

JUDICIAL BRANCH

JUDICIAL DEPARTMENT

Analyst: Jolivette

Agency Totals

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	431,879,018	454,524,551	505,643,238	519,823,309
Other Funds	131,468,646	262,993,590	50,074,088	217,814,418
Federal Funds	1,176,014	1,344,289	1,357,254	1,355,846
Total Funds	\$564,523,678	\$718,862,430	\$557,074,580	\$738,993,573
Positions	1,727	1,900	1,899	1,935
FTE	1,588.12	1,776.58	1,784.72	1,817.22

Overview

The Oregon Judicial Department (OJD) includes the judges and administrative staff to operate general-jurisdiction trial or circuit courts, a tax court, an intermediate court of appeals, and a supreme court. Oregon's 36 counties are consolidated into 27 judicial districts. In 1983, Oregon's district courts, circuit courts, and appellate courts were unified into a statewide court system. In 1998, district courts were abolished and merged with circuit courts into single unified trial level courts. Oregon's Justice, County, and Municipal courts fall outside the jurisdiction of the agency.

The Chief Justice is the administrative head of the Department and has the authority to make rules and issue orders related to the administrative and procedural operations of state courts. The Chief Justice appoints the chief judge of the Court of Appeals and the presiding judges of all state trial courts. The Chief Justice also appoints the state court administrator. The Judicial Conference, comprised of all elected judges, serves an advisory role. The Department's administrative proceedings are generally not open to the public. The Department's other responsibilities include the collection of court-ordered judgments, providing court interpreters and state court security, and fiscal oversight of state-supported county courthouse capital construction projects.

The Department is unique in many aspects. It has a decentralized structure of independently elected judges and, for the most part, non-represented employees who are overseen by a single administrative head (i.e., the Chief Justice). Circuit court judges and staff work in county-owned and -maintained buildings. Each presiding judge exercises a degree of autonomy in prioritizing the budget for local courts depending upon local needs.

The Department's 1,935 positions (1,817.22 FTE) are organized into the following program areas:

- Judicial Compensation – \$87.3 million, 197.00 FTE. Funds the personal services costs of the state's 196 statutory judgeships.
- Appellate and Tax Courts – \$27 million, 98.52 FTE. Includes the operating costs for the Supreme Court, Court of Appeals, Tax Court (a court of original jurisdiction), and legal support costs.
- Trial Courts – \$254.7 million, 1,310.66 FTE. Includes the operating costs of the courts of general jurisdiction. A circuit court is located in each of Oregon's 36 counties. Circuit courts are organized administratively into judicial districts. Some of these, primarily rural, districts include more than one circuit court; however, most of the 27 judicial districts comprise a single circuit court.
- Administration and Central Support – \$77.2 million, 154.43 FTE. Includes the Office of the State Court Administrator, information systems management, fiscal and human resources management, and centralized state agency assessments.
- State Court Technology Systems – \$22.8 million, 30.00 FTE. Funds the personal services costs and systems costs associated with developing, maintaining and supporting state court electronic applications, services, and systems including electronic filing services.

- Mandated Payments – \$17.3 million, 22.61 FTE. Includes the costs of providing trial and grand jurors, court interpreters, civil appellate transcript costs for indigent persons, and Americans with Disabilities Act accommodation services.
- State Court Facilities and Security Account – \$6.7 million, 4.00 FTE. Provides funding for security improvements, emergency preparedness, business continuity, and facility upgrades for Oregon’s courts.

Revenue Sources and Relationships

The Judicial Department budget consists of 70.3% General Fund, 29.5% Other Funds, and 0.2% Federal Funds. Excluding the bond proceeds and county matching funds that are passed through to counties for county courthouse capital construction projects and bond proceeds for the Supreme Court Building Renovation, General Fund supports approximately 92% of the remaining budget.

In the 2019-21 biennium, OJD is projected to generate an estimated \$309.9 million in revenue from a variety of sources, including fines and forfeitures (\$151.3 million), state court fees (\$129.6 million), and individuals’ contributions toward their public defense (\$4.8 million). Compensatory fines and restitution, which are expected to total \$22 million, are also collected by the courts and distributed to individual victims. Because these are trust funds, they are not accounted for in the Department budget. Other sources of Other Funds revenue include the sale and distribution of court publications (\$715,000); fees charged for public access to Oregon eCourt and the Oregon Judicial Information Network (\$7.3 million); State Law Library assessment revenues (\$2.6 million); fees charged for the interpreter and shorthand reporter certification programs; and various grants from other state, local, and federal agencies.

The majority of court-generated revenues are distributed to the General Fund (\$129.6 million, or 41.8%), the Criminal Fine Account (\$119.8 million, or 38.7%), and cities and counties (\$33.7 million, or 10.9%). OJD will retain approximately \$6 million (or 1.9%), primarily for the State Court Technology Fund, which retains 8.85% of most major court filing fee collections. Moneys collected from individuals’ contributions to their public defense through the Application/Contribution Program are transferred to the Public Defense Services to offset the General Fund cost of public defense eligibility verification staff in OJD (22.70 FTE) and for operating expenses for public defense administration in the Public Defense Services Commission (2.80 FTE).

The Department is also responsible for the collection of certain money owed to the state. In general, collections are for past-due crime victim restitution payments, compensatory fines, and other fines, costs, and assessments. After accounting for an administrative fee, the collections revenue is distributed by case type (i.e., criminal, civil, etc.) according to statute. Depending on the case type and obligation type (i.e., fines or restitution), balances remaining after statutory obligations and administrative costs are deducted are then distributed to the state or local governments.

According to the most recent Report on Liquidated and Delinquent Accounts Receivable dated June 2016, the Judicial Department reported that \$1.63 billion is owed the state. Since 2002, the amount of debt has increased \$1.31 billion, and is now five times the 2002 level. OJD defines its liquidated and delinquent accounts as “...those cases on which no payment has been received within 30 days of the agreed upon payment date.” OJD’s definition therefore includes deferred payment plan accounts. Several factors explain this growth, including increased collection costs which are included in the judgement and account for 25% of outstanding debt; limited discretion of judges to adjust fines and fees for ability to pay; and the fact that judgements can last between 20 and 50 years, depending on the type of debt owed. In addition, many patrons of the court are not able to pay. Half of OJD debt, for example, is owed in felony cases by individuals who are incarcerated and have no ability to pay.

Direct Federal Funds come from a grant for a Juvenile Court Improvement Project. The grant has a 25% matching funds requirement. The Department also receives grants from the Department of Human Services for the Citizen Review Board, but that federal grant is received and expended as Other Funds.

Budget Environment

The Department has no control over the number of case filings it receives, and has legal restrictions on its ability to manage its caseload. For example, there are clear statutory requirements for speedy trials in criminal matters. If a case is not processed within allowable timeframes, it could be dismissed or be subject to other prescribed statutory sanctions or relief. Any flexibility OJD has resides primarily in its ability to delay adjudication in civil case filings; however, if contentious civil issues remain unresolved for extended periods of time, this could result in citizen frustration and a negative impact on business activity.

OJD workload is driven by a number of factors, including: the number and complexity of cases filed; the impact of social issues, such as drug abuse and family dissolution; crime rates; and the effect of new laws and regulations. Case types vary in their impact on judicial resources and staff. Criminal felony, misdemeanor, juvenile, and complex civil case types have the greatest workload impact on judicial and staff resources. Violations and Small Claims cases have a lower impact on such resources.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget of \$738.9 million total funds is 2.8% greater than the 2017-19 legislatively approved budget. The budget supports 1,935 positions (1,817.22 FTE), a 2.3% increase in FTE from the prior biennium. The Department's operating costs are primarily supported by the General Fund. The \$519.8 million of General Fund support is 14.4% higher than the prior biennium level. The agency is also projected to carry forward approximately \$1.5 million of General Fund from 2017-19, which will be added to its 2019-21 biennium budget without additional legislative action. Details on the enhancements and reductions in the legislatively adopted budget are provided in the program area summaries below, but budget highlights include:

- \$135 million of Article XI-Q bond proceeds (Other Funds) for the state share of courthouse replacement project costs in Clackamas (\$31.5 million), Linn (\$15.9 million), and Lane (\$87.6 million) counties. This brings total state bonding for the Lane and Linn county projects to \$94 million and 32.7 million, respectively. Future requests are anticipated for all three projects.
- \$27.8 million of Article XI-Q bond proceeds (Other Funds) for renovation of the Oregon Supreme Court building, including seismic updates, energy efficiency improvements, and various systems and safety code upgrades. This brings the two-biennium total Article XI-Q bond proceeds for this project to \$33.8 million. The budget includes \$5.3 million General Fund for project costs that cannot be financed with bonds.
- \$8.5 million of Article XI-Q bond proceeds (Other Funds) to purchase state-owned furniture and equipment for the new Multnomah County Courthouse, bringing the total costs for state-owned furniture, fixtures, and equipment at the facility to \$17.4 million. The budget includes \$750,000 General Fund, on a one-time basis, for related OJD moving expenses.
- \$6.7 million Other Funds for activities funded from the State Court Facilities and Security Account, including emergency preparedness, court security training, and courthouse capital improvements.
- \$2.1 million of Article XI-Q bond proceeds are provided to finance the costs of issuing the bonds for the Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF) and capital construction projects.
- \$2 million General Fund for planning of a replacement courthouse for Benton County. The funding provided establishes no obligation for the state to provide any additional support for this project.
- \$1.1 million General Fund and eight positions (4.50 FTE) were added to establish two new circuit court judgeships, one in Jackson County and one in Marion County, beginning July 1, 2020.
- \$1.3 million General Fund to increase judges' annual salary by \$5,000 effective July 1, 2020.
- \$1.8 million General Fund and nine positions (9.00 FTE) were added to support implementation of SB 24 (2019) and SB 973 (2019) related to supports and services for people with serious mental illness and substance addictions.
- \$12.3 million General Fund for Legal Aid services, a 3% increase from the 2017-2019 legislatively approved budget.
- A \$5 million General Fund reduction was made to help balance the statewide General Fund budget. These reductions are equivalent to approximately 1.4% of the department's operations budget. The Judicial Department is given flexibility in implementing the reductions, to minimize the impact on judicial operations.

Judicial Compensation

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	72,393,239	80,412,773	85,801,535	87,294,170
Total Funds	\$72,393,239	\$80,412,773	\$85,801,535	\$87,294,170
Positions	194	196	196	198
FTE	194.00	194.50	196.00	197.00

Program Description

The Judicial Compensation program contains the personal services costs (salary plus other payroll expenses) of the 198 statutory judgeships authorized in Oregon, including 177 circuit court judges (an increase from the current 175, beginning in July 2020), one tax court judge, thirteen Court of Appeals justices, and seven Supreme Court justices. The judges of the Supreme Court, Court of Appeals, and Tax Court are elected by voters in nonpartisan statewide elections for six-year terms. The judges of the circuit courts are elected by voters in nonpartisan judicial district elections for six-year terms. The Chief Justice, selected by members of the Supreme Court, serves as the administrative head of the Judicial Department. Costs for non-statutorily established judgeships (such as temporary or pro-tem judges, 50 senior or “Plan B” semi-retired judges, and judicial referees) are included within the budgets for the Appellate Courts, Trial Courts, and the Administration and Central Support programs, rather than under this program area. The services and supplies supporting each statutory judgeship also reside within those programs.

Judicial salaries, as with most other elected official salaries, are set in statute. Since 2015, state law has required that judicial salaries be adjusted on an ongoing basis to match the cost-of-living adjustments awarded to management service employees in the executive branch. Amounts beyond the cost-of-living adjustments require legislative action. In 2016, the Legislature approved a \$5,000 salary increase, effective January 1, 2017. In 2017, the Legislature approved a \$5,000 salary increase effective July 1, 2018. In 2019, the Legislature approved a \$5,000 increase effective July 1, 2020. The salary rates established by the 2016, 2017, and 2019 legislative session actions are shown in the table below.

Statutory Judge Salaries	2017	2018	2019	2020
Chief Justice	\$150,572	\$157,076	\$160,452	\$170,412
Supreme Court Justices	\$147,560	\$154,040	\$157,356	\$167,232
Court of Appeals Chief Judge	\$147,560	\$154,040	\$157,356	\$167,232
Court of Appeals Judges	\$144,536	\$150,980	\$154,224	\$164,004
Tax Court Judge	\$139,652	\$146,048	\$149,184	\$158,808
Circuit Court Judge	\$135,776	\$142,136	\$145,188	\$154,692

In addition to annual salaries, the Judicial Compensation program also finances judges’ other payroll expenses (OPE), which are equal to approximately 35% of salary. About half of the OPE total is to pay PERS contributions. A judge’s retirement benefit is defined by statute (ORS 238). PERS operates a separate Judge Member Plan exclusively for judges to comply with ORS 238. The 2019-21 biennium contribution rate for this plan is 27.92% of salary, compared to a 16.39% PERS contribution rate for non-judge employees.

Revenue Sources and Relationships

Statutory judgeships are funded with General Fund.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget of \$87.3 million is \$6.9 million (or 8.6%) above the prior biennium level and is 1.7% above the current service level. The Legislature approved two related budget adjustments: one adds

\$1.3 million to increase judges' annual salary by \$5,000 on July 1, 2020, and the other adds \$456,000 General Fund and two positions (1.00 FTE) for two new circuit court judgeships established in HB 2377: one in Jackson County and one in Marion County. The new judgeships are established on July 1, 2020. Funding in this program area pays for the compensation for the new judges. Funding for support staff and for other associated expenses of the courts relating to the new judgeships is included in the Trial Courts program.

Since the 2015-17 biennium, salaries of judges have been increased by the same percentage provided to management service employees in the executive branch for cost of living adjustments. The Legislature may provide additional General Fund to support any salary increases granted under this provision during the biennium, either from funds appropriated to the Emergency Board or from funds otherwise available to the General Fund.

Appellate and Tax Courts

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	20,570,480	22,579,063	24,379,678	24,053,363
Other Funds	2,961,408	2,801,960	2,932,629	2,932,629
Total Funds	\$23,531,888	\$25,381,023	\$27,312,307	\$26,985,992
Positions	103	102	101	101
FTE	101.80	100.80	98.52	98.52

Program Description

The Appellate and Tax Courts program includes the Oregon Supreme Court and the Court of Appeals. The Supreme Court consists of seven justices elected to serve 6-year terms. The Court of Appeals, which was statutorily created in 1969, consists of thirteen judges who hear appeals from trial courts, agencies, and boards. The administrative head of the Court of Appeals is the Chief Judge, who is appointed by the Chief Justice. The Court of Appeals has an Appellate Settlement Conference Program that mediates some civil, domestic relations, and workers' compensation cases.

The Appellate and Tax Court program also includes the Tax Court, which is a court with original jurisdiction over tax law matters. Currently, there is one Tax Court judge who hears matters arising from Oregon tax law and appeals from the Tax Magistrate Division. A Tax Magistrate Division was created in 1997 to replace the informal administrative tax appeals process conducted by the Department of Revenue. The Tax Magistrate Division has three magistrates. The Tax Court has exclusive, statewide jurisdiction for all matters related to state tax laws, including income taxes, corporate excise taxes, property taxes, timber taxes, cigarette taxes, marijuana taxes, local budget law, and property tax limitations.

Revenue Sources and Relationship

The Appellate and Tax Court program is primarily funded with General Fund, but also includes some Other Funds revenue, including State Law Library assessment revenues (\$2.6 million) and publication sales revenue (\$715,000).

Budget Environment

The following table contains historic case filing data for the Appellate and Tax courts. As of 2015, the number of case filings for the Supreme Court and the Court of Appeals have continued to decline to twelve-year lows. Case declines have also occurred in both divisions of the Tax Court; however, 2015 caseloads were not the minimums observed over this period.

Appellate and Tax Court Historic Case Filings by Calendar Year

Court-Type	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Supreme Court	999	1,062	1,347	1,274	1,321	1,368	1,001	925	923	952	977	882
Court of Appeals	3,677	3,801	3,517	3,312	3,220	3,416	3,089	2,936	2,909	2,652	2,565	2,598
Tax Court Regular Division	39	43	27	26	73	50	53	73	97	43	37	27
Tax Court Magistrate Division	1,184	1,021	827	915	1,237	1,641	1,370	1,310	885	580	470	575

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget of \$26.9 million is \$1.6 million (or 6.3%) above the prior biennium level and is 1.2% below the current service level. One vacant position was eliminated. The \$0.3 million of General Fund reduction is unspecified to allow the Judicial Department flexibility to implement it in a manner to minimize its impact on judicial operations.

Trial Courts

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	211,368,152	223,466,398	247,579,369	244,830,652
Other Funds	6,720,457	9,099,771	5,221,203	9,862,734
Federal Funds	331,911	--	--	--
Total Funds	\$218,420,520	\$232,566,169	\$252,800,572	\$254,693,386
Positions	1,373	1,390	1,391	1,422
FTE	1,2461.11	1,272,72	1,282.16	1,310.66

Program Description

Trial Court operations includes the funding and operations of all state trial courts (Circuit Courts). The program also includes staff who verify the eligibility of applicants for representation at public expense (Application/Contribution Program).

There are circuit courts in each of the 36 counties which are consolidated administratively into 27 judicial districts. These courts act as courts of general jurisdiction and adjudicate matters and disputes in criminal, civil, domestic relations, traffic, juvenile, small claims, violations, abuse prevention act, probate, mental commitment, adoption, and guardianship cases. One circuit court, Multnomah, also operates as the municipal court for City of Portland parking violations. Jurisdiction over tax law is reserved to the Tax Court.

Revenue Sources and Relationships

The circuit courts are primarily funded with General Fund. Other Funds revenue includes transfers from the Public Defense Services Commission for a portion of the Application/Contribution Program, which is used for verification of eligibility for public defense representation in circuit courts (\$3.9 million), and grant funds supporting specialty court operations (\$4.6 million).

Budget Environment

In calendar year 2017, caseloads totaled 516,055 across nine major case-categories. This is less than the 555,141 cases in 1994 (which was the lowest caseload count over the period prior to 2011) and represents a 21.3% decline

from the high of 655,574 cases in 2003. The types of cases filed in circuit courts have changed since the 1990 to 2010 average, with all case types declining, except for civil, civil commitments, and probate.

Case-Type by Calendar Year	1990 to 2010 Average	2000 to 2010 Average	2005 to 2010 Average	2011 Caseload	2013 Caseload	2015 Caseload	2017 Caseload
Civil	76,060	84,686	93,874	92,449	95,191	74,070	83,166
Small Claims	64,683	71,232	76,118	73,673	70,259	67,932	55,902
Domestic Relations	51,501	47,699	46,088	47,919	43,898	41,735	43,699
Felony	33,481	35,304	32,364	31,086	32,464	32,407	31,738
Misdemeanor	65,254	64,156	62,960	59,589	53,029	50,335	49,100
Violations	285,795	276,816	249,869	214,654	215,080	205,511	222,341
Juvenile	18,971	17,853	16,845	14,013	11,783	11,430	10,223
Civil Commitments	6,974	8,236	8,674	8,871	9,582	8,512	7,710
Probate	10,136	10,029	10,006	10,347	10,642	11,312	12,176
Total	612,809	615,982	596,797	552,601	541,928	503,244	516,055

Oregon’s circuit courts have also operated specialty courts and dockets for over two decades. Such courts have become a significant component of the Department’s service delivery model and have a significant budgetary impact. Specialty courts perform a unique function that is separate and distinct from the adjudicatory functions of the courts. The types of specialty courts that have been established include: drug, driving under the influence, family, community, domestic violence, mental health, clean slate, and early resolution.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget of \$254.7 million is \$22.1 million (or 9.5%) above the prior biennium level and is \$1.9 million (or 0.75%) above the current service level. Fifteen positions (12.50 FTE) were added. General Fund support is reduced \$2.7 million (or 1.1%) from the current service level. The net General Fund support represents the combination of \$5.1 million in reductions to existing program support, partially offset by \$2.4 million of supplemental funding to implement new programs and for new judicial support positions.

- General Fund balance adjustment – Includes a \$3.3 million reduction, unspecified, to allow the Judicial Department the flexibility to implement it in a manner to minimize its overall impact on court operations.
- Standard statewide adjustments – \$1.1 million General Fund for the Trial Courts portion related to PERS actual rates versus planned rates.

Funding enhancements in the budget include:

- New Judgeships (HB 2377) – \$602,624 General Fund and six positions (3.50 FTE) to fund establishment of two new circuit court judgeships established in HB 2377, one in Jackson County and one in Marion County. The new judgeships are established on July 1, 2020. The costs and positions in the Trial Courts program exclude compensation for the new judges; those are included in the Judicial Compensation program. Funding in the Trial Courts program supports compensation for support staff and other related expenses of the courts.
- Behavioral Health Resources – \$1 million General Fund, and six positions (6.00 FTE) to provide circuit courts additional resources to manage behavioral health dockets, coordinate with county behavioral health and treatment resources, and provide additional tracking and data input/reporting associated with Aid and Assist cases for individuals who may have significant behavioral health issues when interacting with the courts.

Administration and Central Support

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	61,671,744	59,901,624	67,365,811	71,932,444
Other Funds	81,661,109	21,988,046	3,134,264	3,924,586
Federal Funds	844,103	1,344,289	1,357,254	1,355,846
Total Funds	\$144,176,956	\$83,233,959	\$71,857,329	\$77,212,876
Positions	186	185	154	157
FTE	176.36	181.95	151.43	154.43

Program Description

The State Court Administrator serves under the direction of the Chief Justice of the Supreme Court. The State Court Administrator is responsible for the centralized functions of the Oregon courts system. The Office of the State Court Administrator is divided into the following eight divisions:

- Juvenile and Family Court Programs
- Legal Counsel
- Human Resource Services
- Office of Education, Training, and Outreach
- Executive Services
- Enterprise Technology Services
- Appellate Court Services
- Business and Fiscal Services

The State Court Administrator also provides management and oversight of the Citizens Review Board, the Interpreter Certification program, revenue management, the Supreme Court building, internal auditing, the administration of the Appellate Court Records Office, and the Supreme Court library. Centralized assessments and costs to state agencies are also managed and paid by this office.

Revenue Sources and Relationship

The program is primarily funded with General Fund, but includes the following Other Funds and Federal Funds revenue sources:

- Article XI-Q bond proceeds to cover bond cost of issuance (\$1.2 million)
- Grant funds supporting two permanent Other Funds positions for Relief Assistance Officers for Lane County (\$0.5 million)
- Department of Human Services moneys for the Citizen Review Board (\$2.1 million).
- Federal Funds from grants that are used for assessments of state foster care and adoption laws and judicial processes, juvenile case data management, and training specific to juvenile case process improvements under the Juvenile Court Improvement Project (\$1.34 million).

Budget Environment

The State Court Administrator and staff provide centralized legal, analytical, business, and administrative support for the Department, which is challenging given the decentralized structure of the Department and the aging information technology infrastructure on which decision-making must rely. The eCourt program is now fully implemented in all courts and represents a significant upgrade to the technology infrastructure. The eCourt system has increased the Department's ongoing operating costs.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget of \$77.2 million is \$6 million (or 7.2%) below the prior biennium level, but this decrease is largely an artifact of transferring funding for staff paid out of the State Technology Fund into a

different program budget for improved transparency. A more accurate comparison is that the budget is a 7.5% increase over the current service level. A list of program reductions and enhancements includes the following:

- General Fund balance adjustment – \$0.9 million General Fund reduction, unspecified, to allow the Judicial Department the flexibility to implement it in a manner to minimize its overall impact on court operations.
- Standard statewide adjustments – \$1.4 million General Fund reduction for the program’s portion of standard statewide adjustments for state government service charges and Attorney General charges.
- Multnomah County Courthouse – \$750,000 General Fund increase for agency moving expenses associated with the Multnomah County courthouse.
- Supreme Court Building Preservation and Seismic Retrofit – \$5.3 million General Fund and \$0.4 million Other Funds for non-bondable costs associated with the renovation of the Supreme Court building.
- Bond Cost of Issuance – \$410,000 for bond issuance costs associated with Article XI-Q bond sales for the Supreme Court building and Multnomah County courthouse fixtures and equipment.

Mandated Payments

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	15,963,277	15,948,377	16,606,161	16,588,495
Other Funds	661,742	663,947	689,109	688,909
Total Funds	\$16,625,019	\$16,612,324	\$17,295,270	\$17,277,404
Positions	23	23	23	23
FTE	22.61	22.61	22.61	22.61

Program Description

The Mandated Payments program provides for trial and grand jurors, court interpreters, arbitration services, civil appellate transcript costs for indigent persons, and Americans with Disabilities Act (ADA) accommodation services.

Revenue Sources and Relationship

The Mandated Payments Program is primarily funded with General Fund but includes a relatively nominal amount of Other Funds revenue (4.2%) from juror fees and mileage donated back to the Department.

Budget Environment

Demand for mandated services is a function of the volume of cases heard by the courts, and therefore any increase in proceedings can translate to higher costs. Mandated payments were higher than initially funded in both the 2013-15 and 2015-17 legislatively adopted budgets. The Legislature transferred \$400,000 of General Fund from the Third-Party Debt Collection program to Mandated Payments during the 2015 legislative session, and \$300,000 from Judicial Compensation to Mandated Payments during the 2017 legislative session to address this funding shortfall.

Approximately 55% of the budget supports interpreter services, 44% supports jury payments, with less than 1% supporting ADA compliance and arbitration expenses.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget of \$17.3 million is \$0.7 million General Fund (or 4.0%) above the prior biennium level. Funding is \$17,866 General Fund below the current service level, which is the program’s portion of standard statewide adjustments. These include reductions to standard inflation adjustments, reductions based on expectations regarding hiring practices and the filling of vacant positions, and reductions in the assessments and charges of the Department of Administrative Services and the Department of Justice.

Third Party Collections

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	13,735,137	15,548,479	15,312,377	15,312,377
Total Funds	\$13,735,137	\$15,548,479	\$15,312,377	\$15,312,377

Program Description

The purpose of the program is to collect amounts owed to the state that are subject to collection by the Judicial Branch. While 91% of cases are paid in full, approximately 9% of cases require collection efforts by the courts, through third party collection firms, or through the Department of Revenue. In general, collections are for past-due crime victim restitution payments, compensatory fines, and other fines, costs, and assessments.

After accounting for the program's administrative expenses that are passed on to the General Fund, the remaining collections revenue is distributed by case type (i.e., criminal, civil, etc.) according to statute. Depending on the case type and obligation type (i.e., fines or restitution), balances remaining after statutory obligations and administrative costs are deducted are distributed to the state or to local governments.

Delinquent accounts move through a series of collection efforts as defined by each circuit court. In general, these steps include: circuit court late payments notices (up to one year); referral of an account by the circuit court to the Department of Revenue (DOR) for collection (up to one year); referral to a private collections firm (up to two years); and finally, a circuit court may refer an uncollected item to the Judicial Department's central staff for collection. The Department also works with DOR to intercept state tax refunds, including kicker checks.

Revenue Sources and Relationships

During the 2019-21 biennium, OJD will generate an estimated \$285.7 million in revenue from fines, assessments, forfeitures, filing fees, and individuals' contributions toward their public defense. Third party collection activities will account for approximately 28% of this revenue and most of the revenues collected will be transferred directly to either the General Fund, the Criminal Fine Account, or to cities and counties. This program is funded 100% by the General Fund.

Legislatively Adopted Budget

Generally, the budget and position authority for revenue management activities resides under the Trial Court, Administration and Central Support, and Appellate/Tax Courts budget structures. A separate General Fund appropriation is made, however, for payments to third-party debt collectors and for bank credit card charges. The appropriation funds payments to the Department of Revenue and private collection firms for fees that are paid as a percentage of the amount collected, plus bank fees and Treasury charges.

The Oregon Judicial Department projects third-party collection costs of \$19.2 million in 2019-21, a 6.1% increase over the prior biennium level. The collections on delinquent debt by the third-party debt collectors are forecast to total approximately \$80.3 million during the 2019-21 biennium.

State Court Facilities and Security Account

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
Other Funds	11,044,706	6,439,866	6,716,018	6,711,710
Total Funds	\$11,044,706	\$6,439,866	\$6,716,018	\$6,711,710
Positions	4	4	4	4
FTE	4.00	4.00	4.00	4.00

Program Description

In 2005, the Legislature established a State Court Facilities Security Account (SCFSA) within the Oregon Judicial Department (OJD). Revenue for the account is derived from moneys allocated from the Criminal Fine Account (CFA). By statute, account proceeds may be used to provide security in buildings that contain or are utilized by the Supreme Court, Court of Appeals, Oregon Tax Court, or the Office of the State Court Administrator (OSCA). Additionally, expenditures may be made for developing and implementing a plan for state court security improvement, emergency preparedness, business continuity, and statewide training on state court security.

In 2011, the Legislature expanded the use of the account to include the funding of capital improvements for court facilities and distribution of support to County Local Court Security Accounts. Counties fund security of their court facilities from a combination of monies in those accounts and other county revenue sources.

Revenue Sources and Relationships

The SCFSA is funded with CFA revenues. In the 2011-13 biennium, the account received an initial allocation of funding from the CFA of \$7.6 million. This included an allocation of \$2.9 million for state court security and \$4.7 million for local court security (formerly part of the county assessment and deposited directly into local court security accounts). The CFA allocation to the SCFSA increased to \$9.4 million in the 2013-15 biennium and to \$11 million in the 2015-17 biennium.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget of \$6.7 million is \$0.3 million (or 4.2%) above the prior biennium level. The budget is \$4,308 or 0.1% below the current service level, which is related to a statewide PERS rate adjustment. The SCFSA is expected to have an ending balance equal to approximately one month of expenditures.

Expenditures are entirely supported by two CFA allocations: one for OJD Security and Emergency Preparedness Office (\$3,784,490) and the other for Distributions to County Local Court Security Accounts (\$2,931,528).

External Pass-Throughs

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	16,042,390	15,840,390	15,196,725	28,995,492
Other Funds	11,900,000	11,900,000	11,900,000	--
Total Funds	\$27,942,390	\$27,740,390	\$27,096,725	\$28,995,492

Program Description

In the 2011-13 budget, General Fund was added to the OJD budget to support funding of county law libraries and law library services, and county mediation and conciliation programs. These programs had previously been funded through court fee revenue transfers. In addition, the External Pass-Through program includes General Fund appropriations passed through to fund the Council on Court Procedures and the Oregon Law Commission. In 2013-15, the Legislature added the transfer of court fee revenues (Other Funds) to the Oregon State Bar for the Legal Services Program (Legal Aid). For 2017-19, the Legislature also added a one-time pass-through to Clackamas County for a county courthouse construction project. In the 2019 legislative session, the Legislature changed the funding mechanism for Legal Aid, so going forward it will be handled as a direct General Fund appropriation rather than a transfer of court fee revenues.

Revenue Sources and Relationship

The External Pass-Through program is funded with General Fund. All funds are transferred by the Department to other entities.

Budget Environment

In 2011, the Legislature passed HB 2710, which simplified court fees and generally eliminated the dedication of court fee revenue to specific programs. Other than a 10% surcharge incorporated into most filing fees dedicated to the State Court Technology Fund, court fees are now directed to the General Fund. Two county programs that had been financed from dedicated fees – county law libraries and mediation/conciliation programs – plus the Oregon Law Commission and Council on Court Procedures, were provided equivalent General Fund after the dedicated fees were eliminated.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget of \$29 million is \$1.3 million (or 4.5%) above the prior biennium level and \$1.9 million General Fund (or 7.0%) above the current service level. The net change to the current service level, however, is the combined effect of reducing existing program funding by \$1.17 million General Fund while funding one new program with \$1.2 million General Fund.

This budget includes a General Fund budget reduction of \$458,000. It includes a shift of \$11.9 million from Other Funds to General Fund for the Legal Aid program, as well as an inflation adjustment of \$357,000 General Fund for Legal Aid. Finally, it includes \$2 million General Fund for a one-time grant to Benton County for planning costs associated with a project to replace the county's courthouse.

eCourt Program

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	1,626,080	2,956,358	2,432,622	3,432,622
Other Funds	16,519,224	--	19,480,865	19,378,850
Total Funds	\$18,145,304	\$2,956,358	\$21,913,487	\$22,811,472
Positions	38	--	30	30
FTE	22.24	--	30.00	30.00

Program Description

The Oregon eCourt Program provides funding for the Oregon Judicial Case Information Network (OJCIN), which is the Department's electronic case management system. Specifically, the program supports public access to OJCIN, technology support services, electronic case filing, system maintenance, and limited equipment replacement. In 2017, the Department completed a multi-year, \$91 million project to modernize the system. Since that time, focus has shifted from implementation of the new system to its support and ongoing maintenance, as well as accessibility for system users.

For the 2019-21 biennium, the State Court Technology Fund (SCTF) was transitioned from other parts of the budget into the eCourt Program. This is to consolidate related funding and provide improved budget transparency. Statute requires the SCTF be used to:

- Develop, maintain, and support state court electronic applications, services, and system
- Provide access to and use of those applications, services, and systems
- Provide electronic service and filing services

Revenue Sources and Relationships

The eCourt Program is funded with a combination of General Fund and Other Funds. The General Fund supports system maintenance and equipment and software replacement. Other Funds is comprised of filing fees, user fees, transaction fees, and an allocation from the Criminal Fine Account.

- Filing fees are statutorily required payments associated with case filing in Oregon courts. A portion of filing fee revenues (8.85%) is deposited into the SCTF. In the 2019-21 biennium, SCTF revenue is expected to be \$6 million.
- User fees are charges for electronic access through a subscription to court information by external users. While the public has free access to the electronic case register, a subscription allows remote access to case documents. For the 2019-21 biennium, user fee revenue is expected to be \$6.5 million.
- Transaction fees charged for online use of credit and debit cards are expected to generate \$0.5 million.
- The 2019-21 allocation from the Criminal Fines Account is \$3.9 million. In 2017, the Legislature increased presumptive fines by \$5 to support court technology costs.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget adds staff costs of \$19.5 million and 30 positions (30.00 FTE) to the program budget. The positions were previously budgeted in Administration and Central Support. The Legislature provided a total of \$3.4 million to address increased system maintenance and service agreement costs in 2019-21 comprised of \$1 million General Fund and \$2.4 million Other Funds; however, the revenue bill (HB 2241) intended to support the \$2.4 million Other Funds expenditure limitation did not pass.

Debt Service

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	18,508,519	17,871,089	30,968,960	27,383,694
Other Funds	--	--	--	1,300,000
Total Funds	\$18,508,519	\$17,871,089	\$30,968,960	\$28,683,694

Program Description

The Debt Service Program provides the funding to make payments on principal, interest, and financing costs associated with the issuance of certificates of participation (COPs) and general obligation Article XI-Q bonds. COPs are tax-exempt government securities previously issued for the Judicial Department which have been replaced with general obligation bonds authorized under Article XI-Q of the state Constitution. Debt service on both the COPs and the general obligation bonds is paid by General Fund. The costs of issuing the COPs or bonds is paid from the proceeds as Other Funds and are included in the Administration and Central Support program area.

Until the 2013-15 biennium, the Department’s debt service was related exclusively to the Oregon eCourt Program. Beginning in 2015-17, debt service for capital construction and for support of county courthouse capital projects funded through the Oregon Courthouse Capital Construction and Improvement Fund is also included in the Debt Service budget. Debt service related to the Oregon eCourt Program will be fully retired in Spring 2022.

Revenue Sources and Relationships

The Department’s debt service is currently funded with General Fund, although interest earnings on bond proceeds may be used, if available.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget includes \$27.4 million General Fund to pay debt service on debt previously issued to finance implementation of eCourt, a Supreme Court Building renovation project, and the Multnomah, Jefferson, and Lane County Courthouse replacement projects. This 53.2% increase from the prior biennium level results from bonds authorized in 2017-19 and sold in the Spring of 2019.

Although \$171.3 million of new Article XI-Q bonds are authorized in the 2019-21 biennium budget for OJD capital construction and county courthouse projects, no debt service costs need to be paid this biennium because the

bonds will not be issued until Spring 2021. Debt service costs on the new bonds are estimated to be approximately \$21 million General Fund in the 2021-23 biennium.

Oregon Courthouse Capital Construction and Improvement Fund

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
Other Funds	--	--	--	136,695,000
Total Funds	--	--	--	\$136,695,000

Program Description

A separate program area was established in the 2017-19 biennium budget for the Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF). OCCCIF expenditures in the two prior biennia are included in the Administration and Central Support program. The Legislature established the OCCCIF in 2013 to allow general obligation Article XI-Q bond proceeds to be used to construct and make improvements to county-owned courthouse facilities housing the state’s circuit courts. The OCCCIF receives a combination of both state bond proceeds and required county matching funds. The OCCCIF is available to replace courthouses that have significant structural defects that present threats to health and safety. Bond proceeds may pay up to one-half of allowable project costs if the facility provides space to other state agencies; otherwise, state funding cannot exceed one-quarter of allowable project costs. To date, all funded projects have qualified to receive one-half of allowable costs from bond proceeds.

As of the 2017-19 biennium, the OCCCIF has provided \$134 million of Article XI-Q bond proceeds for the Multnomah County Courthouse replacement project, \$6.5 million for a new Jefferson County Courthouse, and \$6.4 million for the Lane County Courthouse replacement project. An equal amount of county matching funds was authorized for each project. The support provided allowed completion of the Jefferson County project and will allow for completion of the Multnomah County Courthouse in 2020. The Lane County Courthouse project is expected to require a total of \$94.9 million of bond support.

Revenue Sources and Relationships

Other Funds are provided from proceeds from the sale of Article XI-Q general obligation bonds and required county matching funds. One-half of expenditures are financed by Article XI-Q bond proceeds and the other half is financed by county funds deposited into OCCCIF that are then available to pay project expenses.

Legislatively Adopted Budget

The 2019-21 biennium legislatively adopted budget totals \$136.7 million Other Funds for the OCCCIF, including \$68.4 million of Article XI-Q bond proceeds and \$68.3 million of county matching funds. Bonds are approved for the following projects, in the following amounts:

- Clackamas County Courthouse – \$31.9 million. This is the first bond sale for this project. An additional \$63 million is expected to be requested in subsequent biennia to complete the courthouse replacement project.
- Lane County Courthouse – \$88.5 million. This brings the total amount of state bond proceeds provided for this project to \$94.9 million.
- Linn County – \$16.2 million. This is a one-time request; however, it is anticipated there will be future expenses for fixtures, furniture, and equipment.

The bonds will not be issued until Spring 2021, and debt service costs will not be incurred in the 2019-21 biennium. Beginning in the 2021-23 biennium, however, debt service on the bonds is expected to total approximately \$16.5 million General Fund per biennium.

Capital Construction

	2015-17 Actual	2017-19 Legislatively Approved	2017-19 Current Service Level	2017-19 Legislatively Adopted
Other Funds	--	14,900,000	--	36,320,000
Total Funds	--	\$14,900,000	--	\$36,320,000

Program Description

This program provides for capital construction to existing state-owned facilities, or for state-owned furnishings and fixtures in county-owned facilities. The Department owns a single building, the Supreme Court Building, which was constructed in 1914 and is the oldest building on the Capital Mall. All other buildings used by the Judicial Department are either leased from private parties or are owned and maintained by the county. The Appellate Court Services Division, under the Administration and Central Support Program Areas, is responsible for the Supreme Court Building Service Section.

In 2008, the Department contracted with the private firm that was undertaking the State Court Facilities Assessment of 48 county-owned circuit court buildings to perform a similar assessment of the Supreme Court Building. This assessment reported an estimated total cost of \$19.2 million (excluding some additional items that the Department would likely add), for renovation of the Supreme Court Building. By 2013, OJD had re-estimated the cost to fully renovate and seismically retrofit the building at \$26.8 million.

(Note: Capital construction support for county-owned facilities is included in the Administration and Central Support [prior to the 2017-19 biennium], and Oregon Courthouse Capital Construction and Improvement Fund [beginning with the 2017-19 biennium] programs.)

Revenue Sources and Relationships

Other Funds are provided by proceeds of the sale of Article XI-Q general obligation bonds. In 2013-15, \$4.4 million of bond proceeds were provided for a deferred maintenance project at the Supreme Court Building. In 2019, an additional \$6 million in bonds was sold for the project for a total of \$10.4 million.

Legislatively Adopted Budget

The 2019-21 biennium budget includes \$36.3 million of Article XI-Q bond proceeds (Other Funds) for two capital construction projects. These include \$8.5 million for state-owned equipment and furnishings in the new Multnomah County Courthouse, and \$27.8 million to renovate and provide seismic updates for the Oregon Supreme Court Building. The Supreme Court Building restoration project is now forecast to require up to \$12 million in bond proceeds for the 2021-23 biennium. There are no debt service costs due on the Article XI-Q bonds issued for these projects during the 2019-21 biennium, but debt service costs are projected to total approximately \$4.5 million General Fund per biennium beginning in 2021-23.

COMMISSION ON JUDICIAL FITNESS AND DISABILITY

Analyst: Siebert

Agency Totals

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	434,708	252,710	258,880	274,890
Total Funds	\$434,708	\$252,710	\$258,880	\$274,890
Positions	1	1	1	1
FTE	0.50	0.50	0.50	0.50

Overview

The Commission on Judicial Fitness and Disability investigates and acts upon complaints of judicial misconduct or disability. The basis for a finding of misconduct is a violation of the Oregon Code of Judicial Conduct. The Commission does not have formally approved administrative rules but has rules of procedure.

Major updates to the Code of Judicial Conduct are reviewed by the Judicial Conference, which is comprised of all state court judges, and then approved by the Oregon Supreme Court. The Code of Judicial Conduct can also be updated by Chief Justice Order, as noted above. Thus, the Supreme Court is charged not only with promulgating the Code, but also with the review and approval of Commission recommendations.

The Commission has jurisdiction over the following categories of judges: justices of the peace, circuit court judges, appellate court judges, temporary or pro-tem judges, senior or "Plan B" semi-retired judges, judicial referees, and the Tax Court judge. In total, the Commission's current jurisdiction extends to approximately 400 Oregon judges. The Commission does not have jurisdiction over municipal court judges, arbitrators, or administrative law judges.

The nine-member Commission is comprised of three judges, three lawyers, and three members of the public. The executive director of the Commission is also an attorney in private practice. The Commission is co-located within the executive director's private law office. Commission members, as well as the executive director, recuse themselves when they have personal involvement or prejudice regarding a complaint or complainant. By statute, the Commission's initial complaint proceedings and records are confidential until such time as a public hearing is held on a formal charge. Also, the Commission considers all its proceedings non-public, including those pertaining to administrative matters.

The Commission reviews approximately 105 to 160 written complaints each year. A significant number of the complaints involve the legal determination of a judge, and after initial review by the Commission, are dismissed because they fall outside the Commission's statutory authority to investigate judicial misconduct. Those complaints that are within its statutory authority are initially investigated. If there is sufficient evidence in support of a complaint, a formal investigation is conducted by outside counsel hired by the Commission. The outcome of the investigation could lead to the dismissal of a complaint, an informal disposition by the Commission, or a formal charge leading to prosecution. For a formal charge, a public hearing is held, the outcome of which is either the judge's exoneration or a recommendation by the Commission to the state's Supreme Court to censure, suspend, or remove the subject judge. The Supreme Court's determination on the Commission's recommendation is a final decision but may be appealed to the U.S. Supreme Court. At any point in the process, a judge may resign, retire, or enter into a stipulated agreement with the Commission by agreeing to the recommended sanction. All stipulated agreements must be approved by the Supreme Court. In a matter where a judge's conduct is determined to be the result of a physical or mental disability, the Commission generally refers the matter directly to the Chief Justice for disposition.

Revenue Sources and Relationships

The Commission's budget is supported by General Fund. The Commission's statutory authority does not allow for the imposition of civil penalties or the recovery of extraordinary costs from judges sanctioned by the Supreme Court. The Commission relies upon in-kind support from the Oregon Judicial Department for financial and limited support services as discussed below.

Budget Environment

The Commission budgets for normal and extraordinary expenditures. The normal operating budget pays for a half-time executive director, office rental and supplies, meeting accommodations, travel reimbursements, and initial investigations. The Commission does not have budgeted resources for budget, accounting, and website services. These activities are undertaken for the Commission by the Oregon Judicial Department (OJD). OJD assists the Commission in the technical development of its budget, Emergency Board actions, and related accounting transactions. The services provided by OJD are done without financial remuneration.

Formal investigations and prosecutions are classified as an extraordinary expense of the Commission, since it has no control over the number of valid complaints or their cost. Extraordinary expenses may include: private attorney fees for investigations and trial, court reporter services, meeting space rental, executive director and board member travel expense for formal hearings, and miscellaneous expenses. The Legislature historically has provided the Commission with a small approved budget for extraordinary expense with the understanding that the Commission may return to the Emergency Board or the Legislature if extraordinary expenses exceed the available budget. In the 2015-17 biennium the Legislature added \$224,752 General Fund for extraordinary expenses related to two cases.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget of \$274,890 General Fund is \$22,180 (or 8.8%) above the prior biennium funding level and is \$16,010 (or 6.2%) above the current service level due primarily to increases in Services and Supplies. Of the 2019-21 total, \$255,899 is appropriated for administration (i.e., normal expenses), and \$18,991 is appropriated for extraordinary expenses. The budget includes one position (0.50 FTE). Funding was increased by \$16,000 from the current service level to pay for compensation adjustments made at the end of the 2017-19 biennium and to pay for additional administrative staff time to support the work of the Commission.

PUBLIC DEFENSE SERVICES COMMISSION

Analyst: Jolivette

Agency Totals

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	285,082,822	305,425,556	344,173,541	342,319,238
Other Funds	3,234,718	4,967,943	4,170,527	4,039,068
Total Funds	\$288,317,540	\$310,393,499	\$348,344,068	\$346,358,306
Positions	77	77	76	81
FTE	76.23	76.23	75.80	80.80

Overview

The Public Defense Services Commission (PDSC) was established as an independent state agency in 2001. The agency combined the state Public Defender, which provided appellate representation, with the trial court representation function, which had been a division within the Oregon Judicial Department since the early 1980s. Prior to the early 1980s, trial level public defense, as well as Oregon trial courts, was a local government responsibility.

The Commission is comprised of seven members appointed by the Chief Justice of the Oregon Supreme Court, who also serves on the Commission as an ex-officio member. The Commission holds public meetings across the state approximately once every quarter. The agency is overseen by an executive director, appointed by the Commission. By statute, the Commission is to “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.”

The Commission is organized into three divisions:

- Appellate Division – \$22.6 million, 56.80 FTE. Consists of public defense attorneys who represent eligible persons at the appellate court level and support staff. The Appellate Division is responsible for providing appellate representation on criminal matters, juvenile dependency and termination of parental rights cases, and parole cases. This is accomplished primarily through the use of staff attorneys. The Division is the state counterpart to the Oregon Attorney General’s Appellate Division.
- Professional Services Account – \$315.7 million, 0.00 FTE. Contains the funding for contract defense services, including attorneys, investigators, and expert witnesses, primarily at the trial court level.
- Contract and Business Services Division – \$8.1 million, 24.00 FTE. Responsible for administering the public defense contracts that provide legal representation for eligible persons, processing requests and payments for non-contract fees and expenses, and the budget and other financial activities of the Commission.

Eligible persons are entitled to adequate legal representation in court, at state expense, under provisions of the Oregon and federal constitutions and Oregon statutes. Public defense representation is not limited to criminal cases. Other statutory and constitutional provisions include: the right to appointed counsel in court proceedings involving life, liberty, and property, including habeas corpus; post-conviction relief; contempt; juvenile dependency, delinquency, and termination of parental rights; civil commitments for the mentally ill or developmentally disabled; and parole and probation violation proceedings. The U.S. Supreme Court has held that the right to appointed counsel includes related costs such as expert witnesses and investigation expense.

Oregon statutes broadly define who is financially eligible for public defense. Each applicant for state-paid representation is required to provide a verified financial statement detailing income, assets, debts, and dependents. This process is administered by Verification Specialists employed by the Oregon Judicial Department. Verification Specialists assist judges in their decision whether to appoint state-paid counsel. A person is presumed

eligible for services if the applicant’s income is less than or equal to the eligibility level for the federal food stamp program (130% of the federal poverty level), unless the applicant has liquid assets that could be used to hire an attorney. If an applicant’s income exceeds food stamp standards, the applicant is eligible for state-paid counsel only if the applicant’s income and liquid assets are determined to be insufficient to hire an attorney suitable for the type of case pending against the applicant.

Public defense at the trial court level is accomplished primarily through a state-funded and -administered competitive contracting system that operates on a two-year cycle (January to December). The Commission contracts with approximately 98 nonprofit public defender offices, private law firms, consortia of attorneys or law firms, or individual attorneys. Legal representation on criminal matters for eligible persons at the appellate court level is primarily handled by attorneys who are employees of the Commission.

“Non-routine” expenses which are primarily for investigators, but also for forensic and medical services or experts, are typically paid directly by the Commission after a court-appointed attorney receives pre-approval. The Commission has approximately ten contracts with non-attorney providers, including one with a private forensics laboratory. Some public defender contracts, however, do include a provision for investigators.

Budget Environment

- Caseloads – The state has a constitutional obligation to provide counsel for eligible persons and to provide for timely adjudication. If insufficient funding for public defense results in violation of these constitutional provisions, the court must dismiss the case and release the person. The Commission has no legal authority to control the number of public defense cases it receives, nor any authority to prioritize case-types. In the absence of any prioritization and adequate public defense funding, the courts would need to dismiss cases.

The number of cases is affected by numerous factors, including crime rates and demographic factors, such as population size and age distribution. The state of the economy also affects the number of people who are financially eligible for public defense services and it may affect funding levels for public safety and judicial services. When, for example, law enforcement is reduced or expanded as a result of economic conditions, the number of arrests and prosecutions can change. Trial-level caseloads (excluding death penalty cases) increased substantially in the 1990s and into the 2003-04 fiscal year. Between the 1993-94 and 2003-04, annual caseload count increased from 108,963 to 170,902 – a 57% increase. Since 2003-04, caseload counts have fluctuated from year to year but remained relatively flat overall, coming in between 170,000 and 180,000 cases per year. The 2017-18 caseload count of 175,996 was up about 3.0% over the 2003-04 count.

Trial-Level Non-Death Penalty Public Defense Caseloads	Caseload	Change
Fiscal Year 2003-04	170,902	16.3%
Fiscal Year 2004-05	171,850	0.6%
Fiscal Year 2005-06	179,058	4.2%
Fiscal Year 2006-07	178,002	-0.6%
Fiscal Year 2007-08	170,288	-4.3%
Fiscal Year 2008-09	169,795	-0.3%
Fiscal Year 2009-10	172,480	1.6%
Fiscal Year 2010-11	170,381	-1.2%
Fiscal Year 2011-12	172,357	1.2%
Fiscal Year 2012-13	170,084	-1.3%
Fiscal Year 2013-14	170,482	0.2%
Fiscal Year 2014-15	170,957	0.3%
Fiscal Year 2015-16	173,890	1.7%
Fiscal Year 2016-17	175,450	0.9%
Fiscal Year 2017-18	175,996	0.3%

Finally, law changes affecting crimes and how crimes are categorized will affect both the number of cases and the cost of providing public defense. The average cost to PDSC of criminal cases, for example, varies from \$429 for a misdemeanor to \$4,705 for a Measure 11 felony. Death penalty cases are particularly costly and require expenditures over multiple years. Costs related to death penalty cases were estimated to total \$29.9 million in the 2017-19 biennium and are forecast to total \$30.1 million in 2019-21.

- Compensation and Workload – The quality of legal representation for eligible persons is dependent upon many factors, including the experience and workload level of the public defender. As such, important budget issues often relate to the recruitment and retention of qualified attorneys and investigators, and to keeping workloads at manageable levels. PDSC undertakes public defense delivery system reviews and investigations in cooperation with local public defense contractors, Circuit Court Judges, District Attorneys, and other local justice system representatives, and prepares service delivery plans for each judicial district or county. These plans help promote cost-effective delivery systems unique to each locale that incorporate best practices from around the state. PDSC routinely performs quality assurance assessments of providers in each judicial district.

The Commission sets guideline rates administratively, based upon available resources, to pay nonprofit public defenders, law firms, consortia of attorneys, or individual attorneys for their services. Rates the Commission pays directly and salaries nonprofit public defenders pay are generally below the rates paid to privately-paid defense attorneys, investigators, and expert witnesses; to deputy district attorneys; and to federal public defenders. This impacts the ability to recruit and retain qualified professionals in the public defense system.

Payment rates remain lower than for professionals in private practice or for prosecuting attorneys. According to a 2012 report from the Oregon State Bar, attorneys in public defense organizations are, on average, paid approximately 27% less than their district attorney counterparts, with the percentage varying greatly. Organizations have had to accept more cases in order to maintain funding levels necessary for operations. This has led to attorney caseloads that exceed national standards.

Salary levels for the Commission's own attorneys in the Appellate Division show a similar situation. PDSC attorneys are compensated less than other state attorneys, for example those in the Department of Justice. Compensation parity remains an issue and continues to impact the Commission's operations as more experienced defenders are able to move to higher paying jobs within the legal community.

Revenue Sources and Relationships

General Fund finances 98.8% of the PDSC budget, with the remaining 1.2% financed by Other Funds. The sole source of Other Funds is revenue from the Application/Contribution Program (ACP). Applicants for state-appointed counsel pay a \$20 application fee unless the fee is waived for financial hardship reasons. In addition, the court may find that individuals are able to pay a contribution toward their defense costs. Revenue from these application fees and contributions is projected to total \$4.8 million in the 2019-21 biennium. These revenues are dedicated to support of the public defense system.

PDSC will transfer \$3.9 million of ACP revenues back to the Judicial Department to support program Verification Specialist positions in the courts. PDSC, however, supports compensation of 3.00 FTE positions in the Contract and Business Services Division with the ACP revenue it retains. ACP cash balances above reserve requirements have also been used to augment Professional Services Account expenditures.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget of \$346.4 million is \$35.9 million (or 11.6%) above the prior biennium. This includes a \$3.3 million, or 17.4%, General Fund increase for the Appellate Division; a \$31.6 million, or 11.2%, General Fund increase for the Professional Services Account; and, a \$1.9 million, or 37%, General Fund increase for the Contract and Business Services Division. There is an increase of 4 positions (4.57 FTE) compared to the 2017-19 legislatively approved budget.

Appellate Division

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	15,438,639	19,207,111	22,034,633	22,553,674
Total Funds	\$15,438,639	\$19,207,111	\$22,034,633	\$22,553,674
Positions	58	58	57	57
FTE	57.23	57.23	56.80	56.80

Program Description

The Appellate Division is responsible for providing legal representation for eligible persons on criminal matters, and for parents in juvenile dependency and termination of parental rights cases at the appellate court level. The Division also represents inmates requesting judicial review of Board of Parole and Post-Prison Supervision decisions. These services are primarily provided through the use of staff attorneys. The Division is the defense counterpart to the Oregon Department of Justice's Appellate Division. Representation is primarily in the Oregon Court of Appeals and the Oregon Supreme Court, although the Division occasionally appears in the U.S. Supreme Court. The Juvenile Appellate Section in the Division handles dependency and termination of parental rights cases appealed to the Oregon Court of Appeals. The section also serves as a resource for trial-level counsel.

Revenue Sources and Relationships

The Appellate Division is fully supported by General Fund.

Budget Environment

The Appellate Division's workload is driven by the number of criminal and parole appeals, and the legal complexity of the appealed cases. Statutory changes, ballot initiatives, and United States and Oregon appellate court decisions also affect the number of appeals that are filed.

The Appellate Division caseload fluctuates from one biennium to the next, with no clear trend being observed. The number of cases assigned to its attorneys fell from 4,042 in the 2005-07 biennium to 3,744 in the 2007-09 biennium, then increased back to 4,226 in the 2009-11 biennium. The 2011-13 biennium budget added 7 division positions to reduce attorney caseloads. Caseload totals fell to 3,600 cases in the 2011-13 biennium and to 3,767 cases in 2015-17. 2017-19 biennium caseloads were projected to total approximately 3,800. At this rate, the average caseload level for the Commission's appellate attorneys is approximately 48 case assignments per year. Some states, including Washington, have established a maximum appellate caseload of 25 cases per attorney; Nebraska sets the maximum at 40 per year.

Comparing maximum salaries, Appellate Division attorneys are paid 2% to 32% less than their Department of Justice counterparts. This disparity affects attorney recruitment and retention and can affect timeliness and effectiveness of services. PDSC, which establishes the compensation plan for agency employees, increased Appellate Division attorney salaries effective January 1, 2015, and again on January 1, 2017. The agency did not request additional General Fund to pay 2015-17 biennium costs associated with the salary increases. Costs of the 2017 salary increases totaled approximately \$792,000 in the 2017-19 biennium.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget of \$22.6 million is \$3.3 million (or 17.4%) above the prior biennium level and is 2.4% above the current service level. Two budget adjustments were included in the budget:

- Appellate Division Employee Compensation – \$603,237 General Fund was added to address compensation parity between Appellate Division attorneys and Department of Justice attorneys.
- Standard Statewide Adjustments – \$84,196 General Fund was removed for the program's portion of standard statewide adjustments for state government service charges and Attorney General charges.

Professional Services Account

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	265,642,630	280,941,239	316,304,337	312,520,622
Other Funds	2,684,455	4,244,845	3,328,276	3,200,000
Total Funds	\$268,327,085	\$285,186,084	\$319,632,613	\$315,720,622

Program Description

The Professional Services Account (PSA) pays the cost of legal representation for eligible defendants in criminal matters, and for persons who are entitled to state-paid legal representation if they are financially eligible and are facing involuntary civil commitment proceedings; contempt; probation violation; juvenile court matters involving allegations of delinquency and child abuse or neglect, including termination of parental rights; and other limited civil proceedings. The Constitutions of both the United States and Oregon guarantee the right to legal representation, at state expense, to financially eligible persons facing criminal prosecutions. The program is also responsible for the cost of transcripts and appellate legal representation for cases not represented by the Appellate Division.

The PSA funds public defense primarily at the trial court level for eligible defendants. Trial-level caseloads, excluding death penalty cases, increased substantially in the 1990s and into the 2003-04 fiscal year. Between the 1993-94 and 2003-04 fiscal years, annual caseload counts increased from 108,963 to 170,902 – a 57% increase. Since 2003-04, caseload counts have fluctuated from year to year but remained relatively flat overall, coming in between 170,000 and 180,000 cases per year. The 2017-18 caseload count of 173,890 was up approximately 3% over the 2003-04 count.

The largest category of case type is Misdemeanors and Misdemeanor Probation Violations, which represents 36% of total trial-level, non-death penalty caseload. This is followed by Dependency and Juvenile Delinquency at 34%; Felonies and Felony Probation Violations at 30%; and all others at less than 1%. Costs for the different case types vary substantially, with felony cases being especially expensive. As a result, the distribution of costs for the same categories listed above is much different than the distribution of the number of cases: Dependency and Juvenile Delinquency comprises only 11% of total trial-level, non-death penalty costs; Felonies and Felony Probation Violations, 56% of total costs; Misdemeanors and Misdemeanor Probation Violations, 28% of total costs; and all other, 5% of total costs.

Revenue Sources and Relationships

The General Fund has historically supported almost all of the program. Other Funds are from the Application/Contribution Program and are used to help support public defense expenditures. Most of the Other Funds expenditures in the program are transfers to the Judicial Department to support public defense eligibility verification services in the courts.

Budget Environment

Although many factors affect caseload levels, including the state of the economy and state budget, caseload levels have remained relatively stable in recent biennia. Instead, concerns over compensation rates for public defenders, and their workload levels, have been prominent. Compensation paid directly by the Commission to attorneys, investigators, and expert witnesses, and compensation paid by public defender organizations that are funded by the Commission, are below the levels available for district attorneys and privately-paid defense attorneys. This negatively affects the ability to recruit and retain employees in the public defense system. The impact of high caseload levels on public defense services has also been a concern. The caseload levels are especially high for attorneys that deal in Juvenile Dependency cases. Recently, caseload counts for the more expensive case types have been growing, putting additional strain on the budget.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget of \$315.7 million is \$30.5 million (or 10.7%) above the prior biennium level, but is 1.2% below the current service level.

Funding enhancements and reductions include:

- Current Service Level Adjustment – \$28.5 million General Fund was added for inflation and caseload, including \$11.5 million for services and supplies inflation, \$5.5 million for PDSC contractor personal services inflation, and \$11.5 million for caseload.
- Parent Child Representation Program – \$3.2 million General Fund was added to expand the Parent Child Representation Program to Multnomah County effective July 1, 2020. Multnomah will be the sixth county in which the program is being implemented. The program is currently offered in Columbia, Coos, Lincoln, Linn, and Yamhill counties.
- Professional Services Account Funding Reductions – \$7 million General Fund was removed from the budget to help balance the statewide General Fund budget within available resources. This reduction represents about 40% of the funding added in the 2019-21 budget for inflation.

Additionally, the Legislature approved a special purpose appropriation in the amount of \$20 million to address caseload and contract model concerns raised in a recent evaluation of indigent defense contracting by the agency. Specifically, the Legislature directed the agency to implement an improved contract model that is not based on a flat-fee per case and implement strategies aimed at reducing public defender caseloads at the trial court level.

Contract and Business Services Division

	2015-17 Actual	2017-19 Legislatively Approved	2019-21 Current Service Level	2019-21 Legislatively Adopted
General Fund	4,001,553	5,277,206	5,834,571	7,244,942
Other Funds	550,263	723,098	842,251	839,068
Total Funds	\$4,551,816	\$6,000,304	\$6,676,822	\$8,084,010
Positions	19	19	19	24
FTE	19.00	19.00	19.00	24.00

Program Description

The Contract and Business Services Division (CBS) is responsible for administering the public defense contracts that provide legal representation for financially eligible persons, and for processing requests and payments for non-contract fees and expenses. The Division also houses the administrative functions of the Juvenile Dependency Improvement Program (a.k.a., the Parent Child Representation Program), a program established in the 2013-15 biennium that operates pilot programs in Yamhill, Linn, Coos, Lincoln, and Columbia counties to expand representation services in juvenile dependency cases.

Revenue Sources and Relationships

The program is mostly supported by the General Fund, with a small portion of Other Funds support. The agency is budgeted to receive approximately \$4.8 million Other Funds during the 2019-21 biennium from an application fee of \$20 and a contribution amount that is paid by persons seeking representation at state expense. The fees are used to offset the General Fund cost of public defense eligibility verification staff in the Judicial Department (22.70 FTE) and for operating expenses for public defense administration (3.00 FTE). The Commission entered into an intergovernmental agreement with the Judicial Department regarding use of these fees for public defense verification staffing.

The estimated ending balance in the Application Contribution Program Account for the 2019-21 biennium is \$22,608, which is less than one month of reserves.

Budget Environment

This program administers approximately 98 contracts in all 36 counties, and receives and verifies invoices for payment on contractual services. The program also reviews over 19,000 requests per year for non-routine expenses, such as investigations. The administrative expense of the Commission, as represented by this Division, is 1.7% of the agency's budget.

The program works with public defense contractors on the development and use of best management and business practices, and also receives and investigates complaints regarding concerns over the quality of legal representation and the appropriate expenditure of public defense funds. The fiscal administration and oversight of the \$315.7 million Professional Services Account and the other expenditures of the Commission are essential functions of this program, as is the role of the program to minimize administrative costs of public defender organizations through review of management and operational processes and procedures. Less fiduciary oversight of the Account could translate into added and inappropriate expenses charged to the Account.

Legislatively Adopted Budget

The 2019-21 legislatively adopted budget of \$8.1 million is \$2.1 million (or 34.7%) above the prior biennium level and is 21.1% above the current service level. The following budget adjustments were made:

- New Office Space – \$322,000 General Fund to lease an additional 6,500 square feet of office space in Salem.
- Financial Management – \$300,000 General Fund for IT contract services related to replacement of the existing outdated financial management system, and a \$263,810 General Fund increase to support two limited-duration Accounting Technician positions to improve payment processing timelines.
- Quality Assurance Activities – \$261,678 General Fund and two positions (2.00 FTE) to improve quality assurance activities by the agency. The Legislature directed the Commission to work collaboratively with the Oregon Judicial Department and other stakeholders to identify and begin to implement system changes to improve oversight of public defense services contracts, specifically for indigent defense.
- Standard Statewide Adjustments – \$20,832 General Fund and \$3,158 Other Funds was removed for the program's portion of standard statewide adjustments for state service charges and attorney general charges.

The Legislature approved a \$2 million special purpose appropriation to the Emergency Fund for acquisition of a new financial/case management system and directed the agency to follow the Stage Gate review process.

