



PUBLIC DEFENSE SERVICES COMMISSION

2013-15 Biennium

Nancy Cozine
Executive Director

*Presentation to
Joint Legislative Ways & Means
Public Safety Subcommittee
March 25-26, 2013*

Presentation Schedule Day 1

- PDSC – Mission, History, Vision and Values
- PDSC – Agency Overview
- Contract & Business Services Division
- Appellate Division
- Key Performance Measures
- Quality of Representation

Presentation Schedule Day 2

- Budget Drivers
- Challenges
- Budget Development
- Invited Guests

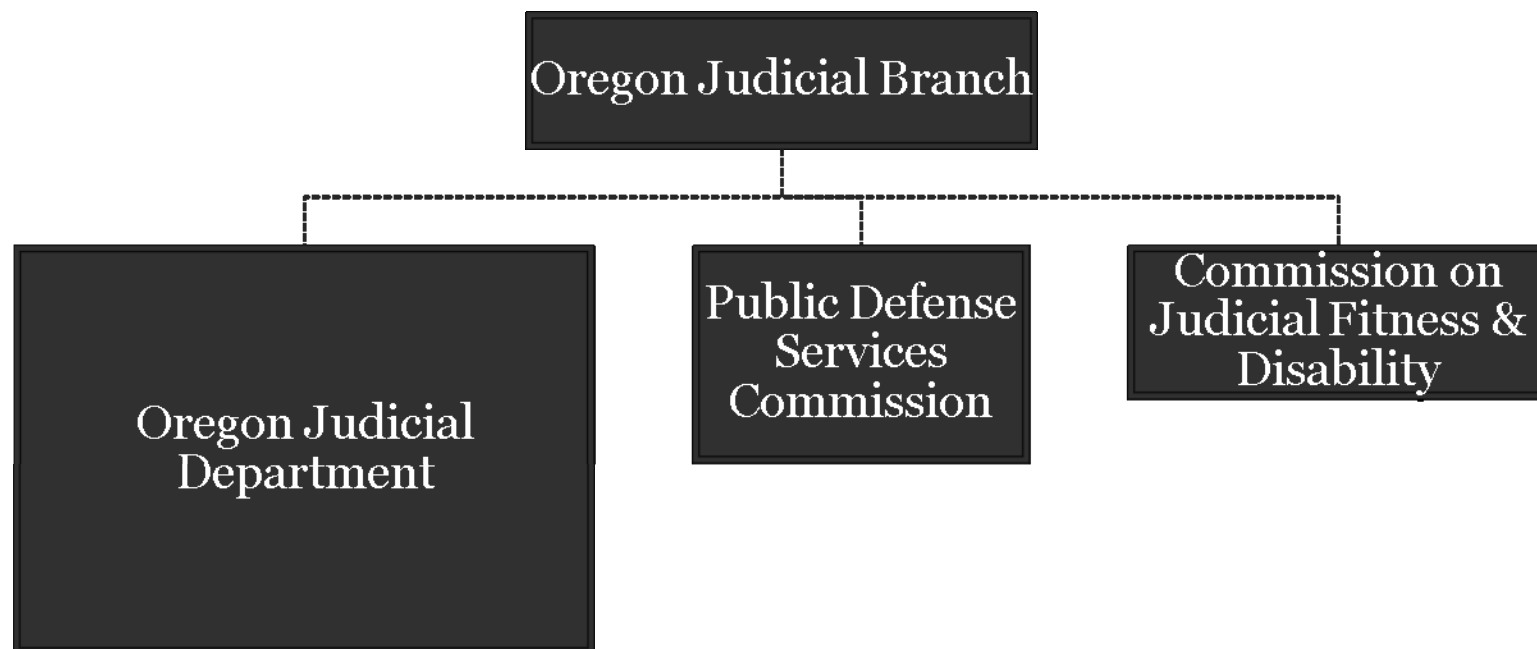
Public Defense Services Commission (PDSC) Mission Statement

It is the mission of the PDSC 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

History

The PDSC was created in 2001 as a new, independent agency within the Judicial Branch



History

- October 2001: PDSC responsible for oversight of criminal appeals

State Public Defender's Office becomes the Office of Public Defense Services

- July 2003: PDSC begins oversight of public defense services provided at the trial court level

Work and employees from the Oregon Judicial Department's Indigent Defense Services Division are transferred to the Office of Public Defense Services

The Commission

ORS 151.213

- Chief Justice serves as a nonvoting, ex officio member
- Chief Justice appoints seven members, including
 - two persons who are not Oregon State Bar members
 - at least one OSB member engaged in criminal defense, but not a public defense provider
 - at least one former Oregon state prosecutor
- Four-year membership terms; members can be reappointed

Commission meets approximately 9 times per year

All meetings are open to the public and recorded; transcripts and meeting materials are posted on the agency's website.

Commission Members

Chief Justice Thomas A. Balmer
Ex-Officio Permanent Member

Barnes H. Ellis, Chair
General Counsel & Corporate Secretary, Mercy Corps

Shaun McCrea, Vice-Chair
Partner, McCrea PC

Per Ramfjord
Partner, Stoel Rives LLC

Henry H. Lazenby, Jr.
Lazenby & Associates

John R. Potter
Executive Director, Oregon Criminal Defense Lawyers Association

Janet C. Stevens
Deputy Editor, Bend Bulletin

Hon. Elizabeth Welch
Senior Judge

PDSC Guiding Principles

- Vision
- Values
 - Quality
 - Cost Efficiency
 - Leadership
 - Accountability

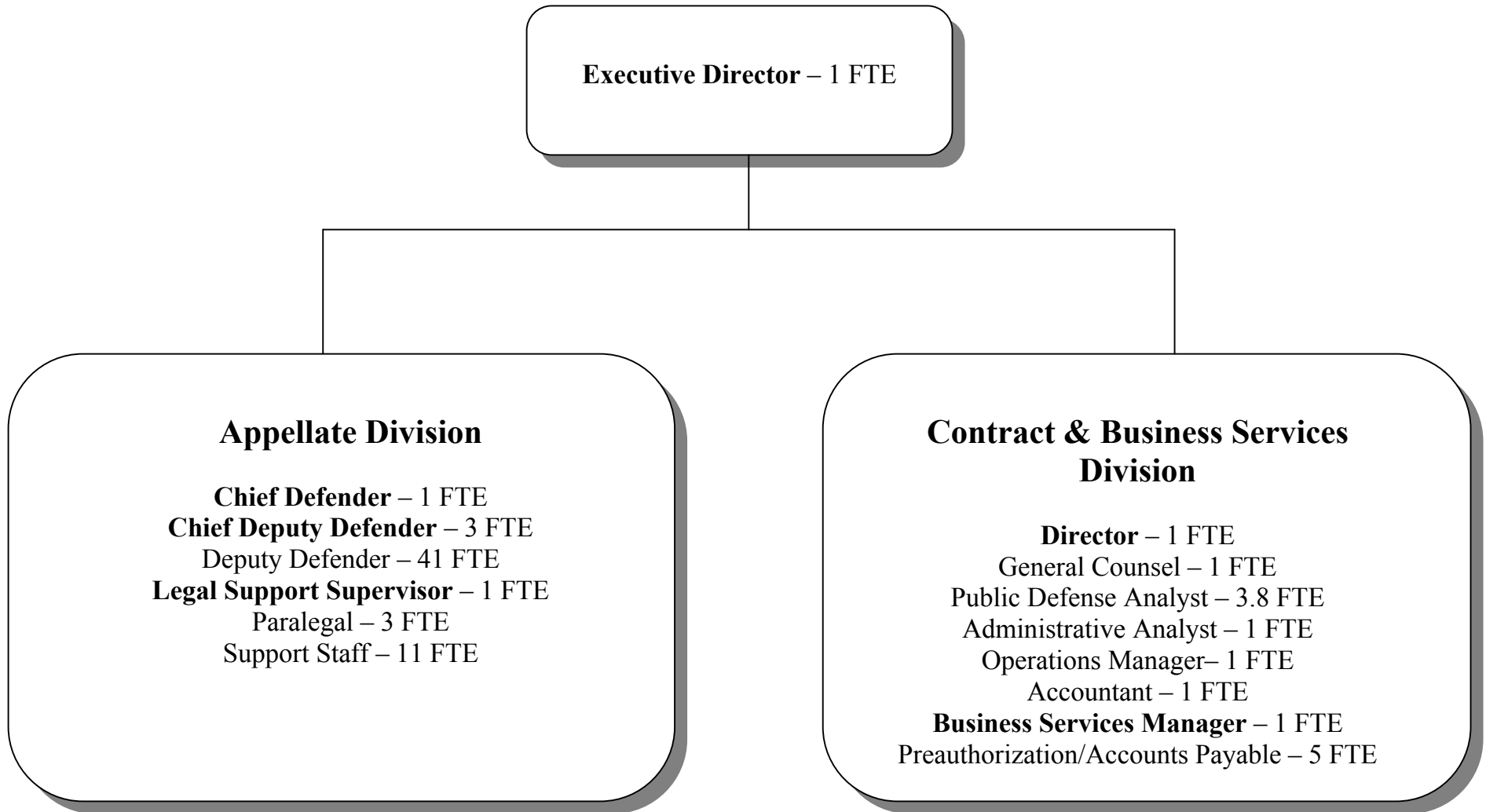
PDSC Accomplishments

- Established a public defense delivery system that became a national model of excellence
- PDSC oversight of an efficient, reliable and transparent contracting process
- Created effective quality assurance processes
- Continued sponsorship of annual conferences to provide training for lawyers and contract administrators

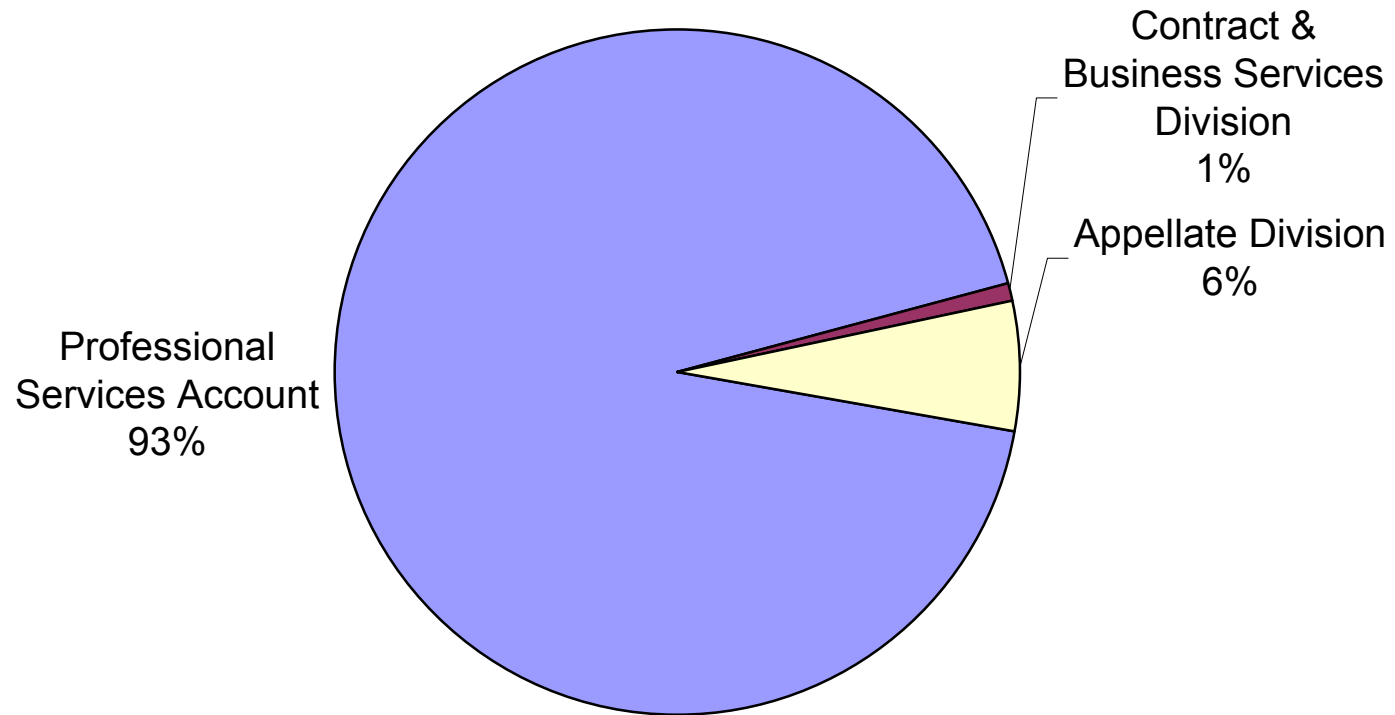
PDSC Accomplishments

- Adopted policies, procedures, standards and guidelines
- Implemented a complaint policy and procedure
- Converted to a paperless office
- Created a reliable, paperless process for submission and review of expense requests
- Developed an annual employee satisfaction survey

Office of Public Defense Services



Public Defense Services Commission 2013-15 Agency Request Budget



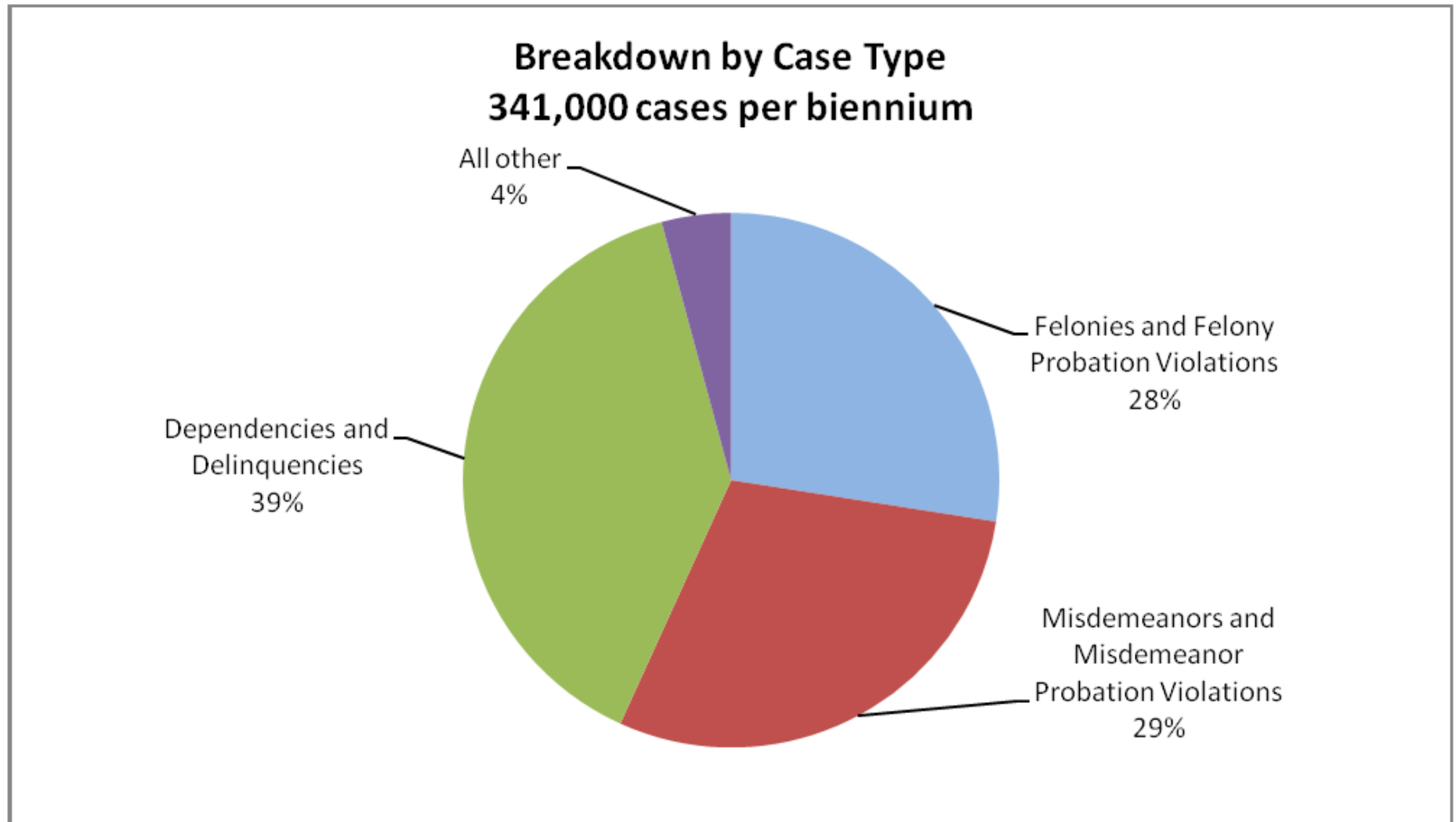
Public Defense Case Types

- Criminal proceedings (misdemeanors to death penalty)
- Dependency (child welfare) and termination of parental rights proceedings
- Probation violation and extradition proceedings
- Juvenile delinquency proceedings
- Contempt proceedings (including alleged nonpayment of court-ordered child support and alleged violations of Oregon's Family Abuse Prevention Act)
- Civil commitment proceedings and Psychiatric Security Review Board proceedings
- Post-conviction relief and habeas corpus proceedings

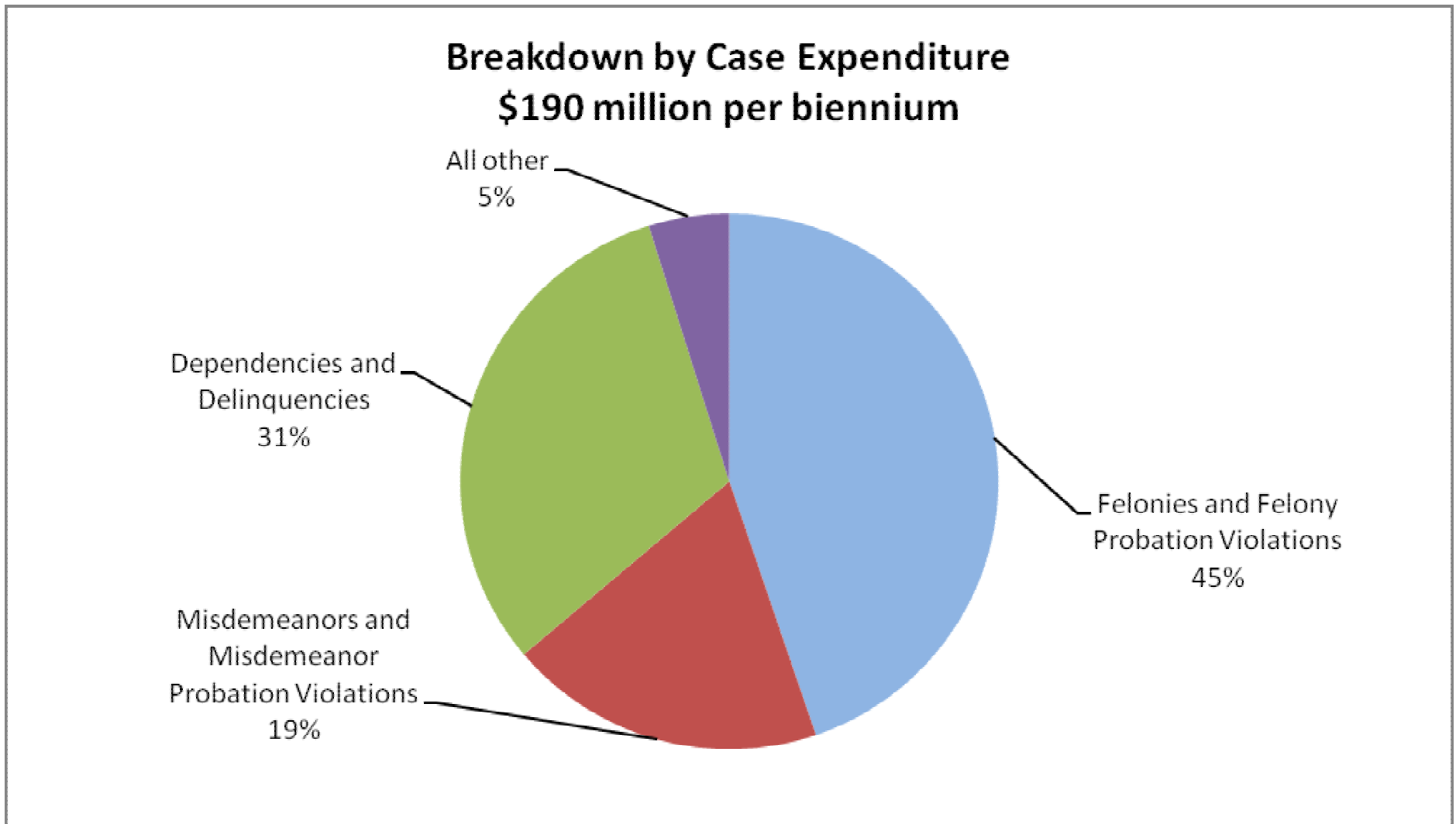
Case Types Not Covered by PDSC

- Municipal court proceedings
- Violations
- Administrative hearings such as DMV hearings, parole hearings and school expulsion hearings
- Civil cases such as landlord-tenant matters and small claims
- Relief from sex offender registration (with limited exception for youth offenders)
- Applying for or challenges to restraining orders
- Probate guardianships
- Children in divorce proceedings

Trial-Level Non-Death Penalty Public Defense Caseload



Trial-Level Non-Death Penalty Public Defense Caseload



Contract & Business Services Division

Kathryn Aylward, Director

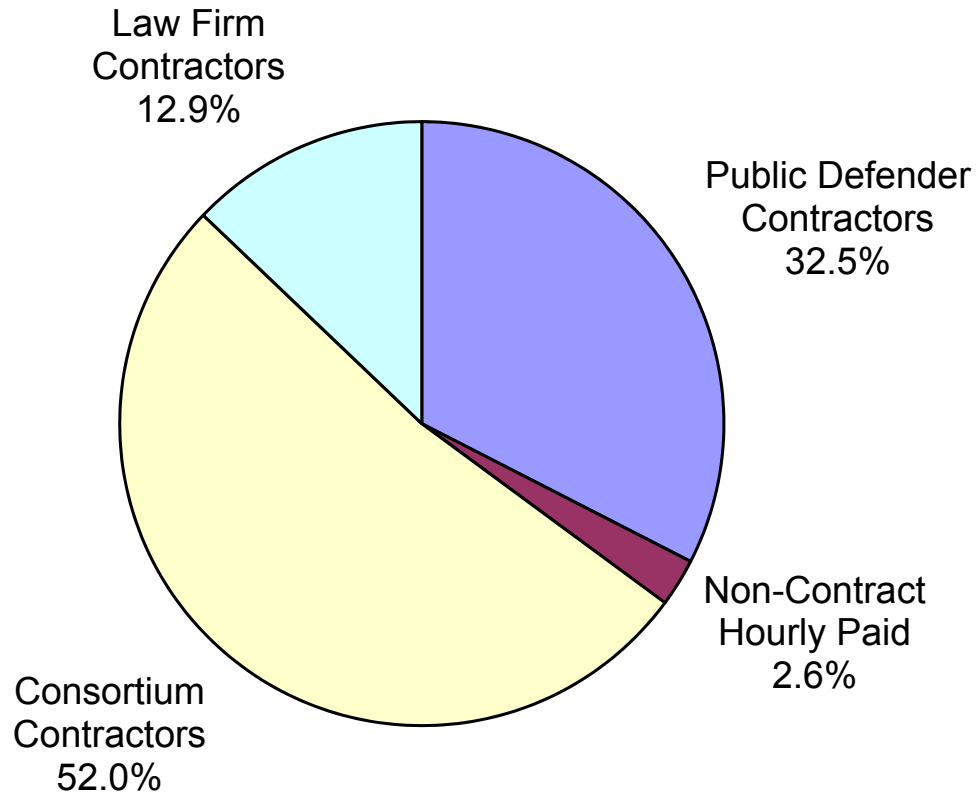
Primary Functions

- Agency operational, human resources, and information technology support
- Contract Administration
- Accounts Payable

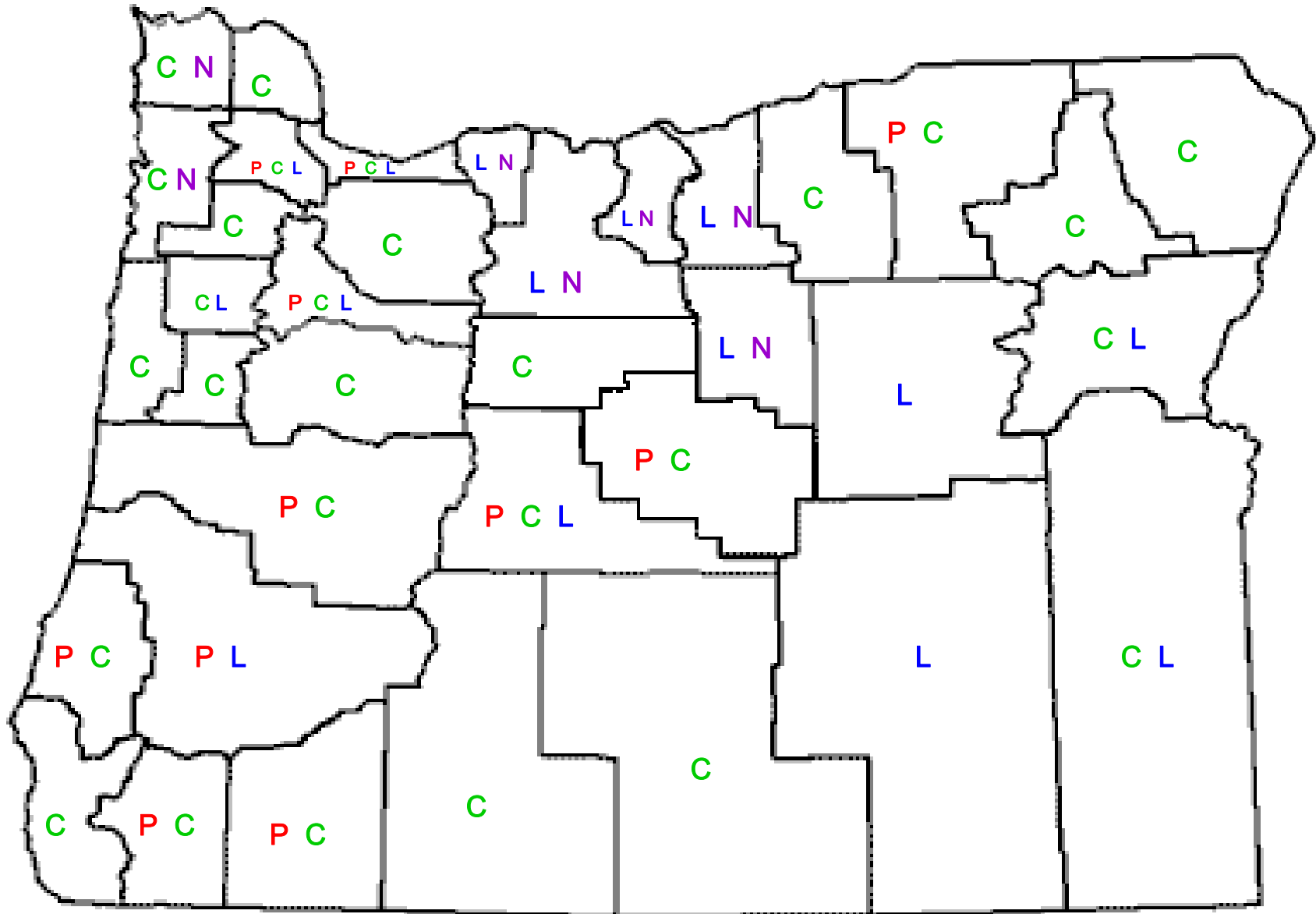
Contracts

- 108 contracts for trial and appellate court representation statewide
- Providers selected through Request For Proposals process
- Two-year contracts

**TRIAL-LEVEL NON-DEATH PENALTY PUBLIC DEFENSE CASELOAD
By Provider Type**



Provider Type By County



P = Public Defender C = Consortium L = Law Firm N = Non-Contract Hourly

Non-Routine Expenses (NREs)

- NREs include “reasonable and necessary” expenses of case preparation. ORS 135.055
 - Non-routine costs, such as investigation, must be approved before the expense is incurred
- NRE requests submitted and processed electronically

Financial Eligibility Criteria

- Eligibility is determined by the court.
- Federal food stamp guidelines (130% of the federal poverty level) serve as the primary determinant of eligibility for state-paid counsel.
- If an applicant's income exceeds food stamp guidelines, the court may appoint counsel only if the applicant's available income and assets are insufficient to hire an attorney without creating substantial hardship in providing basic economic necessities to the person or the person's dependent family.

Application Contribution Program (ACP)

- At the time counsel is requested, the court may impose
 - A \$20 application fee, and
 - a contribution amount that the court finds the person is able to pay without creating substantial hardship
- ACP generates approximately \$4 million per biennium
 - ACP funds - allocated by the legislature to OJD and PDSC
 - ACP funds collected beyond amounts allocated to OJD and PDSC for the biennium remain in the ACP account

Appellate Division

Peter Gartlan, Chief Defender

- Overview
 - Importance of Appellate Courts
 - Shape the law
 - Impact Oregon communities
 - PDSC Appellate Division is institutional counterpart to DOJ Appellate
 - AD works with appellate courts, DOJ, and the legislature to identify system efficiencies

Appellate Division

- Criminal Section – Statistical Information
 - 40 lawyers
 - Evaluate over 3,300 case referrals per biennium and file a notice of appeal in almost 2,300 cases
- Juvenile Section – Statistical Information
 - 5 lawyers
 - Evaluate over 600 case referrals per biennium and file a notice of appeal in more than 540 cases

Appellate Division

- AD Accomplishments
 - Created comprehensive training program, attorney practice manual, and team structure
 - Established Juvenile Appellate Section
 - Regional support program for trial lawyers
 - Electronic case records and e-filing
 - Regular presentations at CLE seminars
- Challenges
 - Retaining attorneys
 - Providing effective support to trial bar

Key Performance Measures

- Appellate Case Processing – Median Days to Filing
- Customer Service – Percent of customers rating their satisfaction with the agency’s customer service as “good” or “excellent”: overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information
- Best Practices of Boards and Commissions – Percent of total best practices met by Commission

Importance of Quality Representation

- Protection of Constitutional Rights
 - Balanced Public Safety System
- Family Protections
 - Dependency Proceedings
 - Terminations of parental rights
- Integrity of Oregon's juvenile and criminal justice systems
- Cost avoidance

Quality Assurance

- Minimum Qualification Standards for Court Appointed Counsel
- Best Practices for Oregon Public Defense Providers
- Performance standards
 - American Bar Association
 - Oregon State Bar
- Complaint investigation and resolution policy
- Death penalty peer panel review
- Peer review site visits and reports
- PDSC service delivery reviews

Quality Assurance

- Annual survey of judges, prosecutors, juvenile departments, and other system partners
- Continuing Legal Education (CLE)
 - Mandatory CLE requirements
 - OPDS involvement in the planning, sponsoring, and presentation of CLE courses
- Death penalty resource attorney
- Juvenile Law Resource Center
- Juvenile Law Training Academy

Budget Drivers

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

Budget Drivers

- Case law changes in the state and federal appellate courts such as the *Padilla* case that increased the cost of representation in the trial courts
- Changing prevailing norms for adequate representation
- Demographic trends such as increases in population, particularly of the “at risk” population of children and juveniles
- Oregon’s crime rate
- Availability of jail space

Budget Drivers

- Recidivism rates in Oregon's correctional population
- Rates of removal of children from their homes by the Department of Human Services
- The condition of Oregon's economy and its rates of unemployment and poverty
- 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

Challenges

- Ability to attract and retain talented lawyers and employees at the trial and appellate court levels
 - Low compensation; high student loan debt
 - High caseloads
 - Ineligibility for loan repayment/forgiveness options
- Continued development and pursuit of effective quality assurance mechanisms
- Excessive caseloads

2013-15 Agency Request Budget

Comparison of Governor's Recommended Budget to Projected 2013-15 Expenditures

	2011-13 LAB	2011-13 Shortfall	2011-13 Total Funding	2013-15 CSL	2013-15 GRB
General Funds	\$222,541,855	\$4,718,994	\$227,260,849	\$251,420,300	\$243,961,605
Other Funds	\$3,830,055	\$0	\$3,830,055	\$3,218,844	\$3,207,042
Total	\$226,371,910	\$4,718,994	\$231,090,904	\$254,639,144	\$247,168,647

The Governor's Recommended Budget is \$7.5 million less than 2013-15 Current Services Level.

2013-15 Agency Request Budget

2013-15 Essential Package 040 Mandated Caseload

1. Standard inflationary adjustment	\$5,644,321
2. Trial-level non-death penalty caseload decrease/increase	\$0
3. Death penalty caseload from prior biennia	\$4,238,379
4. Non-attorney provider cost increase	\$1,248,436
5. Personal services adjustment	\$12,219,139
6. Mileage reimbursement (55.5 cents per mile)	\$139,484
Total	\$23,489,755

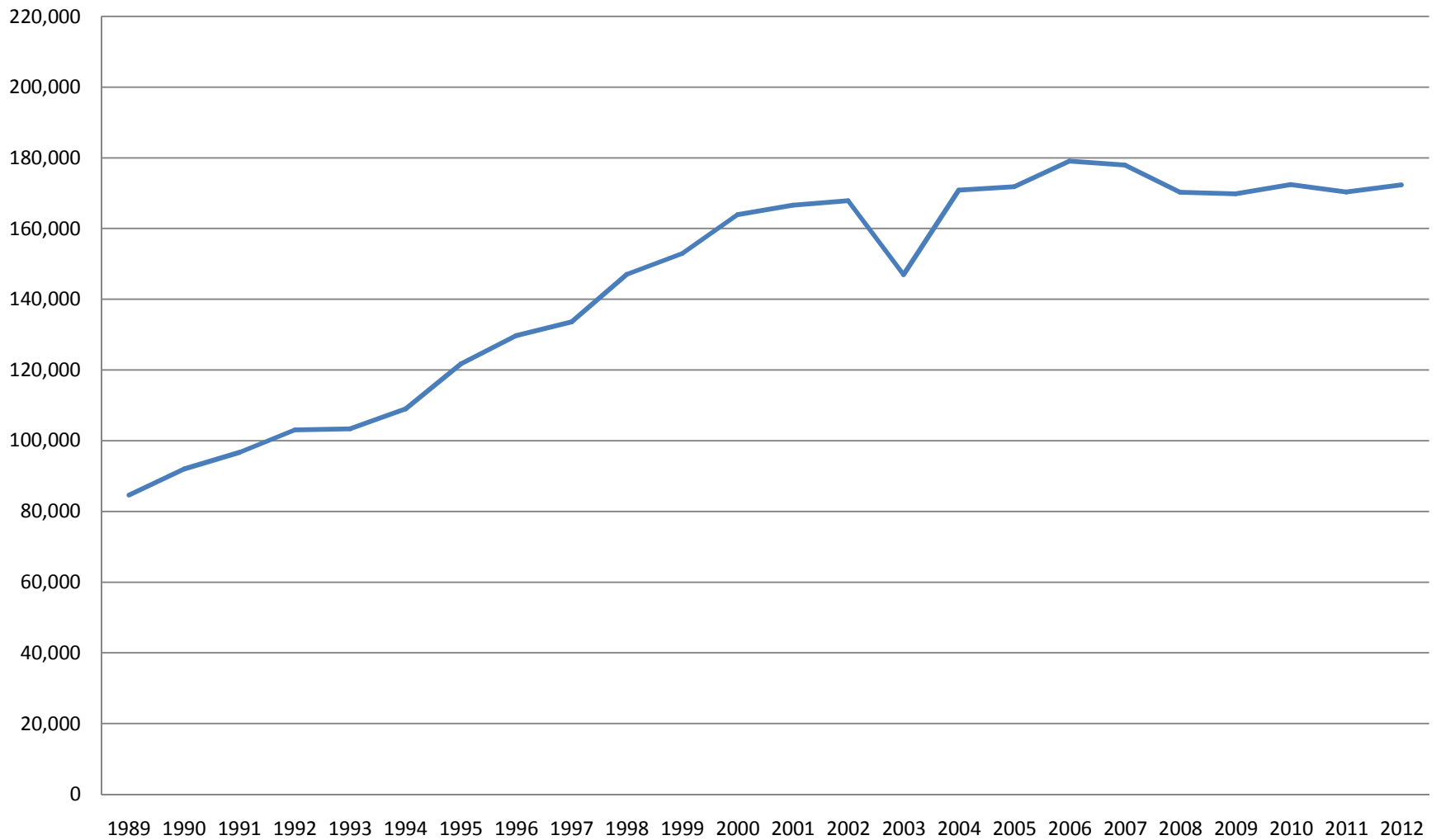
The agency's latest forecast for trial-level caseload and expenditures shows no change at this time. The agency will continue to revise projections and will keep LFO informed as updated information becomes available.

Trial-Level Non-Death Penalty Public Defense Caseloads

Fiscal Year	Caseload	Change (cases)	Change (%)
1989	84,614		
1990	92,038	7,424	8.8%
1991	96,730	4,692	5.1%
1992	103,028	6,298	6.5%
1993	103,330	302	0.3%
1994	108,963	5,633	5.5%
1995	121,700	12,737	11.7%
1996	129,693	7,993	6.6%
1997	133,596	3,903	3.0%
1998	147,038	13,442	10.1%
1999	152,950	5,912	4.0%
2000	163,944	10,994	7.2%
2001	166,658	2,714	1.7%
2002	167,893	1,235	0.7%
2003*	146,947	-20,946	-12.5%
2004	170,902	23,955	16.3%
2005	171,850	948	0.6%
2006	179,058	7,208	4.2%
2007	178,002	-1,056	-0.6%
2008	170,288	-7,714	-4.3%
2009	169,795	-493	-0.3%
2010	172,480	2,685	1.6%
2011	170,381	-2,099	-1.2%
2012	172,357	1,976	1.2%

* Appointments were deferred to the following biennium

Trial-Level Non-Death Penalty Public Defense Caseload



2013-15 Current Service Level

All Fund Types

Trial-level Non-Death Penalty Caseload	\$203.2 million
Death Penalty Caseload	\$26.7 million
Appeals (Civil and criminal conflicts)	\$3.3 million
Appellate Division	\$14.9 million
Contract & Business Services Division	\$3.8 million
Transfer to Judicial Department	\$2.7 million
Total	\$254.6 million

Policy Option Package 100

Juvenile Dependency Caseload Reduction

- Provides funding to reduce trial-level juvenile dependency caseloads in order to improve outcomes for children and families.
- Workloads exceed acceptable levels by approximately 20%. This package would permit the agency to reduce current caseload levels in juvenile dependency and termination of parental rights cases by approximately 7%.
- Cost: \$3,818,237 from general funds.

Policy Option Package 101

Employee Commensurate Compensation

- Package provides funding to reduce salary disparity between PDSC Appellate Division attorneys and their counterparts in the Department of Justice Appellate Division.
- ORS 151.216: Adopt a compensation plan, classification system and personnel plan for the office of public defense services that are commensurate with other state agencies.
- Cost: \$279,155 from general funds.

Policy Option Package 102

Public Defense Provider Compensation

- Package provides funding necessary to:
 - attract and retain qualified attorneys in nonprofit, public defender organizations, primarily in Deschutes, Jackson, Lane, Multnomah, and Washington counties;
 - increase the hourly rates paid to attorneys who provide legal representation in public defense cases on an hourly rate basis (from \$45 to \$53 in non-capital cases; from \$60 to \$72 in capital cases); and
 - increase the hourly rates paid to investigators (from \$28 to \$30 in non-capital cases; from \$39 to \$41 in capital cases).
- Cost: \$4,862,411 from general funds.

Invited Guests

- The Honorable Judge Darleen Ortega, Oregon Court of Appeals
- The Honorable Judge Nan Waller, Multnomah County Circuit Court
- Attorney General Ellen Rosenblum, Oregon Department of Justice
- Walt Beglau, District Attorney, Marion County
- Brett Ballew, Managing Attorney, Washington State Office of Public Defense
- Jack Morris, Morris, Smith, Starns, Raschio & Sullivan, PC
- Angela Sherbo, Youth, Rights & Justice