



# OREGON PUBLIC DEFENSE SERVICES COMMISSION REFERENCE DOCUMENT

82<sup>nd</sup> Legislative Assembly  
Joint Ways and Means Subcommittee on Public Safety



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# Agency Overview

The Public Defense Services Commission (“PDSC” or “the commission”) is responsible for establishing and maintaining a public defense system that ensures the provision of public defense services in the most cost-efficient manner, consistent with the Oregon Constitution and the United States Constitution, as well as state and national standards of justice. The commission is an independent body governing the Office of Public Defense Services, as the administrative agency. The Chief Justice of the Oregon Supreme Court appoints members to the commission. With the recent passage of House Bill 2003 (2021), membership of the commission was expanded from seven to nine members who demonstrate a record of supporting public defense. The PDSC appoints the executive director for the Office of Public Defense Services (“OPDS” or “the agency”).

The 2021-23 legislatively adopted budget included an agency reorganization to provide better transparency, program management, and oversight. Previously, the commission had three divisions: the Appellate Division, the Contract and Business Services Division, and the Professional Services Account. The recommended budget maintains but reorganizes the Appellate Division, and structures the agency into seven additional divisions to make service delivery and budget authority more visible. The new divisions include the Executive Division, the Compliance, Audit, and Performance Division, the Trial Criminal Division, Non-routine Expenses, Court Mandated Expenses, the Juvenile Division, and the Administrative Services Division. The 81st Legislative Assembly added a new division in the even-year session, the Special Program, Contracts, and Distributions Division, which currently serves the Civil Protective Proceedings section.

## Mission, Vision, and Authority

### Mission Statement

The Public Defense Services Commission’s mission is to ensure that eligible individuals have timely access to legal services consistent with Oregon and national standards of justice. The state further mandates the commission to administer “a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution, and Oregon and national standards of justice.” ORS 151.216.

### Statutory Authority

The commission’s and agency’s statutory authority is found at chapter 151 of the Oregon Revised Statutes and chapter 400 of Oregon Laws 2021.

## Historical Context

The Public Defense Service Commission was created by Senate Bill 145 (2001) following recommendations by House Bill 3598 (1999). The agency's primary obligation is to ensure financially eligible individuals receive access to competent counsel (public defense services) for eligible cases in Oregon's trial and appellate courts. The PDSC carries out its statutory mandate through the Office of Public Defense Services. In chapter 151 of the Oregon Revised Statutes, the lawful governance provisions of the PDSC, had remained largely intact since its inception until the passage of House Bill 2003 in mid-2021.

That measure 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 policies 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; and
- 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.

### Public Defense Contracting Systems

Due to the criticisms of the former case-credit contracting model, and arguably the existence of constitutional problems, 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, the agency is now funding entities based upon the number of FTE attorneys under contract to cover a projected caseload.

It is important to note that PDSC/OPDS does not provide direct criminal trial services to clients. 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 the non-profit public defense provider, 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. Some recently passed and implemented requirements for employers have substantially increased the cost to the non-profit organizations, and thus increased funding pressures on the PDSC. The contracted non-profit public defender offices are often represented union shops with their own internal bargaining agreements as well. 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 entity 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.

Additionally, in 2021, OPDS created the Contracts Enhancement Workgroup as a means to engage stakeholders on ways to improve the contracting model. The group made recommendations on caseload standards and weighting, data/reporting requirements, pay differentials, support staff ratios, and administrative costs, amongst other things. These recommendations have not yet been implemented but are under consideration for new contracts, which will take effect July 1, 2022.

### Provider Compensation and Resources

Public defense compensation and resources is one of the biggest challenges facing the agency. The American Bar Association and Moss Adams report revealed the significant dearth in 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 necessary workforce for the future.

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, administrative costs, as well as all overhead costs such as rent, utilities, IT, bar dues, continuing education 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 compensate its members or employees. Recent changes to the contract structure, implemented on July 1, 2022, provide a structured tiering of compensation by attorney qualification level. Stated differently, if the provider employs felony-qualified or murder-qualified staff, OPDS will pay a larger amount for a full caseload than for misdemeanor caseloads. This recognizes that not all attorneys have equal standing in the court system and that felony cases carry more value and effort to handle.

### Other Persistent Challenges

The commission also contends with other systemic and tangential hurdles in a robust public defense system. While those hurdles may seem administrative in nature, long-term strategic planning will be reactive in nature. Articulating answers and planning for those hurdles now will be a significant advantage as the Legislative Assembly makes investments in the commission's delivery model.

### 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; elements that make measuring contemporary problems like case backlog difficult to argue and defend. 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 new FTE 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 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 state agencies. For instance, investigations is a critical and required element of every felony case.

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 and develop 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 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.

The PDSC and OPDS present unique, but not unusual problems and issues. As expected, there are communication problems and a complete restructuring of the staff, budget and accounting. There is a maturation process the agency is going through as program staff are oriented into new policies and procedures that have been proved and adopted throughout state government. This maturation process is

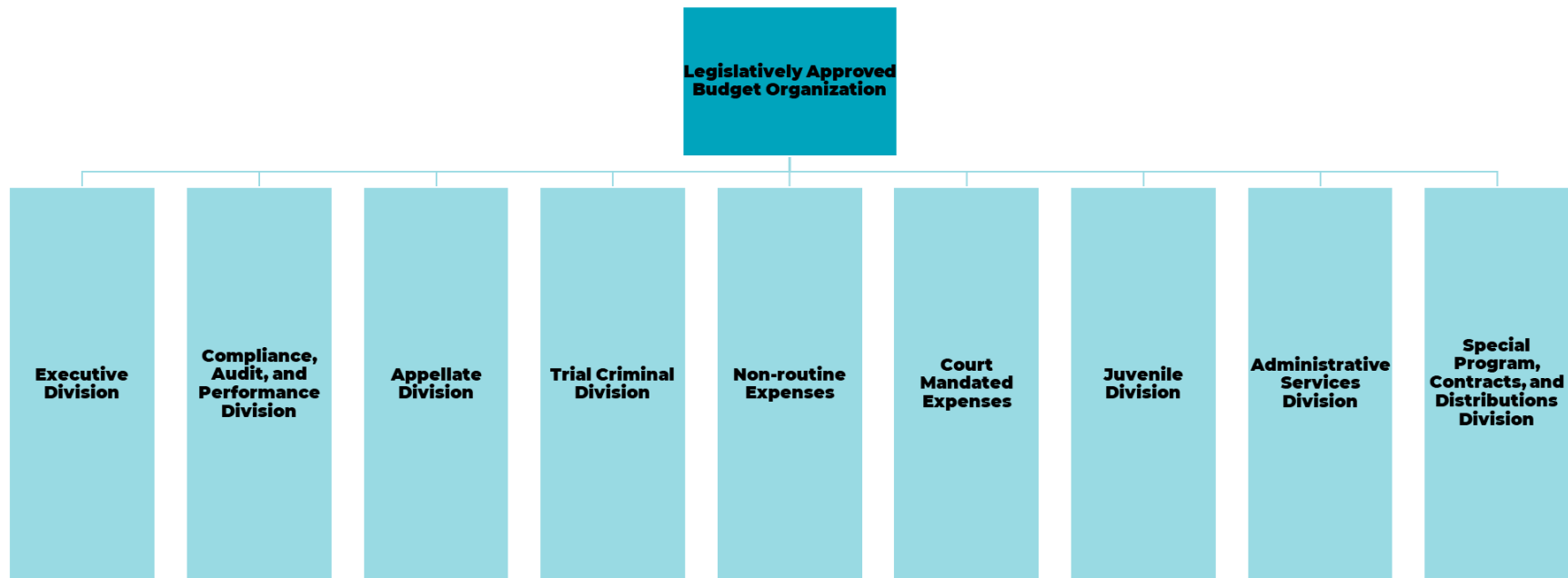
not unlike what many other state agencies have gone through over the past twenty to thirty years. The Commission and OPDS staff are dedicated to the continual improvement and sustainability of the public defense profession for the benefit of clients and all Oregonians.



## Agency Budget

	Fund	Amount	Positions	FTE
2021 – 2023 Legislatively Approved Budget	General	438,160,372	114	107.81
	Other	18,449,667		
2023 – 2025 Current Service Level (inclusive of packages 080 and 090)	General	482,829,421	106	105.80
	Other	17,937,116		
101: Provider Compensation	General	40,120,612	0	0.00
102: Provider Comp. Staffing Expansion	General	152,028,480	0	0.00
103: Parent-Child Representation Program Expansion	General	10,187,974	2	1.01
104: Program Design and Delivery	General	3,180,816	17	11.80
105: Financial Case Management System	General	7,864,650	5	4.76
107: Oregon Judicial Department ETS Services	General	929,720	0	0.00
108: Limited Duration Positions to Perm. Positions	General	2,343,092	8	8.00
109: Case Support Services Position	General	235,394	1	1.00
112: Mandated Caseload for Juv. Representation	General	2,705,261	0	0.00
114: Hourly Attorney Rate to Federal Parity	General	31,154,086	1	0.88
115: Unrepresented Persons Crisis	General	33,505,182	0	0.00
<b>2023 – 2025 Commission Funding Request</b>	<b>General</b>	<b>767,084,238</b>	<b>140</b>	<b>133.25</b>
	<b>Other</b>	<b>17,937,116</b>		

# Agency Organization



# Agency Programs

The commission boasts three administrative divisions—namely, the Executive Division; the Compliance, Audit, and Performance Division; and the Administrative Services Division—as well as four programmatic divisions that either provide (1) direct legal representation in criminal appeals, (2) funding for trial-level public defense providers, or (3) reimbursement to defray the expenses of third-party providers used in the vigorous defense of criminally charged persons.

## Trial Criminal Division

The Trial Criminal Division, a discretely reported program within OPDS, is responsible for delivering quality and efficient public defense services statewide by contracting with various entities including public defender offices, consortia, firms, non-profit organizations, and individuals. The Trial Criminal Division is critical to the development, implementation, and monitoring of the contracts for attorney compliance and performance.

As set forth under ORS 151.216, as amended by HB 2003, PDSC is directed to ensure that financially eligible individuals receive competent court-appointed counsel for eligible cases in Oregon’s trial and appellate courts. PDSC carries out its statutory mandate through the Office of Public Defense Services (OPDS). The Trial Criminal Division within OPDS is responsible for providing public defense services in adult criminal trial and appellate matters, including post-judgment eligible cases such as post-conviction relief and habeas petitions, as well as civil commitment and other mental health cases, in the most efficient manner consistent with the state and federal constitutional mandates and national standards of justice.

### Program Overview

During the 2021 session, the Oregon Legislature passed HB 5030, which established the Public Defense Services Commission (PDSC) budget for the 2021-2023 biennium. HB 5030 contained a provision that held back \$100 million of General Fund and placed it in a special purpose appropriation (SPA), appropriated to the Emergency Board for PDSC. In June 2022, the Emergency Board released the SPA, and the budget request includes a proportionate amount for Trial Criminal Division which was \$70,250,989 for the 2021-23 biennium.

The agency was also directed to move juvenile representation (delinquency and dependency) expenses into the Juvenile Division. About 18 percent of trial level representation costs (in counties not under the Parent Child Representation Program which was already in the Juvenile Division) were in contracts budgeted in the Trial Criminal Division. Accordingly, the current service level funding request for the Trial Criminal Division was reduced by \$34,969,383 and is now requested in the Juvenile Division. In addition, a proportional share of the SPA (12,645,177) was not included in

the package 081 (E-Board actions) for Trial Criminal Division but is instead requested in the Juvenile Division in the Agency Request Budget.

Currently, OPDS delivers public defense services by contracting with various provider types, including public defender offices, consortia, law firms, non-profit organizations, and individual attorneys. In January 2021, OPDS implemented a contract model based upon Fulltime Equivalent (FTE – now referred to as Maximum Attorney Caseload or MAC) attorneys as opposed to the previous case credit model. In July 2022, contracts were converted to a fiscal year basis and the agency executed more than 100 contracts. Contracts for representation in adult criminal cases are reflected in the Trial Criminal Division budget. Contracts for representation in juvenile dependency and delinquency cases, as well as appellate level cases are represented in the Juvenile and Appellate Division budgets, respectively.

Under the FTE/MAC model, additional non-contract attorneys are funded to represent eligible clients who cannot be represented by contractors due to a conflict of interest, or the contract entity is at capacity or does not have an attorney qualified to handle the case. The non-contract attorneys are compensated at an hourly rate of \$75.00 - \$105.00 per hour based on the case type. In July 2022, the PDSC authorized compensation up to \$158 per hour for attorneys not under contract for representing

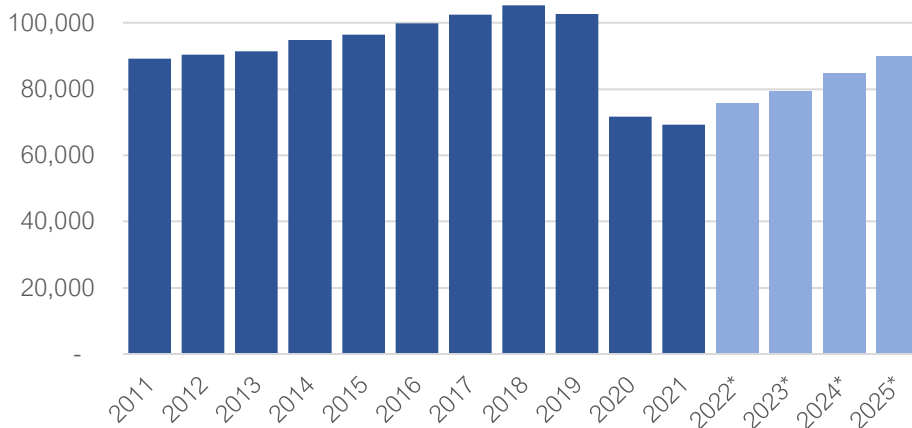


Figure 1: Criminal Trial Cases by Fiscal Year

clients that are in custody and for whom a contract attorney has not been identified. In August 2022, the PDSC expanded the \$158 hourly Rate Program to include providers contracting for less than 1.0 FTE/MAC. This program sunsets on December 31, 2022.

On July 1, 2022, OPDS executed more than 100 contracts with various contract entities. Based on Oregon Judicial Department (OJD) and OPDS data regarding current and past caseload trends, OPDS projected a slight increase in FTE amount from the previous contract period. In consultation with the provider community, OPDS made notable changes to the contracts, providing greater transparency and uniformity to the contract terms, reducing caseload numbers and assigning a salary reimbursement scale tied to attorney qualification for case types. Under the 2022-2023 contract terms, OPDS adopted a salary reimbursement scale for a 1.0 FTE/MAC contract attorney ranging from 195,850.00 (entry level attorney) to 226,450.00 (murder qualified attorney).

Contract attorneys will prioritize court-appointments for the most serious case type the attorney is qualified to accept. The non-contract hourly attorney will continue to be compensated at the rate of \$75.00 - \$105.00 per hour depending on the case type, with the exception of the unrepresented clients.

### Program Justification and Performance

According to the *Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workloads Standards* (Jan. 2022), prepared by the American Bar Association Standing Committee on Legal Aid and Indigent Defense, based on current caseloads and projected FTE, OPDS has a substantial deficiency in public defense attorney FTE. PDSC/OPDS acknowledges that reducing and limiting caseloads/workloads is critical to the public defense system and to providing quality representation to clients. As such, PDSC/OPDS will continue to evaluate its public defense service model, and to advocate for fair compensation and reasonable caseloads/workloads. During the next contract period, PDSC/OPDS may determine that the effective use of taxpayer monies is better used to adopt a statewide public defender system, or alternatively, a system that makes efficient use of both private and public defenders. At the same time, the Criminal and Juvenile Trial Divisions will be responsible for monitoring the caseload and workloads of contract attorneys to ensure the effective assistance of counsel to clients in adult criminal and juvenile dependency and other delinquency matters.

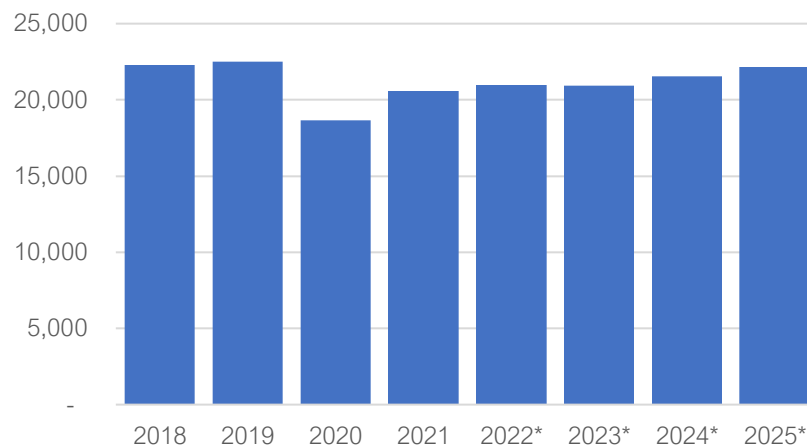


Figure 2: Felony Cases by Fiscal Year

The Oregon Legislature created PDSC in 2001, and the agency assumed responsibility for public defense services in 2003. The governing statutes are contained in Oregon Revised Statutes, Chapter 151.

The performance of legal representation is currently limited to compliance with the PDSC Qualification Standards for Court-Appointed Counsel and by the Oregon State Bar’s Performance Standards for Criminal and Delinquency Cases.

Pursuant to ORS 151.216, PDSC is directed to adopt policies, procedures, standards and guidelines regarding various aspects of providing the right to counsel, including the professional qualifications for counsel. Under this new mandate, OPDS will develop policies and procedures to supervise and systemically review defense counsel performance for quality and efficiency and monitor counsel’s ability, training and

experience to match the complexity of the case.

### Commission Funding Request

		<b>Fund</b>	<b>Amount</b>	<b>Positions</b>	<b>FTE</b>
2021 – 2023	Legislatively Approved Budget	General	199,267,268	0	0.00
2023 – 2025	Base Budget	General	199,267,268	0	0.00
2023 – 2025	Current Service Level	General	180,964,555	0	0.00
080	Emergency Board Packages	General	56,061,890	0	0.00
101	Provider Compensation	General	33,813,631	0	0.00
102	Provider Compensation Staffing Expansion	General	114,397,713	0	0.00
104	Program Design and Delivery	General	518,037	3	2.26
<b>2023 – 2025</b>	<b>Commission Funding Request</b>	<b>General</b>	<b>385,755,826</b>	<b>3</b>	<b>2.26</b>

## Juvenile Division

The Juvenile Division provides for trial-level representation of financially eligible parents, children, and youth in juvenile dependency, termination-of-parental-rights, juvenile delinquency, and contested adoption cases. The Juvenile Division also provides guardians ad litem for parents whose rights the juvenile court determines need protection because they have a mental or physical disability that prevents them from understanding and/or assisting counsel in a dependency or termination-of-parental-rights case.

During the 2021 session, the Oregon Legislature passed HB 5030, which established the Public Defense Services Commission (PDSC) budget for the 2021-2023 biennium. HB 5030 contained a provision that held back \$100 million of General Fund and placed it in a special purpose appropriation (SPA), appropriated to the Emergency Board for PDSC. In June 2022, the Emergency Board released the SPA, and the budget request includes a proportionate amount for Juvenile Division which was \$10,192,365 for the 2021-23 biennium.

OPDS was also directed to move juvenile representation (delinquency and dependency) expenses into the Juvenile Division. About 18 percent of trial level representation (in counties not under the Parent Child Representation Program which was already in the Juvenile Division) costs were in contracts budgeted in the Trial Criminal Division. Accordingly, the current service level funding request for the Trial Criminal Division was reduced by \$34,969,383 and is now requested in the Juvenile Division. In addition, a proportional share of the SPA (12,645,177) is included in the budget request through package 081 (E-Board actions) for Juvenile Division and transferred out of the Trial Criminal Division.

### [Program Overview](#)

In Oregon, financially eligible parents are entitled have counsel appointed in juvenile dependency proceedings when the nature of the proceedings and due process so require, and financially eligible children are generally entitled to counsel in those proceedings. The general practice of juvenile courts is to appoint counsel for both parents and children. A financially eligible parent contesting an adoption is also entitled to court-appointed counsel at state expense. Similarly, youth in delinquency cases are entitled to court-appointed counsel at state expense, with no financial eligibility requirement. Finally, Oregon's juvenile code authorizes the juvenile court to appoint a guardian ad litem, who must either be an attorney or licensed mental health professional, for a parent whose rights the juvenile court determines need protection because they have a mental or physical disability that prevents them from understanding the nature of the proceeding and/or assisting counsel in a dependency or termination-of-parental-rights case.

The PDSC is responsible for compensating those attorneys appointed as counsel in juvenile court proceedings and contested adoption proceedings and attorneys and licensed mental health professionals appointed to serve as guardians ad litem for parents in dependency and termination-of-parental-rights proceedings. The PDSC



satisfies that responsibility primarily by contracting with non-profit public defender offices, consortia, law firms, and solo practitioners to provide for court-appointed counsel in a variety of case types. Funding for those independent contractor attorneys who serve as court-appointed counsel or as guardians ad litem in juvenile court cases comes through OPDS's Juvenile Division, including through OPDS's Parent Child Representation Program (PCRP). The PCRP is an interdisciplinary model of legal representation, and its fundamental components are (1) reasonable caseloads and compensation for attorneys; (2) access to social work case managers to serve as part of the legal team; and (3) enhanced support and oversight by OPDS. These components help ensure that attorneys have adequate time and resources to spend on their clients and cases and that clients' needs are served both in and out of court. The PCRP has been implemented in ten counties: Benton (2020), Clatsop (2020), Columbia (2016), Coos (2018), Douglas (2020), Lincoln (2018), Linn (2014), Multnomah (2020), Polk (2020), and Yamhill (2014).

OPDS's ability to provide competent, zealous legal representation for indigent parents, children, and youth in juvenile court proceedings is inhibited by the independent contractor model currently employed to provide that representation. As with any independent contractor relationship, OPDS cannot direct the work of attorneys providing legal representation and has limited ability to ensure transparency and accountability in the provision of public defense services. Moving to a model in which at least some of the legal representation for parents, children, and youth involved in juvenile court proceedings is provided by OPDS employees subject to OPDS's direct supervision would likely lead to improvements in representation in juvenile court proceedings and increased transparency and accountability.

### Program Justification and Performance

The United States Supreme Court has held that parents have a fundamental liberty interest in the "care, custody, and management of their children" that is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Santosky v. Kramer*, 455 US 745, 753-54 (1982). The Supreme Court has further held that due process does not require the appointment of counsel for every parent subject to a petition to terminate their parental rights but instead left "the decision whether due process calls for the appointment of counsel for indigent parents in termination proceedings to be answered in the first instance by the trial court, subject, of course, to appellate review." *Lassiter v. Dept. of Social Services*, 452 US 18, 31-32 (1981). And, although the United States Supreme Court has not addressed whether children have a similar right to counsel in juvenile dependency proceedings, the United States Ninth Circuit Court of Appeals has held that children have a "constitutional interest in familial companionship and society" similar to that of parents. *Smith v. City of Fontana*, 818 F2d 1411, 1418 (9th Cir 1987), overruled on other grounds by *Hodgers-Durgin v. de la Vina*, 199 F3d 1037 (9th Cir 1999). Oregon's statutes require the appointment of counsel generally for financially eligible children and for financially eligible parents when the nature of the proceedings and due process so require. The general practice of juvenile courts is to appoint counsel for both parents and children.

Like many states, Oregon has long sought to reduce the number of children who enter foster care, to reduce the amount of time a child who enters foster care remains in the state's care, and to achieve permanency for children in as timely a fashion as possible. Research has demonstrated that providing legal representation for parents and children facing potential or actual juvenile court proceedings reduces entry into the foster care system and the amount of time children remain in foster care. The Justice in Government Project, Key Studies and Data About How Legal Aid Helps Keep Family Together and Out of the Child Welfare System (Mar 23, 2021), available at <https://legalaidresourcesdotorg.files.wordpress.com/2021/04/foster-care.pdf#>

The Children's Bureau, part of the U.S. Department of Health and Human Services, has recognized the importance of high-quality legal representation in helping ensure a well-functioning child welfare system. Given the profound decisions juvenile courts must make regarding a family, it is critical that courts receive the most accurate and complete information necessary for judicial decision-making and that the parties' rights are protected, which is best achieved when all parties to a juvenile dependency case are represented. Moreover, evidence suggests that providing counsel for parents, children, and youth contributes to or is associated with:

- Increase perceptions of fairness;
- increased engagement in case planning, services and court hearings;
- more personally tailored and specific case plans and services;
- increased visitation and parenting time;
- expedited permanency; and
- cost savings to state government due to reductions of time children and youth spend in care.

Children's Bureau, Administration for Children & Families, *High Quality Legal Representation for All Parties in Child Welfare Proceedings (Information Memorandum)*, 1-2 (Jan 17, 2017), available at <https://www.acf.hhs.gov/sites/default/files/documents/cb/im1702.pdf>.

#### Legal Representation in Juvenile Delinquency Cases

The United States Supreme Court held in *In Re Gault*, 387 U.S. 1 (1967) that children have a constitutional right to counsel when they are subject to a juvenile delinquency petition. Oregon statutes codify this right and require that the court must appoint counsel to represent a youth at all stages of a proceeding where the offense alleged in the petition is classified as a crime; at any proceeding concerning an order or probation; and in any case where the youth would be entitled to appointed counsel if the youth was an adult charged with the same offense. Statutes further allow the court to appoint counsel in any other proceeding within the jurisdiction of the juvenile court. Finally, statutes prohibit the court from accepting a waiver of counsel from a youth except in very limited and narrow circumstances.

Access to counsel is essential to due process. Treating youth fairly and ensuring that they perceive that they have been treated fairly and with dignity contribute to the positive outcomes in the normal process of social learning, moral development, and

legal socialization during adolescence. Research indicates that when adolescents feel that the system has treated them fairly, they are more likely to accept responsibility for their actions and embrace prosocial activities. Fairness in a legal proceeding is evaluated by opportunity for voice, validation, participation, choice, accuracy of outcomes and access to information. Meaningful participation in the legal process not only allows the adolescent to feel like a valued member of society whose opinion is worthy of consideration, but also allows him or her to influence the judge's final decision and provides more confidence in the accuracy and legitimacy of the outcomes. Access to competent, well-trained, and effective counsel allows adolescents alleged to have committed a delinquent act these opportunities

National Academy of Sciences, *Reforming Juvenile Justice: A Developmental Approach*, (2013), available at [http://www.nap.edu/catalog.php?record\\_id=14685](http://www.nap.edu/catalog.php?record_id=14685).

Attorneys defending youth in delinquency proceedings require additional knowledge beyond that needed to represent adults charged with crimes, such as knowledge of the science of adolescent development, collateral consequences of juvenile court proceedings, and other child-specific systems, such as schools, that may impact or be affected by delinquency proceedings. The National Juvenile Defender Center (NJDC) studied Oregon's access to and quality of juvenile defense in 2020. NJDC found, among other things, that Oregon's system does not have the structure to provide oversight or enforcement to ensure quality representation for youth, has a pay structure and contracting system that does not support defenders specializing in a delinquency caseload, and has no comprehensive guidance for procedure in delinquency cases increasing the risk of inequity. Further, it found that justice and fairness is often dependent on what jurisdiction and even what courtroom a case ends up in.

National Juvenile Defender Center, *Advancing Youth Justice, An Assessment of Access to and Quality of Juvenile Defense in Oregon* (August 2020), available at: <https://njdc.info/wp-content/uploads/Oregon-Assessment-Web.pdf>.

### Program Performance

The Oregon Legislature created PDSC in 2001, and the agency assumed responsibility for public defense services in 2003. The governing statutes are contained in Oregon Revised Statutes, Chapter 151.

The chart on the following page shows the total number of non-PCRJP Juvenile cases reported by OPDS contracted attorneys each year through Fiscal Year 2021, and the projected cases for fiscal years 2022 through 2025.

The pandemic resulted in court operations slowing substantially in 2020 and reduced some types of cases. Case numbers for non-PCRPs have also been reduced by the rollout of PCRPs, which rolled out in Multnomah County in July 2020 and four more

counties in January 2021. Other changes in Oregon law, including Ballot Measure 110 passed in 2020, have also reduced case numbers.

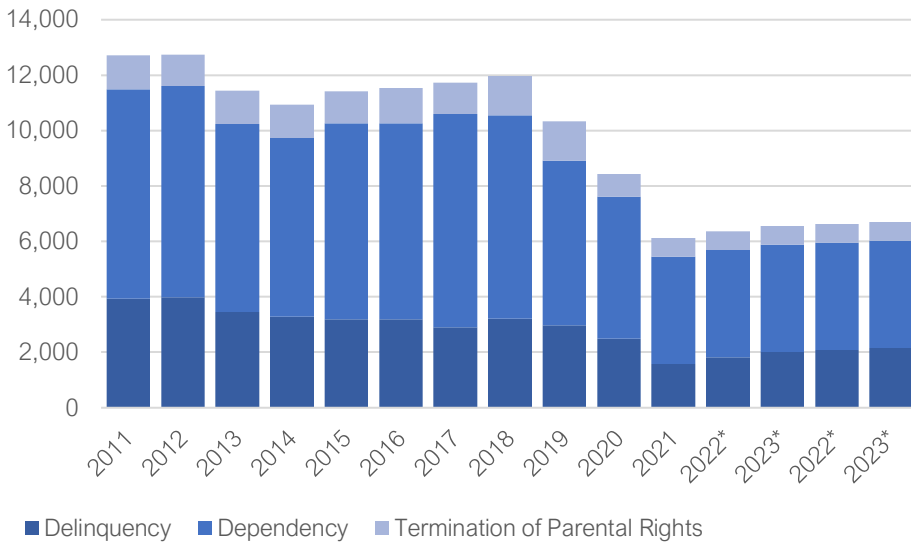


Figure 3: Juvenile (non-PCRPs) Cases by Fiscal Year

Commission Funding Request

		<b>Fund</b>	<b>Amount</b>	<b>Positions</b>	<b>FTE</b>
2021 – 2023	Legislatively Approved Budget	General	30,772,928	0	0.00
		Other	14,000,000		
2023 – 2025	Base Budget	General	30,989,734	0	0.00
		Other	14,000,000		
2023 – 2025	Current Service Level	General	68,682,556	1	1.00
		Other	14,000,000		
080	Emergency Board Packages	General	24,847,247	0	0.00
101	Provider Compensation	General	6,306,981	0	0.00
102	Provider Compensation Staffing Expansion	General	37,630,767	0	0.00
103	PCRPP Expansion	General	9,896,652	0	0.00
104	Program Design and Delivery	General	291,320	2	1.00
112	Mandated Caseload for Juvenile Caseload	General	2,705,261	0	0.00
2023 – 2025	<b>Commission Funding Request</b>	<b>General</b>	<b>150,360,784</b>	<b>3</b>	<b>2.00</b>
		<b>Other</b>	<b>14,000,000</b>		

## Appellate Division

The Appellate Division provides constitutionally and statutorily mandated representation to financially eligible individuals in criminal, parole, juvenile delinquency, juvenile dependency, and termination of parental rights cases on appeal or judicial review. We provide this service through direct representation by attorney professionals and legal support staff employed by OPDS in the Criminal Appellate Section and the Juvenile Appellate Section.

### Program Overview

The Appellate Division employs agency personnel, and it is the defense counterpart to the Appellate Division of the Oregon Department of Justice. The centralization of court-appointed direct appeals in one office establishes an institutional defense entity in the appellate court system, promotes the consistent and rational development of law, and facilitates the identification and implementation of system-wide efficiencies. Examples of the practical impact of the Appellate Division's role in the Oregon criminal justice system include spearheading the litigation upholding the constitutionality of House Bill 3078 (2017), in *State v. Vallin*, 365 Or 295, 434 P3d 413, adh'd to as modified on recons, 364 Or 573, 437 P3d 231 (2019), and coordinating the impact on hundreds of cases on direct appeal by the United States Supreme Court's decision in *Ramos v. Louisiana*, 140 S Ct 1390, 206 L Ed 2d 583 (2020) (holding that guilty verdicts for serious crimes must be unanimous). An example of the practical impacts of the Appellate Division's litigation on the child welfare system are the Oregon Supreme Court's opinions in *Dept. of Human Services v. P.D.*, 368 Or 627, 496 P3d 1029 (2021) and *Dept. of Human Services v. J.S.*, 368 Or 516, 495 P3d 1245 (2021), which clarified under what circumstances and what limitations of authority exist when a juvenile court takes temporary emergency jurisdiction over children from another state who are temporarily in Oregon, and in *Dept. of Human Services v. T.M.D.*, 365 Or 143, 442 P3d 1100 (2019), which held that a juvenile court may not terminate a child's parent's parental rights unless it is in the child's best interests to do so.

The Appellate Division provides statutorily and constitutionally mandated legal representation to financially eligible persons in a wide variety of case types initiated throughout the state. For example, whenever a state circuit court enters a judgment of conviction after the criminal prosecution of a defendant, the circuit court must inform the defendant of their right to appeal from the judgment to the Oregon Court of Appeals. ORS 137.020(5)(a). If the defendant was financially eligible for court-appointed counsel at trial, trial counsel must ascertain whether the defendant wishes to pursue an appeal and, if so, must transmit to OPDS the information necessary to perfect the appeal. ORS 137.020(6). Counsel fails to provide constitutionally adequate assistance of counsel if they do not initiate an appeal upon the client's request. *Garza v. Idaho*, 139 S Ct 738, 203 L Ed 2d 77 (2019). Even if the defendant retained counsel at trial, the state must provide a defendant with appellate representation if the defendant no longer has funds to employ suitable counsel possessing skills and experience commensurate with the nature and complexity of the case for the appeal. ORS 138.500(1). Similar statutes provide for the representation of a person who seeks judicial review of a final order of the Board of Parole and Post-Prison Supervision and

a parent who wishes to appeal from an appealable order or judgment in a juvenile dependency or termination of parental rights case. These services are provided through staff attorneys in the Appellate Division. Representation is primarily in the Oregon Court of Appeals and the Oregon Supreme Court, although the Division occasionally appears in the United States Supreme Court. The Appellate Division has two sections: the Criminal Appellate Section, which represents criminal defendants in appeals such as described above, and the Juvenile Appellate Section, which represents financially eligible parents in appeals from adverse judgments and orders in juvenile dependency and termination of parental rights proceedings. Each section is led by a Chief Defender. The sections also serve as a resource for trial-level counsel.

The Appellate Division has 59 employees, and its workload is driven by the number of criminal cases, parole board decisions, juvenile dependency cases, and termination of parental rights cases referred for appeal; the factual and legal complexity of the appealed cases; and statutory changes, ballot initiatives, and United States and Oregon appellate court decisions. The Division must provide appellate representation in all cases in which a financially eligible individual requests review of an appealable judgment or order because the right to appeal is largely unqualified.

#### Criminal Appellate Section (CAS)

This section provides appellate representation to criminal defendants in misdemeanor and felony appeals (including capital cases), contempt cases, DNA-testing-related appeals, and appeals by crime victims. The section also represents AIC (adults in custody) or adults on supervision seeking judicial review of final orders by the Board of Parole and Post-Prison Supervision. The right to appeal from appealable judgments or orders is a matter of right and largely unqualified.

#### Juvenile Appellate Section (JAS)

This section provides appellate representation to parents in juvenile dependency cases (including jurisdiction and permanency decisions) and termination of parental rights cases. It occasionally provides appellate representation to parents and youth in juvenile delinquency cases. The right to appeal from appealable judgments or orders is a matter of right and largely unqualified.

Attorneys in the Juvenile Appellate Section cannot maintain cases on a backlog because the cases are expedited; any case referred after the attorney's monthly case assignment capacity has been met must be sent to a limited pool of qualified outside providers. The pool is limited because the practice is highly specialized. Per biennium, the section's case referrals have increased from 500 in the 2011-13 biennium, 556 in 2013-15, 622 in 2015-17, 678 in 2017-19; and 677 in 2019-21. Probably due to the greater availability of remote appearances in non-criminal matters, and the continued development of the law precipitated by JAS litigation, referrals to the Juvenile Appellate Section have not decreased during the COVID-19 pandemic. Case referrals for 2021-23 are projected to again exceed 650.



## Program Justification and Performance

The Appellate Division is an essential component to the agency's provision of quality public defense services throughout the state. Criminal and juvenile justice are specialized areas of law requiring particular knowledge, experience, and training. Appellate practice, too, is a specialized area of law subject to numerous procedural rules and substantive law not encountered outside of an appellate case. Consequently, the division invests substantial time in its initial training of attorneys, e.g., months under the close direction and supervision of a managing attorney; and at least six months under the close direction and supervision of a senior deputy attorney. A newly hired deputy defender may not be promoted to a senior deputy defender for three to five years, if not longer. Apart from working in the Oregon Department of Justice or a counterpart appellate agency in another state, there are few places where an attorney can obtain comparable training to effectively litigate a full caseload of appeals before the Oregon appellate courts.

### Program Performance

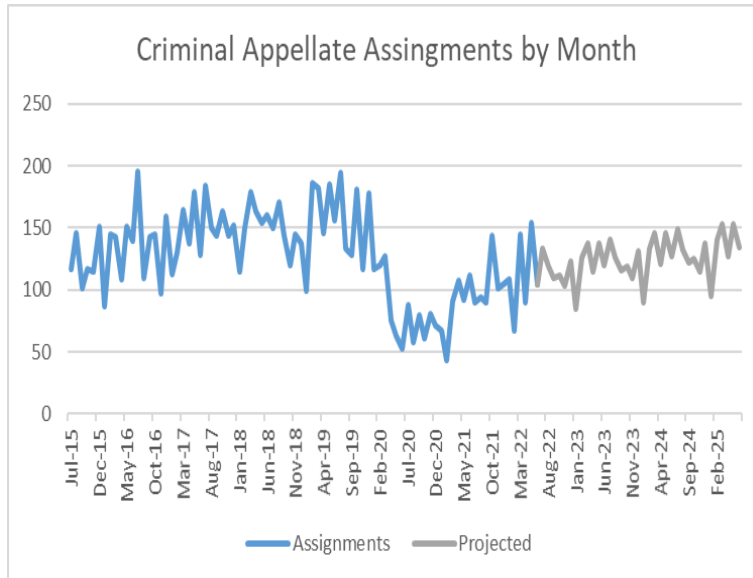
**Criminal Appellate Section** – For case weighting purposes, the section identifies two primary case categories: 1) the trial-type case and 2) the plea-type case.

A trial-type case includes jury trials, trials to the court, conditional pleas, parole appeals, appeals involving requests for DNA testing, appeals initiated by the Attorney General, mandamus actions, and appeals initiated by crime victims. The transcript length for trial-type cases may range from under 50 pages to several thousand pages.

A plea-type case refers to guilty pleas, no-contest pleas, probation violation hearings, and re-sentencing proceedings. Transcript length typically ranges from 20 to 80 pages for plea-type cases.

Additionally, it is not uncommon for the section to receive multiple case referrals for a single client who wants to appeal from several cases of the same type or of different types. The section counts each case as a separate referral and as a separate case assignment. After case assignment, those cases are typically consolidated into a single case on appeal to measure case completion and case workload. In that manner, approximately 15 percent of cases referred are consolidated into another case on appeal.

CAS historically receives more than 3,500 case referrals per biennium: 3,600 cases in the 2011-13 biennium; 3,767 cases in 2015-17; and 3,647 in 2017-19. Circuit court shutdowns or slowdowns since March 2020 due to the COVID-19 pandemic decreased the number of cases referred in 2019-21 to 2,381. The section received 1,307 case referrals in the first year of the 2021-23 biennium. The temporary reduction in case referrals has allowed the section’s attorneys to reduce the historical backlog of cases, which had many clients waiting more than seven months (210 days) for an attorney to begin work on their case after the record has been settled. The section anticipates case referrals will increase to historical levels as circuit courts resume full operation.



Criminal Appellate Section attorneys are assigned a significant number of cases and complete a significant annual workload. According to the Institute for Law and Justice, the annual appellate public defender workload ranges from 25-50 cases per attorney. Institute for Law and Justice, Compendium of Standards for Indigent Defense Systems (2000). Indiana recommends appellate caseloads do not exceed more than 25 cases per attorney per year for appeals in

trial-type cases, or 50 cases per attorney per year for appeals in plea-type cases. Indiana Public Defender Commission, Standards for Indigent Defense Services in Non-Capital Cases, 16 (2016). Texas sets maximum appellate caseloads that vary with transcript length, but which equal an average of 31.2 cases per attorney per year. Tex Admin Code § 174.21 (2018); Texas Indigent Defense Commission, Appellate Addendum: Guidelines for Indigent Defense Caseloads, 16 (2016). The State of Washington sets the maximum appellate caseload at 36 cases per attorney per year. Washington Supreme Court, CrR 3.1 Standards for Indigent Defense, Standard 3.4 (2015).

A non-management Criminal Appellate Section attorney historically is assigned approximately 55 cases per year and the average annual workload or case completion of a non-management Criminal Appellate Section attorney is approximately 35 case per year. During the last two years (during the COVID pandemic), annual case assignments have been closer to 30 cases per year. CAS has been able to reduce its backlog from nearly 800 open unbriefed cases in January 2020 to just over 425 cases as of the end of June 2022.

**Juvenile Appellate Section** – At the end of the 2007 session, the Legislature funded the creation the Juvenile Appellate Section in the Appellate Division. The unit is intended to centralize and enhance appellate representation for parents in juvenile dependency and termination of parental rights cases, act as a resource to the trial bar,

and promote a more consistent state-wide application of the juvenile code through published appellate opinions.

As with their counterparts in the Criminal Appellate Section, Juvenile Appellate Section attorneys are assigned a significant annual workload. The average annual caseload for a non-management full-time Juvenile Appellate Section attorney is currently 41 case assignments per year. It is not uncommon for the section to receive multiple case referrals for a single parent client who wants to appeal from each of their several children's cases. The section counts each child's case as a separate referral and as a separate case assignment. After case assignment, those cases are typically consolidated into a single case on appeal to measure case completion and case workload (i.e. the number of briefs filed).

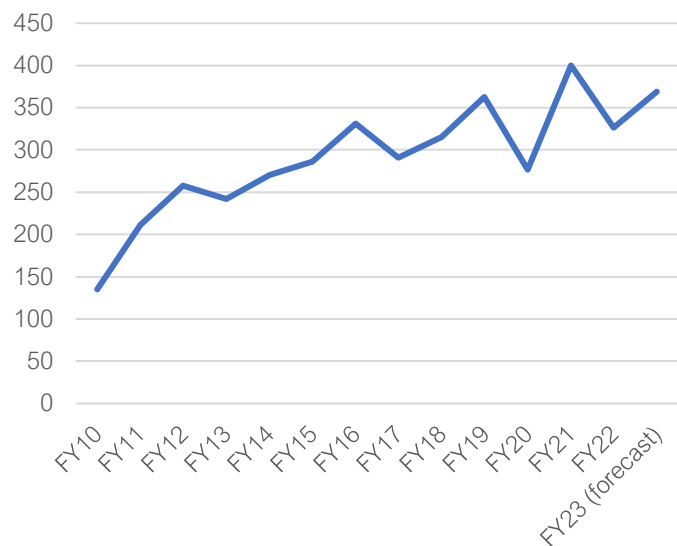


Figure 4: Juvenile Appellate Case Referrals

The number of briefs filed by the Juvenile Appellate Section in fiscal year ending June 30, 2021, is 97, which includes 3 briefs on the merits in the Supreme Court. The number of briefs filed by the Juvenile Appellate Section in the fiscal year ending June 30, 2022, is 126, which includes 3 briefs on the merits in the Supreme Court.

Dependency cases involve appeals from juvenile court judgments asserting jurisdiction over a child or changing a child's permanency plan away from reunification with their family. The transcript length in dependency cases typically ranges from 100 to 800 pages and often includes numerous documentary exhibits. Termination of parental rights cases involve appeals from juvenile court judgments terminating the parent's parental rights to their child or from an order denying the parent's motion to set aside such judgment (when, for example, the parent was tried in absentia and the judgment was entered in the parent's absence). The transcript length in termination of parental rights cases involving an appeal from the termination judgment typically ranges from 500 to 1200 pages and often includes hundreds, if not thousands, of pages of documentary exhibits. The transcript length in termination of parental rights cases involving an appeal from an order denying a parent's motion to set aside the termination judgment typically ranges from 50 to 200 pages.

Dependency and termination of parental rights appeals are expedited. ORAP 10.15. Consequently, the Juvenile Appellate Section never has a backlog.

The section represents parents in the majority of the dependency cases on appeal. It retains the cases it can resolve within the established timelines. Cases that cannot be

kept in-house due to conflict or capacity are sent to a panel of appellate attorneys approved by the agency or to a defense provider pursuant to contract.

Case referrals have risen from 156 during the fiscal year ending 2010 to 429 during the fiscal year ending 2021.

### Commission Funding Request

		<b>Fund</b>	<b>Amount</b>	<b>Positions</b>	<b>FTE</b>
2021 – 2023	Legislatively Approved Budget	General	26,068,312	58	57.38
2023 – 2025	Base Budget	General	26,733,973	58	57.80
2023 – 2025	Current Service Level	General	25,992,983	58	57.80
080	Emergency Board Packages	General	-1,360,000	0	0.00
090	Statewide Adjustments	General	-1,763	0	0.00
<b>2023 – 2025</b>	<b>Commission Funding Request</b>	<b>General</b>	<b>24,631,220</b>	<b>58</b>	<b>57.80</b>

## Case Support Services (f/k/a Non-Routine Expenses)

During the 2021 session, the Oregon Legislature passed HB 5030, which established the Public Defense Services Commission (PDSC) budget for the 2021-2023 biennium. HB 5030 contained a provision that held back \$100 million of General Fund and placed it in a special purpose appropriation (SPA), appropriated to the Emergency Board for PDSC. In June 2022, the Emergency Board released the SPA, and the request includes a proportionate amount for Case Support Services which was \$14,554,511 for the 2021-23 biennium.

### Program Overview

Case Support Services (CSS) provides timely review and pre-approval of reasonable and necessary expenses that support public defense client's cases. These expenses can include:

- Investigation or mitigation services;
- Psychologist, psychiatrist and other professional mental health services;
- Drug and alcohol evaluations (ASAM);
- Scientific evidence analysis and other expert services;
- Discovery and litigation supports; and
- Other services such as printing, transcription, and interpretation.

The CSS team works closely with the Trial Criminal Division in the pre-approval and determination that services requested are reasonable and necessary for the cases needing support.

CSS costs are driven by many factors as vendor costs are driven by market influences. Cases that need case support services are determined by individual attorneys based on the facts of each individual case. CSS costs may fluctuate as a function of law enforcement and prosecution practices and policies which impact pre-charge investigation and formal charging decisions.

With courts slowly getting back to a more normal workflow after the pandemic, additional resources are necessary to address the backlog of cases that would have normally moved through the court system during 2020 and 2021.

### Program Justification and Performance

This program is linked to ORS 135.055(3) requiring PDSCS to pay the cost of "reasonable and necessary" expenses for public defense cases. The public defense system strives to provide clients a constitutionally adequate defense, thus, allowing case supported services further the states' efforts to provide marginalized and under-represented clients timely access to quality representation.

The data below illustrate the number of requests for pre-approval of case supported services over the last 5 years. The number has increased by almost 10,000 individual requests over 5 years. The number of individual requests in 2020 was lower due to

COVID-19 related court shut-downs.

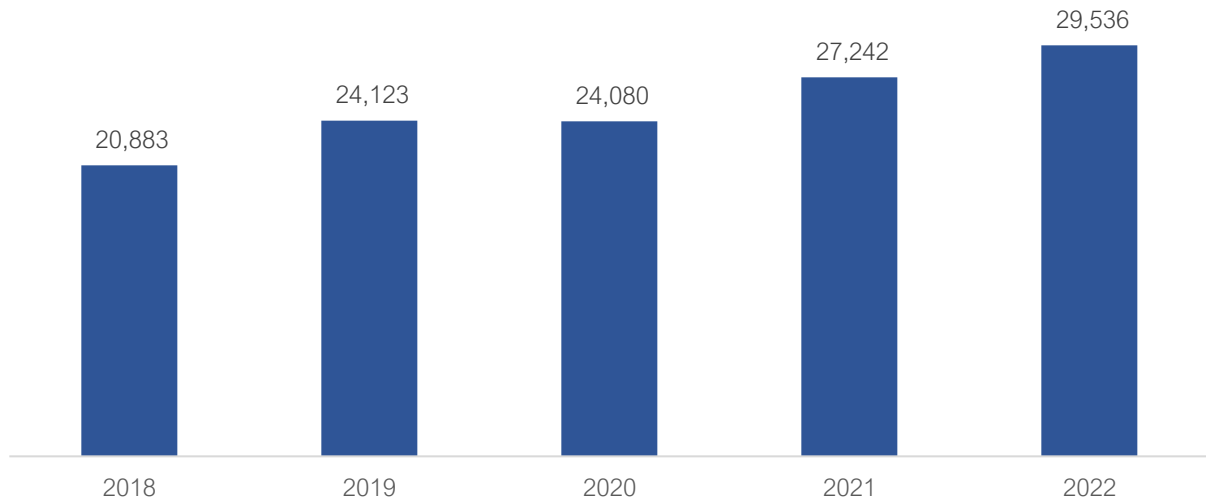


Figure 5: Number of CSS Requests Approved by Fiscal Year

The data below illustrates the dollar amount of CSS pre-approvals over the last 5 years. Note that approvals represent administrative work by the agency, but the amount eventually paid is less than pre-approvals. The amounts pre-approved increased at about the same rate per year from 2018-2022. The increasing dollar amount of pre-approval slowed down in 2020, again due to the impacts of COVID-19 on the court system.

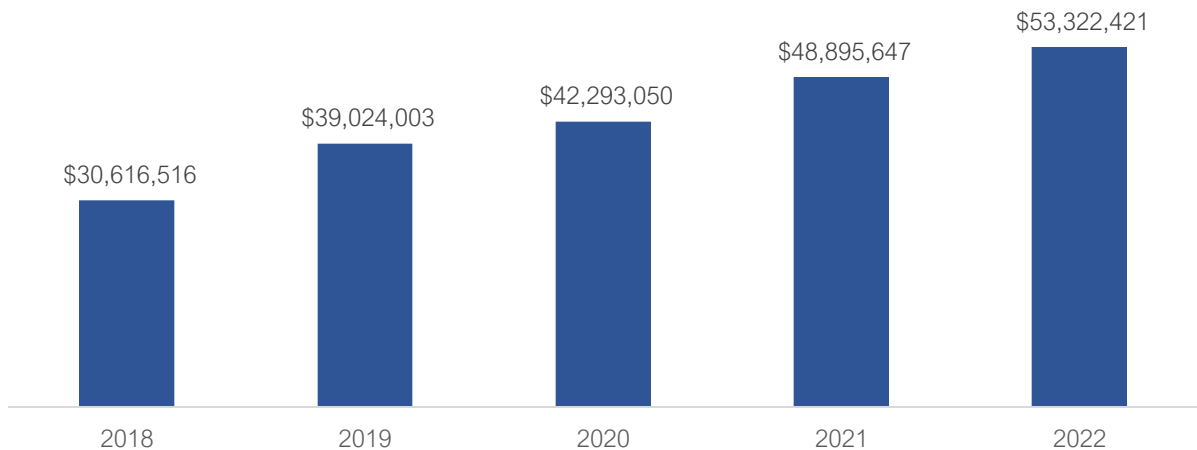


Figure 6: Dollar Amount of CSS Approved by Fiscal Year

## Commission Funding Request

		<b>Fund</b>	<b>Amount</b>	<b>Positions</b>	<b>FTE</b>
2021 – 2023	Legislatively Approved Budget	General	43,663,533	0	0.00
2023 – 2025	Base Budget	General	43,663,533	0	0.00
2023 – 2025	Current Service Level	General	52,049,933	0	0.00
080	Emergency Board Packages	General	7,450,686	0	0.00
114	Increase Hourly Rates	General	15,649,067	0	0.00
115	Unrepresented Persons Crisis	General	6,628,376	0	0.00
<b>2023 – 2025</b>	<b>Commission Funding Request</b>	<b>General</b>	<b>81,778,062</b>	<b>0</b>	<b>0.00</b>



## Court Mandated Expenses

The Court Mandated Expenses Division funds trial and appellate representation for the following (a) the provision of attorney services not funded through a normal provider contract; and (b) discovery, postage, photocopying, parking, mileage, basic interpreter services, and costs associated with obtaining certain types of records (up to \$300). Court Mandated Expenses exclude contract payments and NRE/CSS Expenses.

The Court Mandated Expenses Division is subject to a mandated caseload and is to be budgeted based on anticipated caseload changes for state constitution or court actions.

During the 2021 session, the Oregon Legislature passed HB 5030, which established the Public Defense Services Commission (PDSC) budget for the 2021-2023 biennium. HB 5030 contained a provision that held back \$100 million of General Fund and placed it in a special purpose appropriation (SPA), appropriated to the Emergency Board for PDSC. In June 2022, the Emergency Board released the SPA, and the request includes a proportionate amount for Court Mandated Expense which was \$5,002,135 for the 2021-23 biennium.

### Program Overview

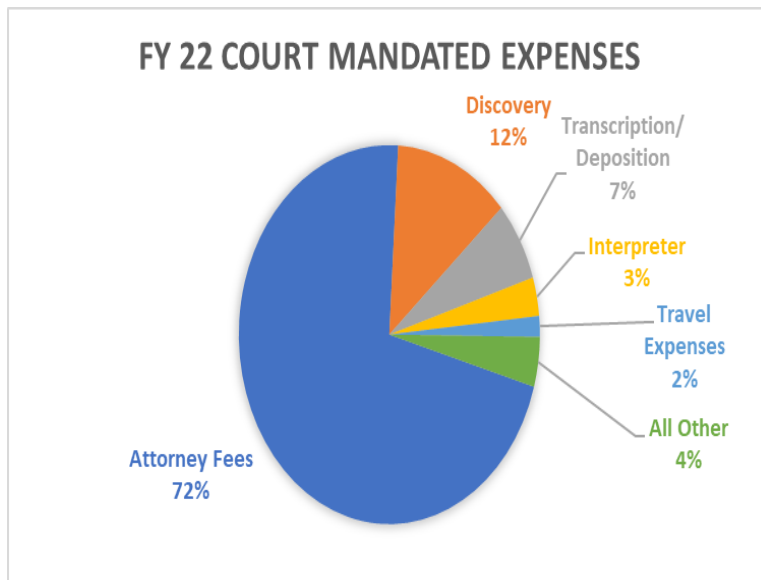
The Court-Mandated Expenses Division is organized into the following sections: (1) Administration; (2) Appellate; (3) Trial Level; (4) Juvenile; and (5) the Application Contribution Program (ACP). Counsel funded through the Court-Mandated Expenses Division include (1) attorneys who serve on OPDS's criminal and juvenile appellate panels and are generally paid set rates to represent clients on direct appeal in criminal, juvenile dependency, termination-of-parental-rights, and juvenile delinquency cases and (2) attorneys who do not have a contract with the PDSC but nonetheless accept one or more court appointments due to conflicts and/or a lack of public defense provider capacity and are generally paid an hourly rate between \$75 and \$105 per hour, depending on the type of case. This funding is essential to ensure the appointment and payment of counsel for all individuals entitled to court-appointed counsel under state and federal law.

### Program Justification and Performance

Court Mandated Expense division is linked to ORS 135.055(3) requiring PDCS to pay the cost of "reasonable and necessary" expenses for public defense cases. The public defense system strives to provide clients a constitutionally adequate defense, thus, allowing case supported services further the states' efforts to provide marginalized and under-represented clients timely access to quality representation.

Court Mandated Expenses are all the non-contract, non-case support service expenditures. Expenditures for the 2019-21 biennium were \$47,654,547, up from \$41,514,019 in the 2017-19 biennium. The Legislatively Adopted Budget for Court Mandated Expenses in 2021-23 is \$39,567,492 although expenses in the category are

currently expected to be more than \$48 million. In 2021-23, the expenses are primarily for hourly attorneys (46%), psychiatric evaluations (40%), and transcription/deposition (6%).



Over the past decade, the budget and administration of the Court Mandated Expenses has grown. Prior to this last budget cycle, OPDS budget categories consisted of the Appellate Division, Contracts and Business Services, and the Professional Services Account, which was used to compensate all providers and routine and non-routine fees and expenses. Beginning in the 2019-21 biennium, the Professional Services Account is divided into separate divisions: (1) Trial Criminal Division; (2) Juvenile

Division; (3) Non-Routine Expenses (NRE/CSS); (4) Court Mandated Expenses; and (5) Special Programs, Contracts & Distributions.

The non-contract attorney hourly rate has increased since 2013, with the current rate for assigned counsel ranging from \$75.00 to \$105.00 per hour. With the implementation of SB 578 (Guardianship or Conservatorship), the courts may order PDSC/OPDS to compensate counsel if the respondent has insufficient assets to retain counsel.

Non-Attorney fees for other providers such as paraprofessionals, interpreters (certified and qualified), and other routine expenses and fees (i.e., mileage lodging, per diem, discovery, copies and other out-of-pocket expenses) have also increased over time.

## Commission Funding Request

		<b>Fund</b>	<b>Amount</b>	<b>Positions</b>	<b>FTE</b>
2021 – 2023	Legislatively Approved Budget	General	15,006,403	0	0.00
		Other	4,449,667		
2023 – 2025	Base Budget	General	15,006,403	0	0.00
		Other	4,449,667		
2023 – 2025	Current Service Level	General	18,335,583	0	0.00
		Other	3,937,116		
080	Emergency Board Packages	General	26,722,465	0	0.00
114	Increase Hourly Rates	General	15,250,114	0	0.00
115	Unrepresented Persons Crisis	General	26,876,806	0	0.00
2023 – 2025	Commission Funding Request	<b>General</b>	<b>87,184,968</b>	<b>0</b>	<b>0.00</b>
		<b>Other</b>	<b>3,937,116</b>		

## Policy, Planning, and Administrative Divisions

### Executive Division

The Executive Division contains the agency's core leadership team and has primary responsibility for agency governance and ensuring compliance with ORS Chapter 151. ORS 151.216 directs the agency "to maintain a public defense system that ensures the provision of public defense services consistent with the Oregon Constitution, United States Constitution, and Oregon and national standards of justice."

## Compliance, Audit, and Performance Division

The Compliance, Audit & Performance (CAP) Division provides oversight of and support to court-appointed counsel in criminal, juvenile dependency, juvenile delinquency, civil commitment, post-conviction relief, and habeas corpus cases.

## Administrative Services Division

The Administration Services Division includes the Budget and Finance, Contract Services/Non-routine Expense, Human Resource Management, and Information Technology sections responsible for agency leadership and central agency administration ensuring compliance with ORS Chapter 151. ORS 151.216 directs the agency “to maintain a public defense system that ensures the provision of public defense services consistent with the Oregon Constitution, United States Constitution, and Oregon and national standards of justice.”. Effective management of this program allows the agency’s service delivery staff to focus on providing excellence in core business program delivery and customer assistance.

## Special Programs, Contracts, and Distributions

The Special Programs, Contracts, and Distributions Division is currently comprised of the Guardianship Program, which is a statewide program that provides appointed counsel to eligible respondents or protected persons in guardianship or conservatorship cases. The agency received this program through SB 578 during the 2021 session. Operations and Policy Analyst FTE for this program began July 2022.

## Divisions’ Justification and Performance

All together the Executive Division, CAP Division, Administrative Division and the Special Programs, Contracts and Distributions Division provide administrative support to the agency's programs. This is necessary to effectuate a healthy, vital, and sustainable public defense system. The legal services funded by OPDS is the largest coordinated law effort in the state of Oregon, serving indigent people in criminal, juvenile, civil commitment, contempt, probate, and other cases, at the trial and appellate level. Consistent leadership and governance are critical to the effective operation of these programs. The scope of these combined programs includes the responsibility for ensuring that the agency continuously meets its obligation to provide high-quality, zealous legal representation for those in Oregon entitled to court-appointed counsel by monitoring the delivery of public defense services and providing guidance to the PDSC and agency regarding policies and procedures that will support and promote high-quality representation.

## Commission Funding Request

		<b>Fund</b>	<b>Amount</b>	<b>Positions</b>	<b>FTE</b>
2021 – 2023	Legislatively Approved Budget	General	22,661,206	54	49.68
2023 – 2025	Base Budget	General	22,688,843	45	45.00
2023 – 2025	Current Service Level	General	22,749,211	46	46.00
080	Emergency Board Packages	General	384,445	1	1.00
090	Statewide Adjustments	General	-50,370	0	0.00
103	PCRP Expansion	General	291,322	2	1.01
104	Program Design and Delivery	General	2,371,459	12	8.54
105	FCMS	General	7,864,650	5	4.76
107	OJD ETS Services	General	929,270	0	0.00
108	Limited Duration to Permanent Positions	General	2,343,092	8	8.00
109	Case Support Services Position	General	235,394	1	1.00
114	Increase Hourly Rates	General	254,905	1	0.88
<b>2023 – 2025</b>	<b>Commission Funding Request</b>	<b>General</b>	<b>37,373,378</b>	<b>76</b>	<b>71.19</b>

# Agency Initiatives and Investments

The Commission adopted a number of novel initiatives during the 2021-23 biennium in response to the unrepresented persons crisis. The initiatives also provided insight into promoting the recruitment and retention of talented public defenders. As such, the lessons learned shaped the proposed 2023-25 biennium budget request.

The Commission put forward several policy option packages that represent decisive investments that will (1) stabilize existing providers, (2) recruit additional providers, (3) increase efficiency and (4) prioritize data collection. Without those investments made by this Legislative Assembly, the agency and public defense system may not be able to tolerate further attrition and the mounting body of unrepresented persons.

## Agency Initiatives

The Public Defense Services Commission (PDSC) has identified a cycle of burnout and attrition that needs to be addressed. The following initiatives have been implemented to address that cycle.

### Actions to Increase Capacity and Mitigate the High Caseloads

The agency has focused on increasing the number of attorneys by increasing the number of new contracts and by using a tiered contracting model which has since been implemented to better incentivize attorneys with greater compensation. Additionally, the agency is working on attracting more attorneys to Oregon to work in public defense to help address the unrepresented persons crisis.

To better support attorneys and help mitigate high caseloads, PDSC works with nonprofit public defender offices to provide resources and the necessary training and supervision for public defenders with complex cases. The agency also works with communities and stakeholders to exchange ideas and find more creative ways of addressing the unrepresented persons crisis. This includes partnering with other state agencies like the Oregon Judicial Department, to gather vital data necessary for quantifying the number of unrepresented persons.

The agency received \$10 million of Emergency Funds in the December Emergency Board, which has helped with investments to stabilize the public defense workforce.

### Increased and Tiered Hourly Rate Structure for All Unrepresented Persons

Goal: Increase capacity by investing \$5,000,000 of the Emergency Fund allocation to increase the hourly rates for non-contract attorneys who accept assignment of cases from the Oregon Judicial Department's "OPDS Unrepresented" list and implementing a tiered rate structure to target the greatest needs.

Public Defense Services' hourly rates have not been competitive. With the rate for

murder cases being \$105 an hour and the rate for all other case types being \$75 per hour, this does not adequately incentivize attorneys. The following tiered rate model will be implemented to allow for better compensation for public defenders:

- \$125 per hour for misdemeanor, contempt, and probation violation cases
- \$158 per hour for Class C felony and felony drug possession cases
- \$164 per hour for Class A and B felony, juvenile dependency, termination-of-parental-rights, juvenile delinquency, habeas corpus, post-conviction relief, civil commitment, and Psychiatric Security Review Board cases
- \$175 per hour for Ballot Measure 11 and felony sex offense cases; and
- \$200 per hour for murder and Jessica's Law cases

### Strategic Reserves

Goal: Set the Agency up to be as strategic and adaptable as possible for the remainder of the biennium by setting aside \$2,500,000 of the Emergency Fund allocation for investment in programs that are proven to reduce unrepresented people

The agency has funded multiple programs for more than six months and has been reevaluating the effects of these programs for future implementation. There is a reasonable degree of uncertainty regarding what additional investments might be necessary if the unrepresented persons crisis should deteriorate. As a result, there is an increased importance for strategic reserves.

### Supervised Civil Attorney Program

Goal: Increase capacity by expanding the pool of attorneys available to represent out of custody persons charged with misdemeanors and minor felonies by investing \$394,200 of the Emergency Fund allocation in a Supervised Civil Attorney Program

The Supervised Civil Bar Attorney Program will provide Supervising Attorneys to maintain oversight of attorneys who are appointed to represent qualified defendants in misdemeanor cases. Additionally, this arrangement will provide a framework that requires data collection on performance and time records on all relevant work.

### Existing Attorney Retention Incentive Program

Goal: Stabilize existing contractors and increase accountability by investing \$6,000,000 of existing agency funds and \$2,105,800 of the Emergency Fund Allocation in a retention incentive program

There is a high attorney attrition rate that is a leading cause for defendants being unrepresented. Any savings from attrition is used to retain existing contractors with the retention incentive payment program. All funds are received under the condition that the remaining attorneys maintain reporting of caseload and information on how the funds are spent. Retention incentive payments will total \$15,000 per full-time attorney, with 12.5% of the funds dispersed each month between February and May 2023 and 50% of the funds dispersed in June 2023.



## Proposed Investments and Policy Packages

The commission is proposing the following investments above CSL to address the current critical issues and to address the problematic future issues. These proposals will allow the commission to continue capitalizing on the current investments from the 2021-2023 biennium and to provide improved services and representation to Oregonians.

### Policy Option Package 081: Permanent Funding of June 2022 Joint Emergency Board Actions

The Emergency Board's actions to create a modified Current Service Level:

- Transfer \$19,558,954 in General Fund to Court Mandated Expenses from Trial Criminal Division (\$10,602,500); Appellate Division (\$1,250,000); Non-routine Expenses (\$7,706,454).
- Allocate \$413,011 in General Fund from Joint Emergency Board's Emergency Fund to the agency's Administrative Services Division.
- Allocate \$100,000,000 in General Fund from the Special Purpose Appropriation (SPA) provided in House Bill 5030 (2021) for the Public Defense Services Commission to the Trial Criminal Division (\$70,250,989); Non-routine Expenses (\$14,554,511); Court Mandate Expenses (\$5,002,125); Juvenile Division (\$10,192,365).
- Mandated caseload inflation and other inflationary adjustments to the SPA are included.
- Allocate \$94,155 in General Fund from the Joint Emergency Board's Emergency Fund to the agency's Administrative Services Division for position reclassification.

### Policy Option Package 082: Permanent Funding of September 2022, Joint Emergency Board Actions

The Emergency Board's actions to create a modified Current Service Level:

- Allocate \$91,907 in General Fund from the Joint Emergency Board's Emergency Fund to Trial Criminal Division for Family Treatment Court.
- Allocate \$121,649 in General Fund from the Emergency Fund to the agency's Compliance, Audit, and Performance Division to establish one permanent position (1.00 FTE).

### Policy Option Package 083: Permanent Funding of December 2022 Joint Emergency Board Actions

The Emergency Board's actions to create a modified Current Service Level:

- Transfer \$12,000,000 in General Fund to Court Mandated Expenses from Trial Criminal Division (\$5,000,000); Appellate Division (\$2,000,000); Non-routine Expenses (\$5,000,000).
- Establish \$4,000,000 in other funds expenditure limitation in Trial Criminal Division for the reimbursement of juvenile expenses from federal Title IV-E funding

transferred from the Oregon Department of Human Services.

- Transfer \$4,000,000 in other funds expenditure limitation from the Juvenile Division to the Trial Criminal Division for the reimbursement of juvenile expenses from federal Title IV-E funding transferred from the Oregon Department of Human Services.
- Allocate \$10,000,000 in General Fund from the Joint Emergency Board's Emergency Fund to the commission for the unrepresented defendant/persons crisis. This is a one-time allocation.

### Policy Option Package 091: Additional Analyst Adjustments

This package adjusts the commission's state government service charges such that they are commensurate to the Department of Administrative Services' 2023-25 price list.

### Policy Option Package 092: Statewide Attorney General Fee Adjustment

This package adjusts the commission's attorney general fees such that they are commensurate to the attorney general's biennial rate setting.

### Policy Option Package 101: Provider Compensation

PDSC proposes to implement a competitive compensation structure for all contract entities. This compensation structure will be introduced as a comparative structure to how the state currently compensates defenders and senior defenders in the PDSC appellate division and with assistant attorney general and senior assistant attorney general positions in the Department of Justice. While increased funding will not fix all the problems with the current service delivery model for public defense services, attorney salary and resource parity with the prosecution is critical to addressing the escalating number of attorneys leaving public defense, improving the current public defense service delivery model, and promoting and maintaining a fair and just criminal justice system. The public defense system must be adequately resourced to participate as equals in Oregon's criminal justice system. This package assumes the inclusion of package 081.

	Funds			Positions	FTE
	General	Other	Total		
Trial Criminal Division	33,813,631	0	33,813,631	0	0.00
Juvenile Division	6,306,981	0	6,306,981	0	0.00
	<b>40,120,612</b>	<b>0</b>	<b>40,120,612</b>	<b>0</b>	<b>0.00</b>

### Policy Option Package 102: Provider Staffing

PDSC proposes to implement a competitive pay structure for all contract entities. This pay structure will be introduced as a comparative structure to how the state currently

compensates PDSC defenders and senior defenders and with assistant attorney general and senior assistant attorney general positions in the Department of Justice. Package 102 is a continuation and is in addition to the funding of Policy Package 101. Therefore, in addition to creating parity at the attorney compensation level, this package takes the next step by providing a menu of options to provide funding for support staffing, supervision, training, and administrative costs. The importance of support staff, investigators, case managers, social workers dedicated supervision cannot be overstated. By funding these critical positions in a non-profit PD office or consortium, the overall attorney workload will be reduced, and case outcomes improved. This package assumes the inclusion of package 081.

	Funds			Positions	FTE
	General	Other	Total		
Trial Criminal Division	114,397,713	0	114,397,713	0	0.00
Juvenile Division	37,630,767	0	37,630,767	0	0.00
	<b>152,028,480</b>	<b>0</b>	<b>152,028,480</b>	<b>0</b>	<b>0.00</b>

#### Policy Option Package 103: Parent-Child Representation Program Expansion

In 2015, the Oregon legislature established the Task Force on Legal Representation in Childhood Dependency to “recommend models for legal representation in juvenile court proceedings” that would, among other things, “improve outcomes for children and parents served by the child welfare system.” SB 222 (2015). This package is intended to provide for high-quality legal representation for parents, children, and youth in juvenile court proceedings consistent with the Task Force’s recommendations across the state. Based on reports from providers, the presence of the PCRCP in neighboring jurisdictions has caused/exacerbated problems with recruitment and retention in counties where PCRCP has not yet been implemented due to inequities in workload and services available in PCRCP versus non-PCRCP jurisdictions. This package would also help ensure the equitable delivery of legal services to indigent clients involved in juvenile court proceedings. This package also includes two permanent Program Analyst 4 positions (1.01 FTE) positions as case contract administrators.

	Funds			Positions	FTE
	General	Other	Total		
<b>Juvenile Division</b>	<b>10,187,974</b>	<b>0</b>	<b>10,187,974</b>	<b>2</b>	<b>1.01</b>

#### Policy Option Package 104: Program Design and Research

The package is requesting 17 positions (11.80 FTE) so the agency can produce written policies, procedures, and processes for both the agency and public defense providers

to adhere and be consistent with legislative directives. The establishment of needed policies and procedures will allow the agency to measure caseloads, workloads, and other metrics to ensure enhanced caseload forecasting, and to establish performance measures and methods for the monitoring compliance with state and national practice standards, client and system outcomes, internal financial controls, and standards applicable to court supported services needed for quality representation. The agency will be better equipped to provide oversight of these functions, increasing agency capacity to support high-quality, zealous legal representation, provide oversight of legal representation for indigent clients, and engage in robust data collection and analysis to inform appropriate procurement methods to contract with public defense providers around the state. These efforts will result in increased leadership, better communication, and more transparency to the agency's work. Positions, costs, and justifications are attached.

	Funds			Positions	FTE
	General	Other	Total		
Executive Division	839,755	0	839,755	4	2.88
Compliance, Audit, and Perf.	1,303,060	0	1,303,060	7	4.78
Trial Criminal Division	518,037	0	518,037	3	2.26
Juvenile Division	291,320	0	291,320	2	1.00
Administrative Services Div.	228,644	0	228,644	1	0.88
	<b>3,180,816</b>	<b>0</b>	<b>3,180,816</b>	<b>17</b>	<b>11.80</b>

### Policy Option Package 105: Financial and Case Management System

The Public Defense Services Commission (PDSC), through its Office of Public Defense Services (OPDS), seeks to procure an integrated financial and case management system designed to support the agency's mission to ensure that eligible individuals have timely access to legal services, consistent with Oregon and national standards of justice. The FCMS will provide a reduction in manual data entry through integrations with partner agencies, allow for the ability to manage payment requests in a timely manner, and produce data so caseloads can be monitored more efficiently and analyzed to better understand the services provided to individuals that qualify for counsel. Without an integrated financial and case management system, the ability to effectively evaluate public defense services is significantly diminished which impacts case management, collection of program data and performance metrics, and the ability to conduct timely and cost-effective research. This package is requesting 3 new positions (2.76 FTE) and 2 limited duration positions from HB 5202 (2022) to be established as 2 permanent full-time positions (2.0 FTE).

	Funds			Positions	FTE
	General	Other	Total		

<b>Administrative Services Div.</b>	<b>7,864,650</b>	<b>0</b>	<b>7,864,650</b>	<b>5</b>	<b>4.76</b>
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### Policy Option Package 107: Oregon Judicial Department ETS Services

This policy package would support the implementation of a Hybrid approach with the continuation of the Oregon Judicial Department’s inter-agency agreement and internal staff supporting new technological advancements for the agency. Continuation of the OJD IAA would be considered status quo and would have no impact on services currently provided. As the agency continues to grow and incorporate new functionality, specifically the FCMS internal staff will support this effort and ensure that adequate training and technical assistance is provided to internal and external users of the system. Carrying forward of the OJD IAA would take place immediately and scheduled to begin July 1, 2023, to start the 2023-25 biennial service contract.

	Funds			Positions	FTE
	General	Other	Total		
<b>Administrative Services Div.</b>	<b>929,270</b>	<b>0</b>	<b>929,270</b>	<b>0</b>	<b>0.00</b>

### Policy Option Package 108: Limited Duration Positions to Permanent Positions

The agency lacks sufficient infrastructure support in operations of the agency. The investment of appropriate resources is necessary in the agency making the transition from being a pass-through agency to becoming a regulatory agency, advancing modernization efforts. This package is to provide stability by making permanent the limited duration positions authorized under HB 5030 (2021) to address deficiencies in the administration of OPDS. All positions have or will be filled through open-competitive recruitments and have demonstrated a permanent and ongoing workload need addressing capacity within the agency’s infrastructure. Positions, costs, and justifications are attached. This package is for 8 positions (8.0 FTE).

	Funds			Positions	FTE
	General	Other	Total		
<b>Administrative Services Div.</b>	<b>2,343,092</b>	<b>0</b>	<b>2,343,092</b>	<b>8</b>	<b>8.00</b>

### Policy Option Package 109: Case Support Services Position

Case supported services (CSS) are pre-approved services by the agency, when attorneys need case supported services such as an expert, a doctor, or other evaluations, prior to the service being performed. The agency has a 4-person team that processes intake and pre-approval of these requests. There are on average 150 of

these requests that are sent into the agency each day. The workload currently is at a level that requires 2 Program Analyst 1's completing the intake process at all times. Intake is a manual process that requires reaching out to the requesting attorney for clarifications. This is a time sensitive process for the attorneys that requested the CSS, the work can't be completed until the agency has pre-approved the work. This package requests the reestablishment of one permanent Program Analyst 1 that was mistakenly removed from the 2021-2023 budget.

	Funds			Positions	FTE
	General	Other	Total		
<b>Administrative Services Div.</b>	<b>235,394</b>	<b>0</b>	<b>235,394</b>	<b>1</b>	<b>1.00</b>

### Policy Option Package 112: Mandated Caseload for Juvenile Representation

The commission seeks to have the legislature designate legal representation in juvenile delinquency, juvenile dependency, and termination-of-parental-rights cases as a mandated caseload, that is, representation required by the state or federal constitutions or statutes or as a result of court actions. The United States Supreme Court held in *In Re Gault*, 387 U.S. 1 (1967) that children have a constitutional right to counsel when they are subject to a juvenile delinquency petition. The United States Supreme Court has held that parents have a fundamental liberty interest in the “care, custody, and management of their children” that is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Recognizing juvenile representation as mandated caseload provides an alternative to ongoing biennial requests to fund the required services.

	Funds			Positions	FTE
	General	Other	Total		
<b>Juvenile Division</b>	<b>2,705,261</b>	<b>0</b>	<b>2,705,261</b>	<b>0</b>	<b>0.00</b>

### Policy Option Package 114: Increase Hourly Rates

This request has three components: the to increase hourly attorney pay from \$75 to match the federal rate of \$164 per hour; second to increase the investigator rate from \$40 per hour to \$75 per hour to be competitive with the federal rate; and third to request an additional accountant (accountant 4) to enable the agency to maintain and handle the increased accounting workload as the agency continues to grow at its current pace.

1. This request will align our private bar attorneys with the federal rate of pay from \$75 to \$164/hour and bring new attorneys to public defense. Oregon is experiencing a public safety crisis, which includes unrepresented individuals. The systemic under sourcing of public defense and high caseloads has led to shortages of public defense

attorneys. This increased attorney pay will hopefully continue to attract and retain attorneys. The return on investment is enough attorneys at the pay equal to the federal rate. Increased hourly pay will reduce the unrepresented crisis in Oregon and preserve the defendant's constitutional right to receive counsel. (\$15,250,114 GF)

2. One of the most important pieces of any case is investigation. To stay competitive and maintain a health supply of qualified investigators, PDSC must increase the level of compensation it provides to investigators. PDSC is proposing to increase the rate of investigation from \$40 per hour to \$75 per hour. While \$75 is not equal to the federal rate it is a healthy increase that should keep Oregon competitive and prevent vendors from leaving this occupation. (\$15,649,067 GF)

3. The package also includes an Accountant 4 position to maintain and oversee the higher volume of expenditures to accuracy for reporting and analysis. This position will provide sub-system oversight, adaptations, and corrections as necessary for our new financial case management system and will ensure the financials interface seamlessly with the statewide financial management system. This position is needed to help design or enhance this new complex system, be the subject matter expert, set up and align all new accounting structures, internal controls, financial reporting, and analysis. Request is for one position (0.88 FTE) (\$254,905 GF)

	Funds			Positions	FTE
	General	Other	Total		
Case Support Services (NRE)	15,649,067	0	15,649,067	0	0.00
Court Mandated Expenses	15,250,114	0	15,250,114	0	0.00
Administrative Services Div.	254,905	0	254,905	1	0.88
	<b>31,154,086</b>	<b>0</b>	<b>31,154,086</b>	<b>1</b>	<b>0.88</b>

### Policy Option Package 115: Unrepresented Persons Crisis (Special Purpose Appropriation)

Oregon's public defense system is currently facing a crisis due to a lack of public defenders. As a result of this crisis, the state cannot guarantee a public defender to every eligible person in need of public defense services leading the prosecution of unrepresented persons. The constitutional crisis caused by the prosecution of unrepresented individuals has been one of the main issues the Public Defense Services Commission has focused on addressing during the 2021-2023 biennium.

The Legislature has made numerous investments to target the unrepresented persons crisis and the Public Defense Services Commission has repurposed agency savings to target additional resources to obtain lawyers for unrepresented persons. These investments have been used to hire and retain and better support public defenders and to increase hourly rates for attorneys and investigators who are appointed to unrepresented persons cases.

Moving forward, Oregon’s public defense system needs comprehensive and structural modernization to move beyond the current crisis and ensure consistent, timely access to a public defender for all eligible persons. Until comprehensive and structural modernization is achieved Oregon will continue to have a constitutional crisis of unrepresented persons, and the Public Defense Services Commission will continue to focus its efforts to mitigate the problem.

The agency struggles to estimate exactly how the continuing crisis will unfold mainly because of the latency of the data and the dynamic movement of cases through the system. However, the agency is confident that the crisis will continue to grow this biennium as many contracted providers are reaching the end of their contractual obligation to the State and a wave of cases return to the trial courts following the Oregon Supreme Court’s decision in *Watkins v. Ackley*. Undoubtedly, Oregon will finish the 2023 fiscal biennium with a large number of unrepresented persons and the problem will persist into the 2023-2025 biennium.

The agency is requesting a special purpose appropriation of \$33.5 million be established to pay for increased hourly rates for attorneys (\$26.9 million) and investigators (\$2.5 million) who are appointed to unrepresented persons cases. There is an additional amount requested for other case support services costs (\$4.1 million). The agency is using the same methodology to forecast the cost that was employed to forecast the expenditures for the \$10 million appropriation from the December 2022 Emergency Board.

	Funds			Positions	FTE
	General	Other	Total		
Case Support Services (NRE)	6,628,376	0	6,628,376	0	0.00
Court Mandated Expenses	26,876,806	0	26,876,806	0	0.00
	<b>33,505,182</b>	<b>0</b>	<b>33,505,182</b>	<b>0</b>	<b>0.00</b>



# Agency Budget Environment

Here, we talk about the big budget drivers and risks. We should probably also discuss pending legislation that will materially shape the commission and agency in future periods. Probably worthwhile to discuss how Covid-19 affected the judicial branch at large and inside the agency. . .

In this section, we need to talk about IT projects too.

## Budget Challenges and Risks

The agency faces unique circumstances which makes it very difficult to fulfil its constitutional obligations. These challenges further complicate things, given that there are many proposed changes that will drastically affect the agency's budget for the 2023-25 biennium. It is vital that these issues are addressed while still maintaining a fully operational agency. The following is a list of those challenges; they are broken up between several different categories: economic factors, demographics, legal changes, and available resources & logistics.

### Economic Factors:

- Shortage of qualified attorneys, and shortage of providers who are willing to provide services at the current compensation levels.
- Rising costs associated with inflation that is affecting vendors (investigation, mitigation, psychological services, etc.).
- The condition of Oregon's economy and its rates of unemployment and poverty.

### Demographics:

- Demographic trends such as increases in population, particularly of the "at risk" population.
- Recidivism rates in Oregon's correctional population.
- Rates of removal of children from their homes by the Department of Human Services.
- Oregon's crime rate.

### Legal Changes:

- Legislative and voter-initiated changes to criminal and juvenile laws that create new offenses, enhance penalties, alter procedures.
- Case law changes in the state and federal appellate courts.
- Changes in law enforcement and district attorney policies, practices, and staffing levels.
- Changes in court procedures and schedules; creation of specialty courts such as drug, mental health, and domestic violence courts.

### Available Resources & Logistics:

- Availability of jail space.
- Access to social services such as drug treatment and family support services that can reduce criminal behavior and the need for court intervention in families.
- Changing prevailing norms for adequate representation and overall case complexity.

## **The Covid-19 Impact on Public Defense**

The global coronavirus pandemic offered an opportunity for state government and courts to utilize technology and communications in new ways. Courts in every jurisdiction confronted a disease, which caused a rash of social and economic consequences that was hitherto unimaginable. In Oregon, shortly after the governor declared an emergency (“Executive Order No. 20-3 of March 8, 2020, Declaration of Emergency Due to Coronavirus (COVID-19) Outbreak in Oregon.”), the chief justice issued the first of at least a dozen orders significantly curtailing court operations. Justice Orders mandated public health protocols such as the personal use of protective face coverings, social distancing, and vaccines; and eventually providing some means for courts to conduct business to the extent it was reasonably safe and practicable. Presiding judges substantially exercised discretion in the conduct and scheduling of both criminal and civil proceedings pursuant to the chief justice’s orders.

Some jurisdictions adopted unique solutions and precautions for their circumstances. The public defenders found it necessary to adapt to each unique courthouse and courtroom. The overall pandemic had an impact on the operations and future of the justice system in Oregon. Public defenders were now carrying cases for a longer period of time before reaching a final disposition or outcome. This made caseload projections much more difficult to project.

## **Pending Legislation**

The Public Defense Services Commission is currently included in Senate Bill 337-1 which involves major agencywide changes which, if passed, will likely result in additional need for funding. This legislation would be making changes to the agency’s overall authority provided in ORS 151.

Other important legislation includes Senate Bill 528-2 and House Bill 2467-2. Senate Bill 528-2 directs the agency to contract out the provision of at least three qualified attorneys for protective hearings, while House Bill 2467-2 creates a new student loan repayment assistance program for public defense providers.

## Information Technology Projects – Current and Upcoming

The Public Defense Services Commission (PDSC), through its Office of Public Defense Services (OPDS), seeks to procure an integrated Financial and Case Management System (FCMS). This system is meant to support the agency’s mission to ensure that eligible individuals have timely access to legal services, consistent with Oregon and national standards of justice. The FCMS will provide a reduction in manual data entry through integrations with partner agencies, allow for the ability to manage payment requests in a timely manner, and produce data so caseloads can be monitored more efficiently and analyzed to better understand the services provided to individuals that qualify for counsel.

## Recent Audit Findings

The budget report to House Bill 5030 (2021) directed the commission to report to the Joint Committee on Legislative Audits [ . . . ] the establishment of the [c]ommission’s internal audit function[.]” The commission hired Kernutt Stokes, an independent auditor, to review the financial management and overall financial performance of the Office of Public Defense Services. As part of that review, the independent auditor tested the agency’s (1) policies and procedures; (2) accounts payable; (3) case support services; (4) attorney contracts; (5) service contracts; and (6) procurement. The commission presented the auditor’s report to the Joint Committee on Legislative Audits on December 8, 2022.

Kernutt Stokes made eleven findings, four observations, and seven process improvement recommendation (PIR). Management concurred with and agreed to all findings, observations, and PIRs.

<b>Audit Area</b>	<b>Findings</b>	<b>Observations</b>	<b>PIR</b>
Policies and Procedures	3	-	-
Accounts Payable	-	2	2
Case Support Services	1	1	2
Attorney Contracts	2	1	2
Service Contracts	2	-	1
Procurement	3	-	-
	<b>11</b>	<b>4</b>	<b>7</b>

# Supplemental Budget Information

## Other Funds Revenues and Ending Balances

Other Funds are sourced from Title IV-E Federal Funds, received as Other Funds from the Department of Human Services, and fees associated with the Application Contribution Program (ACP). In 2019, federal policy was revised, allowing Oregon to claim Title IV-E funds for administrative reimbursement of costs associated with legal representation of a child or parent in foster care proceedings. Reimbursement for training of contracted legal services providers is also included. In the 2021-23 biennium, PDSC received \$14.0 million Federal as Other Funds for Title IV-E as reimbursement for state expenses.

Other Funds revenue for ACP is collected in accordance with ORS 151.487, which provides judges the authority to order those who apply for court-appointed counsel to pay the administrative costs of determining their eligibility and a “contribution amount” toward the anticipated cost of the public defense prior to conclusion of the case. The Judicial Branch Verification Specialists assist the courts in determining whether a person must pay these costs. This revenue is deposited in the Public Defense Services Account and used to fund the operating expenses of the ACP. Anticipated ACP revenues for the 2021-23 biennium is approximately \$4.4 million Other Funds. Of that amount, \$3.6 million will be transferred to the Judicial Department (OJD) to fund the verification specialist positions.

## Fifteen Percent Reduction Options

Program / Division	Funds		Total	Positions and FTE	Reduction Impact
	General	Other			
Special Programs, Guardianship	293,198		293,198	0 0.00	The elimination of the Special Programs, Contracts, and Distributions would eliminate the funding for approximately 391 case hours (budgeted at \$75 per hour) in the Guardianship and Conservatorship program. This program was established by the 2021 Legislative assembly and is still in its infancy. The program operates in Multnomah and Lane County currently and is expected to expand into Columbia County in January of 2023 and to then be deployed statewide in January of 2024. This will require Legislative Action.
Executive Division	192,223		192,223	0 0.50	This reduction in the Executive Division targets Legislative Affairs Manager which is a Deputy General Counsel Position. What the agency loses is the necessary link to the legislative body. This will mean that the Director and the Deputy Director will have to increase their level of engagement with the Legislative Body.
Compliance, Audit, and Performance	265,236		265,236	1 1.00	This reduction in the CAP division represents the elimination of an Internal Auditor. Eliminating this position will severely limit the agency's ability to conduct the necessary research to move solve the problems and provide solutions to move the agency programs forward and to evaluate the policies, procedures and best practices of the agency. Although these positions are crucial to the forward progression of the agency and the continued improvement of constitutional defense representation of Oregonians, it is more favorable than the elimination of the General Counsel and the Deputy General Counsel positions who are working to create the framework for the agency programs.

Program / Division	Funds			Positions and FTE	Reduction Impact	
	General	Other	Total			
Administrative Services Division	647,961		647,961	3	3.00	A reduction in the Administrative Services represents the elimination of essential positions that are crucial to the operational success of the agency. The elimination would touch every section within the division and limit the agency's ability to process payments and requests for services, provide essential reporting for the PDSC and the Legislature, and to maintain the technological support services necessary for the agency to operate its numerous systems and databases. The agency is sparsely resourced in the administrative area and is just starting to get on its feet operationally, so a cut here would send the agency backward to a place that may not be recoverable. This reduction action will abolish an Operation and Policy Analyst 3 in the IT Services Unit, an Accounting Tech 3 in the Accounts Payable Unit and a Program Analyst 1 in the Case Support Services Unit.
Juvenile Division	4,134,128	700,000	4,834,128	0	0.00	A 5% reduction (\$4.13 million GF; \$0.7 million OF) of the Juvenile Division represents the level of funding required for approximately one and one-half months of public defense services. Unless the 2023 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed, or funds this caseload, PDSC will have to cease payment for appointed counsel and related expenses during the last quarter of the 2023-25 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance.
Appellate Division	1,218,573		1,218,573	3	3.00	The reduction to the agency's current service level for the Appellate Division would require the elimination of three attorney positions (2 Deputy Defenders, 1 Senior Deputy Defender). Appellate cases would become backlogged and the average length of time an appeal is pending would increase. The Court of Appeals may order the dismissal of pending cases that exceed 350 days from the date the record settles to the filing of the opening brief.
Non Routine Expenses	2,602,497		2,602,497	0	0.00	A 5% reduction (\$2.6 million GF) of Case Support Services (Non-Routine Expenses) represents the level of funding required for approximately one and one-half months of vendor payments for public defense related reasonable and necessary support services. The related case costs include transcriptionists, investigators, interpreters, mitigators, social workers, psychologists, polygraph examiners, forensic, firearms and DNA experts and medical experts. Unless the 2023 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed which directly drives the needs for related support services, or funds this caseload, PDSC will have to cease payment to vendors for related expenses during the last quarter of the 2023-25 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance.

Program / Division	Funds			Positions and FTE	Reduction Impact	
	General	Other	Total			
Court Mandated Expenses	1,113,635	222,483	1,336,118	0	0.00	A 5% reduction (\$1.11 million GF. \$0.2 million OF) of the Court Mandated Expenses represents the level of funding required for approximately one month of public defense services. Unless the 2023 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed, or funds this caseload, PDSC will have to cease payment for appointed counsel and related expenses during the last quarter of the 2023-25 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance. The reduction in Other Funds will result in reduction to the monies that are passed through to the Oregon Judicial Department for the payment of staff that process the requests for the Application Contribution Program.
Trial Criminal Division	9,048,228		9,048,228	0	0.00	A 5% reduction (\$9.05 million GF) of the Trial Criminal Division represents the level of funding required for approximately one and one-half months of public defense services. Unless the 2023 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed, or funds this caseload, PDSC will have to cease payment for appointed counsel and related expenses during the last quarter of the 2023-25 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance.
	<b>19,515,679</b>	<b>922,483</b>	<b>20,438,162</b>	<b>7</b>	<b>7.50</b>	<b>First five percent reduction</b>
Executive Division	192,223		192,223	1	0.50	This reduction in the Executive Division abolishes the Legislative Affairs Manager which is a Deputy General Counsel Position. What the agency loses is the necessary link to the legislative body. This will mean that the Director and the Deputy Director will have to increase their level of engagement with the Legislative Body.
Compliance, Audit, and Performance	279,330		279,330	0	0.75	This reduction in the CAP division represents the 0.50 FTE reduction of a Research Analyst 4 in the Data Unit and 0.25 of a Deputy General Council position in the Trial Division. Reducing these positions will severely limit the agency's ability to conduct the necessary research to move solve the problems and provide solutions to move the agency programs forward and to evaluate the policies, procedures and best practices of the agency. Although these positions are crucial to the forward progression of the agency and the continued improvement of constitutional defense representation of Oregonians, it is more favorable than the further elimination of the General Counsel and the Deputy General Counsel positions who are working to create the framework for the agency programs.

Program / Division	Funds			Positions and FTE	Reduction Impact	
	General	Other	Total			
Administrative Services Division	779,444		779,444	3	3.00	A reduction in the Administrative Services represents the elimination of essential positions that are crucial the operational success of the agency. The elimination would touch every section within the division and limit the agency's ability to process payments and requests for services, provide essential reporting for the PDSC and the Legislature, and to maintain the technological support services necessary for the agency to operate its numerous systems and databases. The agency is sparsely resourced in the administrative area and is just starting to get on its feet operationally, so a cut here would send the agency backward to a place that may not be recoverable. This reduction action will abolish a Fiscal Analyst 3 in the Budget Unit, an Accounting Tech 2 in the Accounts Payable Unit and an Information Technology Specialist 2 in the IT Services Unit.
Juvenile Division	4,134,128	700,000	4,834,128	0	0.00	A 10% reduction (\$8.2 million GF; \$1.4 million OF) of the Juvenile Division represents the level of funding required for approximately three months of public defense services. Unless the 2023 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed, or funds this caseload, PDSC will have to cease payment for appointed counsel and related expenses during the last quarter of the 2023-25 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance.
Appellate Division	1,441,162		1,441,162	3	3.00	The reduction to the agency's current service level for the Appellate Division would require the elimination of three attorney positions (1 Chief Deputy Defender, 1 Deputy Defender, and 1 Senior Deputy Defender). Appellate cases would become backlogged and the average length of time an appeal is pending would increase. The Court of Appeals may order the dismissal of pending cases that exceed 350 days from the date the record settles to the filing of the opening brief.
Non Routine Expenses	2,602,497		2,602,497	0	0.00	A 10% reduction (\$5.2 million GF) of Case Support Services (Non-Routine Expenses) represents the level of funding required for approximately three months of vendor payments for public defense related reasonable and necessary support services. The related case costs include transcriptionists, investigators, interpreters, mitigators, social workers, psychologists, polygraph examiners, forensic, firearms and DNA experts and medical experts. Unless the 2023 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed which directly drives the needs for related support services, or funds this caseload, PDSC will have to cease payment to vendors for related expenses during the last quarter of the 2023-25 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance.



Program / Division	Funds			Positions and FTE	Reduction Impact	
	General	Other	Total			
Court Mandated Expenses	1,113,635	222,483	1,336,118	0	0.00	A 10% reduction (\$2.22 million GF, \$0.4 million OF) of the Court Mandated Expenses represents the level of funding required for approximately two months of public defense services. Unless the 2023 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed, or funds this caseload, PDSC will have to cease payment for appointed counsel and related expenses during the last quarter of the 2023-25 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance. The reduction in Other Funds will result in reduction to the monies that are passed through to the Oregon Judicial Department for the payment of staff that process the requests for the Application Contribution Program.
Trial Criminal Division	9,048,228		9,048,228	0	0.00	A 10% reduction (\$18.1 million GF) of the Trial Criminal Division represents the level of funding required for approximately three months of public defense services. Unless the 2023 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed, or funds this caseload, PDSC will have to cease payment for appointed counsel and related expenses during the last quarter of the 2023-25 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance.
	<b>19,590,647</b>	<b>922,483</b>	<b>20,513,130</b>	<b>7</b>	<b>7.25</b>	<b>Second five percent reduction</b>
Executive Division	62,892		62,892	0	0.25	This reduction in the Executive Division reduces the Executive Assistant Position at the Public Defense Resource Center in Portland. The agency loses some level of direct commissioner support and a reduced level of customer support at the Multnomah County Courthouse.
Compliance, Audit, and Performance	174,556		174,556	1	0.50	This reduction in the CAP division represents the elimination of a Research Analyst 4. Eliminating this position will severely limit the agency's ability to conduct the necessary research to move solve the problems and provide solutions to move the agency programs forward and to evaluate the policies, procedures and best practices of the agency. Although these positions are crucial to the forward progression of the agency and the continued improvement of constitutional defense representation of Oregonians, it is more favorable than the elimination of the General Counsel and the Deputy General Counsel positions who are working to create the framework for the agency programs.

Program / Division	Funds			Positions and FTE		Reduction Impact
	General	Other	Total			
Administrative Services Division	515,417		515,417	2	2.00	A reduction in the Administrative Services represents the elimination of essential positions that are crucial to the operational success of the agency. The elimination would touch every section within the division and limit the agency's ability to process payments and requests for services, provide essential reporting for the PDSC and the Legislature, and to maintain the technological support services necessary for the agency to operate its numerous systems and databases. The agency is sparsely resourced in the administrative area and is just starting to get on its feet operationally, so a cut here would send the agency backward to a place that may not be recoverable. This reduction action will abolish an Program Analyst 4 in the Trial Division, a Program Analyst 2 in the Case Support Services Unit.
Juvenile Division	4,134,128	700,000	4,834,128	0	0.00	A 15% reduction (\$12.4 million GF; \$2.1 million OF) of the of the Juvenile Division represents the level of funding required for approximately four and one-half months of public defense services. Unless the 2023 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed, or funds this caseload, PDSC will have to cease payment for appointed counsel and related expenses during the last quarter of the 2023-25 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance.
Appellate Division	1,367,721		1,367,721	5	5.00	The reduction to the agency's current service level for the Appellate Division would require the elimination of three attorney positions and two support positions (3 Deputy Defenders, 2 Legal Secretaries). Appellate cases would become backlogged and the average length of time an appeal is pending would increase. The Court of Appeals may order the dismissal of pending cases that exceed 350 days from the date the record settles to the filing of the opening brief.
Non Routine Expenses	2,602,497		2,602,497	0	0.00	A 15% reduction (\$7.8 million GF) of Case Support Services (Non-Routine Expenses) represents the level of funding required for approximately four and one-half months of vendor payments for public defense related reasonable and necessary support services. The related case costs include transcriptionists, investigators, interpreters, mitigators, socials workers, psychologists, polygraph examiners, forensic, firearms and DNA experts and medical experts. Unless the 2023 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed which directly drives the needs for related support services, or funds this caseload, PDSC will have to cease payment to vendors for related expenses during the last quarter of the 2023-25 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance.

Program / Division	Funds			Positions and FTE	Reduction Impact	
	General	Other	Total			
Court Mandated Expenses	1,113,635	222,483	1,336,118	0	0.00	A 15% reduction (\$3.33 million GF, \$0.6 million OF) of the Court Mandated Expenses represents the level of funding required for approximately three months of public defense services. Unless the 2023 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed, or funds this caseload, PDSC will have to cease payment for appointed counsel and related expenses during the last quarter of the 2023-25 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance. The reduction in Other Funds will result in reduction to the monies that are passed through to the Oregon Judicial Department for the payment of staff that process the requests for the Application Contribution Program.
Trial Criminal Division	9,048,228		9,048,228	0	0.00	A 15% reduction (\$27.14 million GF) of the Trial Criminal Division represents the level of funding required for approximately four and one-half months of public defense services. Unless the 2023 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed, or funds this caseload, PDSC will have to cease payment for appointed counsel and related expenses during the last quarter of the 2023-25 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance.
	<b>19,019,074</b>	<b>922,483</b>	<b>19,941,557</b>	<b>8</b>	<b>7.75</b>	<b>Third five percent reduction</b>
	<b>58,125,400</b>	<b>2,767,449</b>	<b>60,892,849</b>	<b>22</b>	<b>22.50</b>	<b>Fifteen percent reduction</b>

## Long-Term Vacancy Information

Program/ Division	Position No.	Position Title	Position Type	FTE	Budget	Vacant Date	Reason for vacancy
Compliance, Audit, and Perf. Div.	2320302	Internal Auditor	PF	1.00	265,236	7/1/2022	Position is being held vacant as the funds are being used to pay for a contracted internal auditor. Several recruitments have failed. Agency will post another recruitment as early as January 2023.
Compliance, Audit, and Perf. Div.	2320301	Internal Auditor	PF	1.00	265,236	7/1/2022	For disclosure purposes, this position was eliminated in the Agency Request Budget reduction exercise and the agency does not submit a governor's budget. Agency has had several failed recruitments this biennium for this position. In January 2023, agency chose to overfill this position to meet a direct need in the agency. As of January 1, 2023, the agency has overfilled the position with a 50/50 split responsibility to the director's office and the Trial Division.