

# **Public Defense Services Commission (PDSC)**

## **Presentation Schedule Day 1**

- Statutory Mandate, Mission, Vision, and Values
- History and Agency Overview
- Key Performance Measures
- Appellate Division
  - Role
  - Structure
  - Quality Assurance

# Presentation Schedule Day 2

- Contract Services
  - Structure & Responsibilities
  - Challenges
  - Quality Assurance
  - Parent Child Representation Program
- Budget Drivers
- 2017-19 Agency Request Budget
- 15% Reduction Plan

# **Presentation Schedule Day 3**

- Invited Guests and Public Testimony

# **Statutory Mandate**

ORS 151.216(1) The Commission Shall:

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.

# Mission & Vision

**Mission:** The Commission ensures that eligible individuals have timely access to legal services, consistent with Oregon and national standards of justice.

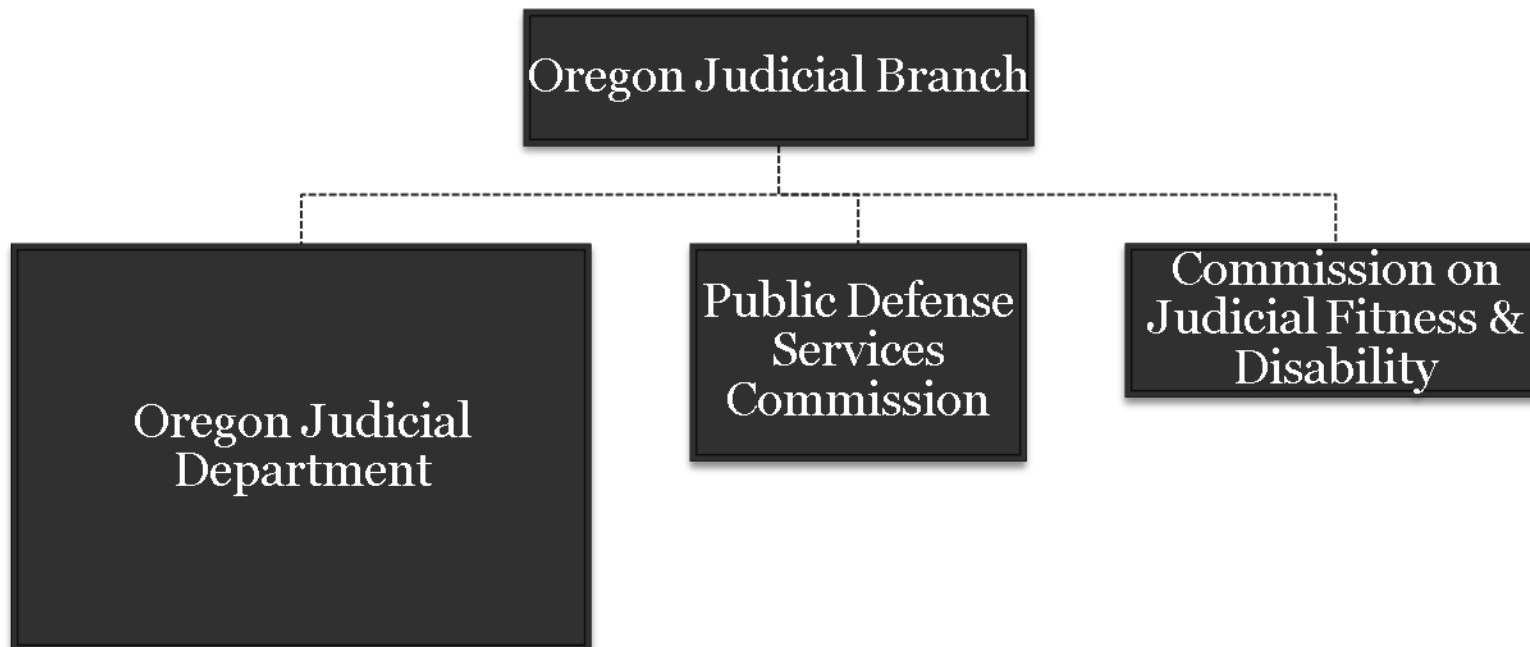
**Vision:** The Public Defense Services Commission (PDSC) will maintain a sustainable statewide public defense system that provides quality representation to eligible clients in trial and appellate court proceedings.

# Values

- Cost Efficiency
- Leadership
- Accountability

# History

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



# Commission Members

**Chief Justice Thomas A. Balmer**  
*Ex-Officio* Permanent Member

**Per Ramfjord, Chair**  
Partner, Stoel Rives LLC

**John R. Potter, Vice-Chair**  
Former Executive Director, Oregon Criminal Defense Lawyers Association

**Thomas M. Christ**  
Partner, Cosgrave Vergeer Kester LLP

**Michael De Muniz**  
De Muniz Law

**Henry H. Lazenby, Jr.**  
Lazenby & Associates

**Janet C. Stevens**  
Deputy Editor, Bend Bulletin

**Hon. Elizabeth Welch**  
Senior Judge



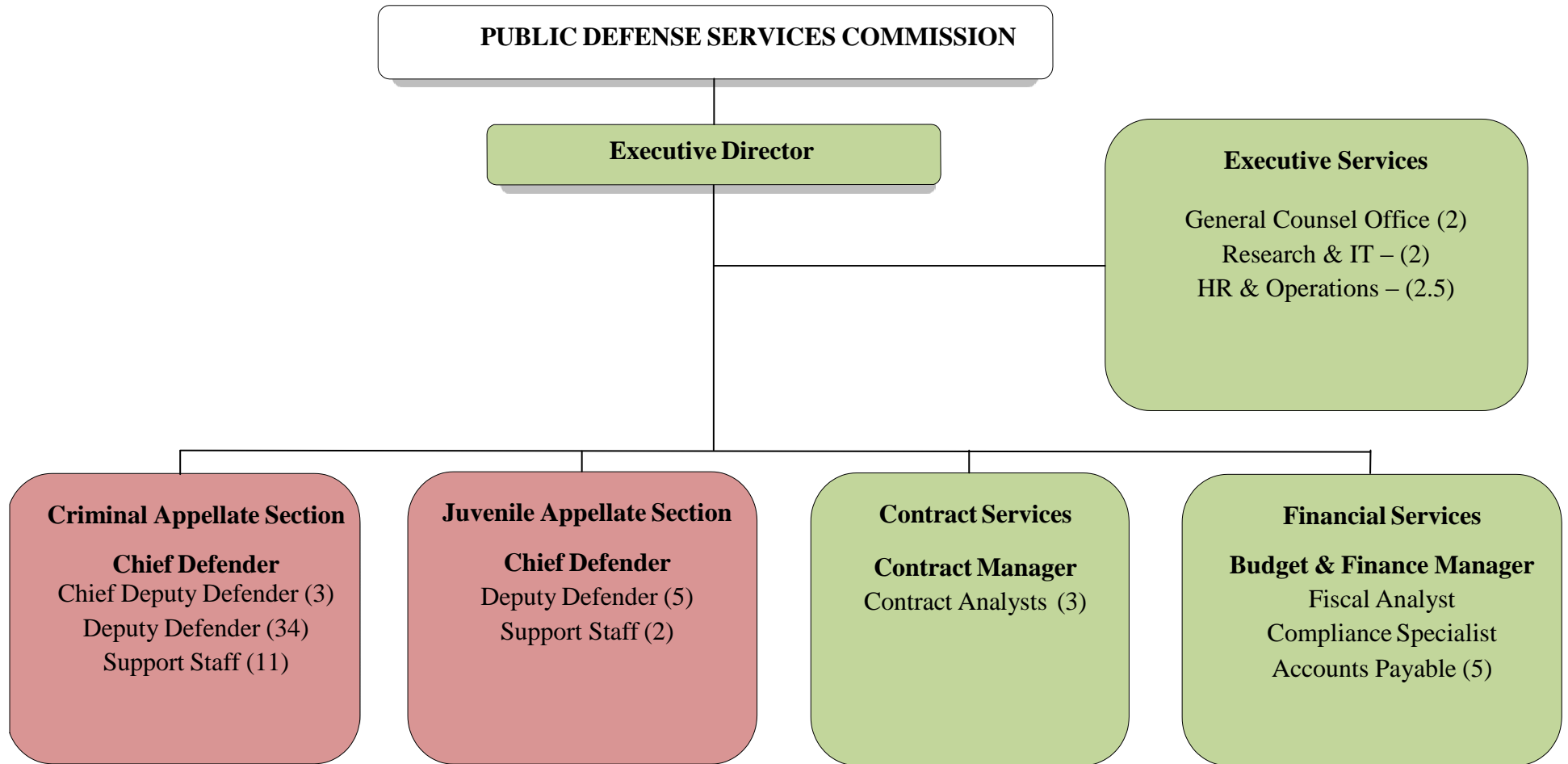
# Key Performance Measures

- Best Practices of Boards and Commissions – Percent of total best practices met by Commission
- 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

# Key Performance Measures

- Appellate Case Processing – Median days to filing opening brief
- 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
- Percent of PCRCP attorneys who report spending approximately 1/3 of their time meeting with court appointed clients in cases which the attorney represents a parent or child with decision-making capacity.

# Office of Public Defense Services



\* Each classification indicates one position, unless otherwise noted.

Red	Appellate Division Appropriation
Green	Contract & Business Services Appropriation

# Public Defense Case Types

173,890 cases per year (FY 2016)

- Criminal proceedings (misdemeanors to death penalty) – 81,013
- Probation violation and extradition proceedings – 24,110
- Contempt proceedings (including alleged nonpayment of court-ordered child support and alleged violations of Oregon’s Family Abuse Prevention Act) – 4,291
- Post-conviction relief and habeas corpus proceedings – 447
- Juvenile delinquency proceedings – 6,796
- Juvenile dependency (child welfare) and termination of parental rights proceedings – 54,441
- Civil commitment proceedings and Psychiatric Security Review Board proceedings – 2,792

# 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

# 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

- Structure: team-based, collaborative approach
  - Criminal Section; Juvenile Section
    - case assignment
    - weekly meetings
    - tiered editing
  - Oregon Supreme Court practice
  - Specialty teams
  - Juvenile Dependency – expedited briefing schedule

# Appellate Division

- Quality Assurance Strategies
  - Case Assignment, Team Structure, Editing System
  - Intensive Training
  - Manual of Procedure and Practice
  - Performance Evaluations
    - production metrics
    - development assessment

# Appellate Division

- KPM – median days to file the opening brief
  - Stages of an appeal
    - trial court judgment or order (clock starts)
    - notice of appeal (within 30 days)
    - transcript preparation and settlement (45 days)
    - *opening brief* (209 days)
    - answering brief (210 days)
    - submission/argument (approx. 90 days post briefing)
    - Court of Appeals decision (greatly varies, three weeks to two years)

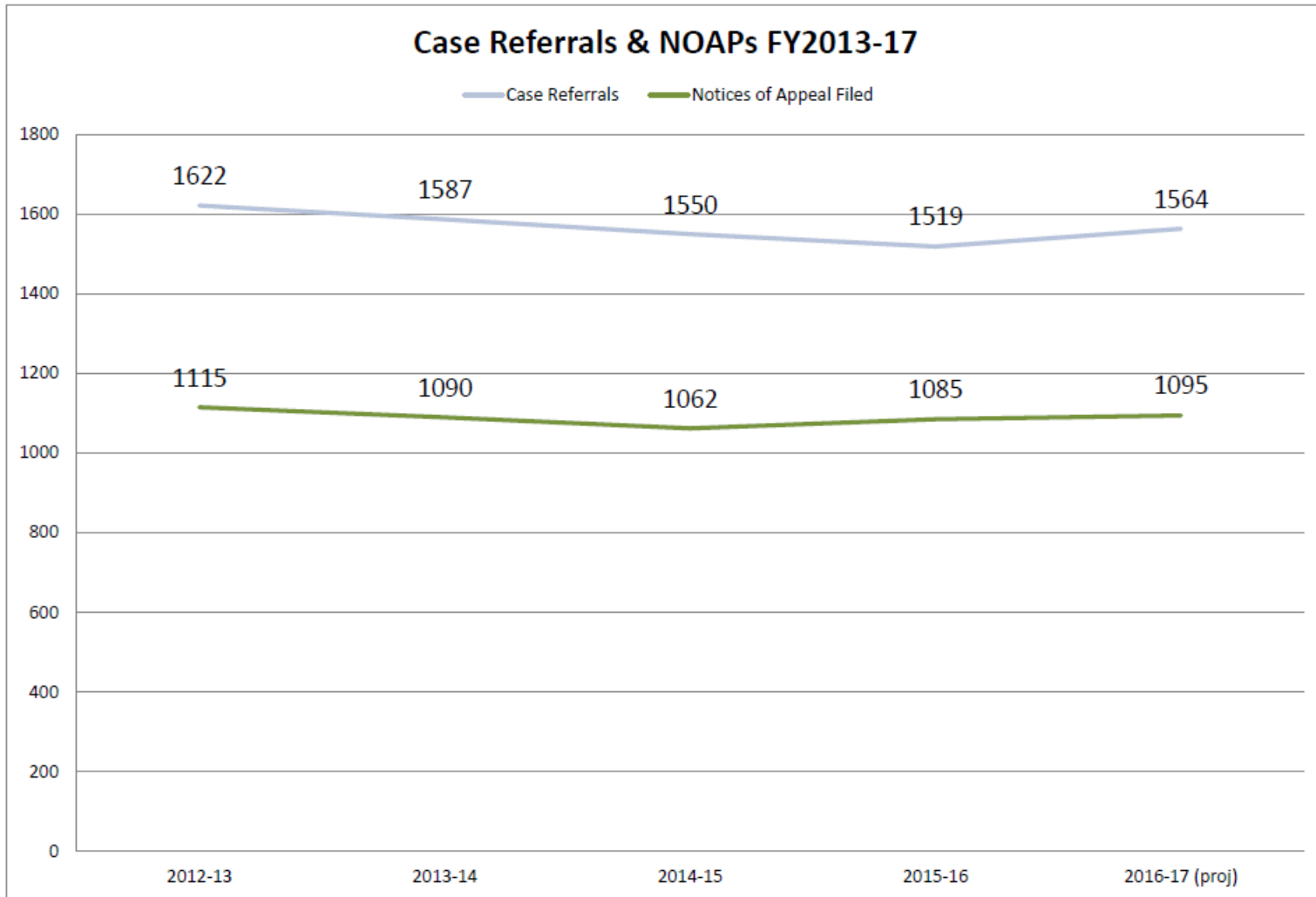
# Appellate Division

- Historic Backlog

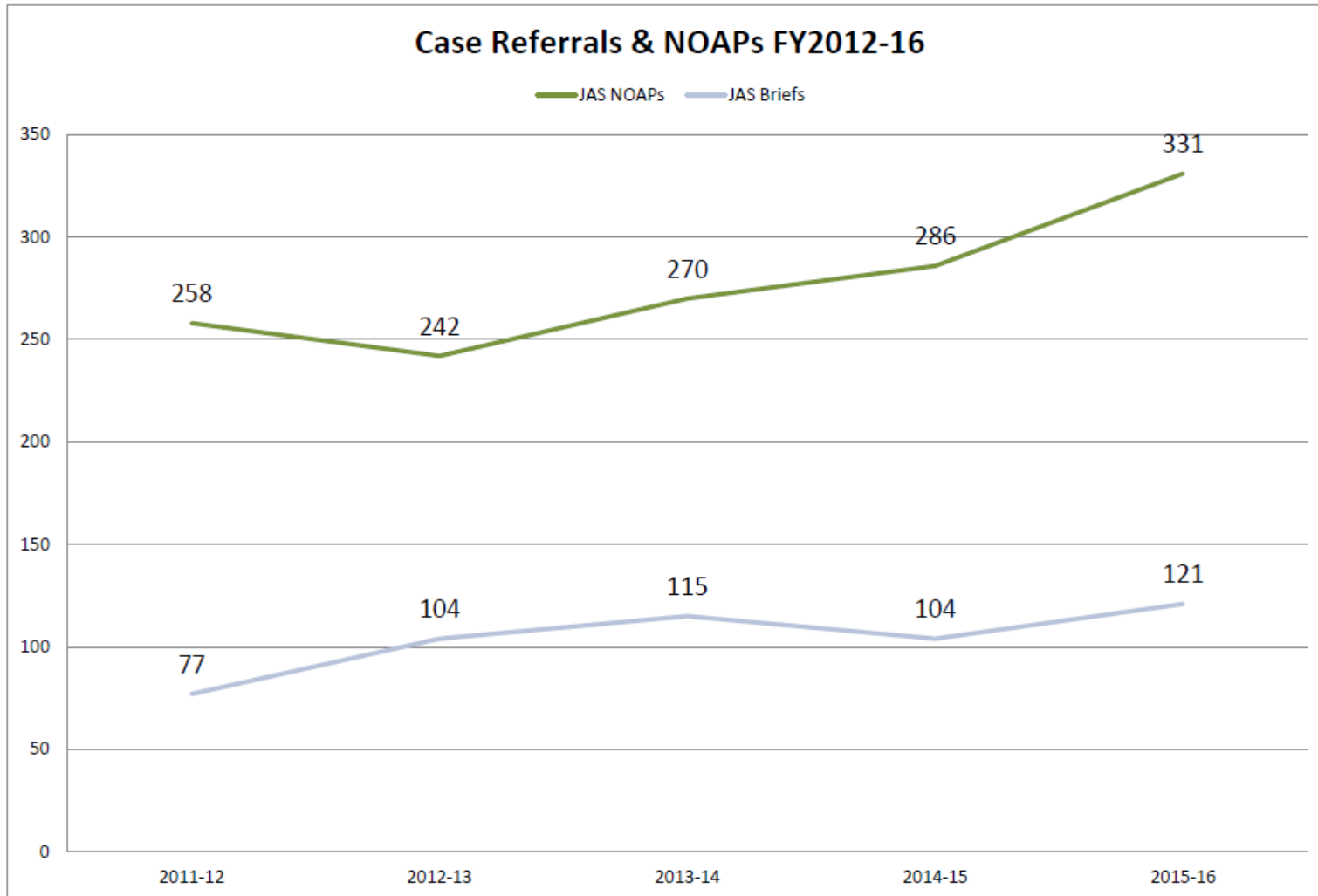
	Days to Opening Brief	Days to Answering Brief	Total Briefing Days
2006	350	280	630
2009	240	210	450
2016	209	210	419

- KPM Target: 180 days

# Criminal Appellate Section



# Juvenile Appellate Section

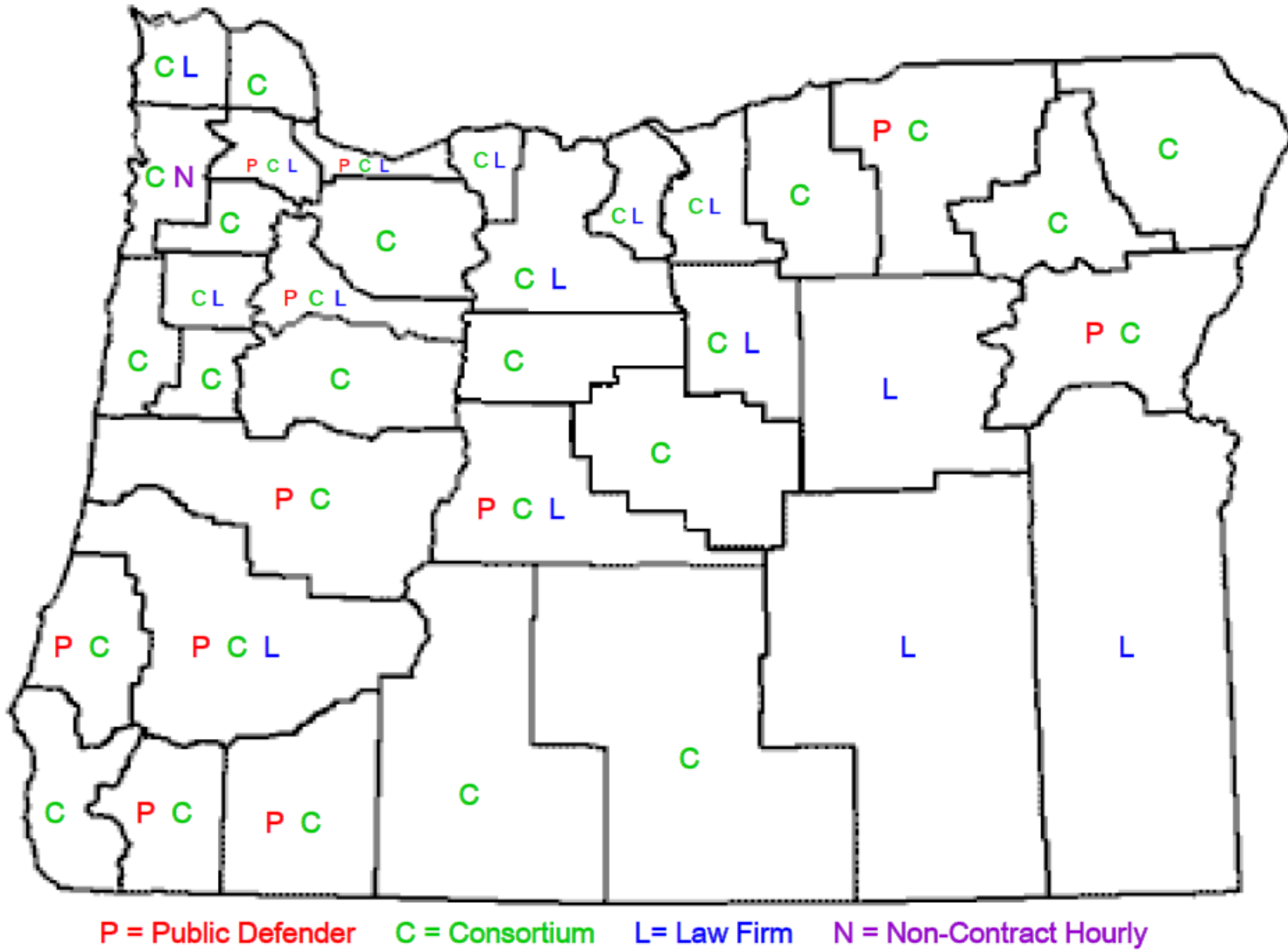


# Contract Services

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

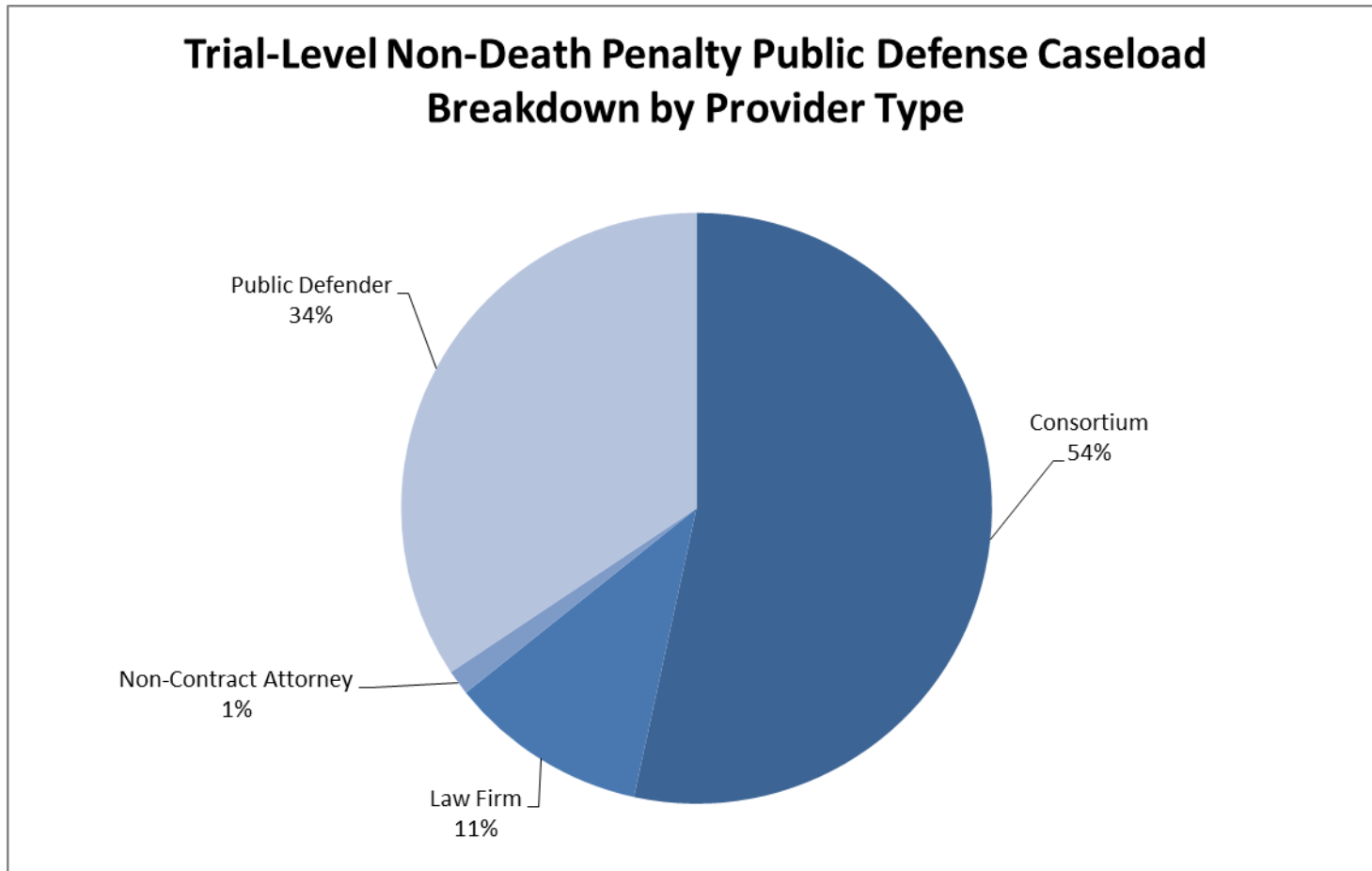
\* OPDS Appellate Division handles all statewide appeals with the exception of juvenile delinquency, civil commitments, habeas corpus, and post-conviction relief.

# Attorney Provider Type by County

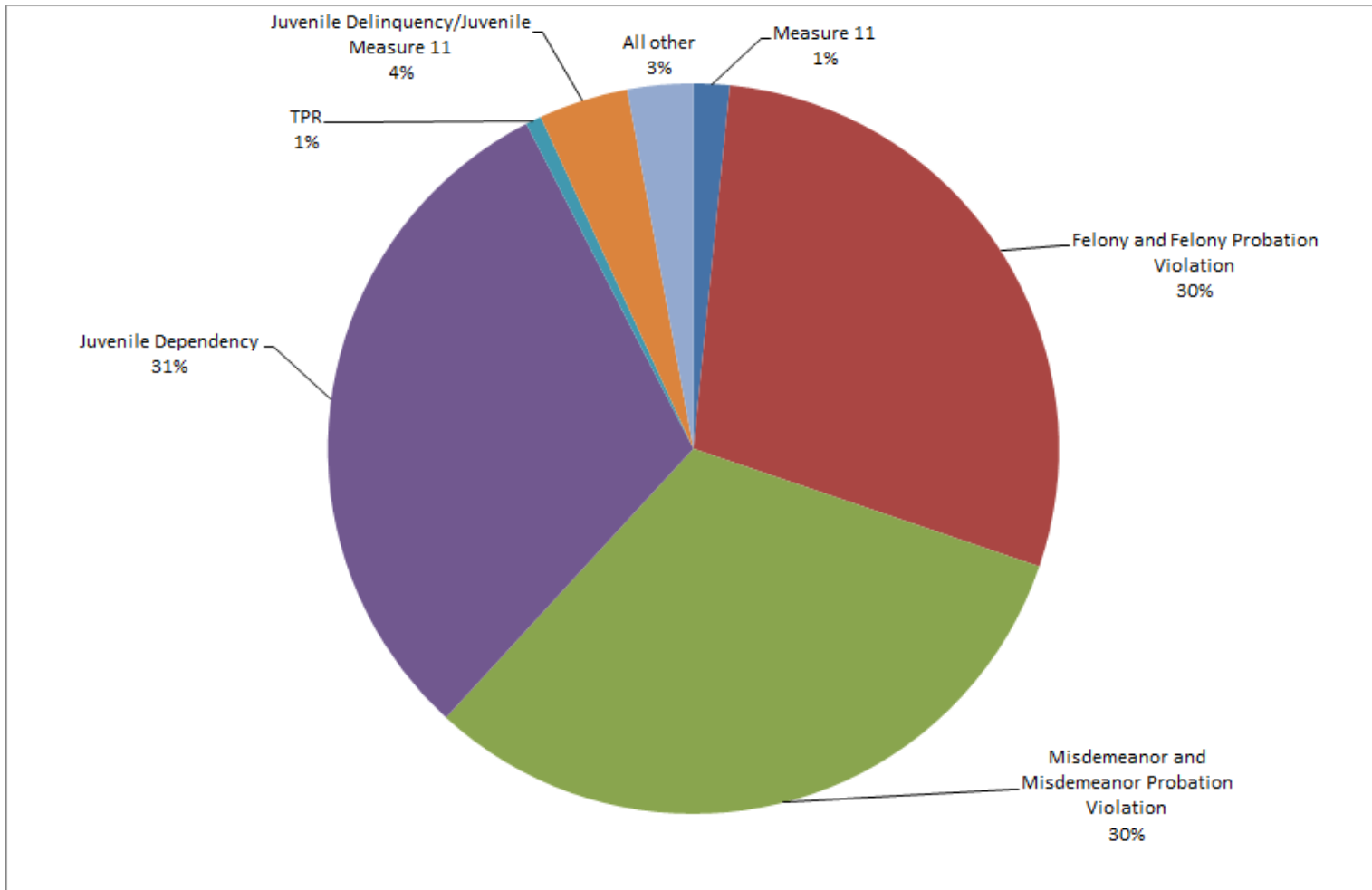




# Trial-Level Non-Death Penalty Public Defense Caseload Breakdown by Provider Type

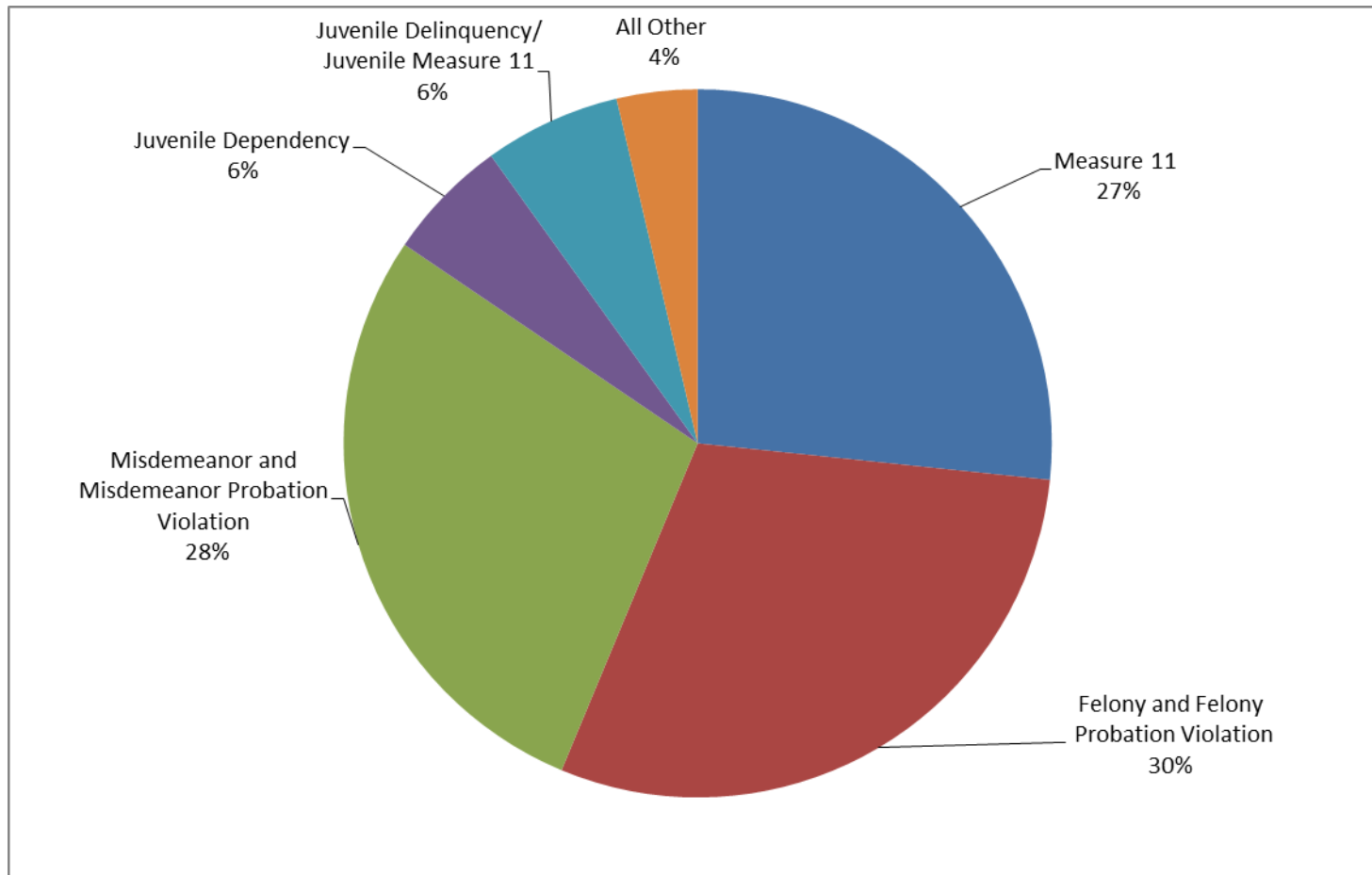


# Trial-Level Non-Death Penalty Public Defense Caseload Breakdown by Case Type



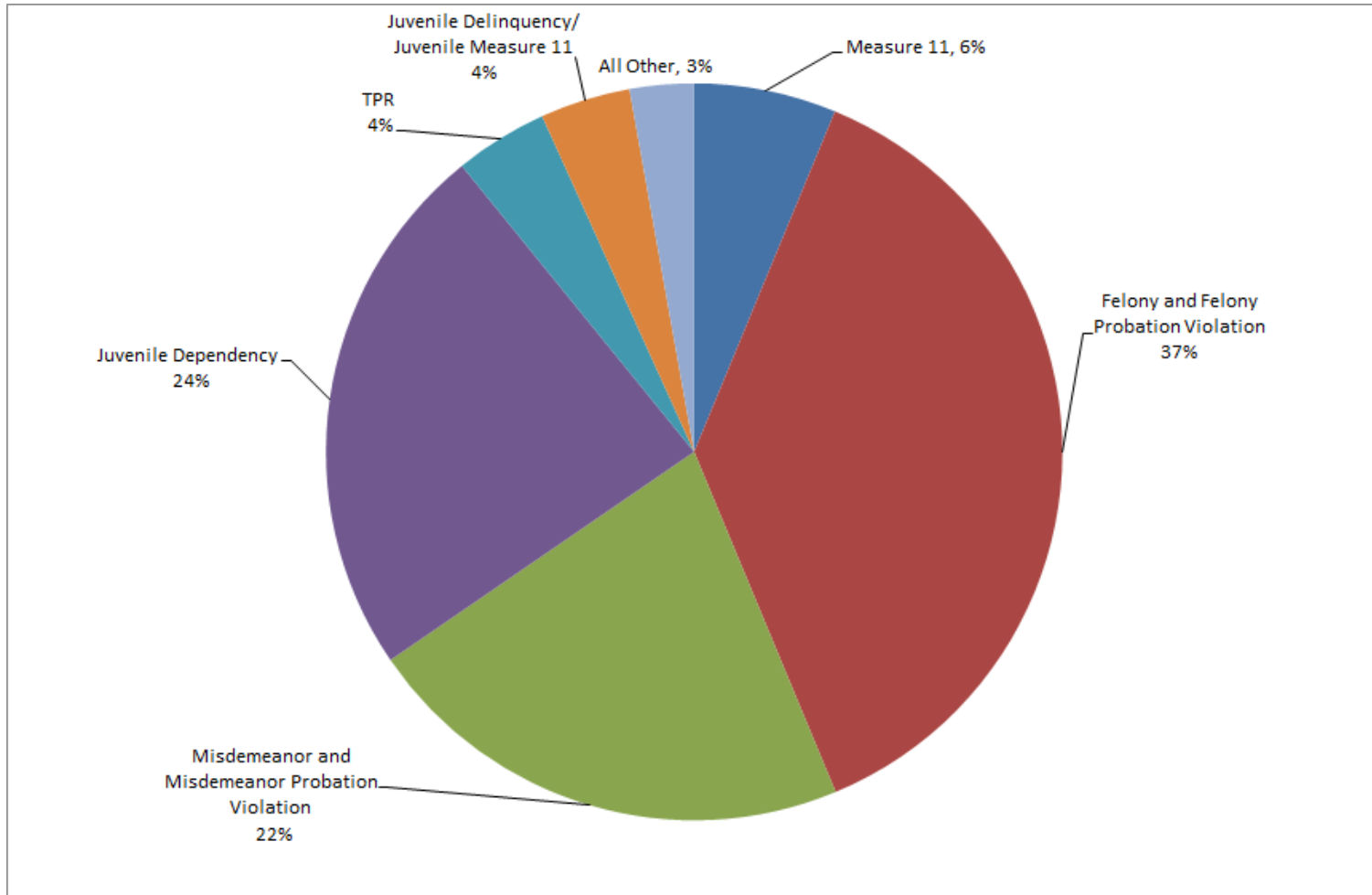
# Trial-Level Non-Death Penalty Public Defense Caseload

## Breakdown by Expense Requests



# Trial-Level Non-Death Penalty Public Defense Caseload

## Breakdown by Total Case Cost (Contracts and Expenses)

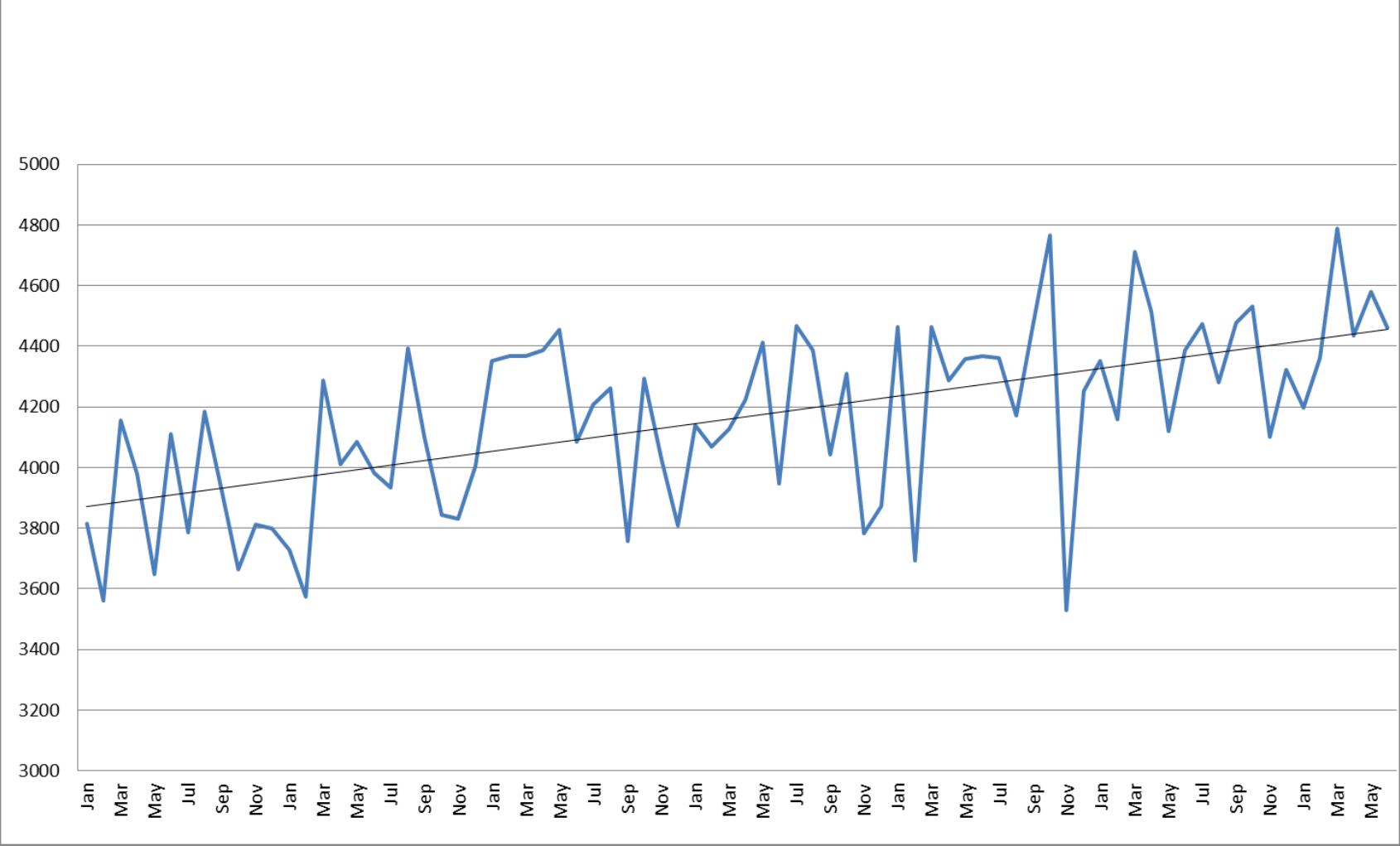


# Trial-Level Non-Death Penalty Public Defense Caseload

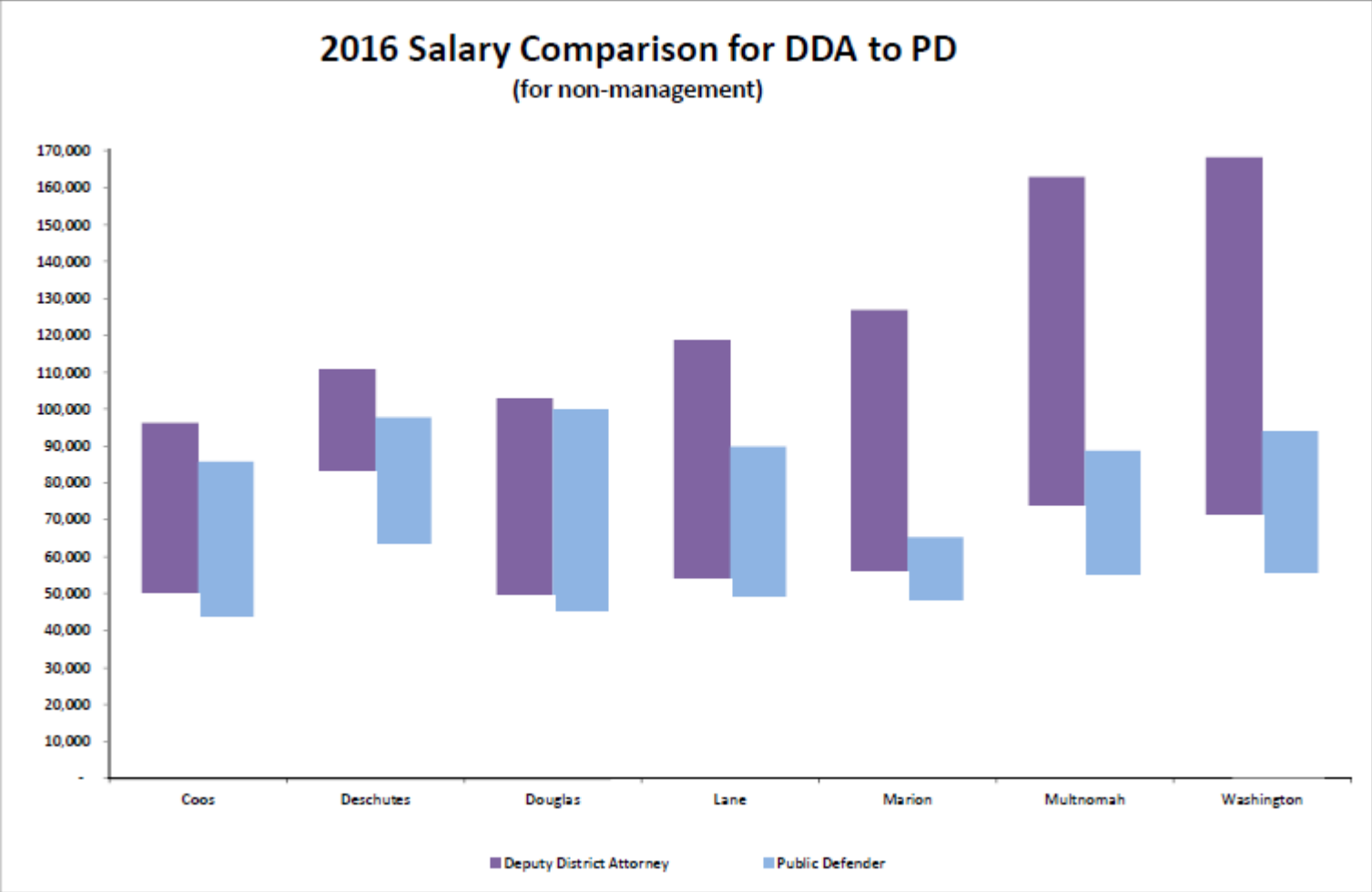
<b>Fiscal Year</b>	<b>Caseload</b>	<b>Change (cases)</b>	<b>Change (%)</b>
1996	129,693	7,993	6.6%
1997	133,596	3,903	3.0%
1998	147,038	13,442	10.1%
1999	152,950	5,912	4.0%
2000	163,944	10,994	7.2%
2001	166,658	2,714	1.7%
2002	167,893	1,235	0.7%
2003*	146,947	-20,946	-12.5%
2004	170,902	23,955	16.3%
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%
2015	170,957	475	0.3%
2016	173,890	2,933	1.7%

\* Appointments were deferred to the following biennium

# Statewide Felony Public Defense Caseload for January 2010 through June 2016



# Challenges



# Challenges

## Student Loan Debt

“In 2012, the average law graduate’s debt was \$140,000, 59 percent higher than eight years earlier.”<sup>1</sup> But some experts suggest that these figures actually under-estimate the debt load of many students.<sup>2</sup> The Wall Street Journal reports that, for many, student debt is now much higher due to changes in federal lending policies, and resulting increases in tuition costs across the country.<sup>3</sup> Consistent with the Wall Street Journal report, several Oregon public defenders have reported debt exceeding \$240,000.

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<sup>1</sup> See The New York Times, October 25, 2015, Sunday Review, Editorial - The Law School Debt Crisis: [http://www.nytimes.com/2015/10/25/opinion/sunday/the-law-school-debt-crisis.html?\\_r=0](http://www.nytimes.com/2015/10/25/opinion/sunday/the-law-school-debt-crisis.html?_r=0)

<sup>2</sup> <http://abovethelaw.com/2016/04/back-in-the-race-are-average-student-loan-debt-figures-misleading/>

<sup>3</sup> See The Wall Street Journal, August 18, 2015, Grad-School Loan Binge Fans Debt Worries, by Josh Mitchell <http://www.wsj.com/articles/loan-binge-by-graduate-students-fans-debt-worries-1439951900?alg=y>



# Challenges

## High Caseloads

### Recently Adopted Caseload Standards

- Missouri: 178 misdemeanor cases per year
- Texas: 216 class A misdemeanor cases per year

### Oregon Caseloads

- Providers report assigning over 400 misdemeanor cases per year

# Trial Level Quality Assurance

- Update to Quality Assurance Provisions of Contract General Terms
- Administration of Qualification Standards for Court Appointed Counsel
- Best Practices for Oregon Public Defense Providers
- Performance standards
  - American Bar Association
  - Oregon State Bar
- Peer review site visits and reports (53 since 2004)
- PDSC service delivery reviews (28 since 2004)
- Complaint investigation and resolution policy

# Trial Level Quality Assurance

- Annual survey of judges, prosecutors, juvenile departments, and other system partners
- Ongoing contacts by OPDS Analysts with Courts and Contract Administrators
- Continuing Legal Education (Contract Term and KPM)
  - Mandatory CLE requirements
  - OPDS involvement in the planning, sponsoring, and presentation of CLE courses
    - Juvenile Law Training Academy
    - Public Defense Management Seminar
- Death penalty resource attorneys
- Juvenile Law Resource Center

# Parent Child Representation Program

- Launched in August 2014 (Linn & Yamhill counties)
  - Response to longstanding deficiencies in juvenile dependency representation and a desire to achieve cost-effective positive outcomes
  - Self-funded expansion to Columbia County in January 2016
- Goals
  - Competent and effective legal representation throughout the life of the case
  - Meaningful representation at all proceedings
  - Improved outcomes for children and families

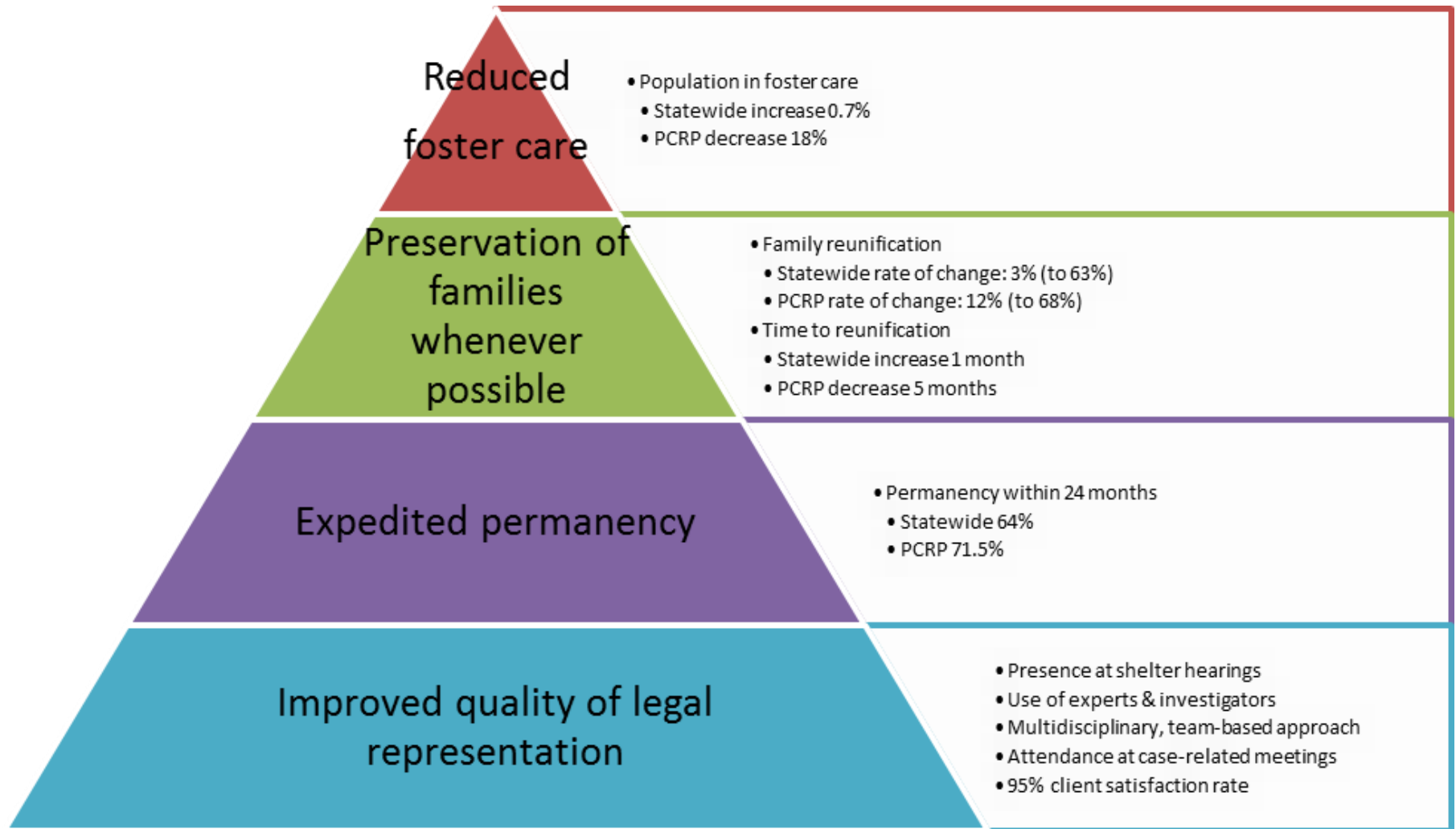
# Parent Child Representation Program

- **Workload contract for legal services**
  - Adequate compensation for *in and out-of-court* time allows for quality legal representation in dependency cases. (ABA Center on Children and the Law Parent Attorney Compensation Survey, 2015)
- **Caseload limits**
  - “Mechanisms or models that control attorneys’ caseloads are one of—if not the—most important components of strong models of parent and child representation.” (Oregon Task Force on Dependency Representation Report, 2016)
- **Case managers**
  - The use of social workers as part of the legal representation team is recommended by the American Bar Association, the National Juvenile Defender Center, the National Association of Counsel for Children, and the Oregon State Bar.

# Parent Child Representation Program

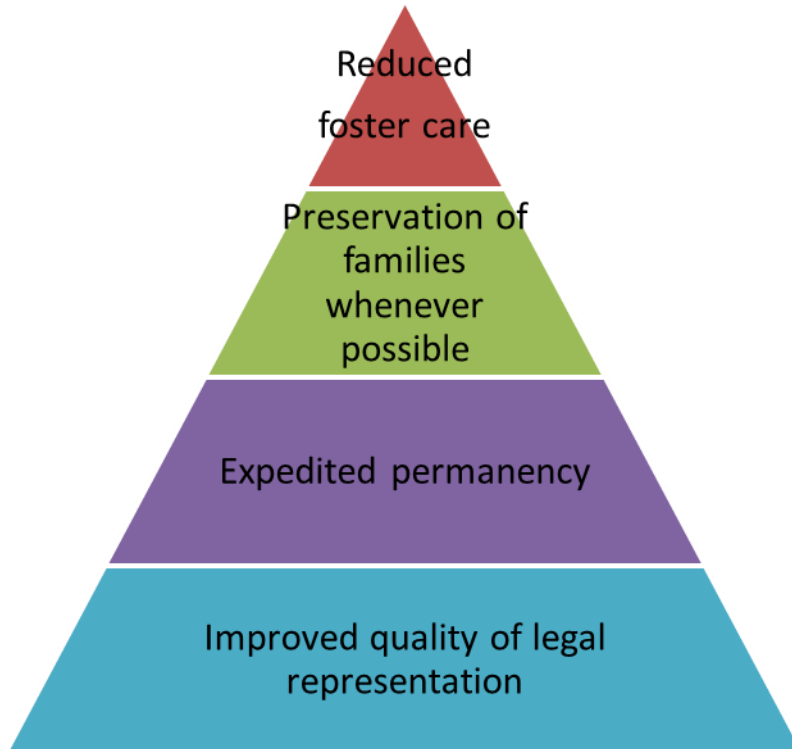
- **Evidence based**
  - Children served by Washington’s Parent Representation Program return home one month faster and reach other permanency outcomes one year sooner. (WA Partners for Our Children, 2011)
  - Jurisdictions which want to improve parental representation and potentially shorten the time children are in foster care should consider a program similar to Washington’s PRP. (Fixen, 2011)
- **Accountability**
  - Attorney-manager oversight
  - Performance and training requirements
  - Measured results
- **Efficiency**
  - “High quality representation for children and families helps promote efficiency in the legal process and protects the rights of children and families.” (Hon. Daniel Murphy, Presiding Judge, Linn County)

# Parent Child Representation Program



# Notable Observations (2015-2016)

full report available at: [http://www.oregon.gov/OPDS/docs/Reports/PCRP\\_report\\_PDSC\\_Jan\\_2017.pdf](http://www.oregon.gov/OPDS/docs/Reports/PCRP_report_PDSC_Jan_2017.pdf)



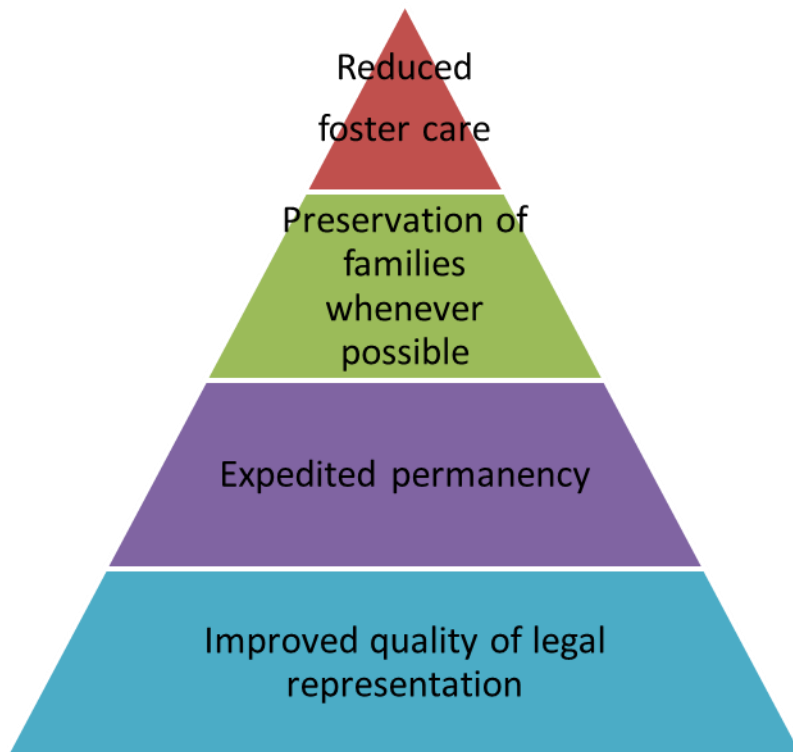
## Reduced use of foster care

- Population in foster care
  - Statewide increase 0.7%
  - PCRP decrease 18%



# Notable Observations (2015-2016)

full report available at: [http://www.oregon.gov/OPDS/docs/Reports/PCRP\\_report\\_PDSC\\_Jan\\_2017.pdf](http://www.oregon.gov/OPDS/docs/Reports/PCRP_report_PDSC_Jan_2017.pdf)

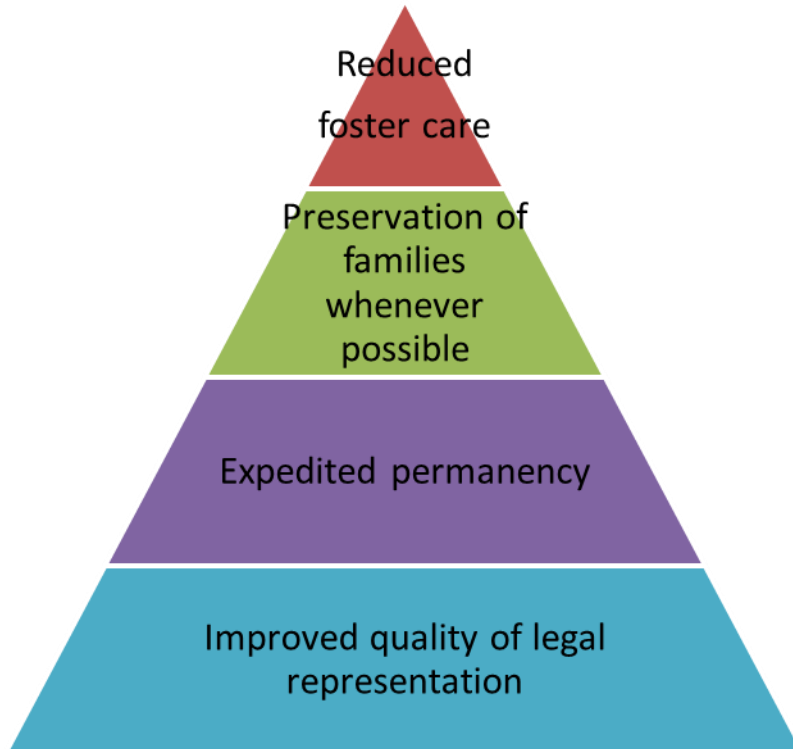


## Preservation of families

- Family reunification
  - Statewide rate of change: 3% (to 63%)
  - PCRP rate of change: 12% (to 68%)
- Time to reunification
  - Statewide increase 1 month
  - PCRP decrease 5 months

# Notable Observations (2015-2016)

full report available at: [http://www.oregon.gov/OPDS/docs/Reports/PCRPP\\_report\\_PDSC\\_Jan\\_2017.pdf](http://www.oregon.gov/OPDS/docs/Reports/PCRPP_report_PDSC_Jan_2017.pdf)

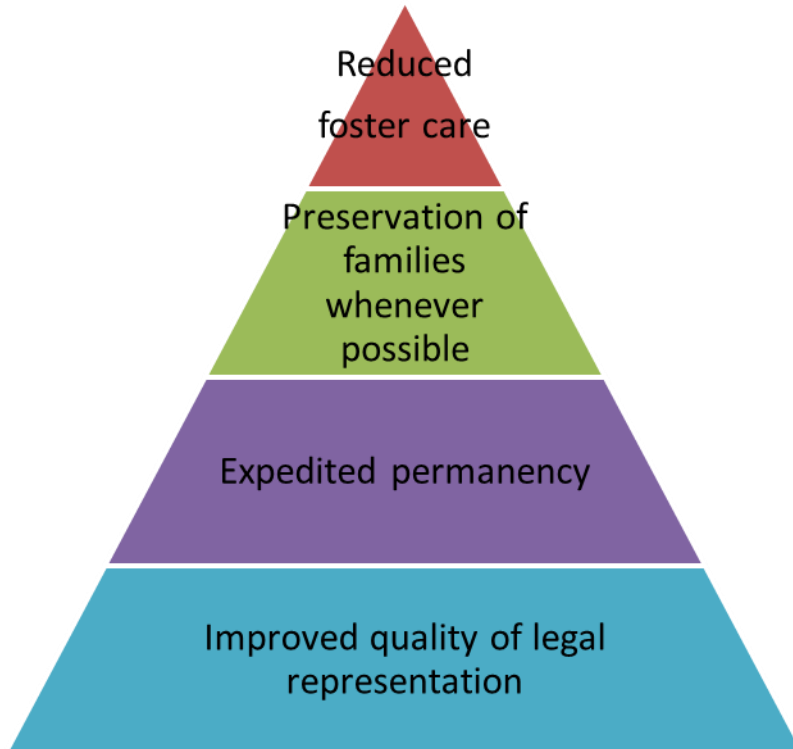


## Expedited permanency

- Permanency within 24 months
  - Statewide 64%
  - PCRPP 71.5%

# Notable Observations (2015-2016)

full report available at: [http://www.oregon.gov/OPDS/docs/Reports/PCRP\\_report\\_PDSC\\_Jan\\_2017.pdf](http://www.oregon.gov/OPDS/docs/Reports/PCRP_report_PDSC_Jan_2017.pdf)

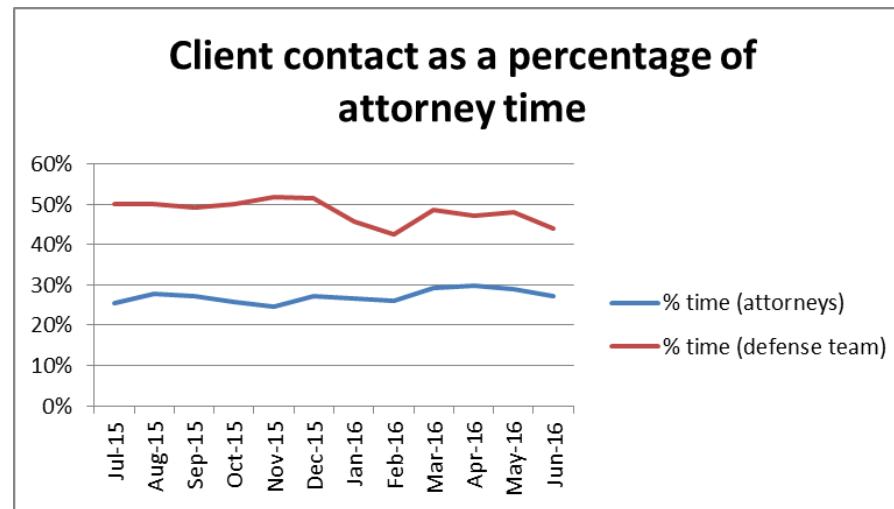


## Improved quality of legal representation

- Presence at shelter hearings
- Use of experts & investigators
- Multidisciplinary, team-based approach
- Attendance at case-related meetings
- 95% client satisfaction rate

# Parent Child Representation Program

Key Performance Measure: PCRCP, June 2015-July 2016



- Percent of PCRCP attorneys who report spending approximately 1/3 of their time meeting with court appointed clients in cases which the attorney represents a parent or child with decision-making capacity.
- 54% of attorneys report spending approximately 1/3 of time with clients.

# Cost Effective

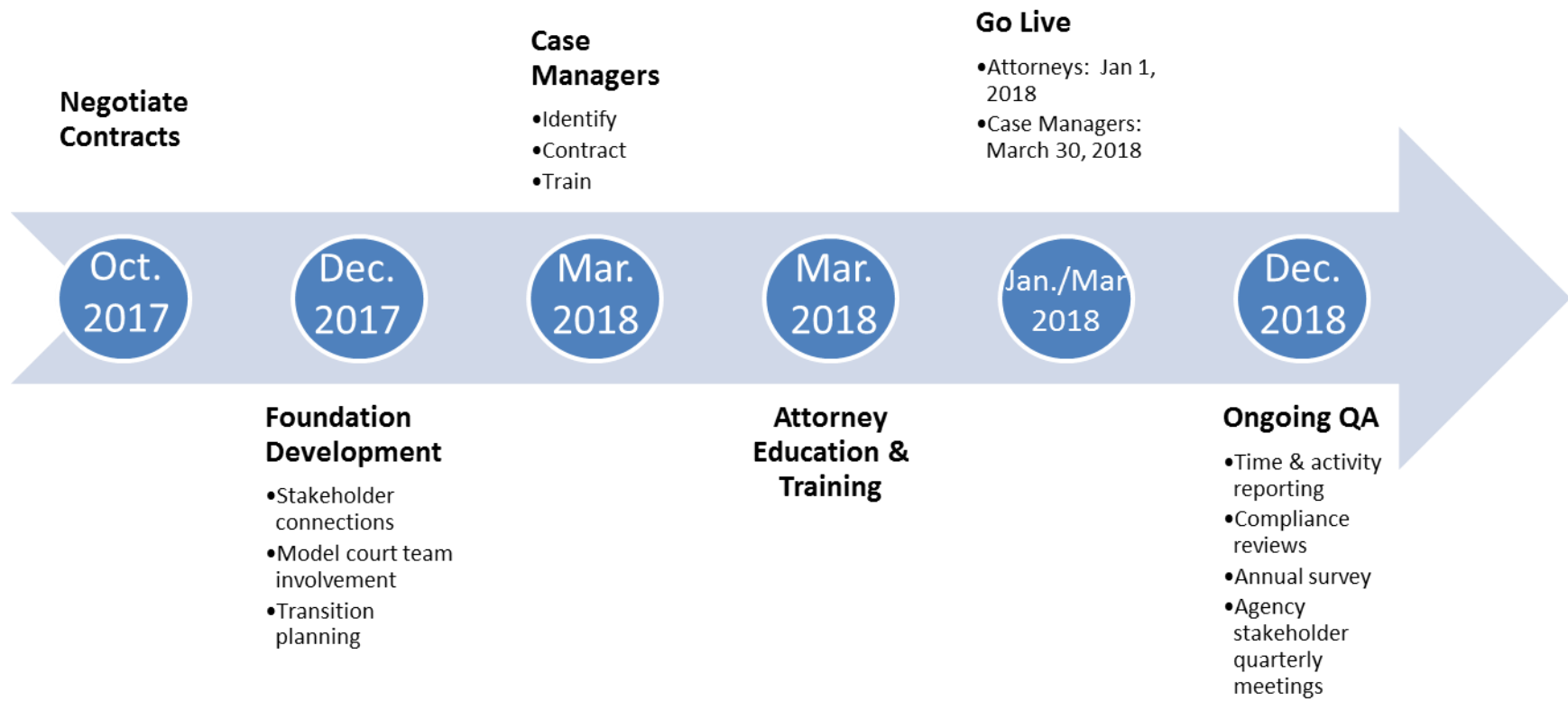
- **Additional annual cost (Linn + Yamhill counties)**
  - \$446,000 attorney contracts
  - up to \$290,000 case manager contracts
- **Savings**
  - 134 fewer children in foster care\*
    - Foster care costs \$28,200/yr. (*A Family for Every Child*, 2011)
    - Median Length of Stay 17 months
  - Washington’s Parent Representation Program provides a cost benefit to the state through reduced foster care stays. In 2013, the program saved \$7.5 million. (*ABA Center on Children and the Law*, 2013)
- **Efficiencies**
  - Early engagement of parents (meeting clients before shelter hearings)
  - All options explored: attorneys successfully advocate for visitation, services, housing, educational needs, transition planning and relative placement
  - Agency accountability
  - Avoidance of collateral consequences of foster care

\* Est. June 2016, applying statewide average fluctuations

# Possible Counties

Large (cost > \$3 M)	Medium (cost < \$3 M and > \$1 M)	Small (cost < \$1 M)
Lane	Jackson	Benton
Multnomah	Douglas	Deschutes
	Washington	Klamath/Lake
	Clackamas	Polk
		Malheur
		Baker

# Rollout Timeline



# Budget Drivers

- Legislative and voter initiated changes to criminal and juvenile laws that create new offenses, enhance penalties, alter procedures
- Case law changes in the state and federal appellate courts
- Changes in law enforcement and district attorney policies, practices, and staffing levels
- Changes in court procedures and schedules; creation of specialty courts such as drug, mental health, and domestic violence courts
- Oregon's crime rate
- Availability of jail space
- Recidivism rates in Oregon's correctional population



# 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
- The condition of Oregon’s economy and its rates of unemployment and poverty
- Rates of removal of children from their homes by the Department of Human Services
- 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

# 2017-19 Agency Request Budget

## Comparison of 2015-17 Legislatively Approved Budget to 2017-19 Agency Request Budget

	2015-17 Legislatively Approved Budget	2017-19 Current Service Level	2017-19 Agency Request Budget
General Funds	\$279,528,938	\$301,366,459	\$350,622,824
Other Funds	\$3,846,904	\$4,109,950	\$4,109,950
All Fund Types	\$283,375,842*	\$305,476,409**	\$354,732,774**

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

\*\* Includes special payments to OJD of \$3.4 million to fund ACP Verification Specialists

# 2017-19 Current Service Level

## All Fund Types

Trial-level Non-Death Penalty Caseload	\$244.1 million
Death Penalty Caseload	\$29.4 million
Appeals (Civil and criminal conflicts)	\$4.8 million
Appellate Division	\$18.5 million
Contract & Business Services Division	\$5.3 million
Transfer to Judicial Department	\$3.4 million
Total	\$305.5 million

# 2017-19 Policy Option Packages

## All Fund Types

POP100: Parent Child Representation Program (PCRP) Expansion	\$10.9 million
POP101: Public Defense Contractor Parity	\$34.5 million
POP102: Trial-Level Case Management System	\$1.4 million
POP103: Employee Compensation ORS 151.216 (1)(e)	\$2.0 million
POP104: PCRP Staffing and Quality Assurance	\$0.4 million
POP105: Professional Services Account Budget Shortfall	\$3.5 million
Policy Option Package Total	\$49.3 million

Reduced
  Withdrawn

# **Policy Option Package 100**

## **Parent Child Representation Program (PCRP) Expansion**

- Provides funding necessary to:
  - Expand the Parent Child Representation Program to cover approximately 1/3 of the statewide caseload
  
- \$10,882,496 - General Funds

# Policy Option Package 101

## Pay Parity

- Part 1 – Increased Rates for Contract and Hourly Providers
  - 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 attorney caseloads that are above Oregon and national standards
  - \$34,466,892 – General Funds

# **Policy Option Package 104**

## **PCRCP Staffing and Quality Assurance**

- Provides funding necessary to:
  - Hire staff to support data analysis in PCRCP and non-PCRCP counties
  - Create a permanent position for Deputy General Counsel specializing in quality assurance in criminal case types
  
- \$406,977 - General Funds

# **Policy Option Package 105**

## **Professional Services Account Budget Shortfall**

- Provides funding to correct ongoing budget shortfall
  - For several biennia, additional resources have been appropriated at the end of the biennium to cover expenses paid from the professional services account. Because the appropriation is made after the budget request for the next biennium is built, there is a recurring shortfall, and the shortfall carries from one biennium to the next
- Reduces need for emergency board funding
- \$3,500,000 - General Funds



# 5% Reduction Impacts

- 5% - \$15,273,820
  - Appellate level reduction of attorneys and legal support will extend the current delay in filing an opening brief. As the backlog of cases grows, all causes will be delayed; delay of more than 350 days risks class action litigation.
  - Trial-Level representation will not be provided during the final 1.5 months of the biennium. In the absence of funding for legal representation, prosecutions cannot proceed.
  - Operation reductions would reduce the agency's ability to pay contract obligations and expenses in a timely manner. It would also increase the time required to process nonroutine expense requests which could cause delays in public defense cases.

# 10% Reduction Impacts

- 10% - \$30,547,640
  - Appellate level reduction of attorneys and legal support will further extend the current delay in filing an opening brief. As the backlog of cases grows, all causes will be delayed; delay of more than 350 days risks class action litigation.
  - Trial-Level representation will not be provided during the final 3 months of the biennium. In the absence of funding for legal representation, prosecutions cannot proceed.
  - Operation reductions would reduce the agency's ability to pay contract obligations and expenses in a timely manner. It would also increase the time required to process nonroutine expense requests which could cause delays in public defense cases.

# 15% Reduction Impacts

- \$45,821,461
  - Appellate level reduction of attorneys and legal support will further extend the current delay in filing an opening brief. As the backlog of cases grows, all causes will be delayed; delay of more than 350 days risks class action litigation.
  - Trial-Level representation will not be provided during the final 4.5 months of the biennium. In the absence of funding for legal representation, prosecutions cannot proceed.
  - Operation reductions would reduce the agency's ability to pay contract obligations and expenses in a timely manner. It would also increase the time required to process nonroutine expense requests which could cause delays in public defense cases.

# 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