

Department of Justice					
	2017-19 Actual	2019-21 Legislatively Adopted	2019-21 Legislatively Approved *	2021-23 Current Service Level	2021-23 Governor's Budget
General Fund	89,726,176	114,789,120	117,240,118	115,524,731	117,886,841
Other Funds	314,248,330	351,837,618	373,423,466	382,228,947	381,678,963
Federal Funds	182,172,657	186,995,478	216,470,717	158,962,562	210,729,095
Total Funds	586,147,163	653,622,216	707,134,301	656,716,240	710,294,899
Positions	1,406	1,453	1,458	1,421	1,391
FTE	1,355.64	1,420.13	1,421.38	1,411.73	1,377.43
* Includes Emergency Board and administrative actions through January 2021					

Program Description

The Department of Justice (DOJ) is responsible for general legal counsel and supervision of all civil actions and legal proceedings in which the state is a party or has an interest. DOJ is also responsible for a number of programs, including child support, district attorney assistance, crime victims’ compensation, charitable activity enforcement, organized crime-related law enforcement, criminal investigations, criminal intelligence, elder abuse, criminal voter fraud, and consumer protection and education services.

CSL Summary and Issues

The 2021-23 current service level budget for the agency totals \$656.7 million total funds, including \$115.5 million General Fund, \$382.2 million Other Funds, and \$159 million Federal Funds. The budget includes 1,421 positions/1,411.73 FTE. The CSL is \$49.8 million, or 7%, less than the 2019-21 legislatively approved budget of \$706.5 million (1,251.38 FTE). There are 37 fewer positions and 9.65 less FTE. The Division of Child Support’s Child Support Enforcement Automated System (CSEAS) information technology project has been completed and federally certified, which explains most of the change in position/FTE counts.

DOJ’s modified current service level budget accounts for the following revenue shortfall reductions to existing programs and DOJ has requested two policy packages to backfill the Other Funds reductions with General Fund.

- Crime Victims and Survivor Services Division (\$4.2 million Other and 16 positions (15.06 FTE): A revenue reduction related to one-time punitive damage award settlements.
- Division of Child Support (\$16.5 million total funds, including \$6 million Other Funds and \$10.4 million in matching Federal Funds and 66 positions (65.39 FTE): For the fourth biennium in a row, the Division is forecasting a revenue shortfall in Temporary Assistance for Needy Families revenue and is requesting General Fund backfill. When a child support obligation involves a family receiving Temporary Assistance for Needy Families (TANF), the family temporarily assigns support rights to the state to offset expenses, when

state services/public assistance is provided on behalf of the child. TANF recoveries have to be split between the federal government and the state at the Medicaid rate. TANF assignment, and therefore recoveries, correlate to the general economy. As the economy improves and fewer individuals receive TANF, assignments decline and recoveries fall. In theory, as the economy declines, the opposite holds true. A reforecasting of the need will be requested in May 2021 after most 2020 tax year data becomes available.

There are issues with the Executive Branch calculation of the current service level and modified current service level:

- Defense of Criminal Convictions (DCC) - DOJ's methodology for estimating or forecasting the DCC caseload was changed during the middle of the 2019-21 biennium. In addition, DOJ has submitted policy packages that likely should have been included as part of the mandated caseload forecast (i.e., *Ramos v. Louisiana*). The DCC caseload will need to be re-forecast and updated based on the legislatively approved AG hourly rate. The DCC has a CSL of \$34.4 million General Fund and an agency request budget of \$43.1 million General Fund.
- Criminal Justice Division - High Intensity Drug Trafficking Area (HIDTA): On May 21, 2020, the HIDTA Board voted to eliminate funding for four Research Analyst 1 positions in the Watch Center beginning calendar year 2021. The support provided by the analysts consists of conducting a wide range of investigative research on criminal suspects and organizations, including analysis of a suspect's criminal history, vehicle ownership, government-issued licenses and certifications, and other information related to the suspect and associated criminal conduct. The positions also provide deconfliction services to law enforcement officers who are conducting separate investigations in a common geographical area.
- Criminal Justice Division - Internet Crimes Against Children (ICAC): The federal government has eliminated grant funding for one ICAC-budgeted position for 2021-23 biennium. ICAC analyst is responsible for conducting preliminary analysis of Cyber-Tips the ICAC unit receives from the National Center for Missing and Exploited Children

Policy Issues

The Legislature in 2021 will likely continue discussions around public safety system reforms as well as the implementation of Ballot Measure 110 (2020) and the decriminalization of certain drug offenses.

United States Supreme Court's decision in *Ramos v. Louisiana*, 140 S Ct 1390 (Apr 20, 2020) The U.S. Supreme Court ruled in *Ramos v. Louisiana* that the Sixth Amendment to the U.S. Constitution (rights related to criminal prosecutions) requires that guilty verdicts for criminal trials be unanimous. The decision affects not only those persons currently in custody, but persons who have served their sentence and post-prison supervision but have a felony conviction from some time in the past. All those persons would currently be able to bring a post-conviction relief case challenging their conviction. The key issue for these cases is whether the *Ramos* rule should be made retroactive, which will ultimately be decided by the U.S. Supreme Court and the Oregon Supreme Court. The Oregon Supreme Court has just recently began issuing decisions related to *Ramos* cases. Hundreds of criminal convictions have been pending appeal before Oregon's appellate courts

awaiting the Ramos decision. In addition, DOJ is anticipating that thousands of cases could be filed over the next biennium seeking relief from non-unanimous criminal convictions.

Pandemic

State and federal courts are providing essential services; however, courts are operating at reduced capacity. There is presumed to be a growing backlog of existing criminal and civil cases due to the pandemic and new cases arising from the pandemic (e.g., evictions, domestic relations, Habeas Corpus), both of which will impact on future prosecutorial and investigative activities.

The pandemic has resulted in an increase in the filing of state habeas petitions. Habeas corpus is a legal remedy, under state and federal constitutions, available to adults in custody to challenge the conditions of their confinement due to either the failure of a jail or prison to provide adequate care for a serious medical condition or sentencing errors that keep persons incarcerated past a sentence date. Each case is unique to the medical condition of the petitioner and must be coordinated with the Department of Corrections (DOC). A class action lawsuit (Maney et al v. Brown et al) was filed by prisoners held by DOC and that matter is expected to last into the 2025-27 biennium. DOC, as the client agency, will be billed by DOJ for habeas corpus matters.

The pandemic is presumed to have caused an increase in domestic and sexual violence and the incidence of child abuse; however, little caseload data is currently available to quantify these presumptions. Coronavirus Relief Funding has been provided to domestic and sexual violence service providers throughout the state, including federally recognized tribal governments, and supplemental General Fund has been provided to Children's Advocacy Centers for forensic interviews, medical examinations, treatment, mental health treatment, and referral and/or coordination of other services. DOJ is expected to report to the Legislature on the number of individuals and families that received assistance, as well as the type and cost of assistance provided.

Other Significant Issues and Background

Legal Services Rate(s) The Attorney General hourly billing rate for the 2019-21 biennium is \$214 and is estimated to generate \$229.3 million from client agencies. The 2021-23 biennium hourly rate, as published in the pricelist, is \$258 per hour (+20.6%) and is estimated to generate \$286.9 million. This is a \$57.6 million, or 25 percent, increase in revenue. The Governor's budget assumes an attorney rate of \$241 per hour, which is a 12.6 percent increase from the 2019-21 rate of \$214 per hour. The hourly billing rate will need to be re-calculated based upon the Co-Chair's budget decisions. DOJ's flat rate or flat charge billing model will be discontinued on June 30, 2021 and for the 2021-23 biennium and all agencies will use the hourly rate billing model.

Grand Jury Recordation assistance The Second Special Legislative Session approved for the 2019-21 biennium a \$500,000 General Fund appropriation to the District Attorneys and Their Deputies for grand jury recordation. DOJ receives the majority of this funding as Other

Funds and has been coordinating the implementation, including procuring statewide transcription services, secure electronic storage, and training. This effort will require continued funding into 2021-23 biennium and beyond.

Victims of Crime Act Funding - Historically, federal funding for VOCA has increased from \$5.4 million in 2013-15, to \$68 million in 2021-23. VOCA grants are currently sub-granted to approximately 50 domestic/sexual assault service non-profit providers, 36 district attorney prosecutor-based victim programs, and 20 child abuse assessment centers. VOCA grants are allocated to subgrantees through both competitive and non-competitive grant processes. This formula grant does not require the Department to provide matching funds; however, the grant does require sub-grantees to provide 20 percent matching funds. Local matching funds are partially paid by state General Fund and a Criminal Fines Account allocation passed-through by DOJ to local providers. The Legislature has employed a consistent strategy of making VOCA grant increases one-time funding so as to better monitor how the funding is being utilized.

Transportation Projects - The Second Special Session approved an increase of \$328,935 Other Funds expenditure limitation and authorized the establishment of one permanent full-time Senior Assistant Attorney General position (0.42 FTE) and one permanent full-time Assistant Attorney General position (0.42 FTE) in the Business Transactions Section. These positions are for design and construction attorneys for transportation infrastructure projects authorized in HB 2017 (2017). The revenue to support these positions will come from hourly legal service billing to the Oregon Department of Transportation. This change offsets DOJ's request for additional resources (total request is for \$1.4 million and four positions (3.52 FTE)).

Trial Division - Civil Litigation Section - The Emergency Board in September authorized the transfer of \$664,918 Other Funds expenditure limitation and two existing permanent full-time Assistant Attorney General positions (2.00 FTE) from the General Counsel Division to the Trial Division, for work related to state habeas corpus petitions filed due to the COVID-19 pandemic. This change offsets DOJ's request for additional resources.

Appellate and Trial Divisions - DOJ is requesting additional resources for *Ramos v. Louisiana*. The source of funding is General Fund from the DCC appropriation (\$3.5 million General Fund at least one additional Appellate Division staff (1.00 FTE)).

Juvenile Dependency Representation The Legislature in 2017 provided funding for a three-phase implementation of Department of Human Services (DHS) child welfare caseworkers in circuit court. This effort was fully implemented on July 1, 2019 and the law authorizing DHS to appear as a party in a juvenile court proceeding without appearance of a DOJ attorney general sunset on June 30, 2020.

Administrative Support Staffing DOJ is requesting additional payroll, accounting, procurement, and project management staff (\$935,852 Other Funds and four positions (3.52 FTE)).

Information Technology The Legal Tools Replacement project 2.0 is DOJ's second attempt to begin the process to replace the agency's legacy case, document, time capture, billing, eDiscovery, and legal matter applications. The project continues to be challenged by scope, schedule, and budget issues. The Legislative Fiscal Office has recommended that the agency be prepared to submit a report to the Legislature in 2021. The request is for \$2.6 million and six positions (5.28 FTE). DOJ is also requesting funding and staffing for litigation support, IT security, and IT staffing (\$2.4 million Other Funds and nine position (7.92 FTE).

Review Attorney Classifications (\$TBD): DOJ has requested, and apparently the Department of Administrative Services has approved, the merging of lower classification attorneys (Assistant AG) with the next higher classification (Senior AG). This change merits further evaluation for its budgetary implications.

Secretary of State Audit/Internal Audit The report includes 17 recommendations to DOJ intended to improve contract review services for state agencies and suggested improvements to the flat charge model.

Governor's Budget

The Governor's budget totals \$710.3 million total funds, which includes \$117.9 million General Fund, \$381.7 million Other Funds, and \$210.7 million Federal Funds. The budget includes 1,391 positions and 1,377.43 FTE. The Governor's budget is \$3.8 million, or 0.5%, more than the 2019-21 legislatively approved budget of \$706.5 million (1,251.38 FTE). There are 67 fewer positions and 43.95 less FTE. Some of the changes in the Governor's budget include the following:

- Punitive damages revenue backfill for crime victims and survivor services (\$4.9M General Fund)
- Defense of Criminal Convictions for the Ramos v. Louisiana (\$4.2 million General Fund)
- Division of Child Support CSEAS State Data Center Hosting (\$300,000 General Fund)
- Criminal Justice Division reduction (\$1.1 million General Fund and three positions)
- Division of Child Support reduction, including special payments to counties (\$1.5 million General Fund and 15 positions)
- Civil Right Unit reduction (\$136,408 General Fund and one position)
- Ballot title preparation (\$50,500 General Fund)
- General Counsel - legal positions to support state agencies (\$2.6M OF legal rate)
- Legal Tools Replacement IT project (\$2.6M Other Funds only - legal rate)
- Litigation Technology IT project (\$1.2M Other Funds - legal rate)

The Governor's budget did not provide backfill funding for the Child Support Division revenue shortfall (\$5.3M GF) nor did the budget backfill the Internet Crimes Against Children grant termination (214,439 General Fund). The Governor's budget includes a \$6.3 million transfer for Other Funds (Protection and Education Account) revenue to the General Fund; however, such a reappropriation requires Legislative action and there is no legislative concept associated with this action.

Reduction Options

Direct General Fund in DOJ is concentrated in the Defense of Criminal Convictions, Division of Child Support, Criminal Justice Division, Crime Victim and Survivor Services Division, Civil Rights Unit, ballot title preparation, and debt service. Select indirect General Fund support (i.e., Other Funds), when reduced produces General Fund savings, including the allocations from the Criminal Fine Account to the Crime Victim and Survivor Services Division, juvenile dependency representation in the Civil Enforcement Division, and Protection and Education Account reductions also in the Civil Enforcement Division.

Key Performance Measures

A copy of the DOJ Annual Performance Progress Report can be found on the LFO website:

https://www.oregonlegislature.gov/lfo/APPR/APPR_DOJ_2020-09-29%20FINAL.pdf