

Public Defense Services Commission (PDSC) Presentation Schedule Day 1

- PDSC – Mission, History, Vision and Values
- PDSC – Agency Overview
- Contract Services
 - Structure & Responsibilities
 - Quality Assurance
- Invited Guests

Presentation Schedule Day 2

- Appellate Division
- Key Performance Measures
- Challenges
- PDSC Accomplishments
- Budget Drivers
- 2015-17 Agency Request Budget
- Invited Guests

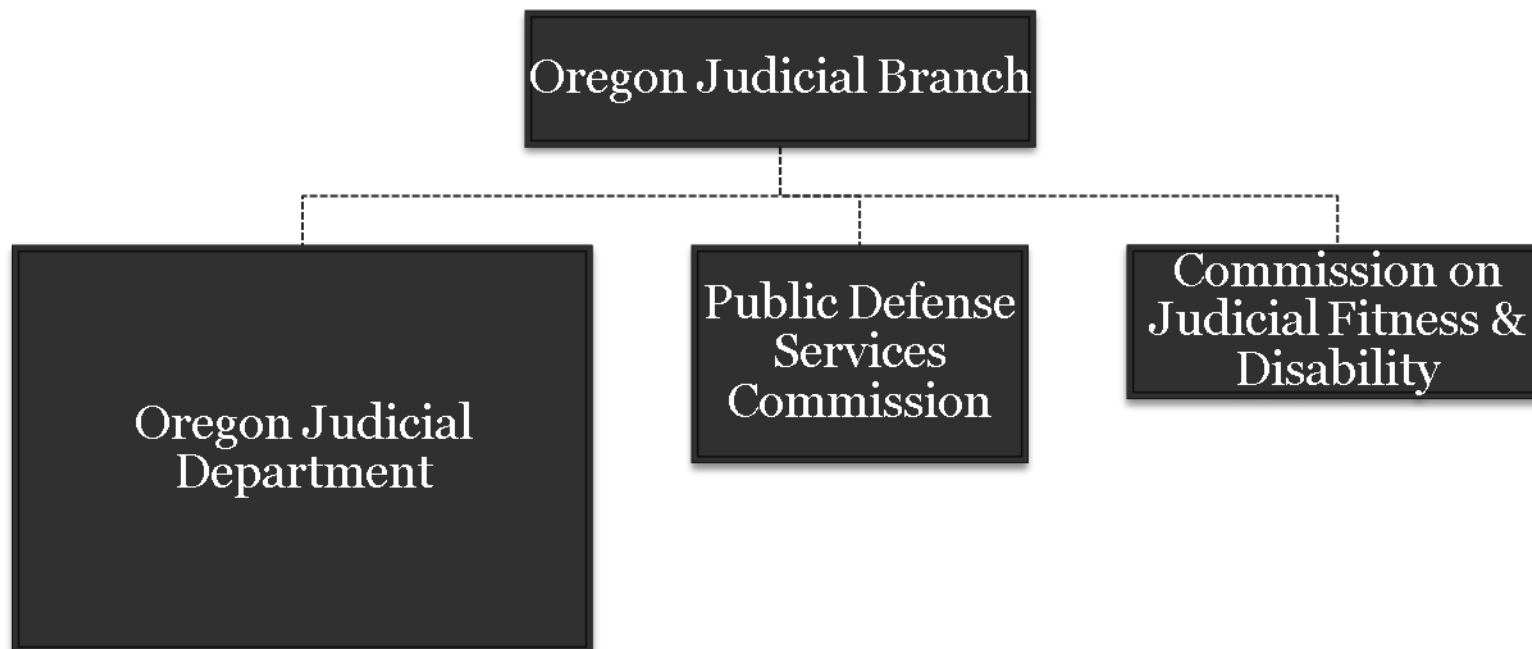
Mission Statement

The PDSC mission is 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

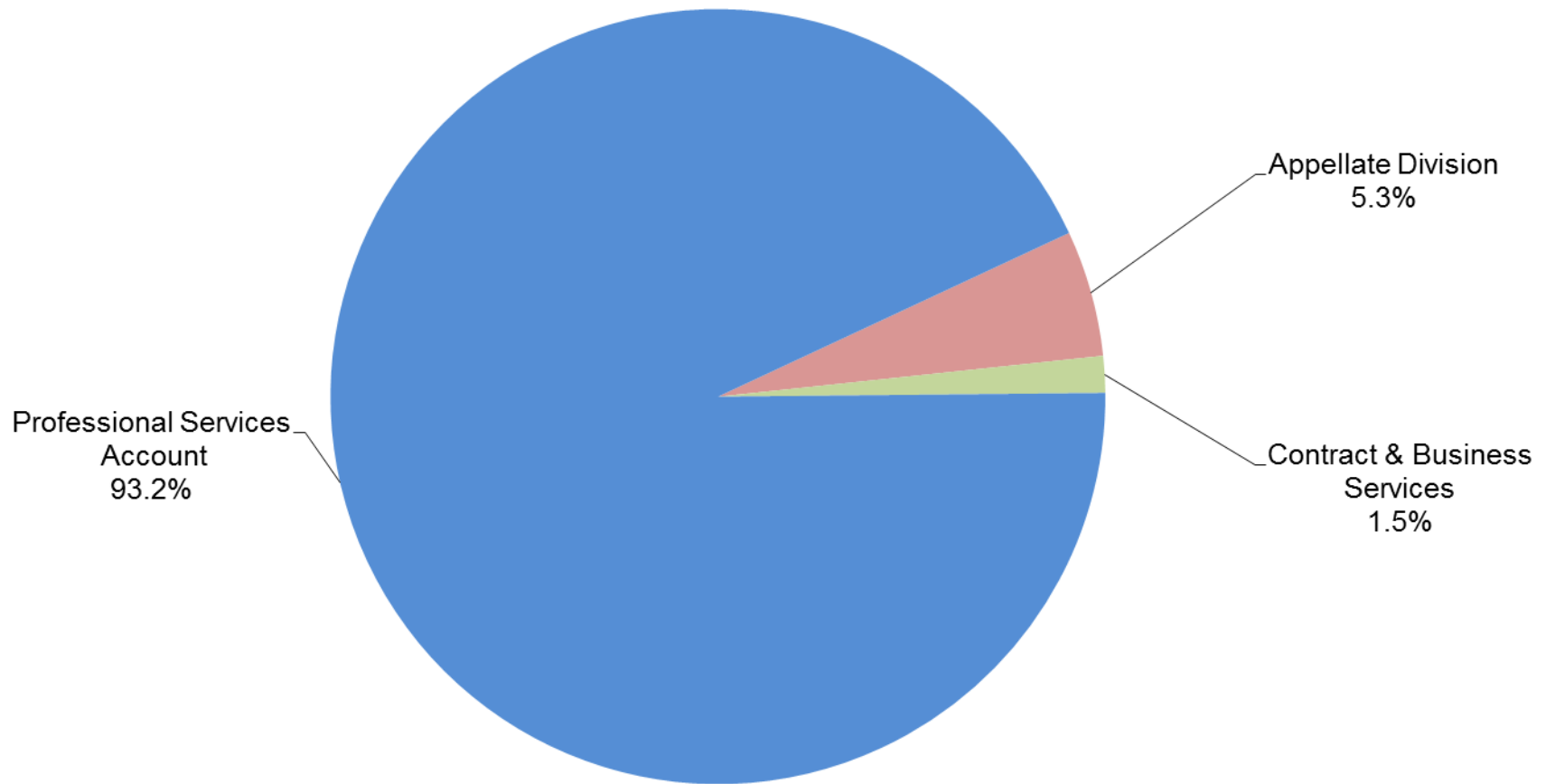
Hon. Elizabeth Welch
Senior Judge

PDSC Guiding Principles

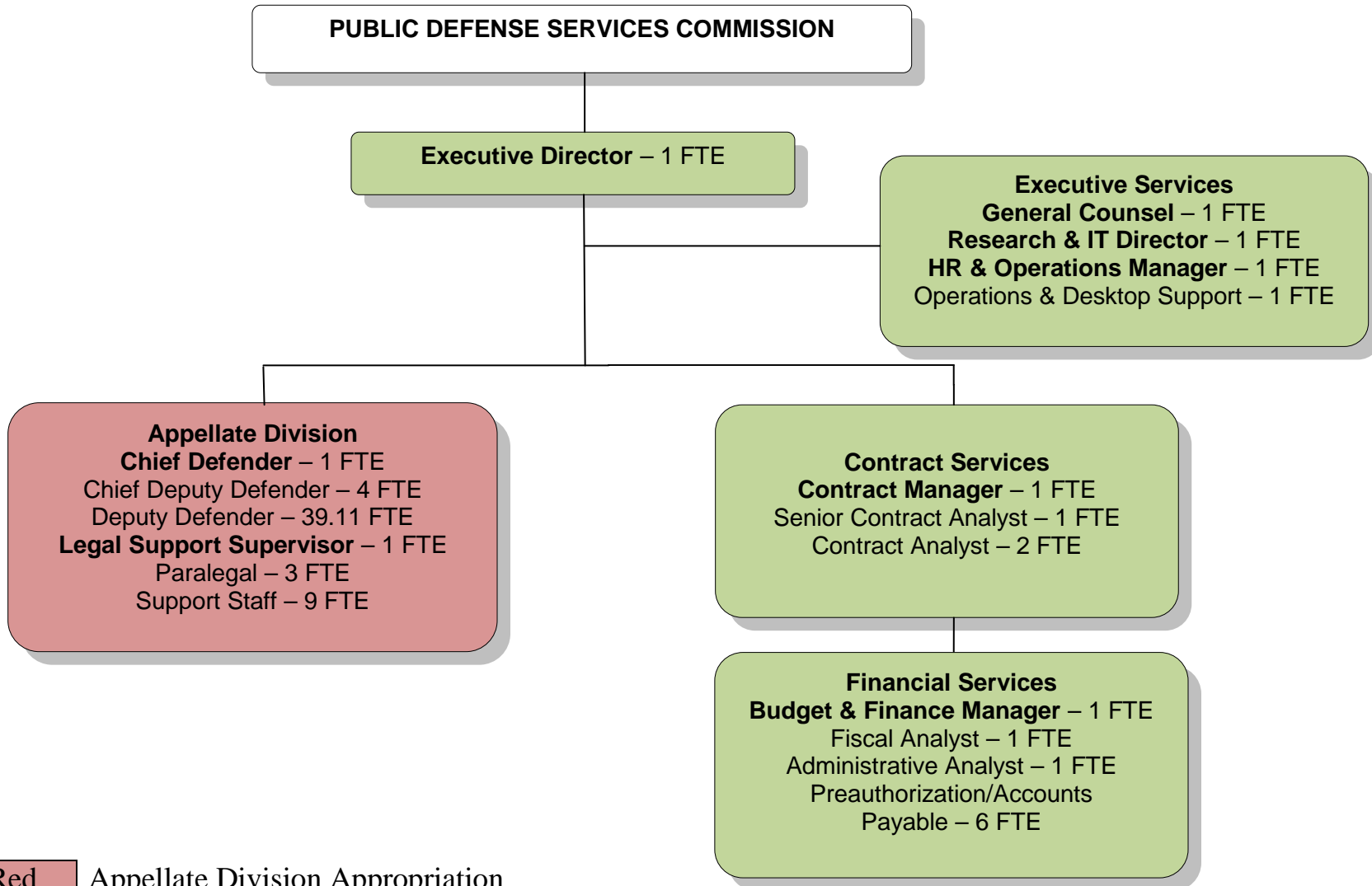
- Vision

- Values
 - Quality
 - Cost Efficiency
 - Leadership
 - Accountability

2015-17 Agency Request Budget



Office of Public Defense Services



Red Appellate Division Appropriation
Green Contract & Business Services Appropriation

Public Defense Case Types

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

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)

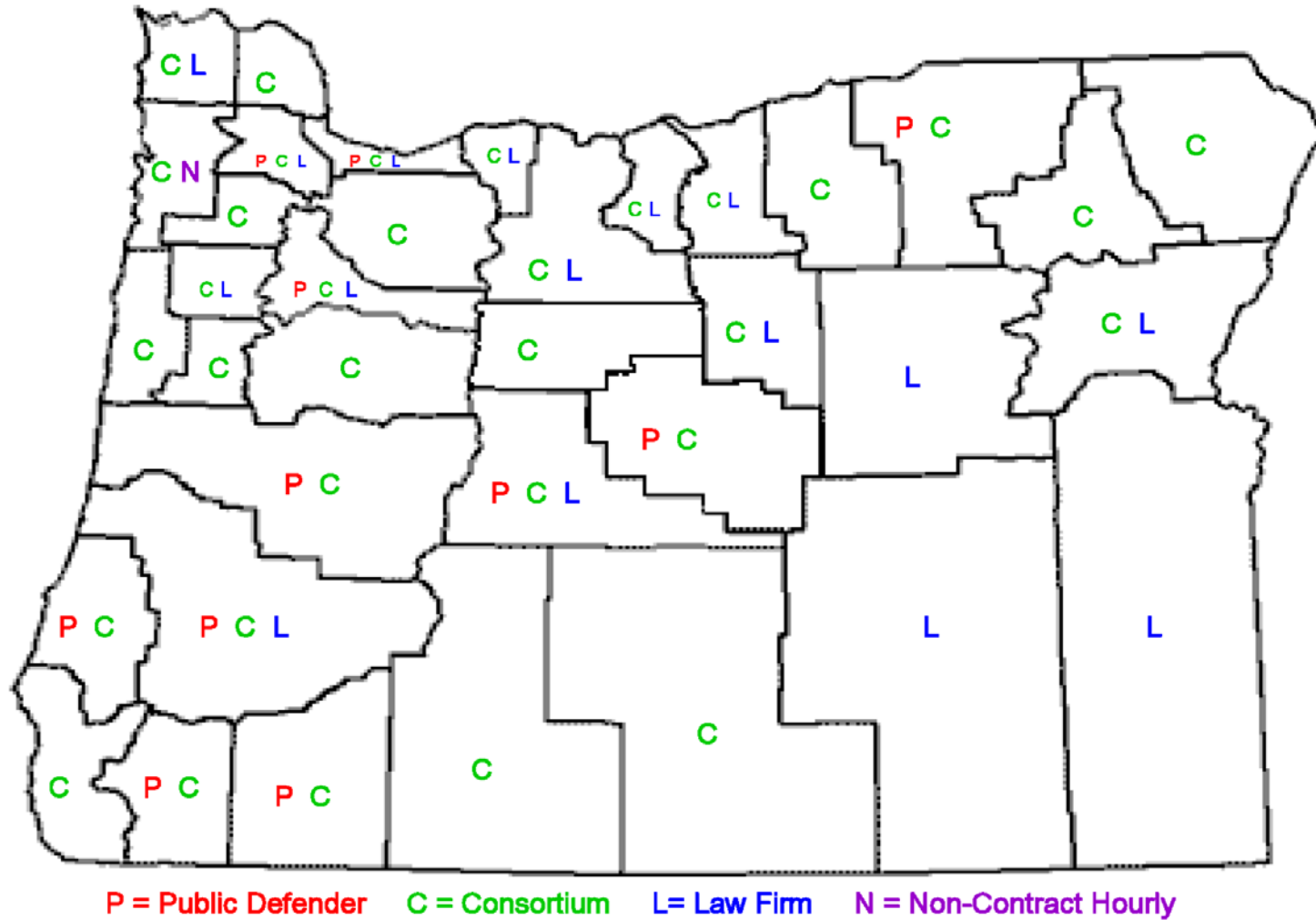
- At the time counsel is requested, the court may impose
 - \$20 application fee
 - Contribution amount that the court finds the person is able to pay without creating substantial hardship
- ACP generates approximately \$3.5 million per biennium
 - ACP funds allocated by the legislature to OJD and PDSC
 - ACP funds collected beyond amounts allocated to OJD and PDSC for the biennium remain in the ACP account

Contract Services

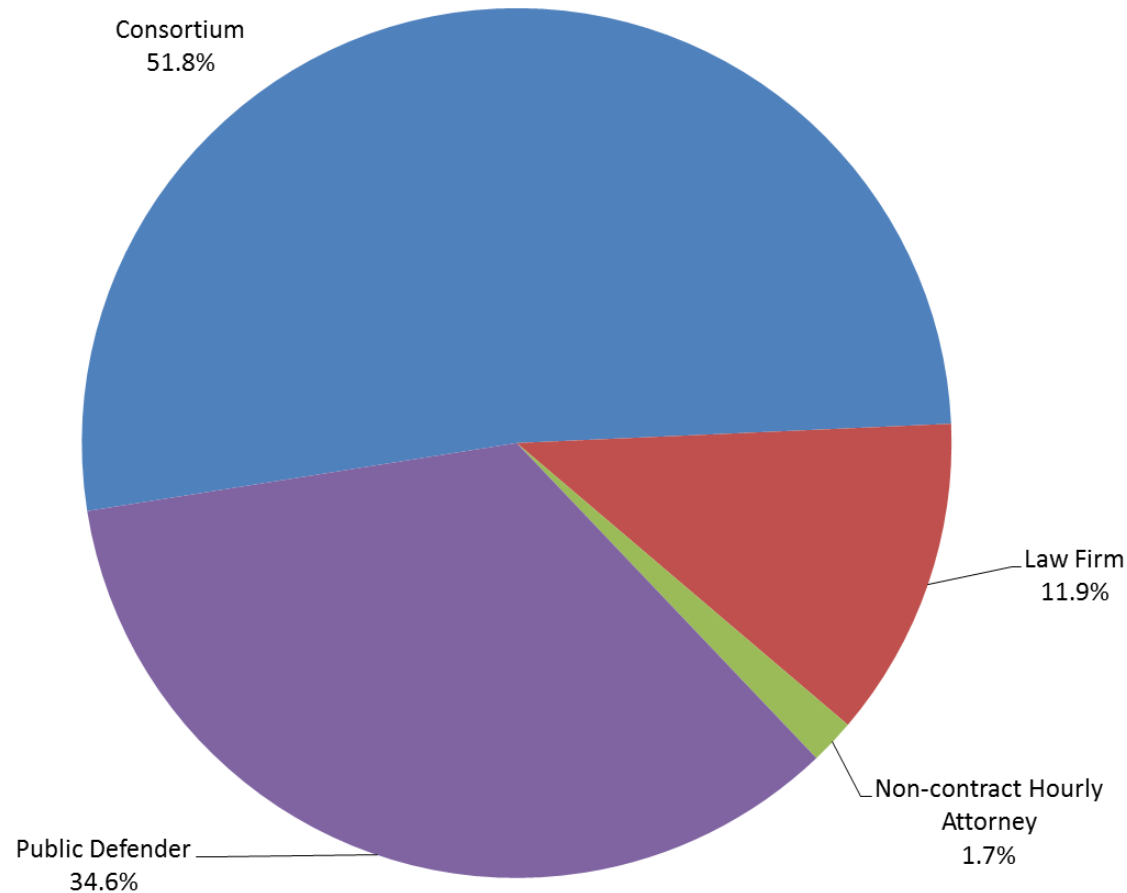
- Contract administration
 - Providers selected through Request For Proposals
 - Two-year contracts
 - 112 current contracts for trial and appellate court representation statewide*

* OPDS Appellate Division handles all statewide appeals with the exception of juvenile delinquency, civil commitments, habeas corpus, and post-conviction relief.

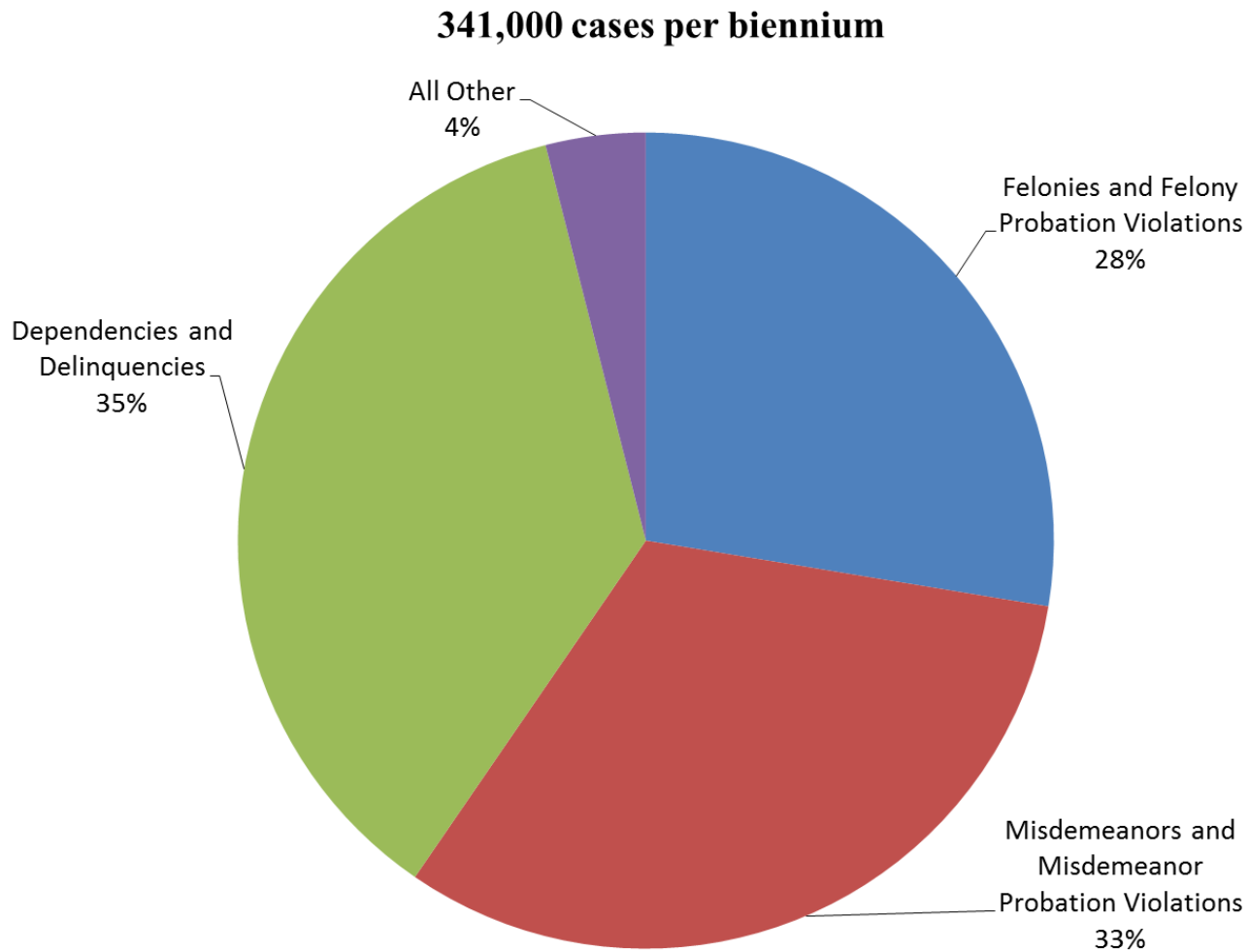
Provider Type by County



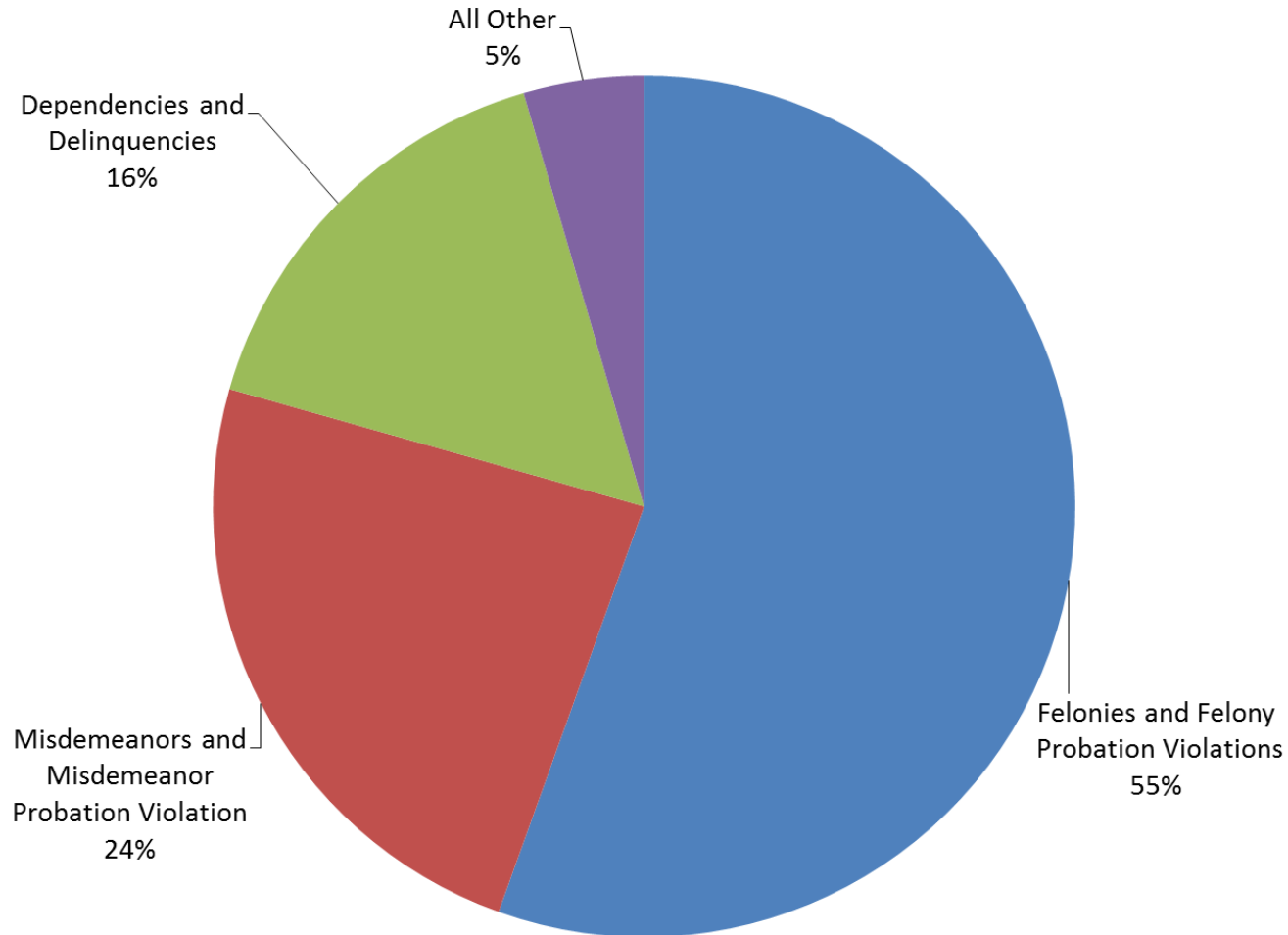
Trial-Level Non-Death Penalty Public Defense Caseload Breakdown by Provider Type



Trial-Level Non-Death Penalty Public Defense Caseload Breakdown by Case Type



Trial-Level Non-Death Penalty Public Defense Caseload Breakdown by Case Expense

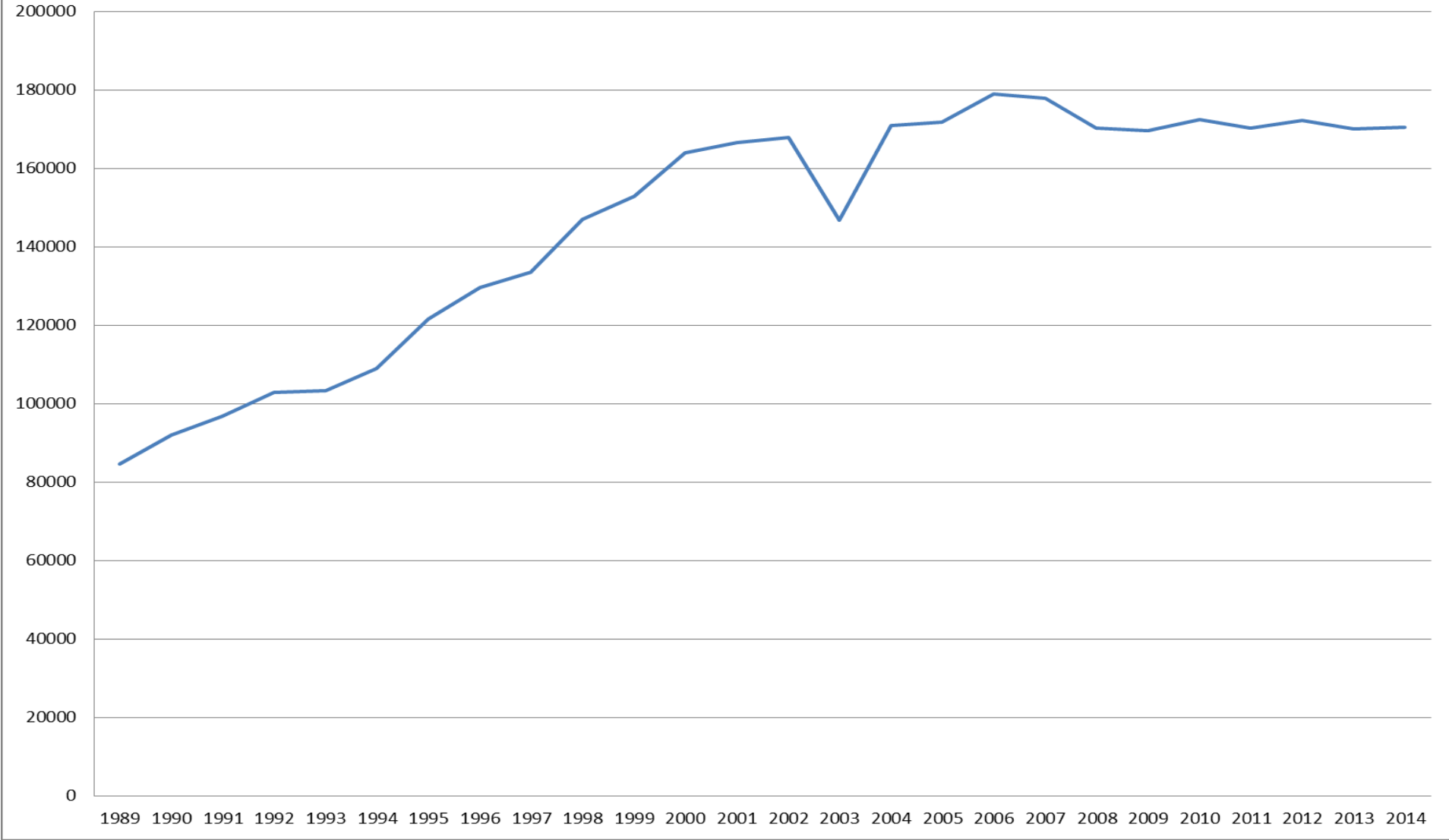


Trial-Level Non-Death Penalty Public Defense Caseloads

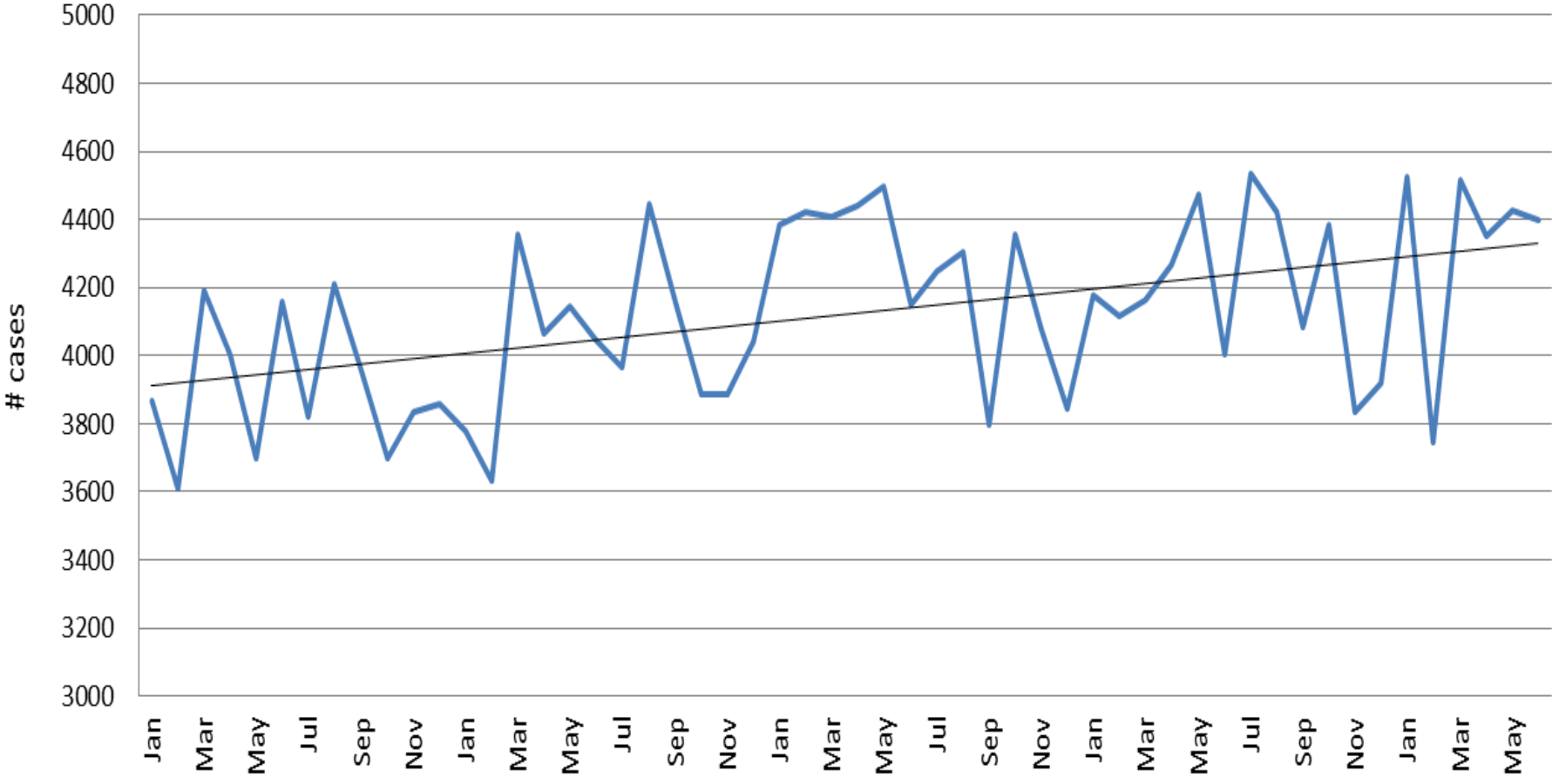
Fiscal Year	Caseload	Change (cases)	Change (%)
1989	84,614		
1990	92,038	7,424	8.8%
1991	96,730	4,692	5.1%
1992	103,028	6,298	6.5%
1993	103,330	302	0.3%
1994	108,963	5,633	5.5%
1995	121,700	12,737	11.7%
1996	129,693	7,993	6.6%
1997	133,596	3,903	3.0%
1998	147,038	13,442	10.1%
1999	152,950	5,912	4.0%
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%
2013	170,084	-2,273	-1.3%
2014	170,482	398	0.2%

*Appointments were deferred to the following biennium

Trial-Level Non-Death Penalty Public Defense Caseload



Statewide Felony Contract Caseload for January 2010 through June 2014



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

Trial Level 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

Trial Level 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

Parent Child Representation Program

- Legal representation for parents and children to promote outcomes consistent with Oregon policy (as stated in ORS 419B.090)
 - Each child has a right to safety, stability, and well-being
 - Each parent has a liberty interest in directing the upbringing of their children
 - Strong preference that children live in their own homes with their own families
 - When not possible for children to be reunited with their parents or guardians, the State of Oregon has the obligation to provide an alternative, safe and permanent home for the child

Parent Child Representation Program

- Modeled on Washington State Parent Representation Program, which has been shown to be a cost-effective program that reduces the time children spend in foster care
- Launched in August 2014 – Linn and Yamhill counties
 - Reduced caseload: No more than 80 cases
 - Enhanced oversight by OPDS
 - Multidisciplinary training and support
 - Partner collaboration and system improvement
 - Independent social work assistance: Case managers in 10-15% of cases

Parent Child Representation Program

- Monitored Requirements
 - Discovery review and client contact prior to shelter hearings
 - Advocacy for clients at all court hearings and case-related meetings
 - Initial client interviews completed within 72 hours of appointment
 - Compliance with performance standards, including independent investigation
 - Lawyer staff to facilitate client contact
 - Increased client contact

Parent Child Representation Program

- Targeted Outcomes
 - Efficient case resolution
 - Fewer continuances
 - Productive negotiation and use of settlement conferences
 - Engaged clients
 - Regular contact
 - Case manager support
 - Effective advocacy
 - Adequate identification, research and litigation of legal issues
 - Independent investigation early in case

Parent Child Representation Program

- Washington Program Results
 - Competent, effective and quality legal representation throughout the life of the case
 - Reduced use of foster care
 - Reunifications occur 1 month sooner (Rate of reunification is 11% higher.)
 - Reduced time to achieve permanency
 - Adoptions and guardianships occur 1 year sooner (Rate at which children are adopted is 83% higher. Rate at which children enter guardianships is 102% higher.)

(Source: Partners for Our Children, *Washington's Parents Representation Program Helping Children in Child Welfare System Reach Permanency*, Issue Brief Vol:1 Issue:1 (February 2011).)

Parent Child Representation Program

- Invited Guests
 - Dana Brandon, Case Manager & Administrator, Parent Child Representation Program
 - Molly Chambers, Program Manager, CASA of Linn County

Appellate Division

- Importance of Appellate Courts
 - Interpret the law for consistent application by police, prosecutors, trial courts, and the public
 - Protect individual statutory and constitutional rights

Appellate Division

- OPDS Appellate Division
 - Institutional counterpart to DOJ Appellate
 - Represents individuals in a high-volume practice before the Oregon appellate courts and is asked to appear as *amicus* in cases of systemic importance
 - Works with the appellate courts, DOJ, and the legislature to identify and implement system efficiencies

Appellate Division

- Criminal Section

- Evaluates over 3,000 case referrals per biennium
- Files over 2,000 notices of appeal per biennium
- Case types: misdemeanor, felony, probation violation, parole, death penalty, DNA testing, crime victims' rights

- Juvenile Section

- Evaluates over 600 case referrals per biennium
- Files over 500 notices of appeal per biennium
- Case types: jurisdiction, review hearing, change in permanency plan, and termination of parental rights

Appellate Division

- Quality Assurance
 - Case assignment based on complexity and attorney experience
 - Team structure and meetings
 - Graduated editing system
 - Regular performance evaluations

Appellate Division

- Challenges
 - Retaining experienced attorneys
 - Providing timely appellate representation
 - 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

Proposed Key Performance Measures

- Trial Level Representation: Providers able to obtain at least 12 hours of continuing legal education per year in the area of law in which the providers represent public defense clients
- Parent Child Representation Program: Percent of PCRCP attorneys who report spending one third of their time meeting with court appointed clients

Challenges

- Ability to attract and retain talented lawyers and employees at the trial and appellate court levels
 - Low case rates; high student loan debt
 - Ineligibility for loan repayment/forgiveness options
- Large caseloads
- Develop efficient data-driven quality assurance mechanisms

PDSC Accomplishments

- Development of a public defense delivery system that is a national model of excellence
- PDSC oversight of an efficient, reliable and transparent contracting process
- Sponsorship of annual conferences to provide training for lawyers and contract administrators
- Modified agency structure within existing resources to manage risk, retain institutional knowledge, and ensure business continuity
- Successful launch of Parent Child Representation Program

PDSC Accomplishments

- Highly-regarded Appellate Division
 - Comprehensive training program, attorney practice manuals, and team structure
 - Electronic case records
 - Regular presentations at CLE seminars
 - Requests to file *amicus* briefs
 - Development of Juvenile Appellate Section

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
- 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

Budget Drivers

- Changing prevailing norms for adequate representation and overall case complexity
- Demographic trends such as increases in population, particularly of the “at risk” population
- Oregon’s crime rate
- Availability of jail space
- Recidivism rates in Oregon’s correctional population
- Rates of removal of children from their homes by the Department of Human Services

Budget Drivers

- 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

2015-17 Agency Request Budget

Comparison of 2013-15 Legislatively Approved Budget to 2015-17 Agency Request Budget

	2013-15 Legislatively Approved Budget	2015-17 Current Service Level	2015-17 Agency Request Budget
General Funds	\$253,184,307	\$265,595,131	\$318,059,416
Other Funds	\$3,995,099	\$5,033,764	\$3,841,565
All Fund Types	\$257,179,406*	\$270,628,895**	\$321,900,981**

* Includes special payments to OJD of \$2.7 million to fund ACP Verification Specialists

** Includes special payments to OJD of \$3.1 million to fund ACP Verification Specialists

2015-17 Current Service Level

All Fund Types

Trial-level Non-Death Penalty Caseload	\$218.1 million
Death Penalty Caseload	\$27.2 million
Appeals (Civil and criminal conflicts)	\$2.5 million
Appellate Division	\$15.2 million
Contract & Business Services Division	\$4.4 million
Transfer to Judicial Department	\$3.2 million
Total	\$270.6 million

2015-17 Policy Option Packages

All Fund Types

POP100: Consistent Rates & Mileage for Public Defense Contract Providers	\$7.5 million
POP101: Public Defense Contractor Parity	\$21.5 million
POP102: Contractor Quality Assurance	\$4.6 million
POP103: Providers Hourly Rate Increases	\$9.5 million
POP104: Juvenile Dependency Improvement	\$5.9 million
POP105: Employee Compensation ORS151.216(1)(e)	\$0.78 million
POP106: Office Space	\$0.4 million
POP107: ACP Revenue Shortfall	\$1.2 million
Policy Option Package Total	\$52.1 million

Policy Option Package 100

Consistent Rates & Mileage for Public Defense Contract Providers

- Provides funding necessary to:
 - ensure consistent case rates for public defense providers within each county and among similarly situated counties;
 - provide mileage reimbursement for the following regions:
Eastern, North Coast, Central, Southern Oregon and the Willamette Valley

- \$7,548,195 - General Funds

Policy Option Package 101

Public Defense Contractor Parity

- Provides funding necessary to:
 - attract and retain qualified attorneys in public defense organizations throughout the state
 - reduce disparity between public defense provider and prosecutor salaries, and reduce caseloads that are above Oregon and National standards
- \$21,574,168 – General Funds

Policy Option Package 102

Contractor Quality Assurance

- Provides funding necessary to:
 - permit public defense contract administrators to effectively monitor and improve the quality of services provided by contract attorneys
 - implement case management systems to increase efficiency and provide OPDS with data required to effectively monitor quality of services provided
- \$4,625,940 - General Funds

Policy Option Package 103

Providers Hourly Rate Increases

- Provides funding necessary to increase hourly rates for:
 - attorney hourly rate (from \$46 to \$70 per hour in non-capital cases; from \$61 to \$95 for lead counsel; from \$46 to \$70 for co-counsel in capital cases)
 - investigator hourly rate (from \$29 to \$35 in non-capital cases; from \$40 to \$45 in capital cases)
 - death penalty contract attorneys (from \$98 to \$125)
 - death penalty contract mitigators (from \$62 to \$70)
- \$9,561,682 - General Funds

Policy Option Package 104

Juvenile Dependency Improvement

- Provides funding necessary to:
 - expand the Parent Child Representation Program (PCRP) to Clackamas and Multnomah counties
 - provide permanent funding for OPDS program staff including the managing lawyer and data entry staff
- \$5,960,417 - General Funds

Policy Option Package 105

Employee Compensation ORS 151.216(1)(e)*

- Provides funding to reduce the salary disparity between OPDS employees and comparable employee classifications in other state agencies
- \$779,456 - General Funds; \$7,801 - Other Funds

* ORS 151.216(1)(e) requires the Commission to “Adopt a compensation plan, classification system and personnel plan for the office of public defense services that are commensurate with other state agencies.”

Policy Option Package 106

Office Space

- Provides funding for additional office space to
 - eliminate lawyer office-sharing
 - add client conference rooms
 - increase space available for training, Commission meetings, and staff meetings
- \$448,117 - General Funds

Policy Option Package 107

ACP Revenue Shortfall

- Restores general fund expenditures in the Professional Services Account that were previously funded from revenue no longer available through the Application Contribution Program (ACP)
- \$1,200,000 - General Funds

Importance of Quality Representation

- Protection of constitutional rights
 - Balance public safety system
- Family protections
 - Dependency proceedings
 - Termination of parental rights
 - Due process for those alleged to be a risk to self or others
- Integrity of Oregon's juvenile and criminal justice systems
- Cost avoidance

Invited Guests

- The Honorable Judge Robert Selander, retired, PCRPA Administrator
- Walt Beglau, District Attorney, Marion County
- Angela Sherbo, Youth, Rights & Justice; Greg Hazarabedian, Public Defender Services of Lane County; Tom Sermak, Public Defender of Marion County; Tom Crabtree, Crabtree & Ramsdorf (Bend)
- Shaun McCrea, PDSC Vice-Chair, & Rosalind Lee, Lane County Defense Consortium Lawyer
- Lane Borg, Metropolitan Public Defender
- Robert Raschio, Law Office of Robert Raschio PC

County Courthouses

