

Public Defense Services Commission

Office of Public Defense Services

2019-2021 Budget Presentation

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.

Agenda

Day 1: Public Defense Overview

Day 2: Quality Assurance and Oversight

Budget Request

Policy Option Packages

Reductions

Day 3: Invited Testimony

Mission, Vision and Values

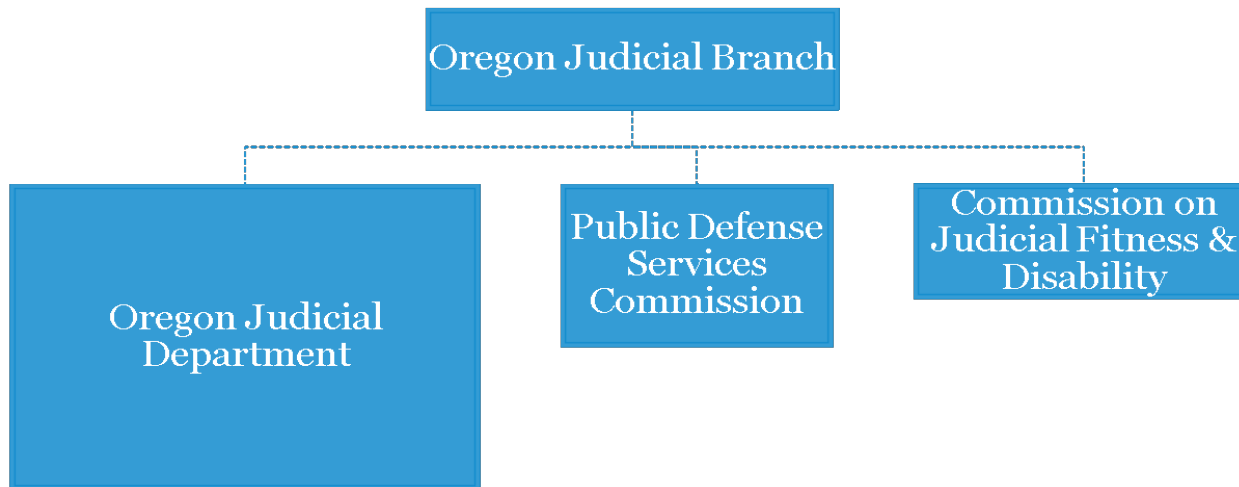
Mission: The Commission ensures that eligible individuals have timely access to legal services, consistent with Oregon and national standards of justice.

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: Leadership, Accountability and Transparency

History

The Public Defense Services Commission was created in 2001 as an independent agency within the Judicial Branch.



Commission Members

Chief Justice Martha Walters
Ex-Officio Permanent Member

Per Ramfjord, Chair
Partner, Stoel Rives LLC

Hon. Elizabeth Welch, Vice Chair
Senior Judge

Thomas M. Christ
Partner, Sussman Shank LLP

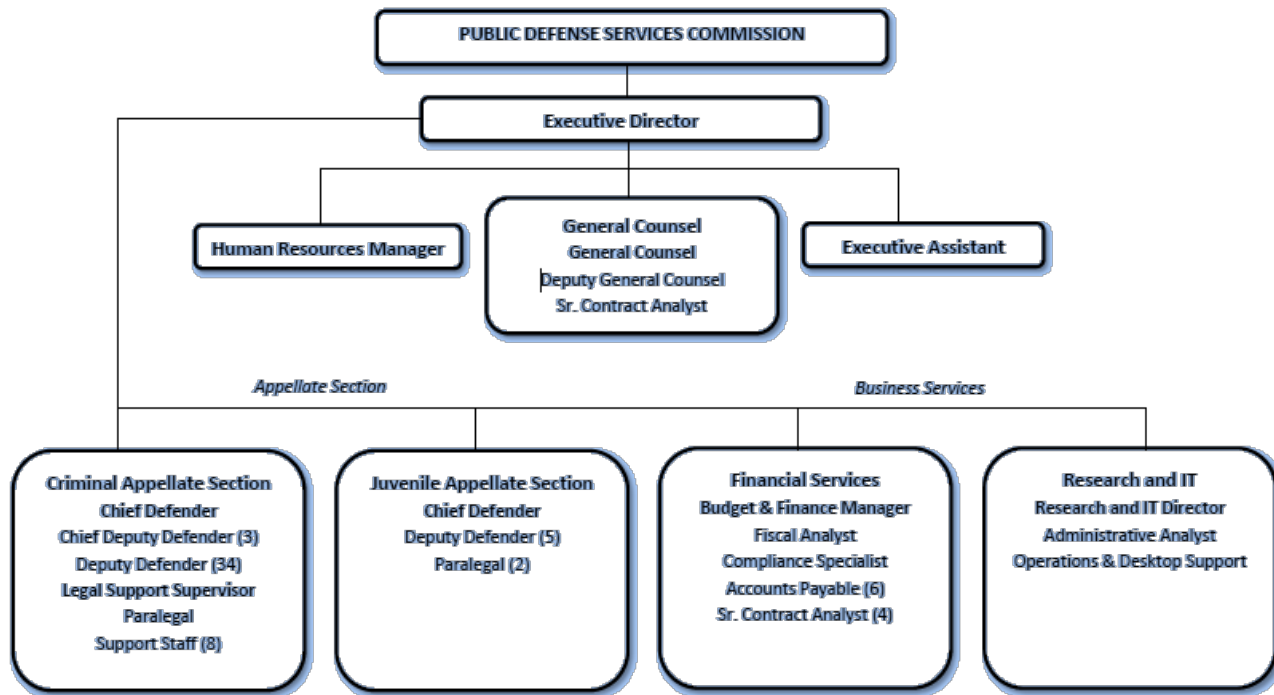
Michael De Muniz
De Muniz Law

Steffan Alexander
Shareholder, Markowitz Herbold PC

Amy Baggio
Attorney at Law, Baggio Law

Vacancy

Office of Public Defense Services



Key Performance Measures

1. Best Practices of Boards and Commissions
2. Customer Service
3. Appellate Case Processing
4. Continuing Legal Education
5. PCRCP – 1/3 time requirement

Public Defense Case Types

- **175,311 cases per year (FY 2018)**
- Criminal proceedings (misdemeanors to death penalty) – 83,105
- Probation violation and extradition proceedings – 26,628
- Contempt proceedings (including alleged nonpayment of court-ordered child support and alleged violations of Oregon’s Family Abuse Prevention Act) – 4,448
- Post-conviction relief and habeas corpus proceedings – 742
- Juvenile delinquency proceedings – 3,438
- Juvenile dependency (child welfare) and termination of parental rights proceedings – 55,466
- Civil commitment proceedings and Psychiatric Security Review Board proceedings – 1,484

Case Types not Covered by OPDS

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

Legislative Impacts

- Violations
- Administrative hearings such as DMV hearings, **parole hearings** and school expulsion hearings
- Municipal hearings
- Civil cases such as landlord-tenant matters and small claims
- Relief from sex offender registration (with limited exceptions for youth offenders)
- Application for or challenges to restraining orders
- **Probate guardianships**
- **Representation in divorce proceedings (representing children in contested case custody proceedings)**

Financial Eligibility Criteria

- 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
- Applicant's income and assets must be insufficient to hire an attorney without creating substantial hardship

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 \$3.2 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.

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 Continued

- Changing prevailing norms for quality 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

Appellate Division

Appellate Division

The Office of the Public Defender, est. 1965, transferred to PDSC in 2001 as the OPDS Appellate Division

- 44 Public Defenders, all State Employees

- Team Based Collaborative Structure
 - Criminal Section
 - Juvenile Section

Appellate Division Role

- Provide appellate representation when counsel is legally mandated
 - Review proceedings for legal issues error that impact outcome
 - Audit administration of state adult-criminal, juvenile-dependency justice systems
 - Develop theories that advance or preserve individual rights
- Legal resource for trial defender, state bar and legislature
- Work with appellate courts, DOJ and the legislature to identify and implement system efficiencies

Criminal Section Cases

- Appeals from criminal convictions (majority of cases)
- Defend lower court's ruling when state appeals (evidence suppressed, case dismissed)
- Challenge final orders of parole board
- Contest orders of contempt
- Institutional foil for DOJ Appellate Division
 - Argue as amicus (non-party) on court's invitation
 - Consolidation of *Foote v. Oregon* with *State v. Vallin* when reviewing legislature's efforts on sentencing reform

Appellate Division Continued

- Criminal Section Representation
 - Limits on jurisdiction and scope of review, for example:
 - Prosecution must result in criminal conviction
 - Conviction after guilty plea, review limited to legality of sentence (not validity of plea or conviction)
- Collaborative/Systematic approach in representing individuals
 - Initial six-month training period
 - Teams for editing, argument preparation, issue discussion
 - Supervising attorney's agreement before advising client to dismiss for lack of any issue

Criminal Section Annual Caseload

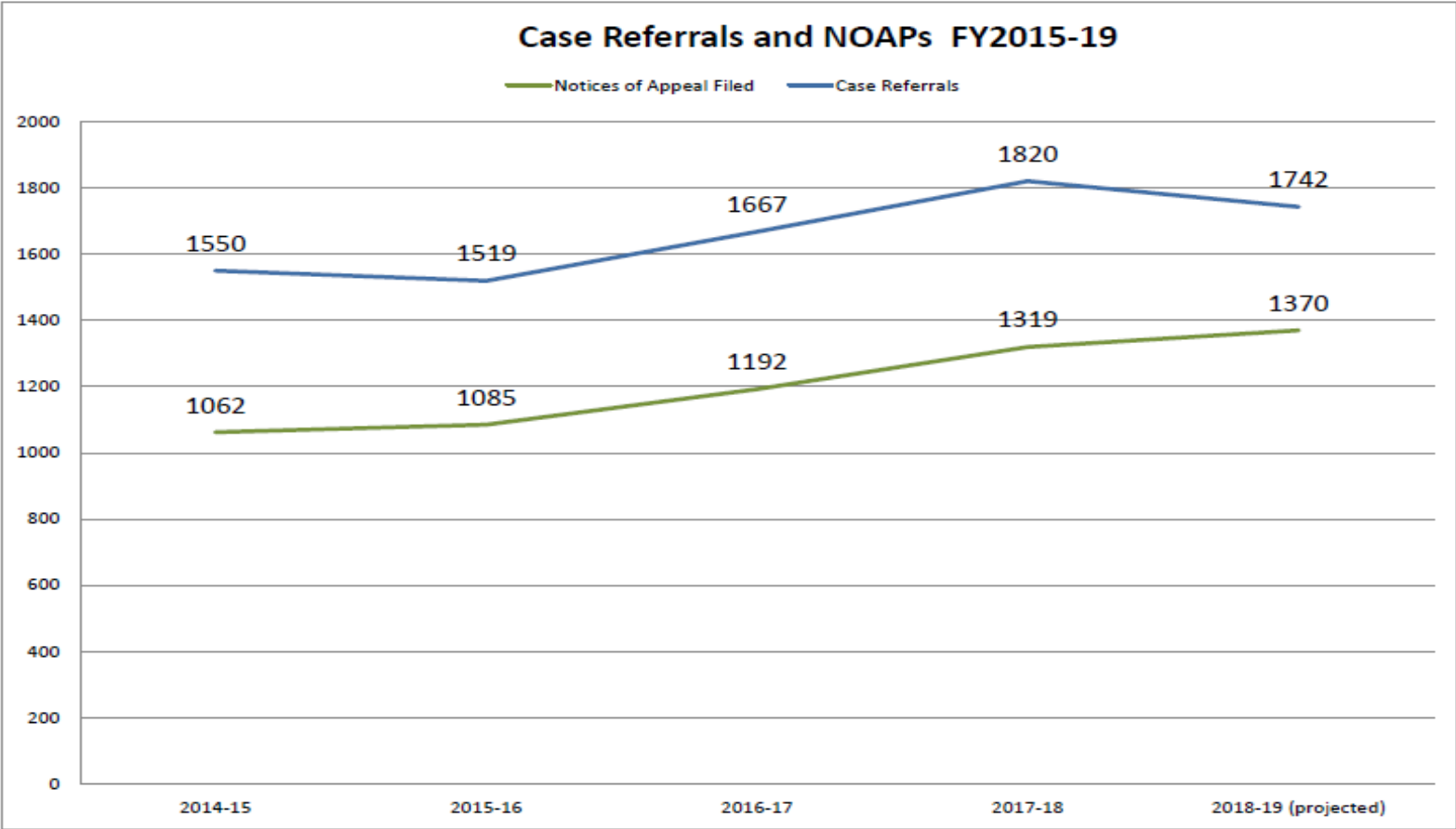
- 1,700 or more cases reviewed (referred for appeal)
- 850 or more briefs filed (identifying legal error and requesting relief from the appellate court)
- 145 cases or more argued (personally appear in the appellate court to answer judges' questions)

Key Performance Measure

Median days to file opening brief – 227 days (KPM goal is 180)

- 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 (182 days until initial due date)
 - Answering brief (182 days until initial due date)
 - Submission/argument (approx. 90 days post briefing)
 - Court of Appeals decision (three weeks to two years)

Case Referrals



Juvenile Appellate Section

Juvenile Appellate Section

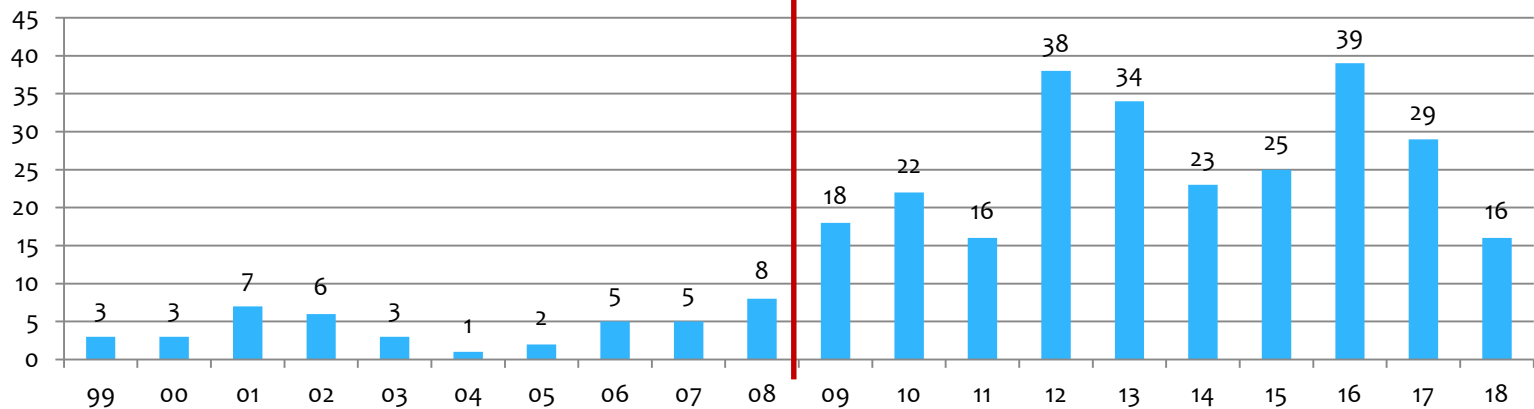
Appellate representation to indigent parents on direct appeal from juvenile dependency and TRP judgments.

- Six attorneys and two paralegals
- Advocacy for individual clients
- Focused on procedural fairness and family preservation
- Team-based collaboration
- Education and outreach

Dependency Opinions

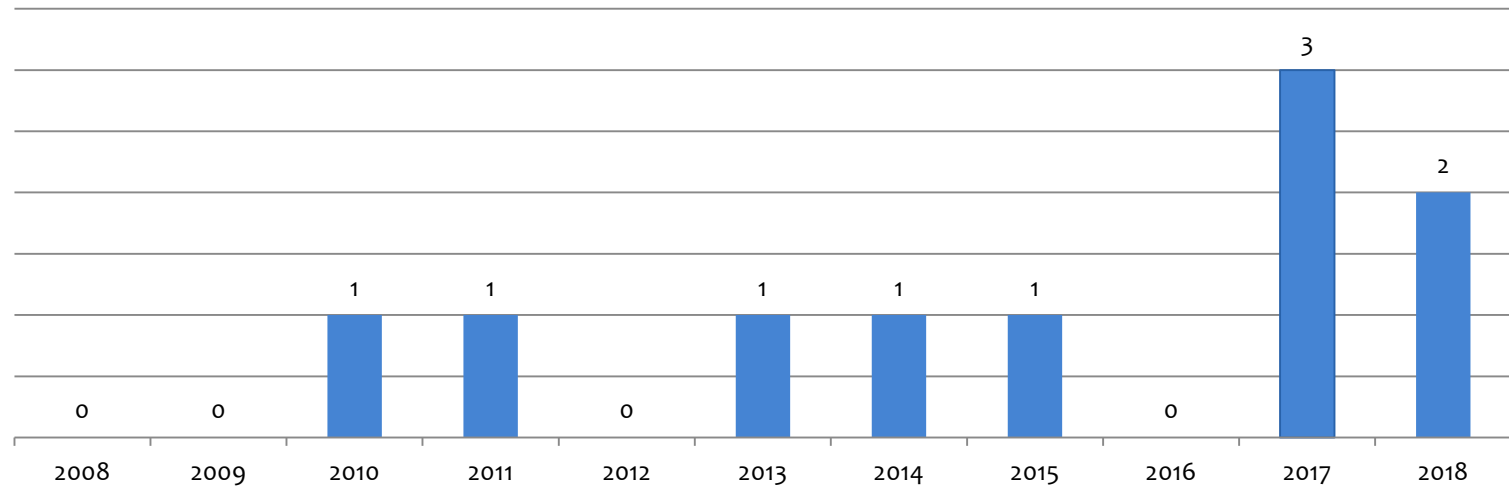
In the ten years since JAS's inception (2009-2018), the number of published opinions by the Court of Appeals in dependency cases increased 504% from the previous ten years.

**Dependency Opinions
1999 to 2018**



Oregon Supreme Court Cases

JAS Cases in the Oregon Supreme Court



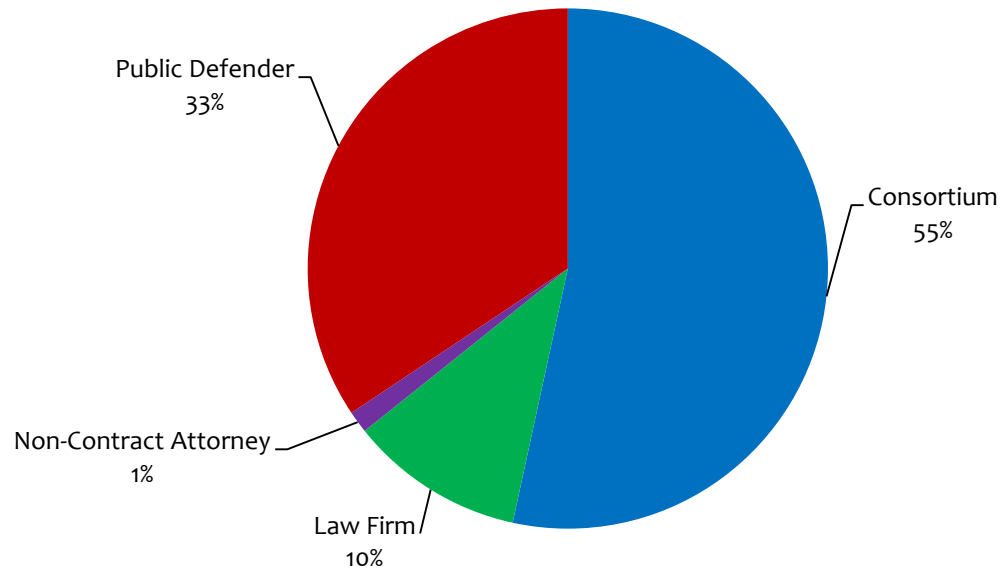
Financial Services Division

Financial Services Division

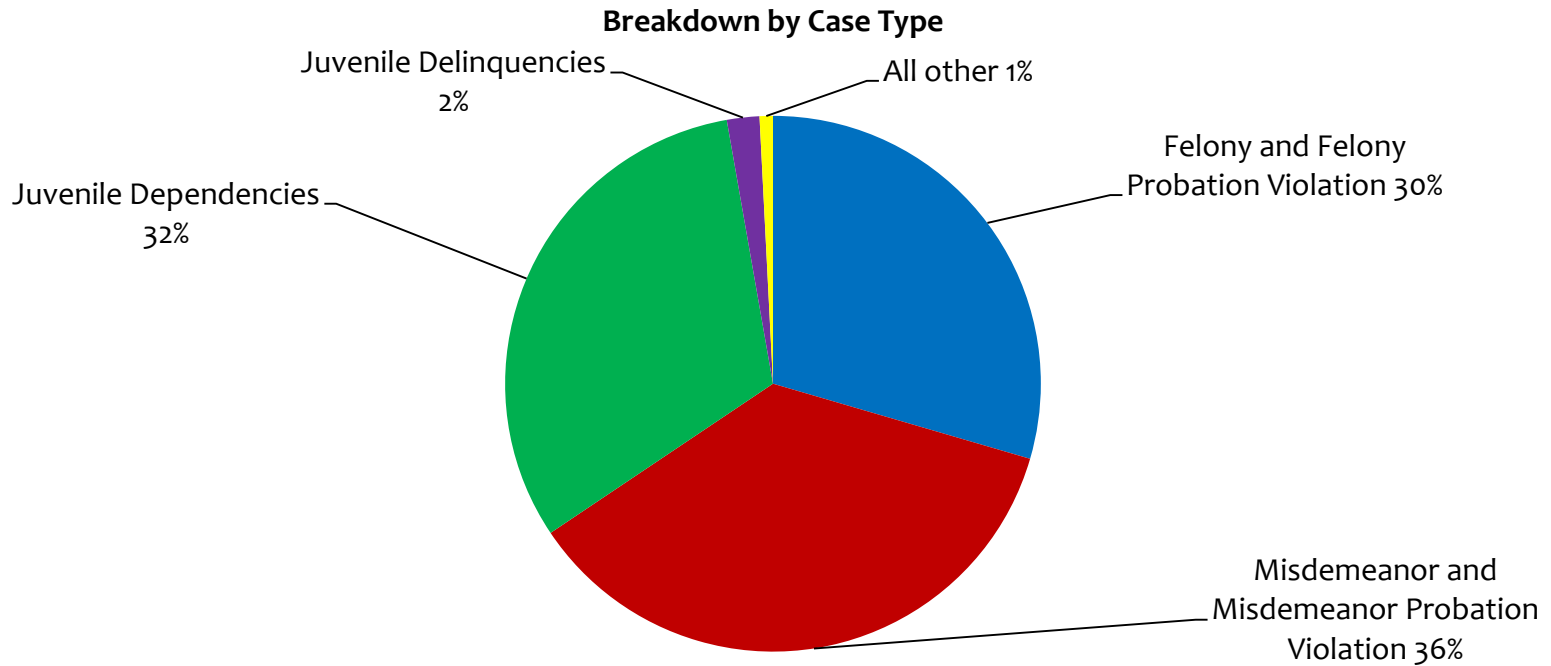
- Provides counsel for 100% of trial level representation
 - 99% of trial representation is achieved through 115 two-year contracts
 - Non-profit public defenders
 - Law Firms
 - Consortia
 - 1% of cases are covered by attorneys who are on panels and receive an hourly rate of \$46/hour
- Reviews requests for case-related expenses
- Processes 85,000 financial transactions per year
- Works with LFO to plan and monitor agency's budget

Trial Level Non-Capital Public Defense Caseload

Breakdown by Provider Type



Trial Level Non-Capital Public Defense Caseload



Parent Child Representation Program (PCRCP)

PCRCP

- Launched in August 2014 (Linn & Yamhill counties)
- Currently: Linn, Yamhill, Columbia, Lincoln & Coos
- Goals
 - Competent and effective legal representation throughout the life of the case
 - Meaningful representation in all proceedings.
 - Improved outcomes for children and families

PCRCP Model

- Workload contract for legal services
- Caseload limits
- Case managers
- Quality assurance & accountability
- Evidence-based
- Transparency

PCRCP

Reduced
foster care

Preservation of
families whenever
possible

Expedited permanency

Improved quality of legal
representation

Notable Observations

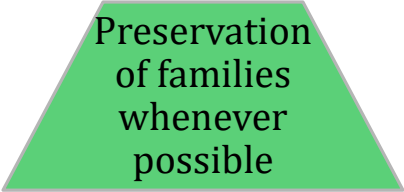


Reduced use of foster care

- Population in foster care
 - Statewide increase 0.4% per year
 - PCRP decrease 6.2% per year

Average rate of change in PCRP county foster population per year, 2014-2018, Oregon child welfare data set report CM.02 Placement Type (of those in care), The number/percent of children on the caseload on the last day of each report period, by the placement type they were in on that day, over time. Report provided by DHS Office of Business Intelligence 3.14.2019.

Notable Observations



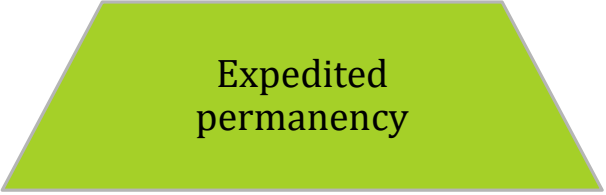
Preservation
of families
whenever
possible

Preservation of families

- Time to reunification
 - Statewide unchanged
 - PCRP counties decreased by 3 months since 2015
- Safe reunification
 - Statewide re-entry rate 12%
 - PCRP re-entry rate 6%

Average change in PCRP county time to reunification per year, 2014-2018, Oregon child welfare data set report CM.15 Median Length of Stay at Foster Care Exit, Of children discharged, the median number of months to discharge (median is middle score where half were more and half less), by admin level. Average PCRP county re-entry rate, 2014-2017, Oregon child welfare data set report PA.04 (Fed) Re-entry to Foster Care, Of all children who enter foster care in a 12-month target period and discharged within 12 months to reunification, living with a relative(s), or guardianship, what percent re-entered foster care within 12 months of discharge .

Notable Observations



Expedited
permanency

Expedited permanency

- Permanency within 24 months
 - Statewide 59%
 - PCRP counties 66%

Average rate of change in PCRP county permanency within 24 months 2014-2018, Oregon child welfare data set report PA.08 Permanency in 24 months (of those entered care 24 months ago).

Notable Observations

Improved quality of legal representation

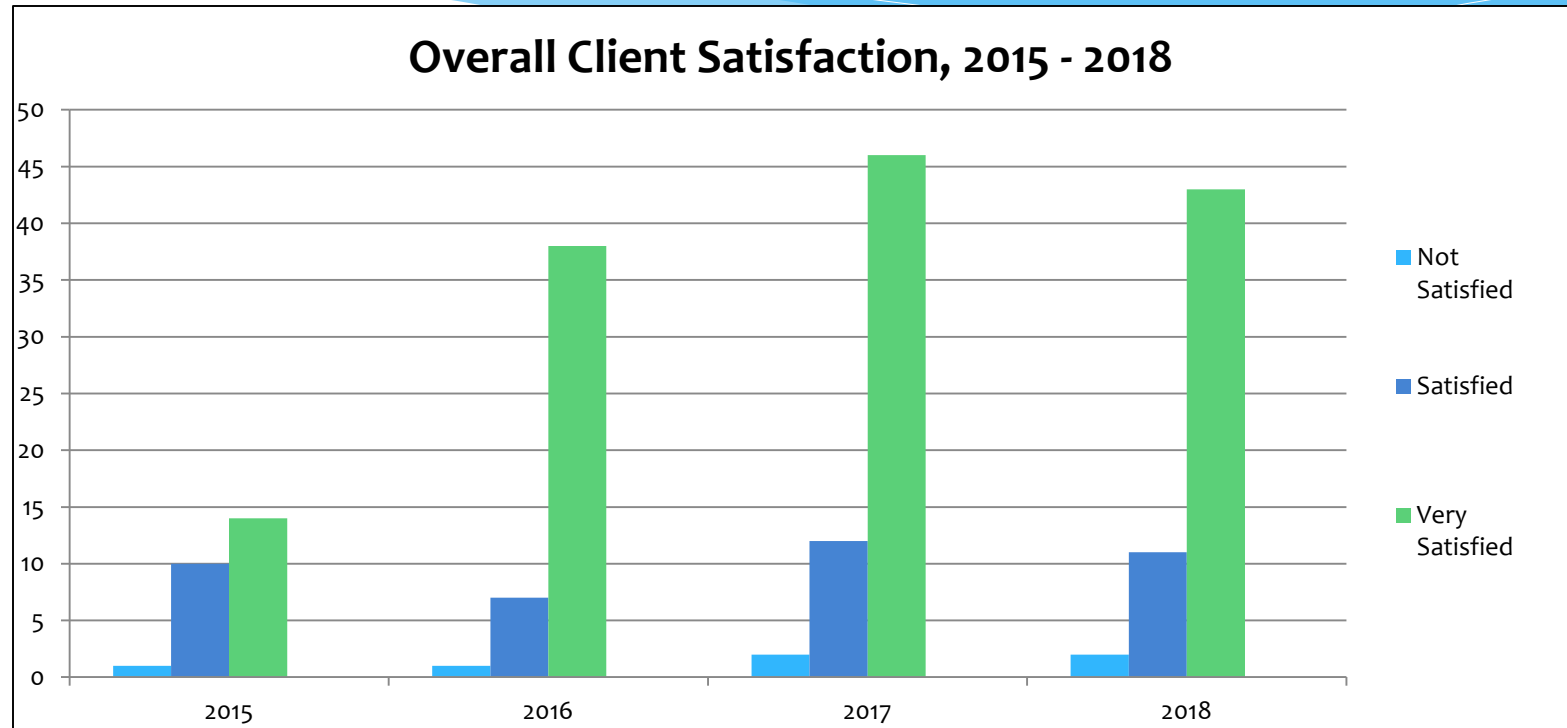
- Presence at shelter hearings
- Use of experts & investigators
- Multidisciplinary, team-based approach
- Attendance at case-related meetings
- 97% client satisfaction rate

Improved quality of legal
representation

Key Performance Measure

- 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
- 67% of attorneys report spending approximately 1/3 of time with clients, an increase of 4% since 2017

PCRCP Continued



- “Overall, I am satisfied with the way my attorney handled my case.”
- 97% of clients total reported being very satisfied or satisfied with their attorney.

PCRCP Continued

HB 5006A Budget note reporting & update

- PDSC, OJD, DOJ and DHS joint report in September 2018 regarding progress toward improving effectiveness and efficiency of juvenile dependency system
- PDSC update:
 - Defined role- to provide representation for children and families in juvenile dependency/TPR cases statewide
 - Expansion of PCRCP to provide quality representation for children and families
 - On-going collaboration with system partners and Juvenile Court Improvement Project (JCIP) to improve court/system efficiencies

Quality Assurance and Oversight

PDSC Resolution

“The commission has had ongoing concerns regarding the constitutional adequacy of the current system based on extensive information received over the past several years from a variety of sources including providers themselves. The Sixth Amendment study confirmed those concerns and has reinforced the sense of the commission that a change in the current system is necessary. After having heard extensive testimony and having received extensive information regarding the various different models used in various different jurisdictions, and having considered the extent to which the different models might function in Oregon, it is the sense of the commission that a model that includes a statewide public defender and conflict council appointed on an hourly or an FTE basis is appropriate.” – Per Ramfjord, PDSC Chair

Adopted unanimously by the PDSC on
February 22, 2019

Sixth Amendment Center Recommendations

- The State of Oregon has created a complex bureaucracy that collects a significant amount of indigent defense data, yet does not provide sufficient oversight or financial accountability. In some instances, the complex bureaucracy is itself a hindrance to effective assistance of counsel.
- The complex bureaucracy obscures an attorney compensation plan that is at root a fixed fee contract system that: pits appointed lawyers' financial self-interest against the due process rights of their clients; and is prohibited by national public defense standards.

Sixth Amendment Center Recommendations

- The State of Oregon should require that services be provided free of conflicts of interest, as is constitutionally required, by abolishing fixed fee contracting and other forms of compensation that produce financial disincentives for public defense lawyers to provide effective assistance of counsel.
- With the abolition of fixed fee contracting, PDSC/OPDS should pay private lawyers at an hourly rate that accounts for both actual overhead and a reasonable fee, and/or hire government employed attorneys for trial level services. OPDS should have the appropriate resources to provide oversight of such a private attorney and state public defender employee system.

Sixth Amendment Center Recommendations

- The composition of the Public Defense Services Commission does not adhere to national standards, in that all commissioners are appointed by the judiciary, while the legislative and executive branches of government have no equal voice in the commission's affairs.
- The Public Defense Services Commission lacks the necessary statutory scope to ensure the state's Fourteenth Amendment obligation to provide effective Sixth Amendment assistance of counsel in every courthouse in Oregon.

Challenges with Trial Services

1. Service Delivery Model
 - Flat fee case rates
 - Independent contractors
2. Transparency in Contracting
3. Attorney Compensation
4. Lack of Caseload/Workload Standards
5. Public Defense Attorney Caseloads
6. Flawed Budgeting Process
7. Lack of Case-Related Data
8. No Foundational Training for New Attorneys
9. Limited Oversight Capacity

Turnover

Metropolitan Public Defender – 70 attorney firm

- 30% turnover within last 1 year (8 attorneys were in their first year)
- 50% turnover within the last 3 years
- 69% turnover within the last 5 years

Turnover

Umpqua Valley Public Defender – 12 attorney office

- 75% turnover within last 3 years
- 133% turnover within last 5 years

Marion County Public Defender – 14 attorney office

- 64% turnover within last 3 years

Turnover

Crabtree and Rahmsdorff (Bend) – 14 attorney office

- 64% turnover within last 3 years
- Average stay for new hires over last 10 years is 2.5 years.

Public Defender of Lane County – 22 attorney office

- 45% turnover within last 3 years

Reform Legislation

- Working with the Chairs of the House and Senate Judiciary Committees

- Legislation will address the agency's critical need to:
 1. Different Service Delivery Model
 2. New Data-informed Budgeting Process
 3. More Diverse Commission
 4. Increased Quality Assurance and Oversight
 5. Foundational Training
 6. Transparency in Contracting and Agency Data

Budget Request

2019-2021 Agency Budget Request

	2017-19 Legislatively Approved Budget	2019-21 Current Service Level	2019-21 Agency Request Budget
General Fund	\$305,425,556	\$344,173,541	\$413,937,025
Other Funds	\$4,967,973	\$4,170,527	\$4,742,251
All Fund Types	\$310,393,499*	\$348,344,068**	\$418,679,276***

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

**Includes special payments to OJD of \$3.2 million to fund ACP Verification Specialists

***Includes special payments to OJD of \$3.9 million to fund ACP Verification Specialists

2019-2021 Current Service Level All Fund Types

Trial-level Non-Capital Caseload	\$282.2 million
Capital Caseload	\$29.4 million
Appeals (Civil and criminal conflicts)	\$4.8 million
Appellate Division	\$22 million
Contracts & Business Services Division	\$6.7 million
Transfer to Judicial Department	\$3.2 million
Total	\$348.3 million

Policy Option Packages

2019-21 Policy Option Packages

All Fund Types

POP191: Trial Level Sustainability	\$50.6 million
POP192: Quality Assurance	\$1.4 million
POP193: Parent Child Representation Program	\$13.1 million
POP194: Multnomah County Courthouse	\$0.4 million
POP195: OPDS Office Space	\$0.6 million
POP196: Employee Compensation	\$1.7 million
POP197: OPDS Operational Needs	\$2.8 million
POP198: Application Contribution Program Support	\$1.0 million
Policy Option Package Total	\$71.6 million

Policy Option Package 191

Trial Level Sustainability

- Represents a 16% increase in funding to narrow the gap between the rapidly increasing costs of operating a small business or public defender office.
- **\$50,608,694 General Fund**

Policy Option Package 192

Quality Assurance

- Provides funding necessary to provide effective oversight of public defense services statewide, to engage in effective remedial effort where needed, and to participate in collaborative stakeholder initiatives for justice system improvement.
 - 2 Deputy General Counsel
 - 3 Business Analysts
 - Social Work Program Manager
- **\$1,439,525 General Fund**

Policy Option Package 193

Parent Child Representation Program

Provides funding necessary to expand the PCRCP from five to ten counties.

- 2 Deputy General Counsel
- Business Analyst
- Clatsop
- Douglas
- Deschutes
- Malheur
- Multnomah
- **\$13,052,274 General Fund**

Policy Option Package 194

Multnomah County Courthouse Staff and S&S

- Provides funds to open and operate the 5000 sq. foot Public Defense Resource Center in the Multnomah County Courthouse.
 - Office Manager
- **\$363,099 General Fund**

Policy Option Package 195

OPDS Office Space Reconfiguration

- Provides funds to procure an additional work space for the Financial Services Division
- **\$592,000 General Fund**

Policy Option Package 196

Employee Compensation

- Provides funds to achieve pay parity with the Oregon Judicial Department and the Oregon Department of Justice.
- **\$1,754,863 General Fund**

Policy Option Package 197

Operational Needs

- Provides funds to acquire a new Financial Management System and additional FTE to meet workload demands
 - Accounts Payable Supervisor
 - Business Analyst
 - 2 LD Accounting Technician 2 positions

- **\$2,791,651 General Fund**

Policy Option Package 198

Application Contribution Program Support

- Provides funds to offset the cost of personnel at OPDS and in courts to manage the program and verify indigent status for individuals requesting court-appointed representation.
- **\$1,005,853 Other Funds**

Reductions

5% Reduction Impacts

- Appellate Division - \$1.1 million GF
 - Would require the elimination of 3.25 attorney positions and 1.0 support staff positions.
 - Backlog would increase
 - Average time on pending appeal would increase
- Professional Services Account - \$15.8 million GF; \$166.414 OF
 - Represents the level of funding required for one month of public defense services.
 - PDSC would have to cease payment for appointed counsel and related expenses for the last quarter of the 2019-21 biennium.
- Contract Business Services - \$291,729 GF; \$42,113 OF
 - Would require elimination of two positions
 - Delayed payments
 - Inappropriate expenditure of funds

10% Reduction Impacts

- Appellate Division - \$2.2 million GF
 - Would require the elimination of 9.75 attorney positions and 3.0 support staff positions.
 - Backlog would increase
 - Average time on pending appeal would increase
- Professional Services Account - \$31.6 million GF; \$332,828 OF
 - Represents the level of funding required for three months of public defense services.
 - PDSC would have to cease payment for appointed counsel and related expenses for the last quarter of the 2019-21 biennium.
- Contract Business Services - \$583,458 GF; \$84,226 OF
 - Would require elimination of four positions
 - Delayed payments
 - Inappropriate expenditure of funds

15% Reduction Impacts

- Appellate Division - \$3.3 million GF
 - Would require the elimination of 6.5 attorney positions and 2.0 support staff positions.
 - Backlog would increase
 - Average time on pending appeal would increase
- Professional Services Account - \$47.4 million GF; \$499,242 OF
 - Represents the level of funding required for 4 months of public defense services.
 - PDSC would have to cease payment for appointed counsel and related expenses for the last quarter of the 2019-21 biennium.
- Contract Business Services - \$875,187 GF; \$126,339 OF
 - Would require elimination of 6 positions
 - Delayed payments
 - Inappropriate expenditure of funds

Invited Testimony