

# JUDICIAL BRANCH

<b>Council on Court Procedures - Agency Totals .....</b>	<b>470</b>
<b>Judicial Department (OJD) - Agency Totals .....</b>	<b>472</b>
OJD - Appellate and Tax Courts .....	474
OJD - Administration and Central Support .....	474
OJD - Trial Court Operations .....	475
OJD - Mandated Payments .....	476
<b>Commission on Judicial Fitness and Disability - Agency Totals .....</b>	<b>478</b>
<b>Public Defense Services Commission (PDSC) - Agency Totals .....</b>	<b>479</b>
PDSC - Legal Services Division .....	480
PDSC - Public Defense Services Account .....	481
PDSC - Contract and Business Services Division .....	482

## Council on Court Procedures – Agency Totals

	2001-03 Actual	2003-05 Legislatively Approved	2005-07 Judicial Branch's Recommended *	2005-07 Legislatively Adopted
General Fund	79,612	0	101,671	10,000
Other Funds	8,000	8,000	8,000	8,000
<b>Total Funds</b>	<b>\$87,612</b>	<b>\$8,000</b>	<b>\$109,671</b>	<b>\$18,000</b>
Positions	2	0	2	0
FTE	0.71	0.00	0.71	0.00

\* Technically, the Governor's recommended budget restores General Fund support for the Council. However, the policy intent of the Governor was to make "no recommendation for this budget, as it is a separate branch of government," thereby not supporting restoration of Council funding.

### Agency Overview

The Council on Court Procedures (CCP) is responsible for reviewing and amending the Oregon Rules of Civil Procedure (ORCP). The ORCP are the rules of procedure which govern civil proceedings in all civil courts of the state. The rules govern trial procedure, instructions to the jury, pleading, subpoenas, summons and jurisdiction and other rules that do not alter the substantive rights of a litigant. Rules of evidence and appellate court procedure are not included as part of the ORCP. Council adopted rule changes are presented to the Legislature at the beginning of each session. Rule changes via legislative measures may also be proposed by entities, agencies, or individuals other than the Council. By statute, the Legislature may amend, repeal, or supplement any ORCP rule. Legislatively adopted rule changes become effective on January 1 of the following even numbered year unless an earlier effective date is stipulated. Once approved, the ORCP carry the weight of Oregon law.

The Council itself is comprised of 23 members: one Supreme Court Justice; one Court of Appeals judge; eight circuit court judges; 12 attorneys; and one member of the public. Oregon State Bar appointed members are from geographically different parts of the state and areas of civil practice. The Council meets three to four hours a month, or approximately 12 days each interim.

### Revenue Sources and Relationships

Prior to the 2003-05 biennium, the Council was funded predominately with General Fund. However, due to a statewide budget shortfall, all General Fund support for the Council was eliminated. Since 1993, the Oregon State Bar Association (OSB) has provided \$8,000 biennially in Other Funds revenue to support Council members' travel. Additionally, the Council has relied upon in-kind support from the OSB, the University of Oregon Law School, and the Oregon Judicial Department (OJD). The OSB provided meeting facilities and telephonic services. The Law School provided for one part-time office support staff, office workspace, office expenses, and allowed the Council's current executive director, who is also a faculty member at the UO Law School, to volunteer his services. OJD provided financial and budgetary support as well as paid judiciary members travel expense.

### Budget Environment

For the 2005-2007 biennium the Legislature chose to reinstate General Fund support for the Council. To operate effectively the Council will need to continue to rely upon the financial support of the OSB as well as other in-kind support. The UO Law School has stated that it is no longer able to continue in-kind support indefinitely. The UO decision lead the Council to enter into a letter of understanding with the privately funded Lewis and Clark Law School (LCLS). LCLS will provide, in-kind, a part-time executive director, office space, and minimal services and supplies for Council operations. The current UO executive director has volunteered to assist in the transition, which is expected to be completed prior to the end of the biennium. Council documents and equipment will move to LCLS by October 1, 2005.

Legislative concerns over the Council's future, and its transition to a privately funded institution, led to the adoption of the following budget note:

Legislative Leadership will appoint a work group to evaluate the role, function, and composition of the Council on Court Procedures. The workgroup will specifically address the Council's continuation as an independent state agency. The workgroup shall complete its work and make a formal report to the Interim Committee on Judiciary by September 2006. Upon receipt of the report, the Committee on

Judiciary shall consider the workgroup's recommendations when determining whether to propose any necessary substantive legislation change to the Council's statutes for the 2007 Legislative Session.

The work group shall be comprised of the following representatives:

- At least one member of the Interim Committee on Judiciary who will serve as chair of the workgroup
- Judiciary Committee Counsel
- Legislative Counsel
- Legislative Fiscal Office

The workgroup may also include representatives of the following, who will serve as ex officio members:

- Council on Court Procedures
- Oregon Judicial Department
- Oregon State Bar
- Oregon Law Commission

### **Legislatively Adopted Budget**

The legislatively adopted budget of \$10,000 General Fund and \$8,000 Other Funds represents a \$91,671 or 83.59% reduction from the Governor's recommended budget. The budget does not allow for any position authority. General Fund is for services and supplies and is to be used to complete the requirements of the budget note as well as provide for a nominal level of operating expense including the transition to the LCLS. As noted, the source of the Other Funds is the OSB and is related to reimbursement of Council member travel expense. State government service charges for the Council collected by the Department of Administrative Services are to be waived for the second biennium in a row. OJD will continue to provide, in-kind, financial and budgetary support for the Council.

**Judicial Department (OJD) – Agency Totals \***

	<b>2001-03 Actual</b>	<b>2003-05 Legislatively Approved</b>	<b>2005-07 Governor's Recommended</b>	<b>2005-07 Legislatively Adopted</b>
General Fund	222,154,156	237,654,982	249,762,817	271,530,503
Other Funds	17,424,895	30,775,154	23,510,763	23,641,495
Federal Funds	1,189,291	2,333,247	892,247	1,390,110
Other Funds (NL)	0	5,949,864	8,220,055	8,220,055
<b>Total Funds</b>	<b>\$240,768,342</b>	<b>\$276,713,247</b>	<b>\$282,385,882</b>	<b>\$304,782,163</b>
Positions	1,992	2,023	2,079	2,029
FTE	1,778.79	1,841.73	1,888.96	1,851.25

\* The Public Defense program is responsible for providing legal counsel to indigent persons at the trial court level. This program, which was part of the Judicial Department, was transferred to the Public Defense Services Commission on July 1, 2003. In order to accurately reflect changes to the Judicial Department budget over time, the table above excludes all public defense expenditures, including administrative and support services.

**Agency Overview**

The Oregon Judicial Department includes:

- *Appellate Courts*, which are the Supreme Court, Court of Appeals, Tax Court, and legal support cost.
- *Administration and Central Support*, that includes the Office of the State Court Administrator, information systems management, and fiscal and human resources management, and centralized state agency assessments.
- *Trial Courts*, which are the courts of general jurisdiction. District courts were abolished effective January 15, 1998 and circuit courts assumed jurisdiction for all state trial court functions.
- *Mandated Payments*, that includes the cost of providing trial and grand jurors, court interpreters, civil appellate transcript costs for indigent persons, and Americans with Disabilities Act accommodation services.

**Revenue Sources and Relationships**

The 2003 Legislature, in HB 2759, created a temporary 30% surcharge on filing fees for the circuit and appellate courts; established the Judicial Department Operating Account and continuously appropriated funds in the Account to the Department for operating expenses; established and increased various court fees; increased the maximum fines for felonies, misdemeanors, and violations; increased the unitary assessment; and increased the base fine and reduced judicial discretion to waive the base fee. The 30% surcharge provided \$6.6 million in revenue that was used to offset General Fund operating expenses.

The 2005 Legislature, in HB 3124, delayed the effective date of the base filing fee increase authorized in HB 2759 (2003) from July 1, 2005 to January 1, 2007, and extended the temporary fees or surcharges that were originally to sunset on June 30, 2005 to December 31, 2006. The Legislature approved a fund shift that restored the \$6.6 million General Fund, and offset those costs with the revenues from HB 3124. The 2005 Legislature, in HB 3124, delayed the effective date of the base filing fee increase authorized in HB 2759 (2003) from July 1, 2005 to January 1, 2007, and extended the temporary fees or surcharges that were originally to sunset on June 30, 2005 to December 31, 2006. The revenues will be deposited into the state General Fund instead of into the OJD Operating Account.

According to the end of session revenue forecast, OJD is expected to generate \$221.3 million in revenue for the biennium from fines, assessments, forfeitures, filing fees, and indigent defense partial payments. OJD will retain approximately 8% of these revenues to fund revenue administration and collection costs, including credit card fees and amounts paid to the Department of Revenue and private collection agencies for collection of delinquent debt. Compensatory fines and restitution 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 2005-07 operating Other Funds revenue include the sale and distribution of court publications (\$1.7 million); fees charged for public access to the Oregon Judicial Information Network (\$2.1 million); State Law Library fees (\$1.5 million); fees charged for the interpreter and shorthand reporter certification programs (\$0.3 million); fees collected in the Application Contribution Program (\$2.3 million); grants from the Department of Human Services for the Citizen Review Board (\$0.7 million); and various grants from other state agencies

(\$0.3 million). Federal Funds of \$0.9 million support assessments of state foster care and adoption laws and judicial processes (\$0.4 million) and the drug court in Benton county (\$0.5 million).

The Department projected an Other Funds ending balance of \$2.3 million, which is used to ensure that cash is available to make payment obligations in a timely manner.

### **Budget Environment**

The temporary graduated income tax assessments adopted by the 2003 Legislature as part of HB 2152 were rescinded by the vote on Ballot Measure 30. As a result, \$13,015,940 (which is the agency share of \$544.6 million) was disappropriated from Judicial Department operations. The Chief Justice managed this reduction primarily by delays in filling vacant positions.

The Governor's 2005-07 budget had an unspecified reduction of \$64,253,489 to the Chief Justice's Recommended Budget. The Governor makes no recommendation on the services affected by proposed reductions to Judicial Branch budgets. The Governor's budget was an unspecified reduction of \$24.7 million General Fund to the budget level required to maintain current operations and pay jurors. The budget did not restore the Ballot Measure 30 reduction of \$13 million or the \$6.6 million General Fund restoration that would be required to maintain current services after 30% filing fee surcharge, that had been approved in HB 2759 (2003) sunset on July 1, 2005. The budget did include the reduction in Other Funds that would occur when the filing fee surcharge sunset. In addition to the specific effects of the Governor's reduction, there was an additional \$5,031,278 in unspecified reductions.

The 2005 Legislature determined that without a restoration of the Governor's budget reductions, the Judicial Department would have implemented a case processing priority plan, similar to the plan enacted by Chief Justice order during the 2001-03 and 2003-05 biennia. This would have delayed processing civil matters, including small claims cases, delayed adjudicating non-person misdemeanors, and could have affected state revenue if delays resulted in the inability to collect fines, costs, and assessments from misdemeanor and violation cases. The Legislature provided \$19 million General Fund to restore the Ballot Measure 30 reductions and \$6 million of the \$6.6 million to replace filing fee surcharge revenue.

The 2005 Legislature enacted several other measures with budgetary impact, including:

- A methamphetamine package that included \$942,679 General Fund and 9 positions (7.75 FTE) for drug court operations. The drug courts had previously been funded with grant funds, which would have expired during the 2005-07 biennium.
- Establishment of 4 new judgeships with support staff. The 2005-07 cost is \$722,00 General Fund and 16 positions (4.00 FTE). The full operating cost for these new judgeships will be \$2.4 million in the 2007-09 biennium.
- Established a State Court Facilities Security Account funded with a surcharge on county court assessments, and added 1 position and \$139,671 Other Funds to manage the program.
- A technical adjustment of \$800,000 that shifted alternative dispute resolution funding from a filing fee surcharge back to the General Fund. The fund shift to Other Funds occurred in the 2003-05 biennium as part of the dispute resolution program adjustment made by the 2003 Legislature.

### **Legislatively Adopted Budget**

The 2005 Legislature funded the Judicial Department at \$3.9 million below the Chief Justice Maintenance Level budget. The budget included standard adjustments for employee compensation, inflation, state government service charges and roll up costs for legislative changes. The Legislature approved a budget of \$304.8 million and 2,029 positions (1,851.25 FTE) for the Department. This was an increase of \$28.1 million (10.1%) above the 2003-05 legislatively approved budget. This included a restoration of \$19 million General Fund, that included the \$13 million Ballot Measure 30 cut and the fund shift of \$6 million, as discussed above.

The Legislature also approved \$2.5 million General Fund for the policy bills detailed in the previous section. The remaining adjustments included reductions to state government and Attorney General rates. The 2005 Legislature allowed the Judicial Department to retain savings from the reduction in the Public Employee Retirement System (PERS) rate and did not reduce the General Fund services and supplies budget by 3%, as was standard for other state agencies. These actions reduced the \$5.7 million gap between the Chief Justice Maintenance Level budget and the adopted budget to the \$3.9 million, as noted above.

## OJD – Appellate and Tax Courts

	2001-03 Actual	2003-05 Legislatively Approved	2005-07 Chief Justice's Recommended	2005-07 Legislatively Adopted
General Fund	13,715,355	15,950,369	18,169,638	16,749,566
Other Funds	89,448	167,131	203,506	203,506
<b>Total Funds</b>	<b>\$13,804,803</b>	<b>\$16,117,500</b>	<b>\$18,373,114</b>	<b>\$ 16,953,072</b>
Positions	94	91	95	92
FTE	91.07	87.57	93.05	90.89

### Program Description

The Appellate and Tax Courts program includes the Oregon Supreme Court, the Court of Appeals, and the Tax Court. The Chief Justice of the Supreme Court is responsible for the administration of the Judicial Department within the Judicial Branch of state government. The Supreme Court consists of 7 justices elected to serve 6-year terms. The Court of Appeals consists of 10 judges who hear appeals from trial courts, agencies, and boards. Currently, there is one Tax Court judge who hears matters arising from Oregon tax law. A Tax Magistrate Division was created in 1997 to replace the informal administrative tax appeals process conducted by the Department of Revenue. In 2003-05, the Tax Magistrate Division had six magistrates.

### Revenue Sources and Relationship

Estimates of 2005-07 Other Funds revenue include the portion of the appellate filing fee designated for the Appellate Mediation program (\$0.1 million).

### Budget Environment

The number of cases filed in the Court of Appeals for calendar year 2003 increased by 37 cases over calendar year 2002. The 2002 case filings were 3,277 compared to 3,314 for 2003. The Tax Magistrate Division has had 11,002 cases filed since September 1, 1987. The number of direct review cases filed in the Supreme Court in 2003 was 218, down from a high of 279 cases in 2001 and 362 cases in 2000.

### Legislatively Adopted Budget

The legislatively adopted budget is \$16.9 million and 92 positions (90.89 FTE). This is an increase of \$0.8 million (5.2%) above the 2003-05 budget. The budget includes \$1,023,552 General Fund to restore the 2003-05 Ballot Measure 30 reduction, plus standard adjustments for inflation and employee compensation, and adjustments to the state government service charge.

## OJD – Administration and Central Support

	2001-03 Actual	2003-05 Legislatively Approved	2005-07 Chief Justice's Recommended	2005-07 Legislatively Adopted
General Fund	38,186,632	34,393,039	62,349,553	46,398,859
Other Funds	7,366,016	16,631,115	8,542,798	9,058,530
Federal Funds	552,569	374,836	404,013	404,013
Other Funds (NL)	0	5,699,864	7,040,677	7,040,677
<b>Total Funds</b>	<b>\$46,105,217</b>	<b>\$57,098,854</b>	<b>\$78,337,041</b>	<b>\$62,902,079</b>
Positions	213	218	210	198
FTE	200.30	204.05	198.58	191.16

### 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 centralized functions of the Oregon courts system, including budget and finance, personnel management, information systems, legal counsel, internal audit, judicial and staff education, and trial court program coordination, analysis, and technical assistance. Management and oversight of the Citizens Review Board, Interpreter Certification program and the administration of the Appellate Court Records Office and the Supreme Court library are funded within the Office. Centralized assessments and costs are also managed and paid by this office.

### Revenue Sources and Relationship

Estimates of 2005-07 Other Funds revenue include grants from the Department of Human Services for the Citizen Review Board (\$0.7million), revenue from the sale and distribution of court publications (\$1.7 million),

fees charged for public access to the Oregon Judicial Information Network (\$2.1 million), fees charged for the interpreters and short hand reporter certification programs (\$0.3 million), reimbursement of costs for administration of the court revenue administration and collection activity (\$0.9 million), fees from the 30% civil filing fee surcharge approved in HB 2759 (\$0.6 million), fees from the dispute resolution surcharge for court mediation and arbitration services (\$0.2 million); fees collected in the Application Contribution Program (\$0.2 million); and payments made to the Department of Revenue and private collection agencies for the cost of collecting delinquent debt (\$7.4 million). Federal Funds from grants are used for assessments of state foster care and adoption laws and judicial processes.

**Budget Environment**

The Administration and Central Support function was segregated from the Appellate and Tax Court function by direction of the 2003 Legislature. The State Court Administrator and support staff continue with efforts to streamline and modernize court operations through ongoing implementation of improvements in automation and processes. Efforts include implementation of technology to facilitate the use of uniform documents and statewide case management systems. Other efforts include developing a plan to improve automated accounting and completion of a financial systems review using the services of a consultant and a technology strategic plan that addresses the overall Oregon Judicial Information Network. The Department will use existing resources to begin implementation of these plans.

**Legislatively Adopted Budget**

The legislatively adopted budget is an increase \$5.8 million (10.2%) and a decrease of 20 positions (12.89 FTE) from the 2003-05 legislatively approved budget. The positions were reduced as a result of the gap between the Chief Justice Maintenance Level budget and the legislatively adopted budget. Adjustments include a fund shift of \$6 million from Other Funds to the General Fund, as discussed above, from the actions of HB 3124, and a \$3,712,289 General Fund restoration of Ballot Measure 30 reductions. Other adjustments include standard reductions to state government service charges.

The budget includes \$139,671 Other Funds and 1 position (.75 FTE) for management of the State Court Facilities Security Account established in HB 2792.

**OJD – Trial Court Operations**

	<b>2001-03 Actual</b>	<b>2003-05 Legislatively Approved</b>	<b>2005-07 Chief Justice’s Recommended</b>	<b>2005-07 Legislatively Adopted</b>
General Fund	159,442,080	175,471,561	217,252,562	195,856,278
Other Funds	9,969,431	13,976,908	14,759,492	14,379,459
Federal Funds	636,722	1,958,411	488,234	986,097
Other Funds (NL)	0	0	779,378	779,378
<b>Total Funds</b>	<b>\$170,048,233</b>	<b>\$191,406,880</b>	<b>\$233,279,666</b>	<b>\$212,001,212</b>
Positions	1,672	1,695	1,748	1,719
FTE	1,474.82	1,532.54	1,572.75	1,549.60

**Program Description**

Trial Court Operations includes the funding and operations of all state trial courts, which, effective in 1998, are the circuit courts. The program also includes staff to verify the indigency of applicants for representation at state expense. There are circuit courts in each of the 36 counties, served by 169 judges (173 effective 01/01/07). These courts adjudicate matters and disputes in criminal, civil, domestic relations, traffic, juvenile, small claims, violations, abuse prevention act, probate, mental commitments, adoption, and guardianship cases.

**Revenue Sources and Relationships**

The state trial courts are primarily funded with the General Fund. Other Funds revenue includes fees collected in the Application Contribution Program (\$2.1 million); a portion of the 8% retained by the OJD for revenue administration and collection costs (\$9.6 million); and fees from the dispute resolution surcharge for court mediation and arbitration services (\$0.7 million). There was a 2006 sunset on the distribution of this surcharge. The 2005 Legislature shifted this funding back to the General Fund. Federal grant revenue of \$0.5 million supports the drug court in Benton County.

## Budget Environment

Case filings in 2003 show an increase of 9,618 compared to 2002 and an increase of 20,073 compared to 1999. Overall, filings have increased from a low of 555,141 in 1994 to 655,574 in 2003, an increase of 18.1%. Although, 50% of current case filings are violations, primarily traffic violations, these cases have the lowest workload impact on judicial and staff resources. More serious felony filings have increased from 30,725 in 1994 to 36,508 in 2003 (18.8%). Misdemeanor cases increased from 61,794 in 1994 to 69,055 in 2003 (10.5%). These criminal case types have the greatest workload impact on judicial and staff resources. Civil cases increased from 68,469 in 1994 to 76,963 in 2003 (12.4%). Domestic relations filings declined by 11,537 cases during that same period (18.6%), primarily in administrative order and judgment-related matters.

There is increasing need to use technology for case management to increase productivity of limited support staff. Increased flexibility is also needed in automated systems to meet the changing data requirements, especially for innovative programs such as therapeutic drug or family courts.

OJD has also been active in developing new methodologies for resolving disputes, including appropriate dispute resolution programs, family law courts, drug courts, and improvements in the jury system and use of interpreters.

## Legislatively Adopted Budget

The legislatively adopted budget is \$212 million and 1,719 (1,549.60 FTE). The budget is an increase of \$20.6 million (10.8%) and 24 positions (17.06 FTE) from the 2003-05 legislatively approved budget. The budget includes restoration of \$13,035,135 General Fund from Ballot Measure 30 reductions and standard reductions to state government service charges.

The budget includes \$722,200 and 4 positions (16.00 FTE) for four new judgeships that the Legislature created in HB 2278, and \$942,679 and 9 positions (7.75 FTE) from the methamphetamine package that retained drug courts whose grant funds would have expired during the 2005-07 biennium.

## OJD – Mandated Payments

	2001-03 Actual	2003-05 Legislatively Approved	2005-07 Chief Justice's Recommended	2005-07 Legislatively Adopted
General Fund	10,810,089	12,110,669	16,249,549	12,525,800
Other Funds (NL)	0	250,000	400,000	400,000
<b>Total Funds</b>	<b>\$10,810,089</b>	<b>\$12,360,669</b>	<b>\$16,649,549</b>	<b>\$12,925,800</b>
Positions	13	19	26	20
FTE	12.60	17.57	24.58	19.60

## Program Description

The Mandated Payments budget funds the cost of providing trial and grand jurors, court interpreters, civil appellate transcript costs for indigent persons, and Americans with Disabilities Act accommodation services.

## Budget Environment

The 1999 Legislature approved a requirement that certified interpreters be provided for all judicial and administrative proceedings. The Judicial Department was given responsibility for the certification process. Staff cost for this activity is paid through the Administration budget.

Juror payment increases approved by the 1999 Legislature in SB 1304 were to change the per diem and mileage rates effective July 1, 2001, with an estimated roll-up cost of \$5.8 million for the 2001-03 biennium. The 2001 Legislature deferred implementation of these changes for six months, to enable OJD to provide jury services within the adopted budget. In the 2002 second special session, the Legislature reduced juror per diem from \$50 to \$25 for the third and subsequent days of service and reduced the mileage reimbursement to 20 cents per mile. The 2003 Legislature also approved the transfer of contractual interpreter services to permanent staff and approved 19 positions to be funded out of existing General Fund resources that had been used for these contracts.

**Legislatively Adopted Budget**

The legislatively adopted budget is \$12,925,800 and 20 positions (19.60 FTE). The budget is an increase of \$565,131 and 1 position (2.03 FTE) from the 2003-05 legislatively approved budget. The budget includes restoration of \$1,229,024 General Fund from Ballot Measure 30 reductions and standard reductions to state government service charges.

## Commission on Judicial Fitness and Disability – Agency Totals

	2001-03 Actual	2003-05 Legislatively Approved	2005-07 Judicial Branch's Recommended	2005-07 Legislatively Adopted
General Fund	185,580	161,762	179,066	175,983
<b>Total Funds</b>	<b>\$185,580</b>	<b>\$161,762</b>	<b>\$179,066</b>	<b>\$175,983</b>
Positions	2	1	1	1
FTE	0.75	0.50	0.50	0.50

### Agency Overview

The Commission on Judicial Fitness and Disability receives and investigates complaints concerning the conduct of justices of the peace, circuit court judges, and appellate court judges. A 2003 Supreme Court decision determined that the Commission lacks jurisdiction over municipal court judges.

The Commission receives approximately 250 written complaints each biennium. Each complaint is reviewed by the Commission which makes an initial determination as to whether a violation of the Code of Judicial Conduct has occurred. The majority of complaints are based on the court's decision rather than being a violation of the conduct of a judge and therefore are dismissed. However, if an initial investigation reveals a possible violation of conduct by a judge, the Commission investigates the complaint. If a departure is found, a formal charge is issued to the judge and a public hearing is held. The Commission then makes a recommendation concerning dismissal or discipline to the Supreme Court which makes the final determination. Besides dismissal, the Commission's recommendation can include: censure, suspension, or removal from the bench. The Commission itself can issue a warning to a judge if conduct approaches, but does not violate the Code of Judicial Conduct. In a matter where a judge's conduct is determined to be the result of a physical or mental disability, the Commission refers the matter directly to the Chief Justice for disposition.

The nine-member Commission is comprised of three lawyers, three judges, and three members of the public.

### Revenue Sources and Relationships

General Fund supports the Commission. 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.

### Budget Environment

The Commission budgets for normal and extraordinary expenditures. The normal operating budget pays for the half-time executive director, office expense, meeting accommodations, travel reimbursements, and initial investigations. The extraordinary budget is used to pay for formal investigations and disciplinary proceedings. Such costs include contracted services for investigators, attorneys, court reporters, and hearing expense.

### Legislatively Adopted Budget

The Commission's legislatively adopted budget is \$175,983 which is 1.7% less than the Governor's recommended budget, but 8.8% above the prior biennium's legislatively approved budget. The normal operating budget is \$148,000 or 84% of the total budget and as noted includes one permanent part-time position (0.50 FTE). The extraordinary budget falls under the professional services line-item and is \$27,983 or 16% of the total budget. While the 2005 budget includes a \$2,341, or 3%, services and supplies reduction in the normal operating budget, it also remedies a seven-year-old discrepancy between the executive director's actual and budgeted salary rates by adjusting upward budgeted salary. Additionally, the budget was adjusted downward by \$742 to reflect the following rate and assessment reductions: Public Employee Retirement System (\$569), Department of Administrative Services (\$149), Oregon State Library (\$19), and Secretary of State Audits Division (\$5).

Although unlikely given the current number and type of disciplinary proceedings being pursued by the Commission, there remains a possibility that if the Commission is unable to manage extraordinary expenses within its total budget it may need to request additional (supplemental) funds from the Legislative Emergency Board. The Commission has not been to the Emergency Board since April 1998. The last three such Emergency Board requests for extraordinary expense funding occurred in 1995, 1996, and 1998. The Board appropriated \$20,000, \$50,000, and \$43,000, respectively.

## Public Defense Services Commission (PDSC) – Agency Totals

	2001-03 Actual	2003-05 Legislatively Approved	2005-07 Governor's Recommended	2005-07 Legislatively Adopted
General Fund	151,553,739	165,421,598	159,440,519	175,292,811
Other Funds	531,989	1,107,063	957,723	953,206
<b>Total Funds</b>	<b>\$152,085,728</b>	<b>\$166,528,661</b>	<b>\$160,398,242</b>	<b>\$176,246,017</b>
Positions	64	60.00	61	57.00
FTE	61.44	58.45	59.45	55.45

### Agency Overview

Eligible persons are entitled to adequate 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 also held that the right to appointed counsel includes related costs such as expert witnesses and investigation expense.

The 1999 Legislature approved a temporary Public Defense Services Commission to evaluate the delivery of trial and appellate public defense services, and to make recommendations to the 2001 Legislature. The Commission's recommendations, which included establishment of a trial and appellate defender office separate from the Judicial Department, was adopted by the Legislature in SB 145 (2001). SB 145 created a Public Defense Services Commission, transferred the State Public Defender's Office to the Public Defense Services Commission effective October 1, 2001, and transferred the Judicial Department's Indigent Defense Account and public defense support staff to the Public Defense Services Commission effective July 1, 2003. With these actions, the Legislature created a unified program to provide trial court and appellate level services to financially eligible persons.

The agency is organized into three divisions. The Legal Services Division consists of state-funded public defense attorneys who represent eligible persons at the appellate court level. The Public Defense Services Account consists of the funding, primarily for the trial court level, for contract defense services, including attorneys, investigators and expert witnesses. The Contract and Business Services Division is responsible for administering the public defense contracts that provide legal representation for eligible persons, and for processing requests and payments for non-contract fees and expenses.

### Budget Environment

During the 2001-03 biennium, in the several special legislative sessions, the budget for the Public Defense Services Account was reduced by \$27.5 million (17%) from the legislatively adopted budget. The program, which was housed in the Judicial Department, managed the first reduction of \$12.4 million through the implementation of Early Disposition Programs in some counties, and because of slowing caseload growth. At its January 2003 meeting, the Emergency Board allocated \$5 million from the Emergency Fund to partially restore the 2002 third special session reductions. Even with the Emergency Fund restoration, there was insufficient funding for representation for all public defense cases. The Chief Justice issued an order that allowed courts to suspend proceedings on non-person criminal post-conviction relief cases that were ranked at a lower priority.

The 2003 Legislature approved a budget of \$169.4 million total funds for the Public Defense Services Commission. This budget was \$3 million below the 2001-03 legislatively adopted close-of-session budget. The 2003 budget included a \$7 million special purpose appropriation to the Emergency Board for public defense cases above a base caseload of 334,358 cases. This special purpose appropriation was intended to fund those cases deferred into the 2003-05 biennium and other caseload growth. At its January 2005 meeting, the Emergency Board allocated the \$7 million special purpose appropriation.

## Legislatively Adopted Budget

The Governor proposed a budget that was \$15.8 million below the funding required for the projected 2005-07 public defense caseload. The Governor made no recommendation on the services affected by this reduction. The 2005 Legislature restored this funding, with standard adjustments to state government and Attorney General rates, and the Public Employee Retirement System (PERS) rate. The General Fund services and supplies operating components of the budget were reduced by 3%.

The 2005 Legislature passed a package of methamphetamine-related bills that expanded the severity of potential sentences, and could result in more persons being prosecuted. The Legislature added \$450,000 General Fund resources to the Commission to cover the projected cost.

The 2005 Legislature approved an unspecified General Fund reduction of \$270,000 that was allocated among the Public Defense Services Commission programs. The budget for the Contract and Business Services Division was reduced by \$4,207, the budget for the Legal Services Division was reduced by \$9,446, and the budget for the Public Defense Services Account was reduced by \$256,347.

## PDSC – Legal Services Division

	2001-03 Actual	2003-05 Legislatively Approved	2005-07 Judicial Branch's Recommended	2005-07 Legislatively Adopted
General Fund	5,854,016	5,071,836	7,119,319	6,054,463
Other Funds	121,926	0	0	0
<b>Total Funds</b>	<b>\$5,975,942</b>	<b>\$5,071,836</b>	<b>\$7,119,319</b>	<b>\$6,054,463</b>
Positions	40	38	41	37
FTE	39.62	37.20	40.50	36.50

### Program Description

The Legal Services Division is responsible for providing legal representation on criminal matters for eligible persons at the appellate court level.

### Revenue Sources and Relationships

The General Fund supports the program. The agency has occasionally had Other Funds revenue from the sale of surplus property. These funds are used for attorney education costs.

### Budget Environment

The workload is driven by the number of criminal and parole appeals filed and the legal complexity of the appealed cases. Statutory changes and ballot initiatives also affect the number of appeals that are filed. The agency experienced significant workload growth because of statutory and ballot initiative changes in the late 1990s. The 1999 Legislature added 6.25 FTE to deal with this workload, including converting limited duration attorney and clerical support positions to permanent funding, and financing three new attorney positions and two clerical positions. The agency also received additional funding from the Emergency Board in the 1999-2001 interim to deal with workload and agency management problems. With these adjustments, the workload was stabilized, and no significant changes were projected.

The 2001 Legislature restructured appeals from orders by the Board of Parole and Post-Prison Supervision. While reducing appellate workload overall, it added workload for the Public Defender. The Legislature appropriated \$174,088 General Fund and added 2 positions (1.07 FTE) to handle this workload. Other issues included addressing time limits for extensions on appeal established by the Court of Appeals.

The Court of Appeals may order the dismissal of pending cases that exceed 350 days, which could eventually result in higher cost if the Federal courts find that Oregon is not providing adequate representation. The agency continues to work towards reducing its backlog of cases that are pending more than 210 days. PDSC reduced this backlog from 184 cases in 2001 to 114 in 2004, through improved case management practices.

In June, 2004 the United States Supreme Court issued a decision entitled *Blakely v. Washington*, 542 US 296 (2004), which invalidated much of Oregon's sentencing scheme and increased the appellate workload. Within months of that decision, the number of appeals filed increased. As of August 2005, the backlog was 229 cases, which is an all-time high for the agency.

## Legislatively Adopted Budget

The 2005 Legislature approved a budget of \$6,054,463 General Fund and 36.50 FTE, which is an increase of \$982,627 (19.4%) above the 2003 Legislatively Approved budget, and a reduction of 1 position (.70 FTE). The General Fund increase is primarily attributable to standard adjustments for employee compensation and inflation.

The Governor recommended a budget that was \$551,691 below what would be required to meet 2005-07 appeals caseload. The Governor's budget would have resulted in the elimination of 3.0 attorney and 1.5 support FTE, with a resulting increase in the timelines and backlog of appeals. The 2005 Legislature restored those reductions, with standard adjustments to state government and Attorney General rates, and the PERS rate. The General Fund services and supplies budget was reduced by 3%.

The Legislature did not include funding of \$223,801 for a policy package to make appellate attorney compensation commensurate with Department of Justice appellate attorneys. The agency has requested commensurate compensation for its attorneys for at least four biennia.

## PDSC – Public Defense Services Account

	2001-03 Actual	2003-05 Legislatively Approved*	2005-07 Judicial Branch's Recommended	2005-07 Legislatively Adopted
General Fund	144,118,428	157,782,856	176,992,037	166,543,539
<b>Total Funds</b>	<b>\$144,118,428</b>	<b>\$157,782,856</b>	<b>\$176,992,037</b>	<b>\$166,543,539</b>

\*Includes the \$7 million special purpose appropriation allocated by the Emergency Board at its January 2005 meeting.

## Program Description

The Public Defense Services Account 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 cases); and other limited civil proceedings. Both the U.S. and Oregon Constitutions guarantee the right to legal representation, at state expense, to financially eligible persons facing criminal prosecutions. This program is also responsible for the costs of all transcripts and the cost of appellate legal representation for cases not represented by the Legal Services Division.

The Public Defense Services Commission will continue to primarily contract with nonprofit public defenders, law firms, consortia, or individual attorneys to provide services.

## Revenue Sources and Relationships

The General Fund supports the program.

## Budget Environment

The public defense cost increases are primarily due to caseload increases. The levels of resources available to law enforcement, prosecution, juvenile departments, mental health and alcohol/drug treatment, parole and probation services, and jail and prison space are primary factors in caseload growth.

The 1999-2001 legislatively adopted budget was based on caseload growth projections of 4% per year. The caseload growth between fiscal years 1998 and 1999 had slowed to 4%. However, caseload growth between fiscal years 1999 and 2000 was actually 7.2%. Caseload growth data for 2003-05 is skewed by the restrictions on appointments during the 2001-03 biennium. The total projected 2003-05 caseload is 338,395, which included 8,630 cases that were deferred from the 2001-03 biennium. It should be noted that the increasing complexity of cases arising from new laws and ballot measures also affect the cost of services.

The 2003 Legislature approved a budget of \$153.7 million General Fund for the Public Defense Services Account. This appropriation, combined with the \$7 million special purpose appropriation to the Emergency Fund for caseload growth, provided a total budget of \$160.7 million. At its June 2004 meeting, the Emergency Board allocated \$4.1 million from the special purpose appropriation for cases above the budgeted base, and allocated \$2.9 million from the general purpose Emergency Fund for partial restoration of Ballot Measure 30 reductions. These allocations left PDSC with a resource gap of \$7 million, which would have required the

Commission to cease payment for appointed counsel and related expense in the last quarter of the 2003-05 biennium. The Emergency Board, in January 2005, allocated the \$7 million to fund this gap.

The total 2003-05 expenditures from the Public Defense Services Account of \$157,782,856 was \$2.9 million below the legislatively adopted budget of \$160,694,576 (including the special purpose appropriation of \$7 million).

### Legislatively Adopted Budget

The 2005 Legislature approved a budget of \$166.5 million General Fund that is \$7.7 million (4.9%) above the 2003-05 legislatively approved budget, to fund anticipated caseload. The budget includes \$450,000 General Fund for anticipated caseload from the methamphetamine package passed by the Legislature.

The Legislature restored cuts in the Governor’s budget of \$14,971,490 below what would be required to meet the projected 2005-07 trial court caseload, and that did not include the allocation of the \$7 million special purpose appropriation approved by the Emergency Board at its January 2005 meeting. The 2005 Legislature evaluated the impact of this reduced funding, which included potentially reducing criminal penalties and thereby reducing the number of cases on which counsel must be appointed, or providing the necessary funds to support the anticipated caseload. The Legislature funded the anticipated caseload.

The Legislature did not include funding of \$10,642,151 for a policy package to provide parity between local defense attorneys and their district attorney counterparts, and to increase the hourly rate for investigators and hourly paid attorneys. These rates have not been adjusted for over a decade.

### PDSC – Contract and Business Services Division

	2001-03 Actual	2003-05 Legislatively Approved	2005-07 Judicial Branch’s Recommended	2005-07 Legislatively Adopted
General Fund	1,581,295	2,566,906	2,729,853	2,694,809
Other Funds	410,063	1,107,063	957,723	953,206
<b>Total Funds</b>	<b>\$1,991,358</b>	<b>\$3,673,969</b>	<b>\$3,687,576</b>	<b>\$3,648,015</b>
Positions	24	22	20	20
FTE	21.82	21.25	18.95	18.95

### Program Description

The Contract and Business Services Division 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.

### Revenue Sources and Relationships

The General Fund supports the program. The program will receive approximately \$1.7 million in the 2003-05 biennium from an application fee (\$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 and for operating expenses for public defense administration. The Commission entered into an intergovernmental agreement with the Judicial Department regarding use of these fees for public defense verification staffing.

### Budget Environment

This program administers 96 contracts, receives and verifies invoices for payment on contractual services, and issues over 20,000 payments per year.

### Legislatively Adopted Budget

The 2005 Legislature approved a budget of \$3,648,015 total funds, which was a reduction of \$25,954 and 2 positions (2.30 FTE) from the 2003-05 legislatively approved budget. The reduction primarily reflects the transfer of the Application Contribution Program staffing of 1 position (1.45 FTE) and \$201,542 Other Funds to the Judicial Department. The Judicial Department budget reflects this transfer. The General Fund budget is an increase of \$127,903 (5%) above the 2003-05 legislatively approved budget and includes standard adjustments to state government and Attorney General rates, and the PERS rate. The General Fund services and supplies budget was reduced by 3%.

The Legislature restored cuts in the Governor's budget of \$245,696 General Fund below what would have been required to meet the contract services workload related to 2005-07 trial court caseload, and would have required the elimination of approximately 3.00 FTE. This would have resulted in delays in paying contract caseload costs and an inability for staff to audit contractor caseload reports.