

## Public Defense Services Commission (PDSC)

	2013-15 Actual	2015-17 Legislatively Approved*	2017-19 Current Service Level	2017-19 Agency Request
General Fund	250,508,919	279,528,938	301,366,459	379,472,826
Other Funds	3,564,624	3,846,904	4,109,950	4,109,950
<b>Total Funds</b>	<b>\$254,073,543</b>	<b>\$283,375,842</b>	<b>\$305,476,409</b>	<b>\$383,582,776</b>
Positions	76	77	77	84
FTE	75.11	76.11	76.23	82.73

\* Includes Emergency Board and administrative actions through December 2016.

### Program Description

The Public Defense Services Commission (PDSC) was established as an independent state agency in 2001. By statute, the Commission is to “establish and maintain 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.” The agency combined the state Public Defender, which provided appellate representation, and the trial court representation function, which had been a division within Oregon Judicial Department since the early 1980s. Prior to the early 1980s, trial level public defense (and Oregon trial courts) was a local government responsibility.

The agency is organized into three divisions with Current Service Level funding as shown:

- **Appellate Division** (\$18.5 million, 57.23 FTE) consists of public defense attorneys who represent eligible persons at the appellate court level. The Appellate Division is responsible for providing appellate representation on criminal matters, juvenile dependency and termination of parental rights cases, and parole cases. This is accomplished primarily through the use of staff attorneys. The division is the state counterpart to the Oregon Attorney General’s appellate division.
- **Professional Services Account** (\$281.7 million, 0.00 FTE) consists of the funding for contract defense services, including attorneys, investigators, and expert witnesses, primarily at the trial court level. Includes funding for the Parent and Child Representation Program.
- **Contract and Business Services Division** (\$5.3 million, 19.00 FTE) is responsible for administering the public defense contracts that provide legal representation for eligible persons, processing requests and payments for non-contract fees and expenses, and the budget and other financial activities of the Commission.

Additional details on the agency and its budget are available in the Legislative Fiscal Office's 2015-17 Legislatively Adopted Budget Detailed Analysis, which can be accessed at: <https://www.oregonlegislature.gov/lfo/Documents/2015-17%20LAB%20Detailed%20Analysis.pdf> .

### CSL Summary and Issues

Approximately 93% of the agency budget is allocated to the Professional Services Account (PSA), which pays for contracted public defense services, primarily at the trial level. The remaining portion of the budget (7%) funds the operations of the Office of Public Defense Services, including the state agency staff who represent most defendants at the appellate court level, and the agency staff who manage the contracts with trial court-level providers. Although the CSL is calculated in the same manner as for other state agencies for this 7% of its budget, the calculation for the Professional Services Account is calculated differently, and needs to be reviewed this session.

There is a funding shortfall of a still uncertain amount in the 2017-19 biennium current service level (CSL) budget. The Legislative Fiscal Office (LFO) is working with the agency to determine the amount of this shortfall. During the current biennium, the Legislature approved \$13.1 million of supplemental funding to cover a similar shortfall; the 2017-19 biennium shortfall, however, is expected to be less than this.

LFO will develop recommendations for CSL calculation and rebasing changes during the session. Over the past several biennia, the Legislature has had to supplement the PSA budget at the end of each biennium. Back in 2013-15, this supplemental funding totaled \$3.5 million. The current CSL calculation for the PSA does not correctly incorporate supplemental funding under all circumstances, and as a result this deficit is generally carried forward from one biennium to the next. In addition, the CSL includes adjustments for caseload change projections. After an extended period of near-constant caseload levels, caseloads are again growing. The 2015-17 biennium CSL and legislatively approved budgets were based on no caseload growth for the current biennium. Furthermore, caseload costs vary significantly by type of case, and some of the more expensive case categories (e.g., felony cases) have been growing the most. This contributed to a \$13.1 million deficit in the current biennium PSA budget. The CSL calculation for 2017-19 does include a 1.4% increase in caseload numbers, but growth appears to have exceeded that level even before that biennium starts. The 2017-19 CSL calculation also does not reflect changes in the case mix. For these reasons, the amount of the projected 2017-19 CSL shortfall is still undetermined at this time.

The PDSC increased the salaries it pays its in-house attorneys on January 1, 2017. This increase affected 47 of the agency's 77 positions. Most of affected salary levels were increased by approximately 7-8%, although some salary step ranges were increased by as much as 22%. The increases were approved to reduce pay differentials between PDSC and Department of Justice (DOJ) attorneys. As a consequence of increases the Attorney General approved for DOJ salaries, PDSC attorneys were being paid between 11% and 34% below their DOJ counterparts. The approved PDSC salary increases were designed to raise PDSC attorney salaries to 91% of the levels paid to DOJ attorneys. The salary increases were not funded in the PDSC's legislatively approved budget, however. The agency funded the \$198,000 current-biennium cost of the salary increases with other expenditure reductions. The CSL does not include funding for the ongoing, \$792,000 cost of

continuing the salary increases in the 2017-19 biennium budget. PDSC would need to retain its 2015-17 biennium General Fund ending balance to fund this cost. Although statute permits them to retain the ending balance (an option not available to Executive Branch agencies), the Legislature would have otherwise had the option to utilize the balance to address other agency needs.

General Fund supports approximately 99% of the PDSC budget. The remaining 1% is funded by revenue from the Application/Contribution Program (ACP). Applicants for state-appointed counsel pay a \$20 application fee, unless the fee is waived for financial hardship reasons. In addition, the court may find that individuals are able to pay a contribution towards their defense costs.

### Policy Issues

The agency requested budget initially included \$78.1 million in policy option package requests for compensation increases, expansion of the Parent and Child Representation Program, increased agency staff support, and a rebase of the current service level for the Profession Services Account. The agency has subsequently reduced its request amount by \$28.7 million, to \$49.4 million. The amounts shown in the summary table above as the 2017-19 Agency Request amounts identify the initial agency request amounts. The revised agency request includes \$350.6 million General Fund. This revised General Fund request is a \$62.4 million (or 21.5%) increase over the current biennium level.

Senate Bill 222 [2015 Session] established the Task Force on Legal Representation in Childhood Dependency. The bill charged the Task Force with developing recommendation to improve outcomes for children and parents served by the child welfare system, and to ensure that courts are able to resolve juvenile court proceedings as quickly and efficiently as possible. The Task Force issued its report in July 2016. The report recommended that PDSC's Parent and Child Representation Program (PCRPP), which currently operates is only operating in Yamhill, Linn and Columbia counties, be expanded statewide. The PCRPP operates with a caseload cap to promote better representation and outcomes. Contractors receive sufficient funding to keep attorney caseloads below a cap (i.e., funding will allow hiring of additional attorneys if necessary). The 2015-17 total budget for juvenile representation equals \$52 million. The PDSC estimates that the cost to expand the PCRPP statewide would require an additional \$35.9 million. The agency initially included a policy option package request for this funding, but has since reduced the request amount to \$11.4 million, which would finance PCRPP expansion to cover approximately 33% of statewide caseloads, and add two attorneys to agency staff to assist in program management.

Salaries for public defenders, at both the trial and appellate levels, are below the levels paid by county district attorneys and the state Attorney General, respectively. The Commission has sought to eliminate these discrepancies. As described in the CSL Summaries and Issues section above, the PDSC has increased staff salaries to reduce salary differentials to approximately 9%. The full cost to eliminate salary differentials for contract providers at the trial level is estimated to total an additional \$34.5 million. The agency has included a policy option package request of this amount to finance elimination of salary differentials. The POP would allocate \$19.8 million for public defender contracts and \$16.1 million for hourly-paid attorneys, mitigators, and investigators.

Additional requests in the agency budget include \$3.5 million to address the recurring Professional Services Account budget shortfall, and approximately \$407,000 for additional agency staffing to improve quality assurance in criminal cases and better data analyses of the PCRCP program.

#### Other Significant Issues and Background

The agency had a projected 2015-17 biennium Professional Services Account deficit of \$13.1 million (or 5.2% over budget). The Legislature added supplemental funding of this amount to address the deficit. The deficit resulted from higher-than-anticipated costs associated primarily with an unforecasted growth in caseloads. The agency's contracts with trial-level public defense providers tie costs closely to caseload levels, and caseloads are difficult to forecast. The unforecasted caseload growth increases 2017-19 biennium program costs as well.

A potential requirement that grand jury proceedings be recorded could impose significant costs to PDSC if approved.

#### Co-Chair Budget Framework Discussion

The Joint Ways and Means Committee Co-Chairs' 2017-19 Existing Resources Budget Framework includes a 3.5% reduction from current service level in operating expenditures for agencies in the Judicial Branch of government. The total amount of General Fund expenditures in the PDSC current service level budget is \$301.7 million. A 3.5% reduction applied to the Public Defense Services Commission budget would therefore be equal to approximately \$10.6 million.