



Oregon Department of Justice
Ellen F. Rosenblum, Attorney General

**2019 Joint Committee on Ways & Means
Public Safety Subcommittee Presentation – Phase 1
March 11-14, 2019**





Oregon Department of Justice
Ellen F. Rosenblum, Attorney General

Appellate Division



Department of Justice – Appellate Division

Mission

Represent the State's interests in appellate courts:

- Oregon Supreme Court
- Oregon Court of Appeals
- Federal Courts of Appeals
- U.S. Supreme Court

Decisions from these courts set statewide (or nationwide) precedent



Program Summary

Write briefs and argue cases in:

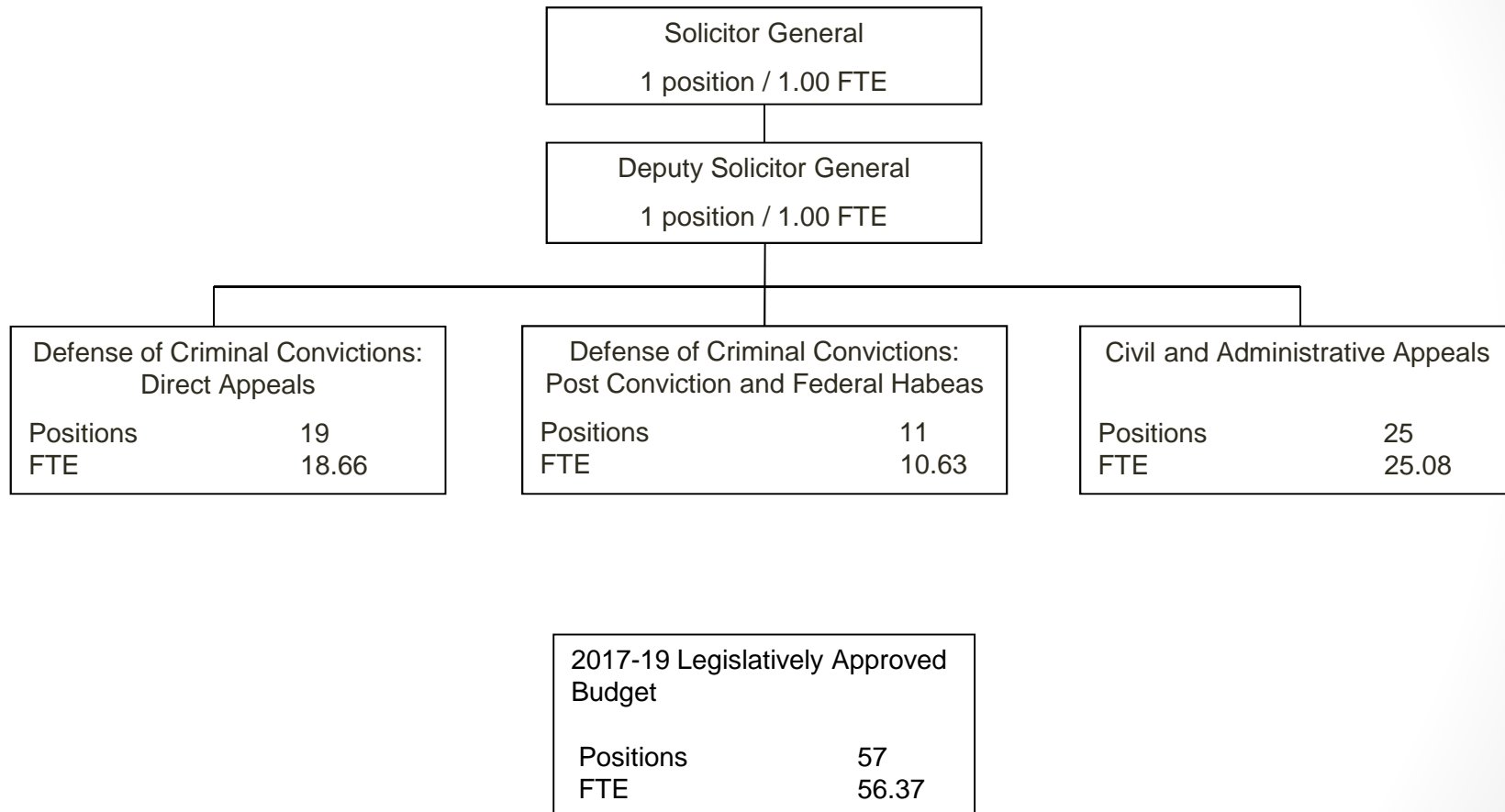
- Oregon Court of Appeals
 - State is a party in every criminal and post-conviction case and more than half of the civil cases
- Oregon Supreme Court
 - State is a party in about two-thirds of cases
- Federal appellate courts

Conduct trials in capital post-conviction cases

Prepare ballot titles for legislative referrals and initiatives



Organization



Types of Cases

- Defense of criminal convictions
- Civil
 - Tax, contracts, torts, civil commitment, juvenile dependency, challenges to statutes
- Administrative
 - Professional and other licenses, regulatory decisions that impose fines or other penalties, benefits decisions, rule challenges
- Other
 - Ballot title, mandamus, amicus



Recent Highlights

- *Kinkel v. Persson*, 363 Or 1 (2018), *cert den* (2019): Upheld sentence imposed on school shooter
- *Oregon Trucking Assns. v. Dept. of Transportation*, 364 Or 210 (2019): Upheld license arrangement between ODOT and DAS to provide electronic access to driver records
- *State v. Vallin*, 364 Or 295 (2019): Upheld constitutionality of sentence reductions for repeat-property offenders in HB 3078 (2017)



Workload

Average number of cases each year:

- Criminal appeals: 1,200
- Post-conviction appeals: 200
- Civil/administrative: 550
 - Juvenile dependency/termination: 200
- Ballot titles: 35

We are the respondent in almost all of these cases:
The other side has appealed and we must respond.



Policy Packages

	<u>Agency Request Budget</u>	<u>Governor's Budget</u>
• Package 091 – Statewide Adjustment DAS Chgs – Adjustments to State Government Service Charges and other DAS charges.	Not Included	(\$80.4K) OF
• Package 092 – Statewide AG Adjustment – Reduces attorney general rate for ballot titles.	Not Included	(\$20.9K) GF



10% General Fund/Criminal Fine Account Reductions

Program	CSL Budget (in millions)	Source	1st 5%	2nd 5%	Total
Crime Victims Law Center	\$ 0.34	GF	(0.02)	(0.02)	(0.04)
Address Confidentiality Program	\$ 0.14	GF	(0.14)	-	(0.14)
Appellate	\$ 0.35	GF	(0.02)	(0.02)	(0.04)
Civil Legal	\$ 0.74	GF	(0.04)	(0.04)	(0.07)
Child Abuse Multidisciplinary Intervention Program	\$ 1.39	GF	(0.08)	(0.08)	(0.17)
Other Crime Victims Assistance and Compensation	\$ 1.86	GF	-	-	-
Oregon Domestic and Sexual Violence Services	\$ 10.16	GF	(0.48)	(0.61)	(1.09)
District Attorney Assistance/Organized Crime & Other	\$ 15.45	GF	(0.77)	(0.77)	(1.55)
Defense of Criminal Convictions	\$ 26.24	GF	(1.31)	(1.31)	(2.62)
Division of Child Support	\$ 28.00	GF	(1.40)	(1.40)	(2.80)
Sexual Assault Victims Emergency	\$ 0.45	GF	-	-	-
Total	\$ 85.13	GF	(4.26)	(4.26)	(8.51)
Child Abuse Multidisciplinary Intervention	\$ 11.99	CFA	(0.60)	(0.60)	(1.20)
Crime Victims Assistance (DA VAP)	\$ 5.57	CFA	(0.28)	(0.28)	(0.56)
Crime Victims Compensation Program	\$ 4.59	CFA	(0.23)	(0.23)	(0.46)
Total	\$ 22.15	CFA	(1.11)	(1.11)	(2.22)
Combined Budget	\$ 107.28		(5.36)	(5.36)	(10.73)



10% Legal Fund/Other Reductions

Program	CSL Budget (in millions)	Source	1st 5%	2nd 5%	Total
Administration	\$ 35.12	OF	(1.76)	(1.76)	(3.51)
Appellate	\$ 22.68	OF	(1.13)	(1.13)	(2.27)
Civil Enforcement - Legal	\$ 60.32	OF	(3.02)	(3.02)	(6.03)
Criminal Justice - Legal	\$ 8.69	OF	(0.43)	(0.43)	(0.87)
General Counsel	\$ 59.24	OF	(2.96)	(2.96)	(5.92)
Trial	\$ 35.88	OF	(1.79)	(1.79)	(3.59)
Total Legal	\$ 221.94	OF	(11.10)	(11.10)	(22.19)
Consumer Protection and Education	\$ 16.35	OF	(1.21)	(1.21)	(2.42)
Non-Participating Manufacturers	\$ 1.94	OF	(0.10)	(0.10)	(0.19)
Total	\$ 18.29	OF	(1.31)	(1.31)	(2.61)
Combined Budget	\$ 240.24	OF	(12.40)	(12.40)	(24.81)





Oregon Department of Justice
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Defense of Criminal Convictions



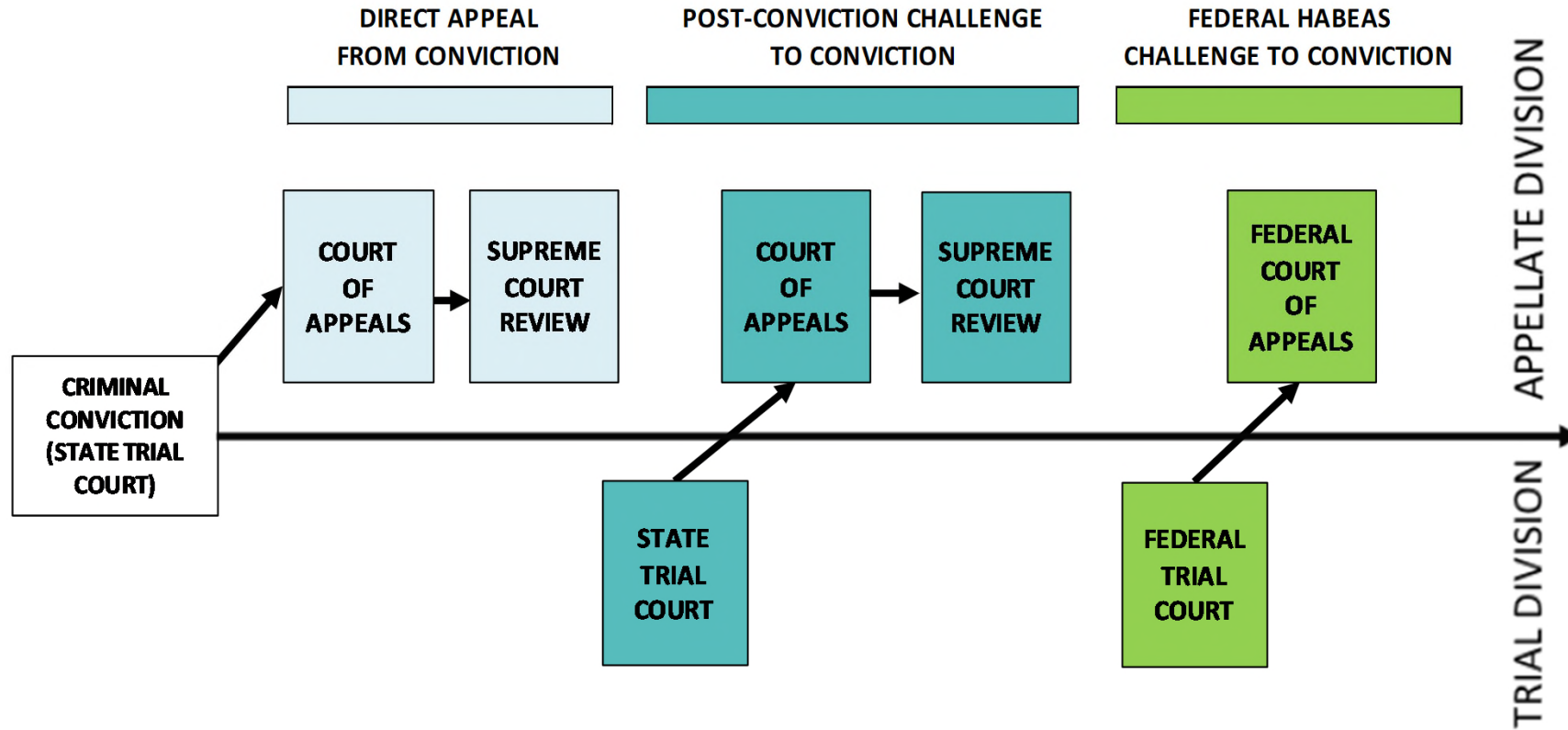
Department of Justice – Defense of Criminal Convictions

Program Summary

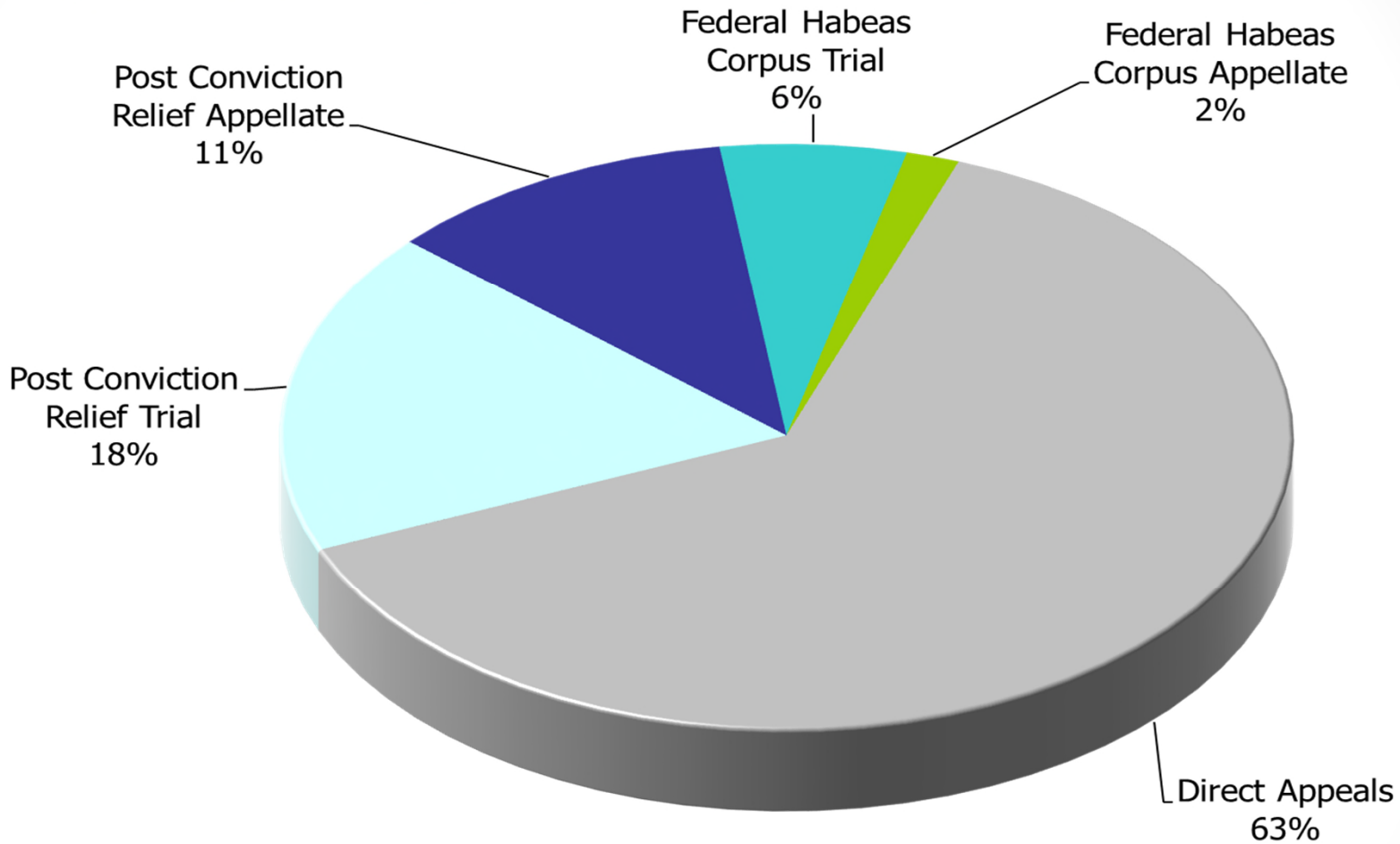
- Mandated Caseload.
- Preserve criminal convictions against challenges in state and federal courts.
- Appeal from trial court decisions that place criminal prosecutions in jeopardy.
- Psychiatric Security Review Board hearings.



Overview of the Process



Caseload



Includes approximately 1,400 cases/year



Direct Appeals

Two possible outcomes in an appeal of a criminal conviction:

- Court will affirm the judgment of conviction
- Court will reverse the judgment of conviction and the court will:
 - Order a new trial
 - Order a new sentence hearing
 - Other relief as the court deems necessary



Post Conviction Relief/Federal Habeas

Two possible outcomes in a PCR/Federal Habeas Corpus proceeding:

- The petition for relief will be **denied** upholding the conviction and sentence; or
- The petition will be **granted**, and the judge will:
 - Order a new trial,
 - Modify the sentence, or
 - Order other relief as necessary



State's Appeals

A small portion of the DCC caseload involves State's appeals:

- Typically involve a challenge to the dismissal of criminal charges or the exclusion of evidence critical to the successful prosecution of the case
- About 30 such cases per year considered
- Solicitor General approves about 10 appeals per year



Psychiatry Security Review Board (PSRB)

- The PSRB has jurisdiction over some people found “guilty except for insanity” of a Measure 11 crime. It conducts hearings over whether these individuals should be conditionally released or discharged into the community.
- Division lawyers represent the state in these administrative hearings.



Policy Packages

	<u>Agency Request Budget</u>	<u>Governor's Budget</u>
• Package 090 – Analyst Adjustments – Governor's Budget GF reductions.	Not Included	(\$3.51M) GF
• Package 092 – Statewide AG Adjustment – Reduces attorney general rate.	Not Included	(\$1.97M) GF



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Trial Division



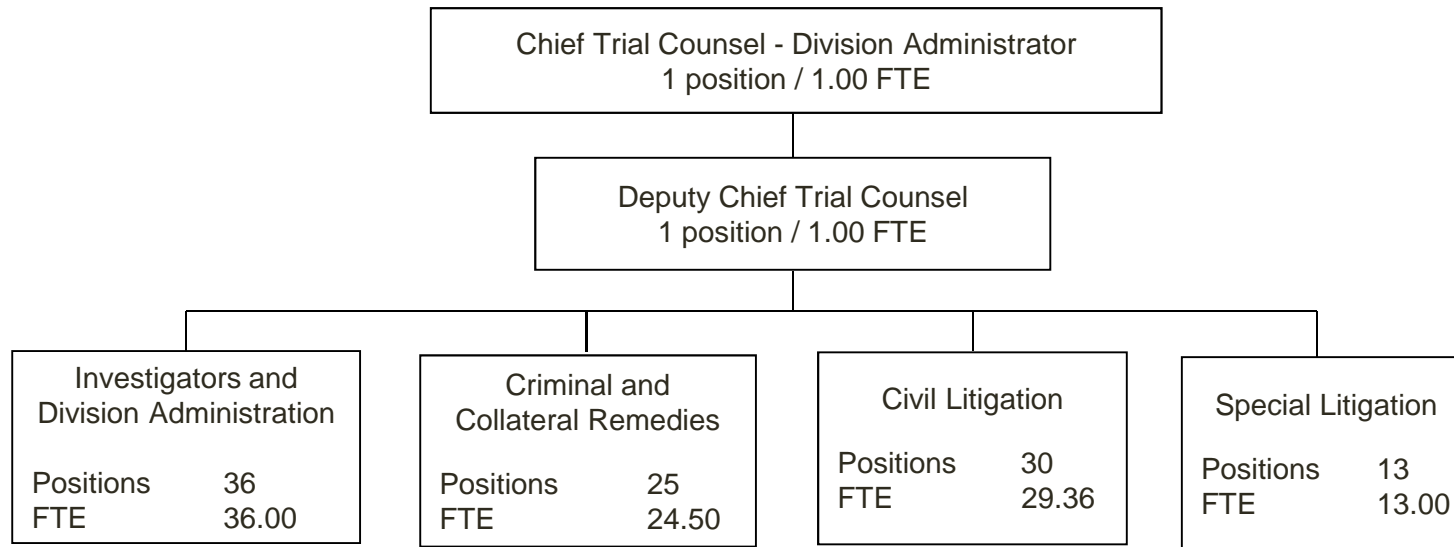
Department of Justice – Trial Division

Program Summary

- The Trial Division defends the State when it is sued for money damages or someone petitions the court to order the State to take or refrain from action.
- **If the State does not appear in the case, or fails to respond to a motion, a judgment can be entered in favor of the opposing party.**



Organization



2017-19 Legislatively Approved Budget	
Positions	106
FTE	104.86



Trial Division Sections

Civil Litigation:

- Employment
- Civil rights
- Highway projects
- Defense of administrative orders
- Torts: personal injury, property damage, malicious prosecution, abuse

Special Litigation:

- Environmental
- Elections
- Constitutional challenges
- Water law
- Disputes between Oregon and the Federal Government



Trial Division Sections

Criminal and Collateral Remedies:

- Post-conviction Relief
- Federal Habeas Corpus
- Psychiatric Security Review Board



Workload

Civil Litigation/SLU

- 750 – 850 cases pending at any time
- 1100 – 1200 new cases each biennium

Criminal and Collateral Remedies

- 600 – 700 cases pending at any time
- 700 – 800 new cases each biennium



Results

Civil Litigation/SLU

- 24% Settled prior to trial
- 76% Litigated to final resolution
 - 96% State prevails
 - 4% Opposing party prevails

Criminal & Collateral Remedies

- 97% Criminal convictions upheld



Factors Affecting Workload

- Risk Management cases: **up 20%** over previous two biennia (250/yr to 300/yr)
- Petitions for Review of Agency Orders: **up over 200%** (FY '17=25 cases; FY '18=53; FY '19=94*)
- Highway construction cases to **triple** (from about 50 per year to 150 per year for next 3 FY's)
- Disputes with Federal Gov't (Pre-2017 = 0 cases; current = 15 cases)

*projected



Factors Affecting Workload

Caseload Entirely Dependent Upon Others

- Lawsuits for money damages or to compel state action
- Convicted criminals (usually Measure 11) suing to overturn their convictions
- Licensees/others attempt to overturn agency orders
- Public records requests
- Oregon Department of Transportation highway improvement projects



Policy Packages

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<ul style="list-style-type: none"> Package 091 – Statewide Adjustment DAS Chgs – Adjustments to State Government Service Charges and other DAS charges. 	Not Included	(\$0.23M) OF
<ul style="list-style-type: none"> Package 151 – Defend Oregon Statutes – Pursue legal actions in defense of Oregon state statutes and the Oregon Constitution. 	\$1.01M OF	\$1.01M OF
<ul style="list-style-type: none"> Package 400 – Transportation Package Condemnation Work – Meet increase in condemnation work during the upcoming biennium. 	\$0.90M OF	\$0.90M OF
<ul style="list-style-type: none"> New Request Water Resources Department Legal Services – Provide legal advice and representation related to increased regulation of water rights. 	<u>Requested Amount</u> \$0.41M OF	



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