

## Office of Public Defense Services

### 2023 Legislative Report

The Office of Public Defense Services has faced a lot of uncertainty over the last five years. It has experienced multiple leadership changes while rapidly expanding from a small pass-through agency to a medium-sized agency intended to provide oversight and regulation. All the while, it has continued to be underfunded, and its providers overburdened. It is no shock that this has culminated in where we are today. With more than 3,000 individuals unrepresented, nearly 400 of whom sit in jail awaiting a lawyer.

With the conclusion of the 2023 legislative session the agency now finds itself with an opportunity in SB 337, a bill aimed at reforming the Commission and the way Oregon provides public defense, and a budget that marks the largest investment in public defense the state has seen in decades.

The close of the 2023 legislative session provides the agency a chance to reset.

SB 337 and OPDS' budget provide a framework, milestones, and goals for the agency and public defense in Oregon; however, they do not provide step-by-step instructions for providing public defense or reforming the agency. The legislature legislates, it is up to the agency to create the rules, policies, and procedures to implement their legislation. The following report is both a review of the 2023 Legislative session, the bills and budgets that directly affect the agency, and a roadmap of how the agency plans to carry out its directives.

#### **Legislative Recap**

Public defense was a major topic of the 2023 legislative session. After a yearlong workgroup, the Tribbranch Workgroup was prepared to introduce a public defense reform bill. This legislation was a priority for both House and Senate Leadership, with public defense being called out in various newsletters, caucus priorities, and leadership quotes:

“For far too long, the scales have been tipped against public defenders, making it difficult to ensure a fair and just public defense system. I share the Chief Justice’s sense of urgency in coming together to collaboratively address both short- and long term solutions, and I am pleased that this workgroup will take on this issue. Together, we will work to ensure our public defense system is fair, just, and ensures every Oregonian can exercise their constitutional right to legal representation.” – **Governor Kotek**, Joint press release from Senate President and House Speaker, *Legislative Leaders to Join Governor and Chief Justice in Workgroup to Solve Ongoing Public Defense Crisis*, 4/19/2022

“During the 2023 Legislative Session, Senate Democrats will: [...] Improve Oregon’s public defense system to protect fair access to justice.” – **Senate Democrats** 2023 Session Agenda

“Improving public safety across the state must take various forms. A critical component of this work will include major reforms to and investments in the state’s public defense system.” – **House Democrats** 2023 Session Agenda

“The Legislature will also be directing significant resources to the Oregon Public Defense System to ensure a fair legal system.” – Joint press release from **Senate President** and **House Speaker**, *Oregon*

*Legislature Announces More Than \$4 Billion Public Safety and Accountability Budget Framework for A Safer Oregon, 5/31/2023*

While lack of quorum in the Senate made it seem like session was in trouble, legislators pulled it together and were able to finish session. This included the passage of SB 337, the tri-branch workgroup bill that reforms public defense and the agency; SB 5532, PDSC's budget bill; and HB 5506, the end of session bill which included some funding for PDSC.

## **SB 337**

### **Policy**

SB 337 started as the policy bill to come out of the tribranch workgroup. It started in Senate Judiciary and then moved to Senate Rules. While there were some details changed through the process, the base bill remained largely the same.

SB 337 does three main things:

- Changes the makeup and appointment process for the Commission.
- Moves the Commission to the Executive branch of government.
- Changes the delivery model of public defense.
  - By July 1, 2027, public defenses in Oregon will be either A) State employees B) employed at a non-profit C) paid hourly as part of panel of qualified counsel.

The bill also lays out a timeline, with milestones for the agency. This timeline was developed specifically to provide the agency with an ample runway to transition to a new public defense delivery model. It also provides multiple opportunities for the agency to return to the Legislature and request timeline extensions, policy changes, or additional supports.

### **Transition Timeline:**

- January 1, 2024
  - Commission makeup changes: initially appointments by Chief Justice with recommendations required from Executive and Legislative Branches; later appointment by Governor, and recommendations by Judicial and Legislative Branches;
  - Commission must start collecting data from all contracted parties;
  - DAS forecasting begins.
- January 1, 2025
  - Commission moves from OJD to the Executive Branch; ED and commission members serve at the pleasure of the governor.
- July 1, 2025
  - Flat fee contracting prohibited;
  - Required to establish panel counsel;
  - Commission must have established hourly pay formula for panel attorneys.
- July 1, 2027
  - Subcontracting no longer permitted (exception for nonprofits);

- Commission members may be removed by the Governor, but only for inefficiency, neglect of duty or malfeasance in office; ED serves at the pleasure of the voting commission members.
- January 1, 2031
  - At least 20% of trial level counsel must be commission employees.
- January 1, 2035
  - At least 30% of trial level counsel must be commission employees.

The full Measure Summary of SB 337-8 (337 before it was combined with SB 1093) can be found [here](#).

SB 337-8 then moved the Joint Public Safety Subcommittee. There it was combined with SB 1093, a bill that seeks to address the unrepresented defendant/persons crisis. In addition to the goals and timeline listed above, SB 337-B now directs each presiding judge of a judicial district to develop and implement a coordinated public safety unrepresented defendant crisis plan.

**Crisis Plan Timeline:**

- August 1, 2023
  - PDSC shall promulgate and disseminate guidance related to the development of the judicial district’s coordinated public safety unrepresented defendant crisis plans.
- September 1, 2023
  - PDSC shall develop a training plan for public defense providers specific to the unrepresented defendant crisis, in consultation and cooperation with public defense provider associations and organizations
  - Presiding judges shall develop and implement a coordinated public safety unrepresented defendant crisis plan and submit the plan to the Oregon Criminal Justice Commission.
- October 1, 2023
  - CJC shall conduct a review of each judicial district’s coordinated public safety unrepresented defendant crisis plan and report to the Legislature

Additionally, the bill allows:

- Presiding judges of judicial districts with a population over 100,000 shall convene a crisis team comprised of at least the presiding judge, district attorney(s), and the Executive Director of the PDSC or the director's designee, to coordinate the development and implementation of a public safety unrepresented defendant crisis plan.
- The Chief Justice may issue orders related to resolving the unrepresented defendant crisis.
- Presiding judges may enter standing orders related to resolving the unrepresented defendant crisis consistent with the orders of the Chief Justice.

The full Measure Summary of SB 377-B can be found [here](#).

**Budget**

SB 377-B was also given funding while in the subcommittee. The Subcommittee approved a General Fund appropriation totaling \$34.5 million. The funding supports the following investments:

- \$14.7 million increases in hourly rates of pay for attorneys, investigators, and interpreters.
- \$9.9 million for one-time incentive compensation for the retention of both recently hired contract providers as well as experienced contract providers.
- \$7.9 million for continued funding of a financial and case management system, including the continuation of all FCMS associated limited duration positions.
- \$1.6 million to establish eight positions:
  - One limited duration Program Manager 3/Project Manager (1.00 FTE) to plan and implement the transition of the agency to the executive branch of government;
  - One Operations and Policy Analyst 4 (0.75 FTE) and one Operations and Policy Analyst 3 (0.75 FTE) for policy, procedure, and rule development;
  - One Deputy General Counsel to service as a statewide training coordinator (0.88 FTE);
  - One Accountant 4 (0.50 FTE), one Accountant 1 (0.50 FTE), one Accounting Technician 3 (0.50 FTE), and one Program Analyst 2 (0.50 FTE) for financial management.
- \$250,000 to fund a contract to conduct an independent survey and economic analysis on the minimum hourly pay for appointed counsel.
- \$112,234 to provide compensation for commission members.
- \$35,508 contract funds for DAS, Office of Economic Analysis to provide caseload forecasting services.

Additionally, there is a \$5 million Special Purpose Appropriation established in the end of session bill (HB 5506) for the transfer of the Public Defense Services Commission to the executive branch if needed.

### **Additional Funding**

The Legislature also added some additional funding packages into SB 377, including:

Pilot Program for Trial-Level Appointed Counsel. \$4.3 million to establish a pilot program of two regional offices. The pilots will focus in two geographic regions of the state to respond to the unrepresented defendant/persons crisis. The priority of the state attorneys and staff are those unrepresented defendants in-custody followed by those defendants out-of-custody.

Positions established as part of the pilot program include the following:

- Program Administration: One Chief Deputy Defender/Pilot Program Administrator starts September 1, 2023.
- Western Oregon Regional Pilot: Five Senior Deputy Defenders, one Legal Secretary (, one Paralegal, and two Program Analysts/Investigators. These positions start on October 1, 2023.
- Southern Oregon Regional Pilot: Three Senior Deputy Defenders; one Legal Secretary; one Paralegal; and two Program Analysts/Investigators. These positions start on December 1, 2023.

Expedited Resolution Case Docket. \$368,316 for an expedited resolution case docket in the Fourth Judicial District, Multnomah County Circuit Court.

Training Program. \$545,000 for the creation of a training program for independent contractors, including nonprofit public defender offices, consortia of attorneys or law firms, private law firms, or

individual attorneys as well as hourly paid attorneys and investigator. The funding includes \$150,000 for the acquisition or development of the training program, \$375,000 for the delivery, and \$20,000 for program expenses.

## **SB 5532**

\$535,487,124 total funds, comprised of \$514,717,456 General Fund, \$20,769,668 Other Funds expenditure limitation, and 113 positions (112.80 FTE), including 8 formerly limited duration positions which are now permanent. The recommended total funds budget is a 14.8% increase from the 2021-23 Legislatively Approved Budget.

Establishes a special purpose appropriation of \$3 million for supplemental funding for the Adult Trial Division or Juvenile Trial Division for caseload costs the Commission is unable to mitigate during the interim legislative periods.

The 2023-25 recommended budget includes three financial realignments to provide better transparency, program management, and oversight of the caseload expenses.

1. Separates the Juvenile Trial Division into the Juvenile Trail Division and the Parent and Child Representation Program.
2. Moves funding for Discovery costs into the Special Programs and Contracts Division.
3. Renames the Trial Division to the Adult Trial Division, and Nonroutine Expenses to Preauthorized Expense

## **Budget Notes**

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

In addition, reporting by the Commission is to include, and be based upon, a comprehensive remediation plan adopted by the Commission and that includes the following elements: (1) Issue – identify each specific issue with a concise problem statement (2) Priority – assign each issue a priority; (3) Evidence of Concern – identify evidence supporting the existence of the issue; (4) Objective – identify what objective the agency is trying to achieve through the resolution of the issue; (5) Best Practice(s) – identify what best practices exist related to the resolution of the issue, which can be used to benchmark the options available as well as the recommended option; (6) Options to resolve the issue – identify what specific options exist to resolve the issue; (7) Recommended Option – identify which is the agency's recommended option to resolve the issue, and on what basis was the option selected; (8) Timeframe – identify the timeframe for implementing the recommended option; (9) Fiscal Impact – identify the cost of implementing the recommended option; and (10) Expected Outcome – identify what outcome is expected from the recommended option and how will it be measured.

Quality Management Plan: The Public Defense Services Commission is directed to develop a quality management plan for public defense and associated Key Performance Measures and Indicators. The Commission is directed to submit the plan prior to the Legislative Session in 2024. In addition, the Chair and the Executive Director of the Public Defense Service Commission are directed to report on existing Performance Measurements and targets.

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.

Nonunanimous Jury Conviction Reporting: The Public Defense Services Commission is instructed to report to the 2025 Legislature on the Commission's trial and appellate caseloads and costs, including a caseload projection for the 2025-27 biennium, related to nonunanimous jury convictions under the U.S. Supreme Court decision in Ramos v. Louisiana (2020) and the Oregon Supreme Court decision in Watkins v. Ackley (2022).

## **HB 5506**

\$1.5 million to contract with Disability Rights Oregon (DRO) for guardianship cases (SB 578, 2021).

The measure includes a one-time increase of \$1 million Other Funds for the potential receipt from the Criminal Justice Commission of a subgrant from the Edward R. Byrne Memorial Justice Assistance Grant.

Establishes 3 Special Purpose Appropriation (SPA):

- \$5 million for expenses related to the unrepresented defendants/persons crisis;
- \$6,170,768 for public defense contingency and expenses related to public defense;
- \$5 million for the transfer of the Public Defense Services Commission to the executive branch.

## **Budget note**

FCMS Report: The Public Defense Services Commission is directed to report to the Joint Legislative Committee on Information Management and Technology and the Joint Committee on Ways and Means prior to the 2024 legislative session on the status of the Financial/Case Management System (F/CMS) information technology project. The Commission's reports to the Legislature shall include: (a) updates on project scope, schedule, budget, and total cost of ownership; (b) current project risks, likely impacts, and mitigation strategies; (c) independent quality assurance reporting; (d) stakeholder/provider involvement in the planning and governance of the project; and (e) other information that helps inform the Legislature on the status of the project or issues that have arisen as the result of the project. The Commission is to follow the Joint Stage Gate or a similar disciplined process related to information technology projects, including development of key artifacts and independent quality assurance oversight.

**Budget Summary**

	<b>21-23 Leg Approved Budget</b>	<b>5532</b>	<b>337</b>	<b>5506</b>	<b>Total</b>
<b>General Funds</b>	\$448,160,372	\$514,717,456	\$39,999,591	\$1,523,964	\$556,241,011
<b>Other Funds</b>	\$18,449,667	\$20,769,668	\$0	\$1,000,000	\$21,769,668
<b>Total</b>	\$466,610,039	\$535,487,124	\$39,999,591	\$2,523,964	\$578,010,679

	<b>21-23 Leg Approved Budget</b>	<b>Total</b>	<b>Change from LAB</b>	
			<b>\$ Change</b>	<b>% Change</b>
<b>General Funds</b>	\$448,160,372	\$556,241,011	\$108,080,639	24.12%
<b>Other Funds</b>	\$18,449,667	\$21,769,668	\$3,320,001	17.99%
<b>Total</b>	\$466,610,039	\$578,010,679	\$111,400,640	23.87%

**Special Purpose Appropriations**

<b>Bill</b>	<b>Amount</b>	<b>Purpose</b>
5532	3,000,000	Supplemental funding for Adult and Juvenile Trial Division for caseload costs the Commission is unable to mitigate during the interim legislative periods.
5506	5,000,000	Expenses related to the unrepresented defendants/persons crisis.
5506	6,170,768	Public defense contingency, expenses related to public defense.
5506	5,000,000	Allocated for the transfer of the Public Defense Services Commission to the executive branch.
<b>SPA Totals</b>	<b>19,170,768</b>	

## Reports Due

The 2023 Legislative Session created seven new reports that the agency is responsible for, in addition to the biennial legislative report and annual Director’s Report that were already in statute. Some of these reports are ongoing, some are one time in nature. The following is a summary of the reports, and a timeline of when reports are due, including major bill milestones.

Report Name	Authority	Report To	Description	Date/Ongoing
Modernization and Remediation Plan	SB 5532 Budget Note 1	Interim Ways and Means	Commission’s Restructuring and Modernization efforts & Comprehensive Remediation Plan using the 10-point format.	Yes, Fall of 23, Session 24, and quarterly thereafter
Crisis Plan Progress Report	SB 337 Section 104	Interim Ways and Means and Interim Judiciary	Unrepresented Crisis Plan (SB 1093). October 1, 2023, report on progress for providing guidance for crisis plans, and training.	October 1, 2023, No
Quality Management Plan	SB 5532 Budget Note 2	Not specified	Plan must be submitted prior to 2024 session, unclear to whom. ED to report on current KPMs.	Prior to 2024 session, No
Internal Audit Function Report	SB 5532 Budget Note 3	Joint Committee on Legislative Audits and the Ways and Means	Report due prior to 2024 session, internal and external audit, and audit plan for 23-25.	Prior to 2024 session, No
FCMS Status Report	SB 5506, Budget Note 9	Joint IT and Ways and Means	Report due prior to 2024 session, FCMS status report.	Prior to 2024 session, No
Comprehensive Public Defense Report	SB 337 Section 98	Interim Judiciary	SB 337 Report. By May 15, 2024, a comprehensive report on the commission’s plan for providing public defense services.	May 15, 2024, Yes, Dec. 1 of 25, 26, 27, and Biennially through 2035
Nonunanimous Jury Conviction Report	SB 5532 Budget Note 4	2025 Legislature	Costs and caseload projections for Watkins/Ramos.	2025 Session, no
Legislative Report	SB 337 Section 3(1)(n)	Judiciary	Compliance metrics for the minimum standards and recommendations for legislative changes.	Ongoing, at least once every 2 years.
Director’s Report	ORS 151.219	Commission Members	Prepare and submit to the members of the commission an annual report of the activities of the commission.	Yes, annually

Reporting and Bill Milestone Schedule	
Quarter	Action
Summer 2023	Promulgate and Disseminate Guidance on Crisis Plans (August 15, 2023)
Fall 2023	Modernization and Remediation Plan I (November)
	Develop Unrepresented Training Plan (September 1, 2023)
	Program Administrator (September 1, 2023)
	Western Oregon Regional Pilot (October 1, 2023)
	Crisis Plan Progress Report (October 1, 2023)
Winter 2024	Quality Management Plan (January)
	Internal Audit Function Report (January)
	FCMS Status Report (January)
	Southern Oregon Regional Pilot (December 1, 2023)
Feb Session 2024	Modernization and Remediation Plan II (February)
	Legislative Report (February)
Spring 2024	Modernization and Remediation Plan III (June)
	Comprehensive Public Defense Report I (May 15, 2024)
Summer 2024	Modernization and Remediation Plan IV (September)
Fall 2024	Modernization and Remediation Plan V (December)
Winter 2025	Modernization and Remediation Plan VI (March/Session)
Session 2025	Commission Moves to Executive Branch (January 1, 2025)
	Modernization and Remediation Plan VII (June/Session)
	Nonunanimous Jury Conviction Report (January/Session)
Summer 2025	Panel Established (July 1, 2025)
	Economic Incentive/Flat Fee Prohibited (July 1, 2025)
Fall 2025	Comprehensive Public Defense Report II (December 1, 2025)
Winter 2026	
Feb Session 2026	Legislative Report (February/Session)
Spring 2026	
Summer 2026	
Fall 2026	Comprehensive Public Defense Report III (December 1, 2026)
Winter 2027	
Session 2027	
Summer 2027	Commission Regains Quasi Independence (July 1, 2027)
	Sub-Contracting Prohibited (July 1, 2027)
Fall 2027	Comprehensive Public Defense Report IV (December 1, 2027)
Winter 2028	
Feb Session 2028	Legislative Report
Spring 2028	
Summer 2028	
Fall 2028	
Winter 2029	
Session 2029	
Summer 2029	
Fall 2029	Comprehensive Public Defense Report V (December 1, 2029)
Winter 2030	
Feb Session 2030	Legislative Report

Spring 2030	
Summer 2030	
Fall 2030	
Winter 2031	
Session 2031	20% State Employees (January 1, 2031)
Summer 2031	
Fall 2031	Comprehensive Public Defense Report VI (December 1, 2031)
Winter 2032	
Feb Session 2032	Legislative Report
Spring 2032	
Summer 2032	
Fall 2032	
Winter 2033	
Session 2033	
Summer 2033	
Fall 2033	Comprehensive Public Defense Report VII (December 1, 2033)
Winter 2034	
Feb Session 2034	Legislative Report
Spring 2034	
Summer 2034	
Fall 2034	
Winter 2035	
Session 2035	30% State Employees (January 1, 2035)
Summer 2035	
Fall 2035	Comprehensive Public Defense Report VIII (December 1, 2035)
Winter 2036	
Feb Session 2036	Legislative Report
Spring 2036	
Summer 2036	
Fall 2036	
Winter 2037	
337 Action	
337 State Employees	
Reports	

**Implementation Plan**

Lawmakers’ have provided the agency with a clear framework, milestones, and goals for the agency and public defense. It's now up to OPDS and its partners to live up to those goals.

To that end, the agency has created 12 workgroups, each focused on a specific report or bill milestone. These workgroups include agency staff from multiple divisions, and outside stakeholders where applicable. Overseen by the Steering Committee, which will provide organizational leadership, direction, and support, these workgroups will use project management tools to initiate, plan, execute, monitor, and close these projects. They will be supported by the agencies existing project managers, Compliance, Audit and Performance Manager, and Government Affairs Manager, and overseen by the Project Manager position the agency received under SB 337.

Workgroups’ progress will be regularly reported to legislative leadership, the Commission, agency staff, and other interested parties. As the workgroups complete their initiation and planning stages, the Steering Committee will be able to incorporate the various timelines and plans to better assess agency resources, and prioritize work as needed.

**Workgroups:**

<b>Name</b>	<b>Purpose</b>	<b>Work Products</b>
Steering Committee	To oversee and support the agency workgroups to ensure the attainment of its goals. Provides leadership and delegation and facilitates communication between the workgroups.	Biennial Legislative Report, Annual Director’s Report.
Modernization and Remediation	The restructuring and modernization effort is essentially an internally focused strategic plan. The Workgroup's tasks are to develop the goals and outcomes of restructuring and modernization, and create a comprehensive remediation plan about how to accomplish those goals and outcomes. The Commission will have to adopt the Comprehensive Remediation Plan.	Modernization and Remediation Plan and Report
Public Defense Delivery	This workgroup will be focused on the delivery model and policy in SB 337. This includes training and supervision standards, workload vs. caseload, hourly rates, oversight and standards, and the move towards state employees. This WG will work very closely with the Quality Management WG, and the Trial Division Implementation WG.	Comprehensive Public Defense Report
Quality Management	Develop a Quality Management Plan and associated Key Performance Measures and Indicators. Once established, this WG will merge with the Delivery WG.	Quality Management Report
Trial Division Implementation	Responsible for creating a plan and implementing the launch of the 2 trial division pilot programs. Once these programs are up and running, this WG will merge with the Delivery WG.	Pilot program planning and implementation.

Unrepresented Crisis Team	Fulfills OPDS' role in the unrepresented crisis planning in SB 337.	Guidance to judicial districts, developing a crisis training plan, Crisis Plan Progress Report
FCMS Status	This is the existing FCMS Team, but now responsible for a budget note.	FCMS report
Audit Function	Audits WG is responsible for creating an audit report on past audits, as well as the 23-25 audit plan. These are both internal and external audits. This WG will work closely with the QM WG.	Audit Report
Nonunanimous Juries	Caseload and cost projections for the 25-27 biennium related to nonunanimous juries.	Nonunanimous Juries Report
Executive Move	Ensures a smooth transition to the Executive branch. Align the agency with executive rules and policies where applicable, and prepare the agency for any changes that will come with the move.	TBD
IT	Maintain, update, and provide IT services for the agency throughout the various changes SB 337 creates. This WG will work closely with OJD and the Executive Move WG.	IT Services
Commission Transition	Facilitate the transition to a new commission. Assist appointing authorities in recruiting and appointing new Commissioners, and orient and train new Commissioners.	Orientation Materials for Commissioners