agency's 2023-25 legislature approved budget. PDC reports that the reorganization actions requested below will produce a net \$33,769 General Fund cost savings for the current 2023-25 biennium, and a \$1.7 million General Fund cost for the 2025-27 biennium:

- Establishment three new sections or budgetary units;
- Transfer six misaligned positions and associated budgetary authority;
- Transfer 16 positions and associated budgetary authority;
- Reclassify seven positions and associated budgetary authority;
- Abolish one existing position and reduce associated budgetary authority; and
- Authorize the establishment of four new positions (1.33 FTE) and associated budgetary authority.

The up-to-date organizational structures of agencies are important for a variety reasons, which include: an operational understanding of the agency for both employees and stakeholders, support for supplemental resourcing, understanding management-to-staffing ratios, programmatic alignment with budgetary structures, and alignment with the appropriation structure in Oregon Law, among others. Since the 2021 Session, the legislature has undertaken a deliberative and detailed effort to reorganize and modernize PDC's organizational structures.

While PDC's efforts to update the organizational structure of agency is commendable there are several issues related to the request that require further deliberation, including:

- The budgetary action being requested represents a net reduction to PDC's General Fund budget. The Emergency Board lacks the legal authority to reduce agency budgets. Rebalances must result in a net-zero transfer between budgeted divisions.
- Select requested actions, such as the establishment of new section and the reclassifications of positions, fall within the agency's administrative authority and do not require the approval of the Emergency Board, if self-funded.
- Select actions have already been taken by PDC in the agency's 2025-27 current service level and may conflict or create a misalignment with the actions the agency is requesting of the Emergency Board.
- Select actions, such the reclassifications and the establishment of positions, are unsupported with documentation justifying the change(s). Additionally, the request was not accompanied by an updated organizational chart.
- The request repurposes or abolishes positions that were previous approved by the Legislature or the Emergency Board for specific purposes.

While the request has elements or components that should advance, and need to advance, there are legal and procedural concerns with the current request. These issues can easily be remedied by the agency given time for further consideration. There is, however, one element of the request in need of more urgent consideration pertaining to the agency's procurement staffing.

Historically, public defense at the trial court level has been accomplished primarily through a state-funded and state-administered contracting system with local providers ("community-based public defense"), who are a combination of nonprofit public defender offices, consortia of attorneys or law firms, private law firms, or individual attorneys for legal services. This model also includes the Parent Child Representation Program (PCRP). In addition to community-based provider contracts, PDC also has statewide contracts for post-conviction relief/habeas cases, post-conviction relief appeals, juvenile appeals, civil commitments/Psychiatric Security Review Board, immigration, forensics justice, and disability rights cases. Contracts, as well as any contract amendments, are negotiated by the agency and approved by the Commission. Biennially, such contracts total in the hundreds of millions of dollars.

The Legislature has made continuing investments in Procurement Section as this section was understood to support standard procurement activities of state government, including, drafting of contracts and contract amendments, contract administration, evaluation of contractor performance and the quality of services provided, offering technical assistance, and adherence to the agency's procurement policies and procedures presumably established in lieu of state law.

However, PDC has been reporting that the agency has no procurement and contracting specialists. Contract administrators (Program Analyst) have been responsible for support contractors and contract administration (e.g., helping facilitate communication and problem-solving when issues arise). PDC notes that there is a conflict of interest between procurement and program administration. The addition of procurement staff responsible for writing and administering contracts would remedy this issue. It is also important to note that agency will transfer from the judicial to the executive branch of government with an operative date of January 1, 2025 (SB 337, 2023). With the transfer the agency will become subject to state procurement law and the oversight of the Department of Administrative Services.

To resolve the agency's procurement staffing issue, PDC's reorganization includes the following request:

- Authorize the establishment of three permanent full-time Program Analyst 4 positions in the Compliance Audit and Performance Division - Trial Criminal Compliance Section (0.99 FTE);
- Transfer one permanent full-time Program Analyst 4 from the Administrative Services Division - Procurement Section to the Compliance Audit and Performance Division - Trial Criminal Compliance Section;
- Downward reclassify three permanent Program Analyst 4 positions to a permanent Procurement Analyst 2 position and two permanent Procurement Analyst 1 positions; and
- Downward reclassify a permanent Manager 4 to a Manager 3 (Procurement Manager) in the Administrative Services Division - Procurement Section.

The Legislative Fiscal Office (LFO) recommends that PDC's procurement staffing request be approved with the following modifications for which the net cost would be \$301,386 General Fund and three positions (0.99 FTE) for the 2023-25 biennium and a 2025-27 biennium cost of \$1.2 million General Fund and three positions (3.00 FTE), net of any savings resulting from the downward reclassifications:

- Authorize the establishment of three permanent full-time Program Analyst 4 positions for the Administrative Services Division.
- Defer the transfer of one permanent full-time Program Analyst 4 from the Administrative Services Division - Procurement Section to the Compliance Audit and Performance Division. This recommendation keeps procurement-related positions consolidated within the Administrative Services Division – Procurement Section pending further analysis of the proposed organizational structure for both procurement and contract administration functions.
- Approve the downward reclassification of three permanent Program Analyst 4 positions to a permanent Procurement Analyst 2 position and two permanent Procurement Analyst 1 positions to align position classifications with procurement work.
- Approve the downward reclassification of a permanent Manager 4 position to a Manager 3 (Procurement Manager).

PDC's most current budget execution report for the 2023-25 biennium (as of July 31, 2024), which includes both actual expenditures to-date as well as projected expenditures for the remainder of the biennium, assumes \$34 million in General Fund savings for the biennium, of which \$4.6 million in the Administrative Services Division. In other words, PDC has within the agency, program, and General Fund appropriation sufficient budgetary authority to fund the procurement actions through the remainder of the biennium. The only required Emergency Board action would be the authorization of the positions and FTE and the reclassifications.

LFO further recommends that the remainder of the request be deferred to give PDC additional time to resolve the issues with the reorganization request, including reconciling the actions with the changes made by the agency to its 2025-27 current service level budget.

Recommendation: The Legislative Fiscal Office recommends that the Emergency Board authorize the establishment of three permanent positions (0.99 FTE) and approve the downward reclassification of four permanent positions in the Public Defense Commission, Administrative Services Division, for procurement and contract administration staffing.

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Oregon Public Defense Commission
Gehringer

Request: Transfer select programs and activities, including transfer of 21 positions between Oregon Public Defense Commission programs and appropriations, reclassify six positions, and abolish one position, to establish three permanent, full-time Program Analyst 4 positions (0.99 FTE) and one Manager 3 position (0.33 FTE).

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

Discussion: The Oregon Public Defense Commission (OPDC) is requesting to create and transfer several positions to align its organizational structure with agency standards and improve efficiency. The changes aim to separate contract and program administration work, create clearer roles, and better define work within divisions.

The table below was created from OPDC's letter to summarize the actions requested:

Position Action	Position Count	Position Type
Created	4	Three Program Analyst 4s, one Manager 3
Transferred	21	Various
Reclassified Upward	1	One Manager 1 to Manager 2
Reclassified Downward	5	<ul style="list-style-type: none">• One Manager 4 to Manager 3• Three Program Analyst 4s to Procurement 1/2• One General Counsel to Manager 4
Eliminated	1	Deputy General Counsel

It's worth noting that OPDC reports that these changes will create a net \$34,769 General Fund savings. Therefore, the below legal reference reflecting the Department's request is out of balance by \$34,769.

Legal Reference: Transfer of \$1,934,819 General Fund appropriation made by chapter 481, section 1, Oregon Laws 2023, for the 2023-25 biennium as follows:

<u>Subsection</u>	<u>Amount</u>
(1) Executive Division	\$-346,834
(2) Compliance, Audit and Performance Division	\$+1,934,819
(4) Adult Trial Division	\$-274,047
(8) Parent Child Representation Program	\$-526,114
(9) Administrative Services Division	\$-822,593



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August 26, 2024

Senate President Rob Wagner, Co-Chair
House Speaker Julie Fahey, 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 Oregon Public Defense Commission (OPDC) requests funding and position authority for three Program Analyst 4 positions (0.99 FTE) for the Adult Trial Division and one Manager 3 (0.33 FTE) for the Executive Division. In total, the OPDC's organizational structure changes represent no cost to the agency and a net personal services savings of \$34,000 for the remainder of the biennium. The rollup cost for the 2025-2027 biennium will be approximately \$1.69 million General Fund.

This request will be the first step in implementing an organizational structure that aligns with agency standard practices. It will allow the Oregon Public Defense Commission (OPDC) to separate the work contract analyst and procurement, create a clearer delineation of roles, and set OPDC up for success in the coming budget year.

The request includes changes that will be reflected in OPDC's Package 60, including:

- Moving miscategorized positions to their correct place;
- Creating new sections within existing divisions to better define work;
- Moving positions to new sections to better meet the needs of the agency;
- Reclassing positions within the agency at a net zero cost;
- Creating new positions with cost savings from reclass at a net zero cost.

Agency Action

OPDC has been working on its organizational structure for some time. While OPDC has maintained an operational organizational chart in Workday, that chart did not align with budgeted resources. OPDC has been working with the Legislative Fiscal Office on this matter, and in June,

made significant progress which allowed OPDC to identify the changes necessary to standardize and align its organizational chart to the legislatively approved budget.

The first step was moving miscategorized positions to their correct place. These are all administrative fixes within the ORPICs system; they don't reflect how the positions were actually being used or managed.

- Four information technology specialists had been mislabeled under the Human Resources section and returned to the Information Technology section;
- A Program Analyst 4 was misplaced in the Procurement section and moved to the Research division under Compliance, Audit, and Performance (CAP);
- A Human Resources Analyst 2 was misplaced under the Information Technology section and returned to Human Resources.

Next, through package 60, OPDC will create new sections within existing divisions to better align with the budget and better define work. This includes:

- Separating Preauthorized Expenses from the Procurement Section within the Administrative Services Division (ASD) and making it its own section;
- Creating an Unrepresented section within the CAP division;
- Renaming the Pilot Program division within Adult Trial to the State Trial Program section.

OPDC then evaluated its current positions and moved positions to different sections to better meet the needs of the agency. This includes:

- Moving an office specialist 2 from Executive-Administration to the CAP-Unrepresented division, this position is providing unrepresented administrative support, including data entry, to the unrepresented program;
- Moving 2 Policy Analyst (Operations and Policy Analyst (OPA) 2 and 4) from Executive-Administration to CAP-Administration. These OPAs are policy writers and CAP Administration is where OPDC's policy team operates;
- Move the Training Coordinator (Administrative Specialist 2) from CAP-Administration to CAP-Trial Criminal Compliance;
- Move the Unrepresented Assignment Coordinator (OPA 2) from CAP-Research to CAP-Unrepresented (this position is also subject to a reclassification below);
- Move the CAP Manager (General Counsel) from CAP-Trial Criminal Compliance to CAP-Administration (this position is also subject to a reclassification below);
- Move the Rules and Records Coordinator (OPA 2) from CAP-Trial Criminal Compliance to CAP-Administration;
- Move a Policy Analyst (OPA 4) from CAP-Trial Criminal Compliance to CAP-Administration for

the policy team;

- Move the Office Specialist 1 from Appellate-Criminal Appellate to Appellate-Administration;
- Move the Unrepresented Assignment Coordinator (OPA 2) from Adult Trial Division-Administration to CAP-Unrepresented;
- Move the 3 Juvenile Resource Counsel (2 Deputy General Counsel and 1 General Counsel) from CAP-Juvenile Compliance to CAP-Trial Criminal Compliance. Contractors often have mixed caseloads (juvenile and adult criminal) and separating staff by contract type makes communication and customer service less efficient;
- Move the Parent Child Representation Program (PCRP) Resource Counsel (Deputy General Counsel) from PCRP-Administration to CAP-Adult Criminal Compliance for the same efficiency reasons as above;
- Move 5 Preauthorized Expenses positions (2 Program Analyst 1, 2 Program Analyst 2, 1 Program Analyst 3) from ASD-Procurement to ASD-Preauthorized Expenses;
- Move a vacant OPA 3 position from ADS-Finacial/Case Management System to Executive-Communications and Government Relations to be OPDC's Communication Specialist. OPDC's Communications and Government Relations division is currently just the Government Relations Manager, and the Commission does not have any communications positions. This position will help to coordinate and manage both internal and external communications with stakeholders, providers, media, courts, and the Legislature.

These actions provided OPDC with a baseline organizational structure. From there, OPDC was able to evaluate current positions and identify problematic elements. The largest problem was the entanglement of how the procurement positions within the ASD-Procurement section were being used. These four Program Analyst (PA) 4 positions have been used, at least since 2019, as program administrators supporting contractors and administering contracts, they have been managed within the adult criminal sections (currently the CAP-Adult Criminal Compliance division). They were essentially administering the contracts while also providing the primary communication point for contractors.

It is OPDC's goal to disentangle this contract and program administration work. These are two clear bodies of work that require different skill sets and training. Procurement specialists should be writing and administering contracts to ensure contract compliance and program analysts should be providing support to contractors and helping facilitate communication and problem-solving when problems arise.

To achieve this OPDC will:

- Eliminate a vacant Deputy General Counsel position within CAP-Trial Criminal Compliance (\$462,477 biennial savings minus 1 position, 1.00 FTE);
- Use the savings to create three PA 4 positions, these positions will be in CAP-Trial Criminal Compliance and allow OPDC to move the four current PA 4 from the positions in ASD-Procurement to the newly created positions. This will vacate three of the four current PA 4 positions in ASD-Procurement (\$401,538 cost November-June 2025, adding 3 positions, 0.99 FTE).

- Move one PA 4 from ASD-Procurement to CAP-Trial Criminal Compliance. OPDC only needs three procurement positions, along with a procurement manager, in the ASD-Procurement unit. Whereas four Program Analyst 4 positions within CAP-Trial Criminal Compliance will allow OPDC to continue to manage providers in four regions (Zero Cost).
- Down class the remaining three PA4 positions within ASD-Procurement into two Procurement Analyst 1 and one Procurement Analyst 2. These classifications more appropriately align with the procurement work they will be doing in line with Executive branch standard practices (\$ biennial savings);
- Down class the Manager 4 in ASD-Procurement to a Manager 3. This is a more appropriate classification for this manager position.

With these moves, OPDC will be able to recruit for and fill its Procurement division with procurement trained staff, separate the contract work from the programmatic work, and allow the current Program Analyst to focus quality issues with providers.

In addition to these significant moves and position creations, OPDC will also be reclassifying and creating other positions at a net zero cost:

- The Unrepresented Coordinator in CAP-Unrepresented is currently an OPA 2 but is cross-filed as a Policy Analyst 2, reclassing this position to a Policy Analyst 2 will make it official (\$ Savings);
- The CAP Manager in CAP-Administration is currently a General Counsel position and is technically vacant as OPDC is using the Manager 4 position within ASD-Procurement to fill the CAP Manager role. OPDC would down class the General Counsel position to a Manager 4, allowing for the Procurement position to be vacated. The CAP Manager position manages the CAP division, primarily the CAP-Administration and CAP-Research divisions. These divisions write policy, build programs, and improve data collection and usage. A General Counsel is not required in this role, as the CAP-Trial Criminal Compliance has multiple attorneys, and OPDC as a whole has a General Counsel position. (\$20,746 savings);
- Create a Manager 3 position for the Executive-Communications and Legislation. The current Government Relations Manager position is a Deputy General Counsel position that is being underfilled as a Manager 3. By requesting that position, OPDC would be able to vacate the Deputy General Counsel position to bring on an attorney who could act as the Commission's subject matter expert on legal legislation along with managing the implementation of public defense reform laid out in SB 337 (2023), while allowing for a true division manager in the Manager 3 position who is able to build a more robust communications and legislative strategy and act as a subject matter expert on government relations and process (\$161,171 cost November-June 2025, adding 1 position, 0.33 FTE);
- Reclass the Manager 1 position withing ASD-Accounting/Accounts Payable to a Manager 2. This is more inline with the work the Accounting Manager does as they oversee the Accounts Payable section and 12 employees (\$51,894 cost).

In total, the OPDC's organizational structure changes represent a net saving to the agency of \$34,000 for the remainder of the biennium, with a rollup cost of \$1.69 million for the 25-27 biennium. This includes:

- 21 position moves;
- 5 position reclassifications downward;
- 1 position reclassification upward;
- 4 new positions created;
- 1 position eliminated.

A full accounting of these position changes and costs is attached.

Action Requested

The Oregon Public Defense Commission (OPDC) requests funding and position authority for three Program Analyst 4 positions (0.99 FTE) for the Adult Trial Division and one Manager 3 (0.33 FTE) for the Executive Division. OPDC requests to move and reclassify as necessary positions to complete its organizational realignment plan. In total, the OPDC's organizational structure changes represent no cost to the agency and reflect a net personal services savings of \$34,000 for the remainder of the 2023-25 biennium. There will be a rollup cost of \$1.69 million for the 2025-2027 biennium.

Legislation Affected

Oregon Laws 2023, Chapter 481, section 1(1) (\$346,834)
 Oregon Laws 2023, Chapter 481, section 1(2) \$1,934,819
 Oregon Laws 2023, Chapter 481, section 1(4) (\$274,047)
 Oregon Laws 2023, Chapter 481, section 1(8) (\$526,114)
 Oregon Laws 2023, Chapter 481, section 1(9) (\$822,593)

Sincerely,



Jessica Kampfe
 Executive Director

cc:

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