

ANALYSIS

Public Defense Commission Internal Audit and Activities

Analyst: John Borden

Request: Acknowledge receipt of a report on an internal audit and related activities.

Analysis: The budget report for HB 5532 (2023), the primary budget measure for the Public Defense Commission (PDC), included the following budget note:

The Public Defense Services Commission is directed to report to the Joint Committee on Legislative Audits and the Joint Committee on Ways and Means prior to the Legislative Session in 2024 on internal audits and audits of provider contracts completed after June 30, 2021, as well as audit plans for the 2023-25 biennium. The report is to include an update on the hiring of internal audit staff and the reporting structure of internal audit staff to the Commission.

On February 23, 2022, the Sixth Amendment Center presented to the Commission and noted that: The complex PDSC bureaucracy hides a stunning lack of oversight that does not allow state policymakers to assure taxpayers that funding invested in indigent defense is expended efficiently and effectively. In addition, PDC will transfer from the judicial branch to the executive branch of government with an operative date of January 1, 2025 (SB 337) and such a transfer should come with a reasonable expectation that the financial practices of PDC are in good order. Thus, the genesis of the budget note was to understand the Legislature's investment in PDC's internal audit function.

Background

The establishment of the Compliance, Audit and Performance Division (CAP) was designed to bring a heightened level accountability to Oregon's public defense system in general, and PDC specifically, and to improve public defense outcomes through a robust monitoring of the quality-of-service delivery and the expenditure of funds at all levels of public defense. The CAP Division's purpose is to provide for the following mutually inclusive services: (a) vendor contract compliance; (b) auditing of vendors/contractors; (c) internal auditing of agency expenditures; (d) research and analysis; and (e) development and maintenance of performance measures, including Key Performance Measures and supporting internal Key Performance Indicators.

CAP and its various sections are intended to operate autonomously from all other legal and administrative divisions within PDC and exercises no managerial, supervisory, programmatic, or operational control over any other division or program. This structure allows for independent assessment and reporting directly to the Commission of the agency's performance.

A key component of the CAP division is the Internal Audit Section (IAS), which was established and funded by the 2021 Legislature (HB 5030). The IAS has a 2023-25 legislatively adopted budget of \$574,109 General Fund and includes two permanent full-time internal auditors (2.00 FTE). PDC reports that of the two positions, one was filled on a permanent basis on August 25, 2023 with the second position filled as a part-time limited duration position on July 1, 2023 and that serves as PDC's Chief Audit Executive. Prior to this time, the positions remained vacant with the funding used for a vendor

contract. The current Chief Audit Executive was contracted by the commission from November 15, 2021, to June 30, 2023. The internal auditors currently report, separately, to the executive director rather than the Commission. The Commission has established an Audit Subcommittee.

The 2023-25 legislatively adopted budget for PDC is \$578.9 million total funds, including \$557.1 million General Fund and \$21.8 million Other Funds across ten divisions. The total funds budget is \$115 million, or 24.8%, more than the 2021-23 legislatively approved budget. The budget includes 143 positions (137.55 FTE), which is 29 positions (29.74 FTE) more than the prior biennium.

Report Findings

For the 2021-23 biennium, the IAS completed three audits: two change of director audits and one sole source personal services contract audit. A contracted comprehensive financial and performance audit was also completed in 2021-23. PDC's audit plan for the 2023-25 biennium, which was approved on December 4, 2023, or five months after the commencement of the biennium, anticipates no financial audits, one training audit, six performance audits, two governance and risk audits, one accountability audit, one consulting audit, and three administrative audits. To-date, no internal audit has been completed for the current biennium.

Analysis

PDC, in a report to the 2021 Legislature, noted that based on a risk assessment, an audit of Client Support Services expenses, which was previously known as Non-Routine Expense and subsequently changed to "Preauthorized Expenses," was being undertaken and that the results were scheduled to be released prior to June 30, 2022. However, no such audit was reported as completed.

PDC does not anticipate auditing any of the following program or activities in the current audit plan: Adult Trial Division, Juvenile Trial Division, Parent Child Representation Program, Preauthorized Expenses, Preauthorized Expenses unfunded liability, Court Mandated Expenses, expenses related to the unrepresented defendant/persons crisis, the Financial Case Management System, the recently established regional pilot programs for state employees, or data quality, among others. The Legislature would benefit from a better understanding of the audit plan development, including prioritization, risk assessment, and how audits that are tied to PDC's remediation plan address administrative and governance deficiencies and support the effective delivery of public defense services.

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

Oregon Public Defense Commission

Gehringer

Request: Report on Senate Bill 5532 (2023) budget note on the internal audit function of the Public Defense Services Commission.

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

Discussion: In a budget note for Senate Bill 5532 (2023), the Public Defense Services Commission (PDSC) was directed to report to the Joint Committee on Legislative Audits and the Joint Committee on Ways and Means prior to the Legislative Session in 2024 on

- internal audits and audits of provider contracts completed after June 30, 2021,
- audit plans for the 2023-25 biennium,
- an update on the hiring of internal audit staff, and
- the reporting structure of internal audit staff to the Commission.

It's worth noting, Senate Bill 337 (2023) changed the name of PDSC to the Oregon Public Defense Commission (OPDC), in the law clarifying that OPDC "is a continuation of the Public Defense Services Commission and not a new authority." Therefore, the agency will be referred to as OPDC hereafter.

Internal audits and provider contracts

OPDC reported the following internal audits and audits of provider contracts completed after June 30, 2021:

- Internal financial audit of expenses incurred by, or on behalf of, previous directors, dated June 30, 2022.
- Internal performance and financial audit of sole-source personal services contracts, dated July 5, 2022.
- Internal financial audit of expenses incurred by, or on behalf of, an ex-director, dated June 30, 2023.
- Internal Follow-Up audit on the status of implementing recommendations from FY2022 audits, dated June 30, 2023.
- Performance audit of the crisis communications program, dated June 30, 2023.

Audit plans for the 2023-25 biennium

The agency's report includes a summary of their audit plan for the 2023-25 biennium, including elements of its development. The plan will be formally reviewed by the Commission next on June 30, 2024, and informally reviewed throughout the biennium for emerging risks, hotline investigations, and non-audit consulting projects.

The audit plan includes 10 audits and other consultative or administrative duties, estimated at 4,253 hours for OPDC's two audit staff. The planned audits include financial/performance audits, governance and risk audits, and several evaluations of OPDC's programs.

Hiring internal audit staff

OPDC has employed two internal audit staff since August 25, 2023, including a Chief Audit Executive (CAE) trainee. The CAE who had been performing contracted work for OPDC since November 2021 is now a limited duration employee. For fiscal year 2024, the agency plans for the CAE trainee to gradually assume the full set of CAE duties through the term of the limited duration staff, and at the conclusion of the limited duration appointment, a second permanent internal auditor will be hired to fully staff the internal audit function.

Reporting structure of internal audit staff to the Commission

OPDC reports that its Internal Audit function reports directly to the Commission, through its audit committee. The activities of the audit committee must conform to internal audit best practices and are prescribed in its charter, approved by the Commission in early 2021. A majority of audit committee members, including the Chair, are external to the Commission and agency. The OPDC membership of the audit committee includes the Executive Director or their delegate, the Budget/Finance Manager, and the Chief Audit Executive as a non-voting member. The agency reports that the current audit committee is diverse, including internal audit and public defense expertise. The Committee meets quarterly, and annually reports to the Commission on its activities from the prior year. For day-to-day administrative purposes, the internal audit function reports to the Executive Director or their designee.



Oregon

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January 16, 2024

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

Dear Co-Chairs:

Nature of the Request

In the budget report and measure summary to Senate Bill 5532 (2023), a budget note directs the Public Defense Services Commission to:

“Internal Audit Function: The Public Defense Services Commission is directed to report to the Joint Committee on Legislative Audits and the Joint Committee on Ways and Means prior to the Legislative Session in 2024 on internal audits and audits of provider contracts completed after June 30, 2021, as well as audit plans for the 2023-25 biennium. The report is to include an update on the hiring of internal audit staff and the reporting structure of internal audit staff to the Commission.”

The Oregon Public Defense Commission (OPDC) requests that the committee accept this letter and the attached documents as fulfillment of this budget note.

Agency Action

Schedule of internal audits completed after June 30, 2021

Fiscal year in which audit was initiated	Audit Title	Date of the Audit Report
July 1, 2021 through June 30, 2022	Internal financial audit of expenses incurred by, or on behalf of, previous directors	June 30, 2022
	Internal performance & financial audit of sole-source personal services contracts	July 5, 2022
	Contracted comprehensive financial and performance audit specified by HB 5030	August 8, 2022

July 1, 2022 through June 30, 2023	Internal financial audit of expenses incurred by, or on behalf of, an ex-director, report issued June 30, 2023	June 30, 2023
	Internal Follow-Up audit on the status of implementing recommendations from FY2022 audits	June 30, 2023
	Performance audit of the crisis communications program	June 30, 2023

Audit plans for the 2023-25 biennium

The Audit plan presented below for the 2023-2025 biennium has been developed from the Agency-wide risk assessment with Management and Audit Committee input. The plan will be formally reviewed annually June 30, 2024, and informally reviewed throughout the biennium for emerging risks, Hotline investigations, and non-audit consulting projects.

OPDC Internal Audit Plan for Fiscal Years 2024-2025*

Type of Project	Type of Audit	Title	Estimated Hours
Audit	Training	Financial/Performance audit: SPOTS card	200
Audit	Performance	Effectiveness of the Provider contracting process	250
Audit	Governance & risk	Governance/Steering	120
Audit	Governance & risk	Effectiveness of Management's "Tone-at-the-Top" program	120
Audit	Performance	Retention programs	600
Audit	Performance	Retention programs	400
Audit	Performance	Retention programs	600
Audit	Performance	Ongoing monitor of FCMS System implementation	140
Audit	Performance	Effectiveness of the IT Budget & costs	600
Audit	Accountability follow-	Implementation status of prior audit recommendations	60
Audit/Consult	n/a	risks, or special requests	903
Administrative	n/a	DAS annual IA report	20
Administrative	n/a	Strategic Plan for Internal Audit	120
Administrative	n/a	Internal Audit Policies & Procedures Manual	120
Total hours:			4,253

* Approved by the OPDC Audit Committee on December 4, 2023.

Status of hiring of internal audit staff

The Agency has two internal audit employees as of August 25, 2023. This includes a Chief Audit Executive (CAE) trainee with extensive experience performing comparable work. The CAE who had been contracting to the Agency since November 2021 is now a Limited Duration employee. During Fiscal Year 2024 the trainee will gradually assume the full set of CAE duties, the term of the Limited Duration CAE will end, and a second permanent internal auditor will be hired.

The reporting structure of internal audit staff to the Commission.

The Internal Audit function reports directly to the Commission, through the latter's Audit Committee. The activities of the Audit Committee (the Committee) conform to best practices and are prescribed in its Charter, approved by the Commission in early 2021. A majority of Committee members, including the Chair, are external to the Commission and Agency. Also on the Committee are a representative of the Commission, the Executive Director or their delegate, and the Budget/Finance Manager. The Chief Audit Executive is a non-voting member of the Committee. The current Committee is diverse, and also includes internal audit expertise and public defense expertise. The Committee meets quarterly, and annually reports to the Commission on its activities during the previous year. For day-to-day administrative purposes, the internal audit function reports to the Executive Director or their designee.

Action Requested

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

Legislation Affected

No legislation is affected.

Sincerely,



Jessica Kampfe
Executive Director

Attachment: OPDS Internal Audit Plan 2023-2025 biennium

Cc:

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

ODE Internal Audit schedule, planning map										Calendar month/year:																																																																																																																																															
Available FTE hours for audits & ad hoc projects:										2023												2024												2025																																																																																																																							
Scenario 1: CAE + plus post-4/30/24 Trainee, + Ltd Duration CAE through 4/30/24										Jul												Aug												Sep												Oct												Nov												Dec												Jan												Feb												Mar												Apr												May												Jun											
Scenario 2: 1 CAE, + Limited Duration CAE thru 4/30/24										2023												2024												2025																																																																																																																							
Lost hours:										Jul												Aug												Sep												Oct												Nov												Dec												Jan												Feb												Mar												Apr												May												Jun											
Category	Title	From risk assessment?	Risk rating	Tied to Remediation Plan?	Office	Type	Estimated duration (hrs)	Estimated completion	Objective																																																																																																																																																
+25% ad hoc project allowance																																																																																																																																																									
SoS Audits Div.	Ethics Hotline investigation					Accountability	80	Nov, 2023	Promote ethics & accountability in State government.																																																																																																																																																
Other ad hoc projects @ 25% of planned hours for two-person shop:																																																																																																																																																									
Audits																																																																																																																																																									
Audit-sm.	Financial/Performance audit: SPOTS card	no	Low	no	Budget/Finance	Training Audit (See RA rows 81-85)	200	Feb, 2024	Adequacy of, and compliance with, financial & administrative (programmatic) control systems.																																																																																																																																																
Audit-sm.	Performance audit: Provider contracting process	yes	Medium	yes	Budget/Trial	Effectiveness (See RA rows 50, 52, 57 and 61)	250	Apr, 2024	Assess effectiveness & efficiency of the provider contracting process.																																																																																																																																																
Audit-sm.	Performance audit: CAP & FCMS program Governance/Steering	yes	High	yes	Leadership	Fulfill OAR 125-700-0140: audit of governance and risk management (See also RA row 30)	120	Mar, 2024	Assess effectiveness of Management's governance & steering processes.																																																																																																																																																
Audit-sm.	Performance audit: "Tone-at-the-Top"	yes	High	yes	Leadership	Fulfill OAR 125-700-0140: audit of governance and risk management (See also RA rows 70-72)	120	Mar, 2024	Assess effectiveness of management styles & practices.																																																																																																																																																
Audit-med.	Performance audit: Diversity/Equity/Inclusion program	yes	High	Yes	Human Resources	Effectiveness (See RA row 21-23)	600	Aug, 2024	Assess effectiveness of the Agency's DEI program																																																																																																																																																
Audit-med.	Performance audit: Recruiting, Onboarding, and Retention programs	yes	Medium	Yes	Human Resources	Effectiveness (See RA rows 4, 5, 14-20, 33 and 37-39)	400	Jun, 2025	Assess effectiveness of the Agency's programs for recruiting, onboarding, & retaining personnel.																																																																																																																																																
Audit-med.	Performance audit: Procurement	yes	high	Yes	Finance/Budget	Effectiveness (No Current Flags - See RA rows 76 - 80)	600	Jan, 2025	Evaluate the Procurement Process, Roles and Responsibility, Criteria, use of Sole Source contracts, Training and Support.																																																																																																																																																
Audit-med.	Performance audit: Ongoing monitor of FCMS System implementation	yes	High	yes	Agency-wide/IT	Effectiveness (See RA rows 96 and 110)	140	Ongoing	Promote effective implementation of mission-critical IT system.																																																																																																																																																
Audit-med.	Performance audit: IT Budget & costs	yes	High	yes	Budget/IT	Effectiveness (See RA row 96)	600	Jan, 2025	Assess adequacy of, & control over, IT budget & costs.																																																																																																																																																
Mandated																																																																																																																																																									
audit-sm.	Follow-up audit: Implementation status of prior audit recommendations	Yes	Mandatory	Yes	Agency-wide	Accountability of management	60	Annually, June	Assess the status of Management's implementation of agreed-to audit recommendations.																																																																																																																																																
Admin	DAS annual IA report	No	Mandatory	No	Internal Audit	Compliance with State regs	20	Annually, August	Compile information for DAS' annual report on statewide internal audit activities																																																																																																																																																
Total hours planned:							4,093																																																																																																																																																		
Total hours available, two-person shop:							3,932																																																																																																																																																		
Total hours available, one-person shop:							2,423																																																																																																																																																		
Excess of planned over two-person available:							-161																																																																																																																																																		
Excess of planned over one-person available:							-1,670																																																																																																																																																		
Percentage excess over planned, two-person:							-4%																																																																																																																																																		
Percentage excess over planned, one-person:							-41%																																																																																																																																																		