



**Oregon Department of Justice**  
Ellen F. Rosenblum, Attorney General

**2017 Joint Committee on Ways & Means  
Public Safety Subcommittee Presentation – Phase 1**  
April 3 – 6, 2017





**Oregon Department of Justice**  
Ellen F. Rosenblum, Attorney General

# Appellate Division



Department of Justice – Appellate Division

# Mission

Represent the State's interests in appellate courts:

- Oregon Supreme Court
- Oregon Court of Appeals
- Federal Courts of Appeals
- U.S. Supreme Court



# Program Summary

Write briefs and argue cases in:

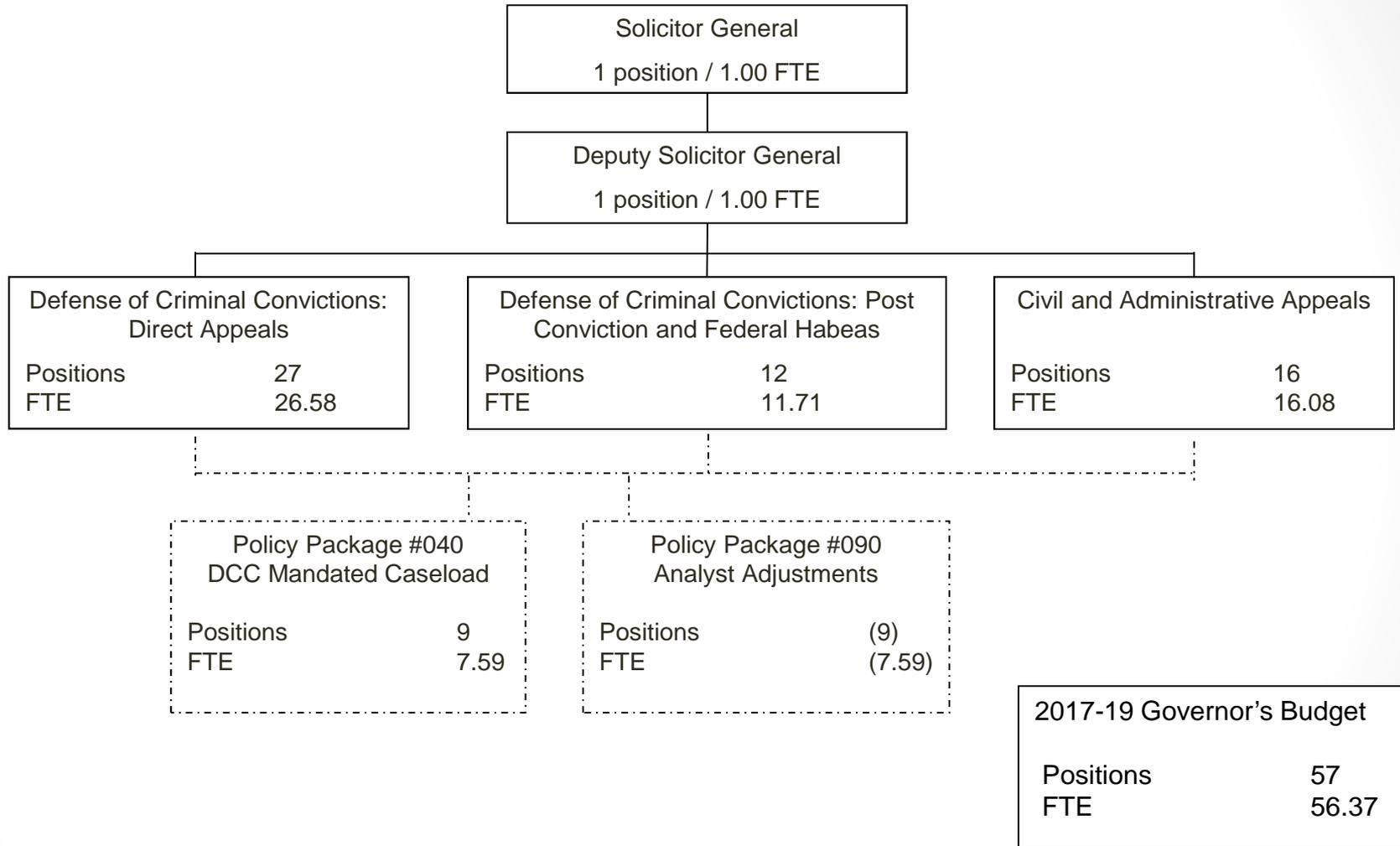
- Oregon Court of Appeals
  - State is a party in every criminal and post-conviction case and approximately 60% of the civil cases
- Oregon Supreme Court
  - State is a party in 50-60% of cases
- Federal appellate courts

Conduct trials in capital post-conviction cases

Prepare ballot titles for legislative referrals and initiatives



# Organization



# Types of Cases

- Defense of criminal convictions
- Civil
- Administrative
- Other (including ballot titles)



# Types of Cases

## Civil

- Tax
- Torts
- Contracts
- Civil commitment
- Juvenile dependency
- Challenges to statutes and initiatives



# Types of Cases

## Administrative

- Professional and other licenses
- Regulatory decisions that impose fines or other penalties
- Benefits decisions
- Rule challenges



# Types of Cases

## Other cases

- “Original Jurisdiction” cases (bypass lower-court review and go directly to the Supreme Court)
  - Ballot titles
  - Mandamus
- Amicus (state is not a party, but has an interest)



# Workload

## Average number of cases each year:

- Criminal appeals: 1,200
- Post-conviction appeals: 200
- Civil/administrative: 400
- Juvenile dependency/termination: 200
- Ballot titles: 40



# Requested Addition to Governor's Budget

	<u>Agency Request Budget</u>	<u>Governor's Budget</u>
• Thorough Ballot Title Review	\$ 0.05M GF	Not Included



# 15% General Fund/Criminal Fine Account Reductions

Program	CSL Budget (in millions)	Source	1st 5%	2nd 5%	3rd 5%	Total
Crime Victims Law Center	\$ 0.33	GF	(0.02)	(0.02)	-	(0.04)
Address Confidentiality Program	\$ 0.13	GF	(0.13)	-	-	(0.13)
<b>Appellate</b>	<b>\$ 0.32</b>	<b>GF</b>	<b>(0.02)</b>	<b>(0.02)</b>	<b>(0.02)</b>	<b>(0.05)</b>
Civil Legal	\$ 0.70	GF	(0.04)	(0.04)	(0.04)	(0.11)
Child Abuse Multidisciplinary Intervention Program	\$ 1.34	GF	(0.08)	(0.08)	-	(0.16)
Other Crime Victims Assistance and Compensation	\$ 1.80	GF	-	-	-	-
Tobacco - NPM Fund/Diligent Defense of the Master Settlement Agreement	\$ 3.23	GF	(0.16)	(0.16)	(0.16)	(0.48)
Oregon Domestic and Sexual Violence Services	\$ 8.99	GF	(0.42)	(0.55)	(0.65)	(1.62)
District Attorney Assistance/Organized Crime Program	\$ 12.80	GF	(0.64)	(0.64)	(0.64)	(1.92)
Defense of Criminal Convictions	\$ 28.62	GF	(1.43)	(1.43)	(1.43)	(4.29)
Division of Child Support	\$ 26.69	GF	(1.33)	(1.33)	(1.33)	(4.00)
Sexual Assault Victims Emergency	\$ 0.43	GF	-	-	-	-
<b>Total</b>	<b>\$ 85.37</b>	<b>GF</b>	<b>(4.27)</b>	<b>(4.27)</b>	<b>(4.27)</b>	<b>(12.81)</b>
Child Abuse Multidisciplinary Intervention	\$ 11.51	CFA	(0.58)	(0.58)	(0.58)	(1.73)
Crime Victims Assistance (DA VAP)	\$ 5.37	CFA	(0.27)	(0.27)	(0.27)	(0.81)
Crime Victims Compensation Program	\$ 4.42	CFA	(0.22)	(0.22)	(0.22)	(0.66)
<b>Total</b>	<b>\$ 21.30</b>	<b>CFA</b>	<b>(1.06)</b>	<b>(1.06)</b>	<b>(1.06)</b>	<b>(3.19)</b>
<b>Combined Budget</b>	<b>\$ 106.67</b>		<b>(5.33)</b>	<b>(5.33)</b>	<b>(5.33)</b>	<b>(16.00)</b>



# 15% Legal Fund/Other Reductions

Program	CSL Budget (in millions)	Source	1st 5%	2nd 5%	3rd 5%	Total
Administration	\$ 31.60	OF	(1.58)	(1.58)	(1.58)	(4.74)
<b>Appellate</b>	<b>\$ 22.96</b>	<b>OF</b>	<b>(1.15)</b>	<b>(1.15)</b>	<b>(1.15)</b>	<b>(3.44)</b>
Civil Enforcement - Legal	\$ 55.55	OF	(2.68)	(2.28)	(3.17)	(8.13)
Criminal Justice - Legal	\$ 8.10	OF	(0.40)	(0.40)	(0.40)	(1.21)
General Counsel	\$ 53.33	OF	(2.67)	(2.67)	(2.67)	(8.00)
Trial	\$ 33.60	OF	(1.68)	(1.68)	(1.68)	(5.04)
Total Legal	\$ 205.14	OF	(10.16)	(9.76)	(10.65)	(30.57)
Consumer Protection and Education	\$ 14.64	OF	(0.83)	(1.23)	(0.33)	(2.40)
Non-Participating Manufacturers	\$ 1.48	OF	(0.07)	(0.07)	(0.07)	(0.22)
Total	\$ 16.12	OF	(0.91)	(1.31)	(0.41)	(2.62)
Combined Budget	\$ 221.26	OF	(11.06)	(11.06)	(11.06)	(33.19)





**Oregon Department of Justice**  
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# Defense of Criminal Convictions

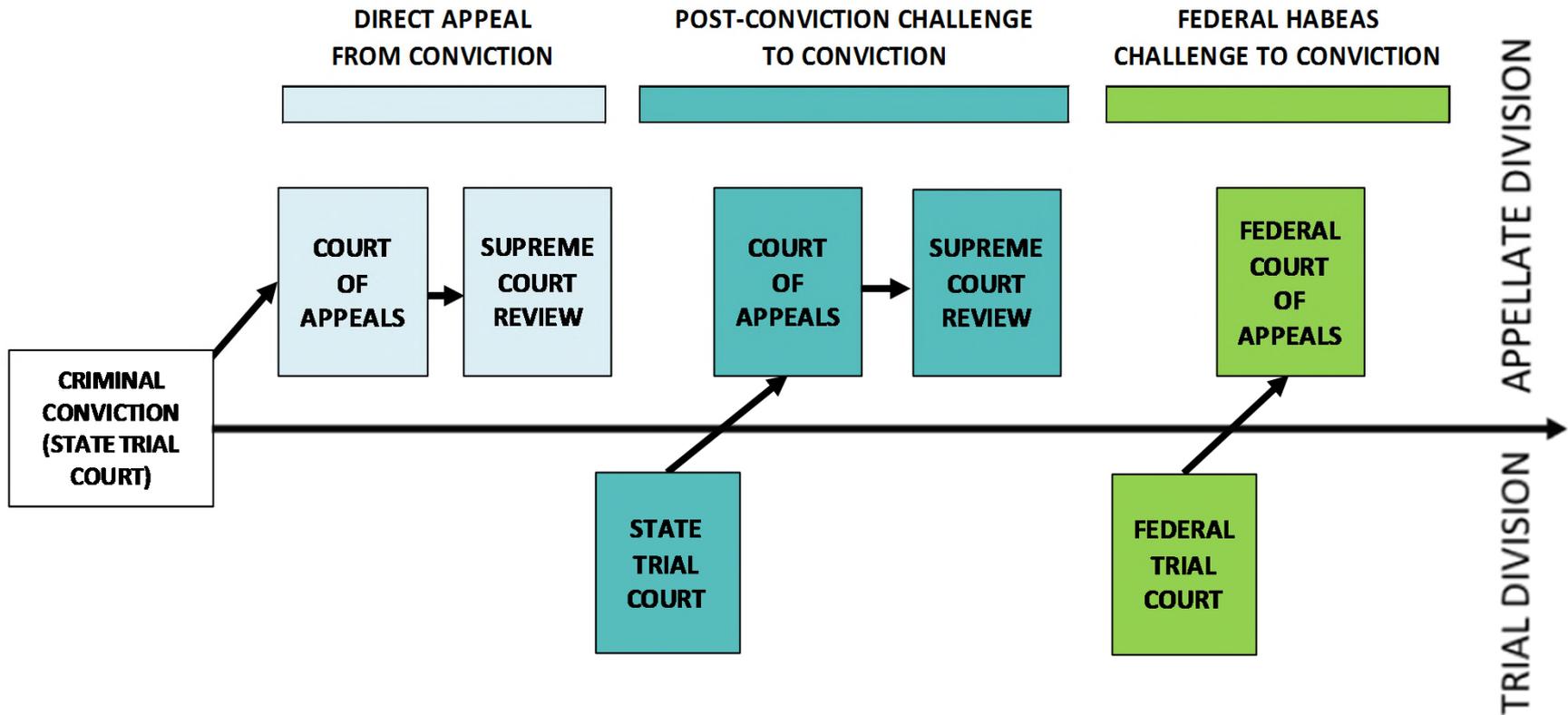


# Program Summary

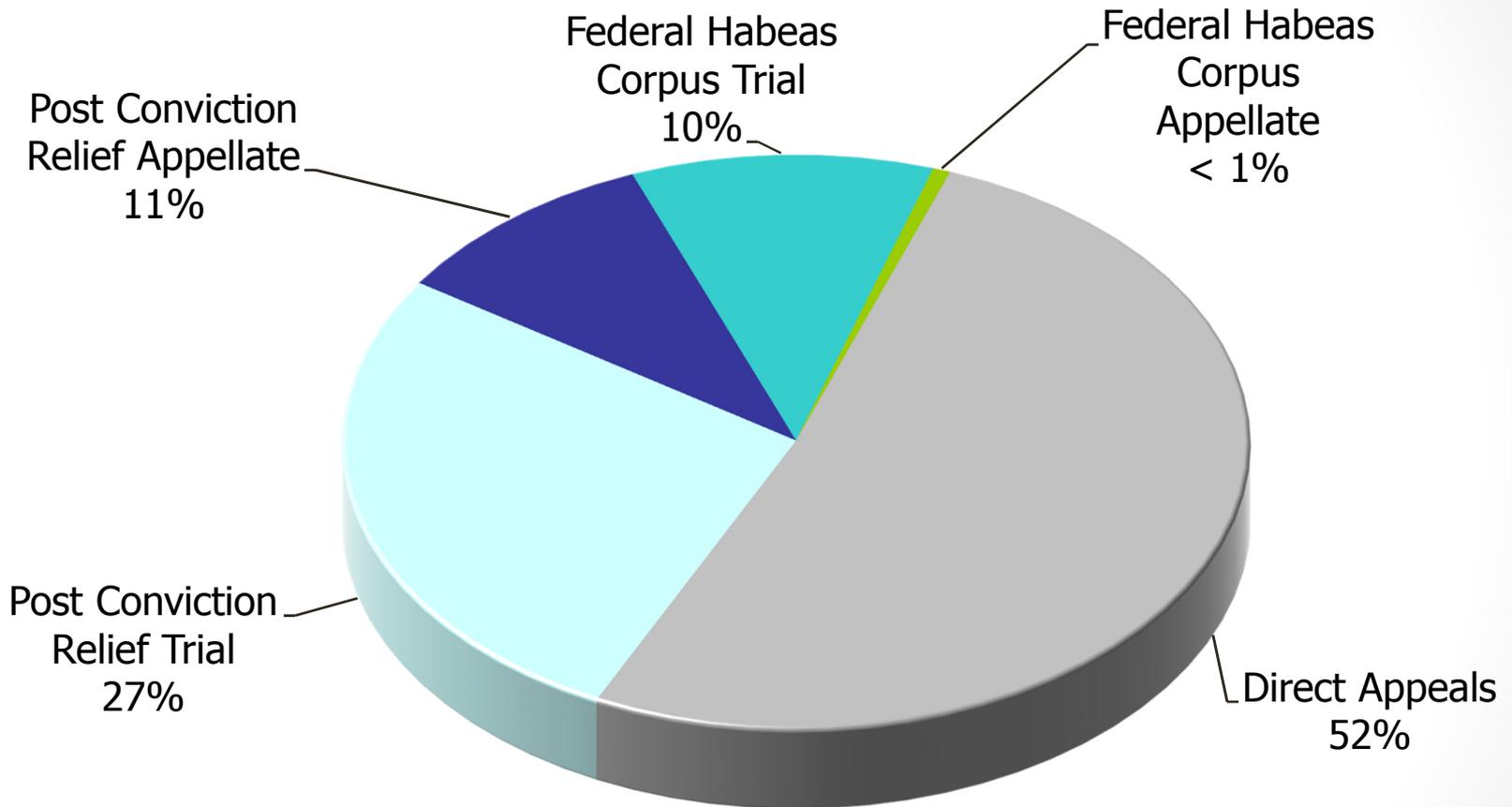
- Mandated Caseload.
- Preserve criminal convictions against challenges in state and federal courts.
- Appeal from trial court decisions that place criminal prosecutions in jeopardy.
- Analyze court decisions and provide crucial information and advice to District Attorneys and law-enforcement officers.
- Psychiatric Security Review Board/State Hospital Review Panel hearings.



# Overview of the Process



# Caseload



Includes approximately 2,200 cases/year



# Direct Appeals

## Two possible outcomes in a direct appeal:

- Court will affirm the judgment of conviction
- Court will reverse the judgment of conviction and the court will:
  - Order a new trial
  - Order a new sentence hearing
  - Other relief as the court deems necessary



# Post Conviction Relief/Federal Habeas

## Habeas

Two possible outcomes in a PCR/Federal Habeas Corpus proceeding:

- The petition for relief will be **denied** upholding the conviction and sentence; or
- The petition will be **granted**, and the judge will:
  - Order a new trial,
  - Modify the sentence, or
  - Order other relief as necessary



# State's Appeals

A small portion of the DCC caseload involves State's appeals:

- Solicitor General approves appeal of lower-court decisions;
- Typically involve a challenge to the dismissal of criminal charges or the exclusion of evidence critical to the successful prosecution of the case;
- Approximately 30-50 such cases per year considered, with 10-20 appeals actually pursued.



# Psychiatry Security Review Board (PSRB) / State Hospital Review Panel (SHRP)

- The PSRB has jurisdiction over some people found “guilty except for insanity” of a Measure 11 crime. It conducts hearings over whether these individuals should be conditionally released or discharged into the community.
- The SHRP conducts hearings to determine whether patients charged with or convicted of non-Measure-11 criminal offenses should be conditionally released or discharged into the community.
- Division lawyers represent the state in these administrative hearings.



# Supporting District Attorneys and Law Enforcement

Respond to legal questions from the state's prosecutors, often on short notice

Prepare and distribute publications on Oregon criminal law, including:

- Weekly electronic legal bulletins
- Search and Seizure Manual
- Oregon Criminal Reporter



# Requested Addition to Governor's Budget

	<u>Agency Request Budget</u>	<u>Governor's Budget</u>
• Revised Mandated Caseload	\$ 0.87M GF	Not included



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# Trial Division



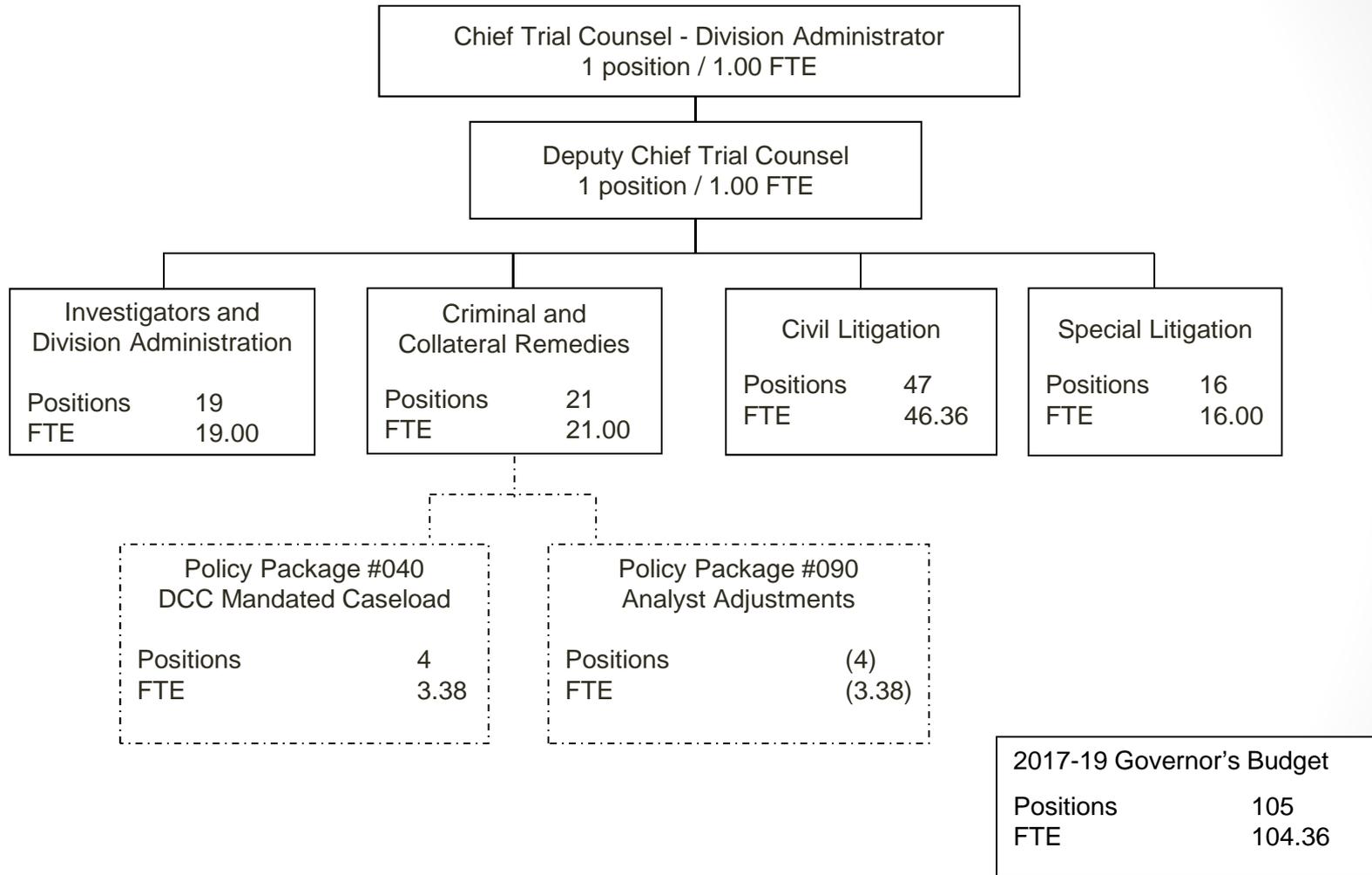
Department of Justice – Trial Division

# Program Summary

When the State is sued for money damages  
or  
someone petitions the court to order the  
State to do something,  
the Trial Division  
defends the State in those actions



# Organization



# Trial Division Sections

- **Civil Litigation:**

Personal injury, property damage, employment, civil rights, highway projects, defense of agency orders, inmate litigation

- **Special Litigation:**

Environmental, elections, constitutional challenges, class actions, water law

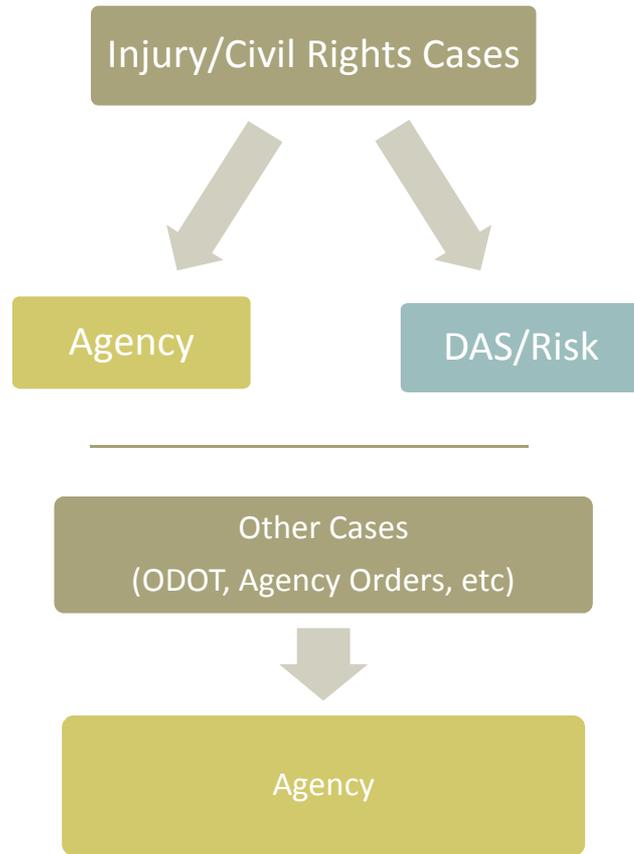
- **Criminal & Collateral Remedies (CCR):**

Inmates trying to get their convictions overturned, patients seeking release from the state hospital

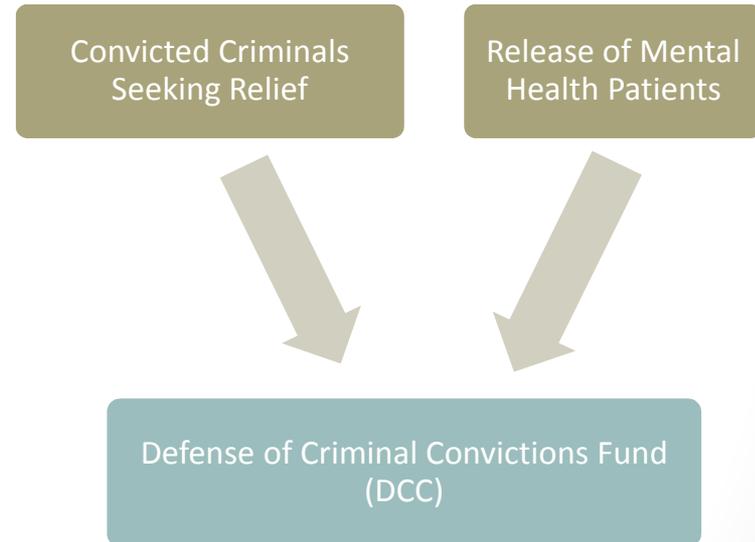


# Clients

## Civil/Special Litigation



## Criminal & Collateral Remedies



# Workload

## Civil/Special Litigation

- 800 cases pending at any time
- 600 new cases each year

## Criminal and Collateral Remedies

- 800 cases pending at any time
- 400 – 450 new cases each year



# Results

## Civil Litigation/SLU

- 24% Settled prior to trial
- 76% Litigated to resolution
  - 96% State prevails
  - 4% Opposing party prevails

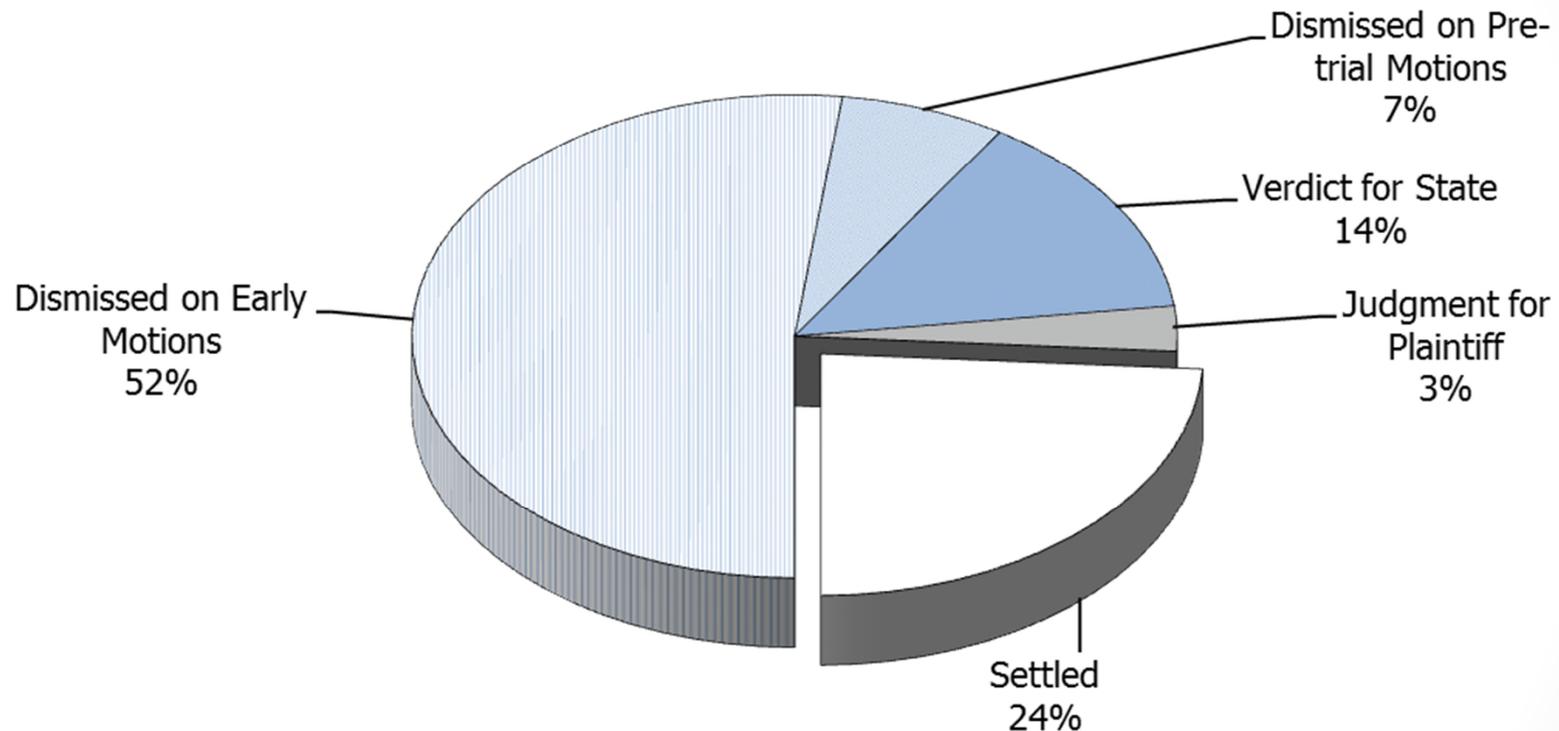
## Criminal & Collateral Remedies

- 97% Criminal convictions upheld



# Case Dispositions

**Fiscal Year 2015-2016**



# Budget Drivers

## Caseload Entirely Dependent Upon Others

- Lawsuits for money damages or to compel state action
- Convicted criminals (usually Measure 11) suing to overturn their convictions
- Licensees/others attempt to overturn agency orders
- Public records requests
- Oregon Department of Transportation highway improvement projects

**If the State does not appear in the case,  
or fails to respond to a motion,  
a judgment can be entered for the opposing party**



# Budget Drivers

## Case Complexity

- Numerous claims and agencies within one suit
- High volume discovery requests
- Numerous motions: DOJ must respond
- Post-conviction Relief/Federal Habeas: increasingly long briefs, more expert witnesses
- Changes in the law: statutes, legal decisions, ballot measure results



# Policy Packages

	<u>Agency Request Budget</u>	<u>Governor's Budget</u>
• Package 221 – Improved Trial Division Legal Service	\$ 0.62M OF	Not Included



# Requested Addition to Governor's Budget

	<u>Requested Addition</u>	<u>Governor's Budget</u>
• Revised Mandated Caseload (1 Assistant Attorney General position / 0.50 FTE)	\$ 0.15M OF	Not included



# Workload

## Civil Litigation/Special Litigation

### Civil Lawsuits for Money Damages or Declaratory/Injunctive Relief

Year	Pending Jan. 1	Opened	Closed
2016	803	607	578
2015	781	565	543
2014	921	557	697
2013	854	653	586



# Workload

## Criminal & Collateral Remedies Civil Suits for Relief from Convictions

Year	Pending	Opened	Closed
2016	823	413	437
2015	820	431	428
2014	807	442	429
2013	1034	404	631



# Results

## Civil Litigation/Special Litigation (Civil Suits/Money Damages)

Year	Cases Settled	Cases Litigated to Final Result	
		Number	% Won
2016	22%	468	97%
2015	27%	416	94%
2014	25%	519	95%
2013	22%	473	97%



# Results

## Criminal & Collateral Remedies Civil Suits for Relief from Convictions

Year	Percentage of Convictions Affirmed
2016	98%
2015	96%
2014	95%
2013	97%



# Legal Fund/Other 15% Reductions

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