

# JUDICIAL BRANCH

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## Council on Court Procedures – Agency Totals

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

*Note: 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. By statute, the Legislature may amend, repeal, or supplement any of the rules. 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 budget period, 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 up to \$8,000 in Other Funds revenue to support Council members' travel reimbursement. Additionally, the Council has relied upon in-kind support from both the OSB as well as the University of Oregon Law School. The OSB provides meeting facilities. The Law School provides office workspace and covers some office expenses for Council staff. The Council's Executive Director is also a professor at the Law School.

### Budget Environment

During the 2003-2005 biennium, rather than suspend operations as was done for three months during the 2001 biennium, the Legislature and the Council agreed that the Council should continue to operate under the following six guidelines:

- 1) The Oregon State Bar will continue to provide \$8,000 per biennium to reimburse Council members for travel expenditures.
- 2) Members of the Council would volunteer to provide administrative support.
- 3) The current Executive Director would volunteer his time.
- 4) The University of Oregon would continue to provide office space and minimal services and supplies within its budget.
- 5) The Council will be relieved from paying State Government Services Charges.
- 6) The Judicial Department would continue providing financial administrative support.

As instructed, Council operations have continued with additional in-kind support from the OSB for administrative expenses. The Council adopted modifications to six of the 85 civil procedures which will be submitted to the 2005 Legislature.

### Governor's Budget

The Governor's budget is an increase of 1,270.9% over the 2003 legislatively adopted budget. The increase is due to a policy package that restores \$101,671 in General Fund support for the Council. This level of staffing and funding is consistent with that of budgets prior to the 2003 legislative session. The Council's budget resumes payment of state government services charges in the amount of \$7,587.

## Oregon Judicial Department (OJD) – Agency Totals

	2001-03 Actual	2003-05 Legislatively Adopted	2003-05 Legislatively Approved	2005-07 Governor's Recommended
General Fund	222,154,156	250,670,922	237,654,982	249,762,817
Other Funds	17,424,895	30,367,366	30,775,154	23,510,763
Federal Funds	1,189,291	2,333,247	2,333,247	892,247
Other Funds (NL)	0	5,949,864	5,949,864	8,220,055
<b>Total Funds</b>	<b>\$240,768,342</b>	<b>\$289,321,399</b>	<b>\$276,713,247</b>	<b>\$282,385,882</b>
Positions	1,992	2,016	2,023	2,079
FTE	1,778.79	1,836.83	1,841.73	1,888.96

*Note: 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 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 is expected to generate \$6.6 million in revenue that is used to offset General Fund operating expenses. Beginning July 1, 2005, the surcharge is repealed and filing fees are increased by 10% and accrue to the General Fund.

According to the December 2004 revenue forecast, OJD is expected to generate \$198.2 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 from the 30% surcharge approved in HB 2759 (\$0.6 million); fees from the dispute resolution surcharge for mediation and arbitration activities (\$0.8 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 projects 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 Department has reported to the Emergency Board, the Joint Legislative Audit Committee and the Joint Legislative Committee on Information Management and Technology on the budget notes for 2003-05, including:

- The use of pro tem judges.
- A plan to improve automated accounting. The Department has completed a financial systems review using the services of a consultant and is working to implement some of the resulting recommendations with existing resources. The Chief Justice's budget also includes a policy option package to fund implementation of additional recommendations.
- Person-based access to court information. In addition to developing person-based access, the Department is completing a technology strategic plan that addresses the overall Oregon Judicial Information Network. The Chief Justice's budget includes a policy option package to fund implementation of the recommendations of the task force.
- The development of performance standards for the trial courts and central administration, including reporting on individual trial court and administrative unit performance. The Department has completed work on the performance standards and has integrated the standards into its budget development process.
- The development of an intergovernmental agreement and report on the Application Contribution Program that provides Other Funds support for indigent defense eligibility verification. The Department and the Public Defense Services Commission have jointly reported on progress.

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 has managed this reduction primarily by delays in filling vacant positions.

## Governor's Budget

The Governor's budget is an unspecified reduction of \$64,253,489 to the Chief Justice's recommended budget. This includes an unspecified reduction of \$24.7 million General Fund to the budget level required to maintain current operations and pay jurors. The Governor makes no recommendation on the services affected by this reduction.

The effect of the Governor's budget adjustments are detailed on the table below.

Governor's Budget	General Fund	Other Funds	Federal Funds	Nonlimited Other Funds	FTE
Policy Packages	(39,606,271)	872,363	488,234	779,378	50.40
Ballot Measure 30	(13,015,940)	-	-	-	-
Filing Fee Surcharge Fund Shift	(6,600,000)	(6,600,000)	-	-	-
	(59,222,211)	(5,727,637)	488,234	779,378	50.40
Gov Unspecified Reduction	(5,031,278)	-	-	-	-
	(64,253,489)	(5,727,637)	488,234	779,378	50.40

The Governor's budget is an increase of \$12.1 million General Fund above the 2003-05 Legislatively Approved budget. However, this increase is not sufficient to maintain existing court services. The Department would need an additional \$12.6 million to fund existing services.

The Governor's budget does not restore the Ballot Measure 30 reduction. The Governor's budget also does not include the \$6.6 million General Fund restoration that would be required to maintain current services after 30% filing fee surcharge approved in HB 2759 sunsets on July 1, 2005. However, the budget does include the reduction in Other Funds that will occur when the filing fee surcharge sunsets. In addition to these specific effects of the Governor's reduction, there is an additional \$5,031,278 in unspecified reductions.

The Department estimates that a reduction of this magnitude will require implementation of a case processing priority plan, similar to that enacted by Chief Justice order during the 2001-03 and 2003-05 biennia. This may include delays in processing civil matters, including small claims cases, and delays in adjudicating non-person misdemeanors. This could affect state revenue if delays result in the inability to collect fines, costs, and assessments from misdemeanor and violation cases. The Department will be working on an implementation

scenario that will be available for discussion during the legislative budget review process. The 2005 Legislature will need to determine what level of court services should be maintained in the current budgetary environment, and what level of funding is required for that service.

The Governor, while taking no specific position on Judicial Branch budget requests, does not include funding of \$39,606,271 General Fund for sixteen policy packages proposed by the Chief Justice. The Governor's budget does include Other, Federal, and Nonlimited Other Funds policy packages. Because the Governor took no position on Judicial Department policy packages, the Governor's budget includes 80 positions (50.40 FTE), of which 67 positions (39.90 FTE) that are completely or partially unfunded.

The Department has not yet determined how it will distribute the Governor's budget reductions. The Legislative Fiscal Office has distributed the reductions on a pro-rata basis to each program for the purpose of the summary tables. The final program levels and program impact will differ from the pro-rata share estimated by the Legislative Fiscal Office (LFO). The actual program levels and program impacts will be presented by the Department during the legislative budget review process, when these plans are finalized.

### OJD – Appellate and Tax Courts

	2001-03 Actual	2003-05 Legislatively Adopted	2003-05 Legislatively Approved	2005-07 Governor's Recommended
General Fund	13,715,355	15,950,369	15,679,713	15,620,887
Other Funds	89,448	167,131	167,131	203,506
<b>Total Funds</b>	<b>\$13,804,803</b>	<b>\$16,117,500</b>	<b>\$15,846,844</b>	<b>\$15,824,393</b>
Positions	94	91	91	95
FTE	91.07	87.57	87.57	93.05

### OJD – Appellate and Tax Courts, Chief Justice's Recommended Budget

	2001-03 Actual	2003-05 Legislatively Adopted	2003-05 Legislatively Approved	2005-07 Chief Justice's Recommended
General Fund	13,715,355	15,950,369	15,679,713	18,169,638
Other Funds	89,448	167,131	167,131	203,506
<b>Total Funds</b>	<b>\$13,804,803</b>	<b>\$16,117,500</b>	<b>\$15,846,844</b>	<b>18,373,114</b>
Positions	94	91	91	95
FTE	91.07	87.57	87.57	93.05

#### 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.

#### Governor's Budget

The Department has not yet determined how it will distribute the Governor's budget reductions. LFO has distributed the reductions on a pro-rata basis to each program for the purpose of the summary tables. The final program levels and program impact will differ from the pro-rata share estimated by LFO. The actual program

levels and program impacts will be presented by the Department during the legislative budget review process, when these plans are finalized.

### OJD – Administration and Central Support

	2001-03 Actual	2003-05 Legislatively Adopted	2003-05 Legislatively Approved	2005-07 Governor's Recommended
General Fund	38,186,632	38,265,869	34,393,039	42,051,001
Other Funds	7,366,016	16,536,365	16,631,115	8,543,998
Federal Funds	552,569	374,836	374,836	404,013
Other Funds (NL)	0	5,699,864	5,699,864	7,040,677
<b>Total Funds</b>	<b>\$46,105,217</b>	<b>\$60,876,934</b>	<b>\$57,098,854</b>	<b>\$58,039,689</b>
Positions	213	217	218	210
FTE	200.30	203.26	204.05	198.58

### OJD – Administration and Central Support, Chief Justice's Recommended Budget

	2001-03 Actual	2003-05 Legislatively Adopted	2003-05 Legislatively Approved	2005-07 Chief Justice's Recommended
General Fund	38,186,632	38,265,869	34,393,039	62,349,553
Other Funds	7,366,016	16,536,365	16,631,115	8,542,798
Federal Funds	552,569	374,836	374,836	404,013
Other Funds (NL)	0	5,699,864	5,699,864	7,040,677
<b>Total Funds</b>	<b>\$46,105,217</b>	<b>\$60,876,934</b>	<b>\$34,393,039</b>	<b>\$78,337,041</b>
Positions	213	217	218	210
FTE	200.30	203.26	204.05	198.58

#### 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.

The State Court Administrator has reported to the Legislature on the use of pro tem judges. Other efforts include developing a plan to improve automated accounting and completion of a financial systems review using the services of a consultant. The Chief Justice's budget includes a policy package to fund implementation of

some of the recommendations that cannot be achieved with existing resources. Work continues on a system for person-based access to court information. The Department is also completing a technology strategic plan that addresses the overall Oregon Judicial Information Network. The Chief Justice's budget includes a placeholder policy package to fund implementation of the potential recommendations of the task force. Recommendations are expected to be available during the Department's budget hearings. The Department has completed work on performance standards and has integrated the standards into its budget development process. Finally, the Department has completed an intergovernmental agreement and report on the application contribution program that provides Other Funds support for indigent defense eligibility verification. The Department and the Public Defense Services Commission have jointly reported on progress.

### Governor's Budget

The Department has not yet determined how it will distribute the Governor's budget reductions. LFO has distributed the reductions on a pro-rata basis to each program for the purpose of the summary tables. The final program levels and program impact will differ from the pro-rata share estimated by LFO. The actual program levels and program impacts will be presented by the Department during the legislative budget review process, when these plans are finalized.

### OJD – Trial Court Operations

	2001-03 Actual	2003-05 Legislatively Adopted	2003-05 Legislatively Approved	2005-07 Governor's Recommended
General Fund	159,442,080	184,344,015	175,471,561	180,590,625
Other Funds	9,969,431	13,663,870	13,976,908	14,763,259
Federal Funds	636,722	1,958,411	1,958,411	488,234
Other Funds (NL)	0	0	0	779,378
<b>Total Funds</b>	<b>\$170,048,233</b>	<b>\$199,966,296</b>	<b>\$191,406,880</b>	<b>\$196,621,496</b>
Positions	1,672	1,689	1,695	1,748
FTE	1,474.82	1,528.43	1,532.54	1,572.75

### OJD – Trial Court Operations, Chief Justice's Recommended Budget

	2001-03 Actual	2003-05 Legislatively Adopted	2003-05 Legislatively Approved	2005-07 Chief Justice's Recommended
General Fund	159,442,080	184,344,015	175,471,561	217,252,562
Other Funds	9,969,431	13,663,870	13,976,908	14,759,492
Federal Funds	636,722	1,958,411	1,958,411	488,234
Other Funds (NL)	0	0	0	779,378
<b>Total Funds</b>	<b>\$170,048,233</b>	<b>\$199,966,296</b>	<b>\$191,406,880</b>	<b>\$233,279,666</b>
Positions	1,672	1,689	1,695	1,748
FTE	1,474.82	1,528.43	1,532.54	1,572.75

### 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. 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 from the dispute resolution surcharge for court mediation and arbitration services (\$0.7 million). There is a sunset on the distribution of this surcharge, which will require action by the 2005 Legislature, or a fund shift back to the General Fund; fees collected in the Application Contribution Program (\$2.1 million); and a portion of the 8% retained by the OJD for revenue administration and collection costs (\$9.6 million). Federal grant revenue supports the drug court in Benton county (\$0.5 million).

### 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.

### Governor's Budget

The Department has not yet determined how it will distribute the Governor's budget reductions. LFO has distributed the reductions on a pro-rata basis to each program for the purpose of the summary tables. The final program levels and program impact will differ from the pro-rata share estimated by LFO. The actual program levels and program impacts will be presented by the Department during the legislative budget review process, when these plans are finalized.

### OJD – Mandated Payments

	2001-03 Actual	2003-05 Legislatively Adopted	2003-05 Legislatively Approved	2005-07 Governor's Recommended
General Fund	10,810,089	12,110,669	12,110,669	11,500,303
Other Funds (NL)	0	250,000	250,000	400,000
<b>Total Funds</b>	<b>\$10,810,089</b>	<b>\$12,360,669</b>	<b>\$12,360,669</b>	<b>\$11,900,303</b>
Positions	13	19	19	26
FTE	12.60	17.57	17.57	24.58

### OJD – Mandated Payments, Chief Justice's Recommended Budget

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

### 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 costs 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.

**Governor's Budget**

The Department has not yet determined how it will distribute the Governor's budget reductions. LFO has distributed the reductions on a pro-rata basis to each program for the purpose of the summary tables. The final program levels and program impact will differ from the pro-rata share estimated by LFO. The actual program levels and program impacts will be presented by the Department during the legislative budget review process, when these plans are finalized.

## Commission on Judicial Fitness and Disability – Agency Totals

	2001-03 Actual	2003-05 Legislatively Adopted	2003-05 Legislatively Approved	2005-07 Judicial Branch's Recommended
General Fund	185,580	161,762	161,762	179,066
<b>Total Funds</b>	<b>\$185,580</b>	<b>\$161,762</b>	<b>\$161,762</b>	<b>\$179,066</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 found not in violation of the code and dismissed. However, if an initial investigation reveals a possible violation, 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. The recommendation can include: censure, suspension, or removal from the bench. The Commission 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 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

The 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 operating and extraordinary expenditures. Normal operating expenditures pay for the half-time Executive Director, office expenses, meeting accommodations, travel reimbursements, and initial investigations. Extraordinary costs pay for formal investigations and disciplinary proceedings. Such costs include contracted services for investigators, attorneys, court reporters, and Commission hearing expenses. For 2003, the Legislature appropriated approximately \$27,300 in extraordinary funds, with the understanding that additional funds could be requested if disciplinary costs exceed that amount. Due to two pending disciplinary actions, the Commission may submit a request for additional extraordinary funding during the 2005 regular legislative session. At this time, the amount of the request is uncertain, but may be as high as \$50,000. The last three Emergency Board allocations for extraordinary expenses occurred in 1995, 1996, and 1998, and allocated \$20,000, \$50,000, and \$43,000, respectively.

### Governor's Budget

The Commission's total budget increased \$17,304, or 10.7%, above the 2003-2005 legislatively approved budget. The normal operating budget increased \$16,329 due to two factors: (a) a one-time personal services adjustment to remedy a seven-year-old discrepancy between the Executive Director's actual and budgeted salary rates; and (b) standard adjustments. A \$3,225 budget increase for Pension Bond Contributions in personal services was partially offset by a related services and supplies \$1,268 reduction in the state government services charges. The Commission saw an \$806, or 23%, increase in liability insurance. The extraordinary budget increased \$683, or 2.5%, to \$27,983 based on the standard inflation adjustment. The Governor's budget did not include additional funding for extraordinary expenditures related to pending disciplinary investigations.

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

	2001-03 Actual	2003-05 Legislatively Adopted	2003-05 Legislatively Approved	2005-07 Governor's Recommended
General Fund	151,553,739	168,333,318	* 158,421,598	159,440,519
Other Funds	531,989	1,107,063	1,107,063	957,723
<b>Total Funds</b>	<b>\$152,085,728</b>	<b>\$169,440,381</b>	<b>\$159,528,661</b>	<b>\$160,398,242</b>
Positions	64	60	60	61
FTE	61.44	58.45	58.45	59.45

\* The Commission will request that the Emergency Board, at its January 2005 meeting, restore the balance of the Ballot Measure 30 cut. The Emergency Board could allocate up to \$7 million, which would fully restore the cut. If the Emergency Board chooses to restore these funds, the total 2003-05 Legislatively Approved General Fund would be \$165,421,598.

### 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 indigent 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 Office of the Public Defender to the Public Defense Services Commission effective October 1, 2001, and transferred the Judicial Department 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 indigent defendants.

### Budget Environment

During the 2001-03 biennium, in the several special legislative sessions, the budget for the Indigent Defense 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 defer prosecution of non-person criminal and misdemeanor 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, which 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. The 2003 budget was \$3 million below the 2001-03 legislatively adopted close-of-session budget.

The failure of Ballot Measure 30 triggered cuts of \$9.9 million for public defense contracts effective May 2004. Without Emergency Board or legislative action, all contract services funding will be exhausted by June 1, 2005. This could result in disruptions to the public safety system, including the dismissal of cases for lack of counsel during the last quarter of the 2005 fiscal year. The Commission will request \$7 million from the January 2005 meeting of the Emergency Board to maintain services through the remainder of the 2003-05 biennium.

Interim actions by the Emergency Board are described in detail in the Public Defense Services Account section of this analysis.

## Governor's Budget

The Governor's budget is \$15.8 million below the funding required for the projected 2005-07 public defense caseload. The Governor makes no recommendation on the services affected by this reduction. The 2005 Legislature will need to address this gap. This could include either identifying a source to restore the funding, or revising Oregon statutes to eliminate the sanctions that make a person eligible for appointed counsel.

## PDSC – Legal Services Division

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

### Program Description

The Public Defense Direct Services program is responsible for providing legal representation on criminal matters for indigent 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 by indigents and the legal complexity of the appealed cases. Statutory changes and ballot initiatives also affect the number of appeals that are filed. After experiencing significant workload growth because of statutory and ballot initiative changes in the late 1990s, the workload has stabilized, and no significant changes are projected. 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.

The 2001 Legislature adopted HB 2348 that restructured appeals of 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 include 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 has reduced this backlog from 184 cases in 2001 to 114 in 2004, through improved case management practices.

### Governor's Budget

The Governor's budget is \$506,130 above the 2003-05 General Fund appropriation, but \$551,691 below what would be required to meet 2005-07 appeals caseload. The agency will be required to eliminate approximately 3 attorney and 1.5 support FTE, which will result in an increase in the timelines and backlog of appeals. As noted above, the Court of Appeals may order the dismissal of pending cases that exceed 350 days.

The Governor, while taking no specific position on Judicial Branch budget requests, does not include funding of \$223,801 for a policy package to make appellate attorney compensation commensurate with Department of Justice appellate attorneys or of \$765,888 and 4 attorney positions to fund post-conviction relief. The post-conviction relief package would enable the Legal Services Division to use permanent staff rather than contract attorneys for post-conviction relief cases, which would improve the quality of representation. The agency has requested commensurate compensation for its attorneys for at least three biennia.

## PDSC – Public Defense Services Account

	2001-03 Actual	2003-05 Legislatively Adopted	2003-05 Legislatively Approved	2005-07 Judicial Branch's Recommended
General Fund	144,118,428	160,694,576	150,782,856	176,992,037
<b>Total Funds</b>	<b>\$144,118,428</b>	<b>\$160,694,576</b>	<b>\$150,782,856</b>	<b>\$176,992,037</b>

### Program Description

The Public Defense Services Account pays the cost of legal representation for indigent persons at trial, and for persons who are entitled to state paid legal representation if they are indigent 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 indigent 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 Public Defense Legal Services.

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

### Revenue Sources and Relationships

The General Fund supports the program.

### Budget Environment

The indigent 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 Contract Services Program. This appropriation, combined with the \$7 million special purpose appropriation to the Emergency Fund for caseload growth, provides a total budget of \$160.7 million. The failure of Ballot Measure 30 triggered cuts to this appropriation of \$9.9 million effective May 2004. At current caseload and expenditure rates, PDSC will have a total resource gap of approximately \$14 million for the 2003-05 biennium. 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. PDSC will request funding for this gap from the Emergency Board in January 2005. Otherwise, the Public Defense Services Account will exhaust its resources during the last quarter of the 2003-05 biennium, and will have to cease payment for appointed counsel and related expense.

### Governor's Budget

The Governor's budget is \$595,540 above the legislatively approved budget for 2003-05. However, the legislatively approved budget does not include the restoration of \$7 million to fully restore the Ballot Measure 30 cut that PDSC has requested from the Emergency Board at its January 2005 meeting. The Governor's budget also does not restore the Ballot Measure 30 reduction, and is \$14,971,490 below what would be required to meet the projected 2005-07 trial court caseload. This reduction represents the level of funding required for between two and three months of contract services. Unless the 2005 Legislature acts to either reduce criminal penalties and thereby reduce the cases on which counsel must be appointed, or funds this caseload, PDSC will have to cease payment for appointed counsel and related expense during the last quarter of the 2005-07 biennium. Generally, if counsel is not available, the courts will dismiss cases.

The Governor, while taking no specific position on Judicial Branch budget requests, does not include \$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 Adopted	2003-05 Legislatively Approved	2005-07 Judicial Branch's Recommended
General Fund	1,581,295	2,566,906	2,566,906	2,729,853
Other Funds	410,063	1,107,063	1,107,063	957,723
<b>Total Funds</b>	<b>\$1,991,358</b>	<b>\$3,673,969</b>	<b>\$3,673,969</b>	<b>\$3,687,576</b>
Positions	24	22	22	20
FTE	21.82	21.25	21.25	18.95

#### Program Description

The Contract and Business Services Division is responsible for administering the public defense contracts that provide legal representation for indigent 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 defendants 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 indigent 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.

#### Governor's Budget

The Governor's budget is \$82,749 below the 2003-05 General Fund appropriation, and \$245,696 below what would be required to meet the contract services workload related to 2005-07 trial court caseload. This reduction will require the elimination of approximately 3 support FTE, which will result in delays in paying contract caseload costs and an inability for staff to audit contractor caseload reports.

The Governor, while taking no specific position on Judicial Branch budget requests, does not include a requested \$201,542 Other Funds and 1.45 FTE for a policy package that transfers Application Contribution Program staffing in PDSC to the Judicial Department. The Judicial Department policy package 103 reflects this transfer.