

2023 Joint Committee on Ways & Means Public Safety Subcommittee Presentation – Phase 1

February 28, 2023

Oregon Department of Justice
Ellen F. Rosenblum, Attorney General



Civil Enforcement Division

Oregon Department of Justice

Ellen F. Rosenblum, Attorney General

Department of Justice: Civil Enforcement Division



Civil Enforcement Organization

Chief Child Advocacy Counsel –
Division Administrator
1 Position / 1.00 FTE

Child Advocacy

Positions	177
FTE	174.04

2021-23 Legislatively Approved Budget –
Child Advocacy Section

Positions	178
FTE	175.04

2023-2025 Agency Requested Budget

Positions	198
FTE	194.51

Chief Civil Enforcement Counsel –
Division Administrator
1 Position / 1.00 FTE

Charitable
Activities

Positions	18
FTE	18.00

Financial Fraud/
Consumer Protection

Positions	25
FTE	25.00

Medicaid Fraud

Positions	19
FTE	19.00

Civil Recovery /
Tobacco Enforcement

Positions	64
FTE	62.88

2021-23 Legislatively Approved Budget
Civil Enforcement

Positions	127
FTE	125.88

2023-2025 Agency Requested Budget

Positions	125
FTE	124.00

Civil Enforcement Division Overview

Preserve and Recover State Resources

Advocate for Children's Financial Support

Education, Enforcement, and Regulation

Consumer
Protection

Medicaid Fraud

Charitable
Activities

Civil Recovery

False
Claims and
Antitrust

Tobacco
Enforcement

Consumer Protection

Consumer Protection

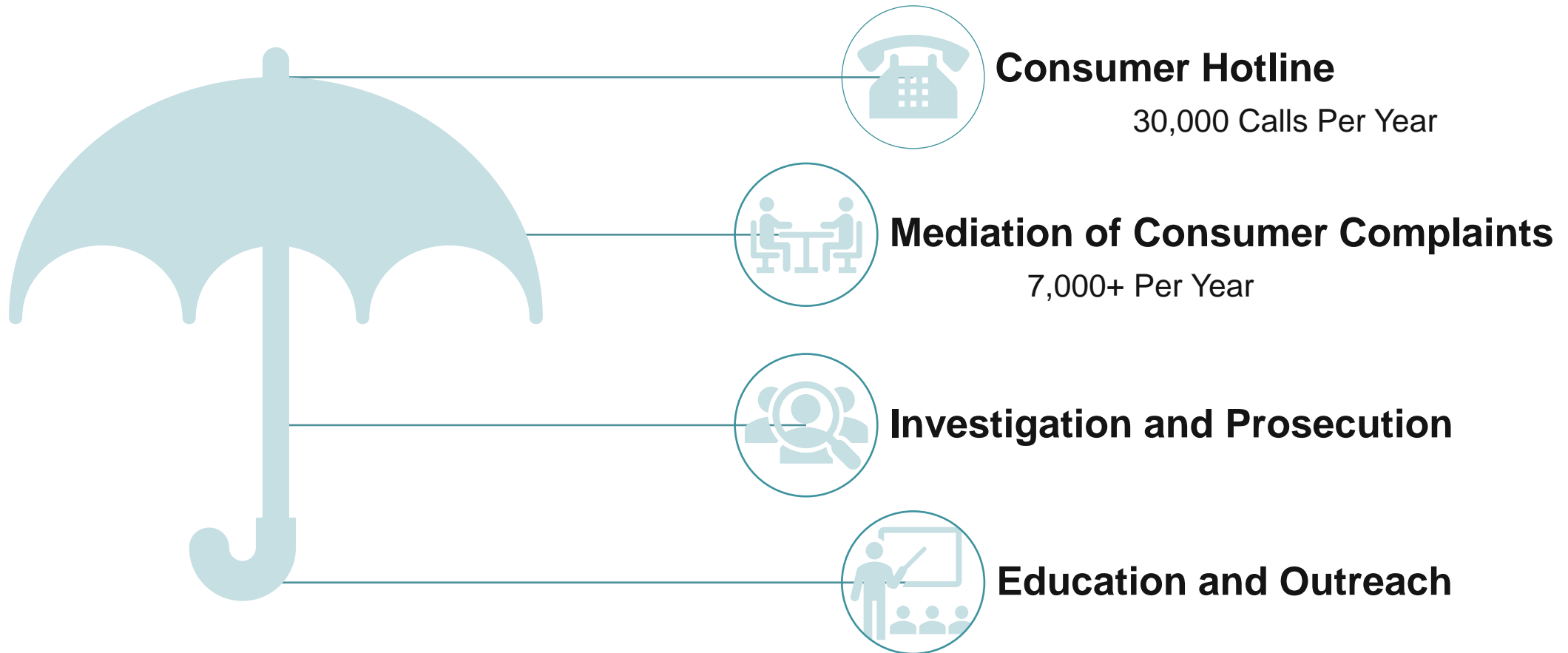
Section Goals

- Protect and Assist Oregon Consumers
- Promote Competition by Ensuring a Fair and Honest Marketplace



100% Self-Funded

Consumer Protection

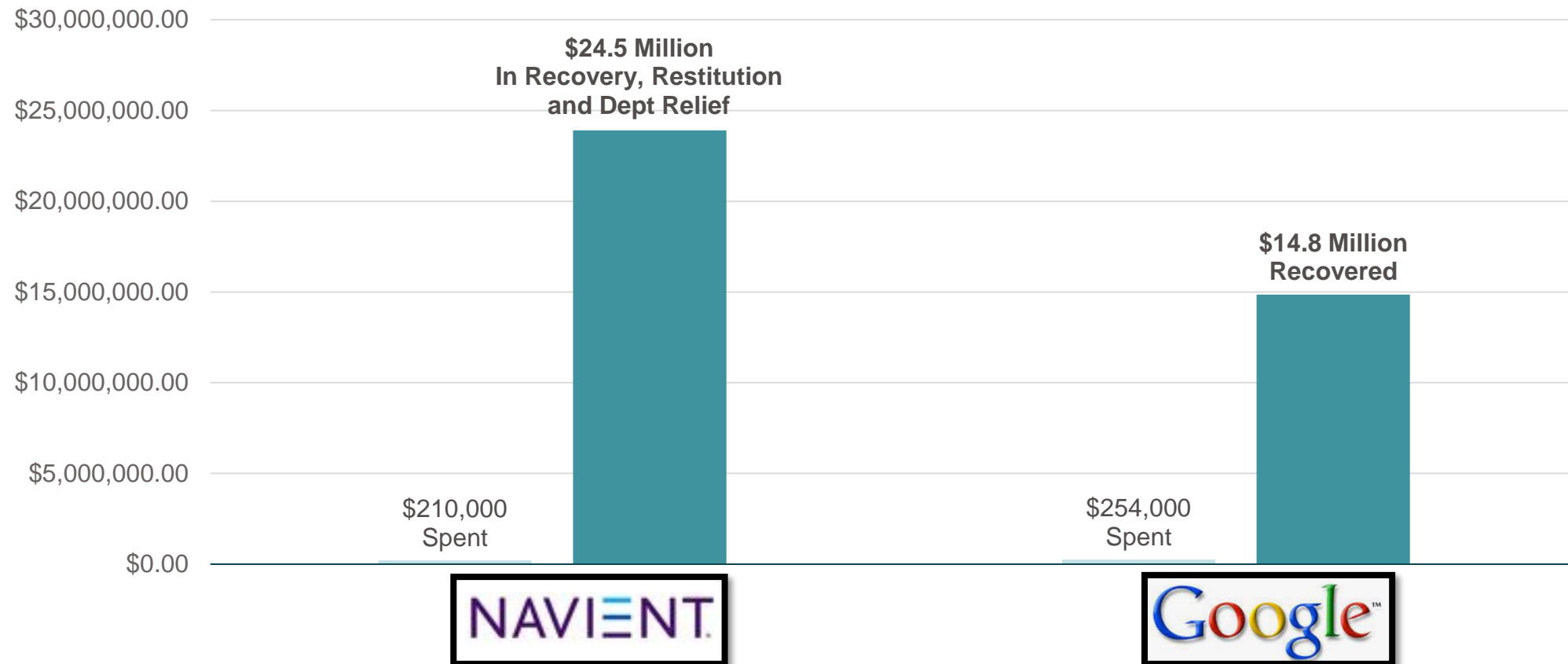


Consumer Protection



Consumer Protection – Enforcement Actions

Case Recovery and Direct Litigation Expense Comparison



Consumer Protection Antitrust and False Claims Unit

ANTITRUST

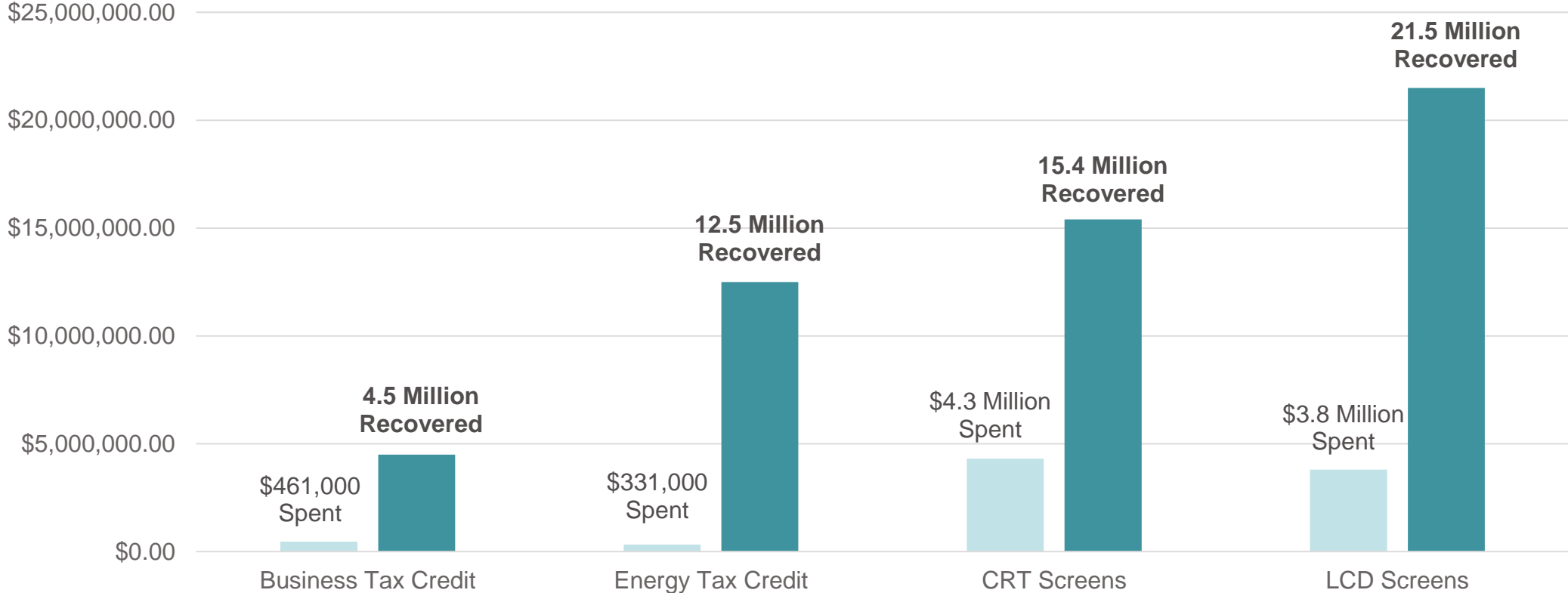
Protect competition through enforcement actions prohibiting price fixing and mergers that reduce competition

FALSE CLAIMS

Recovery of benefits obtained from government entities through misrepresentations or false information

Consumer Protection Antitrust and False Claims Unit

Case Recovery and Direct Litigation Expense Comparison



Civil Recovery

Civil Recovery

PLAINTIFF LAWYERS FOR THE STATE

RECOVER MONEY OWED TO STATE AGENCIES

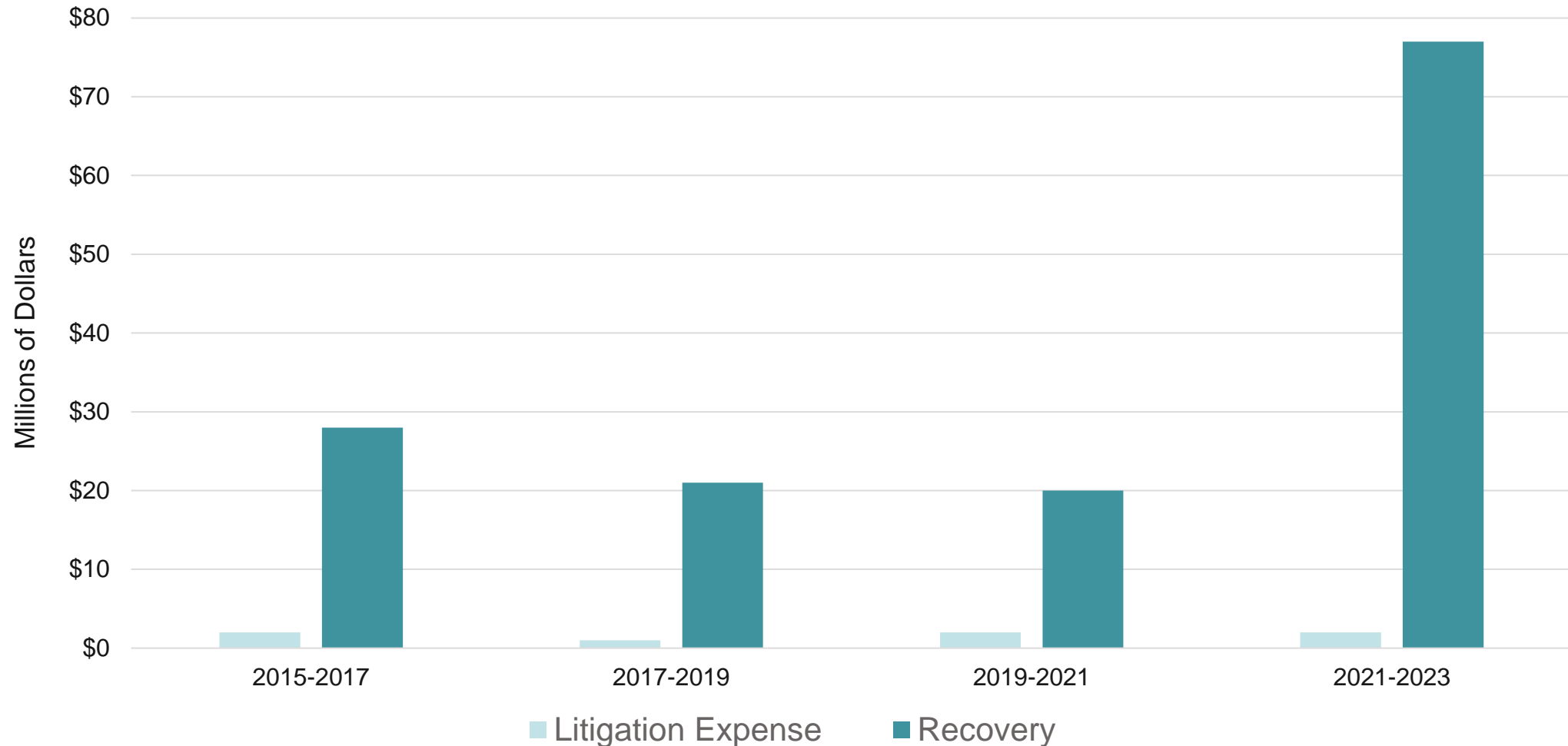
- Fire Suppression Costs
- Overpayments and Fraud
- Damage to State Property
- Breach of Contract
- Represent State in Bankruptcy Court Proceedings

REAL PROPERTY DISPUTE

- Quiet Title
- Ejectments and Evictions
- Judicial Foreclosures

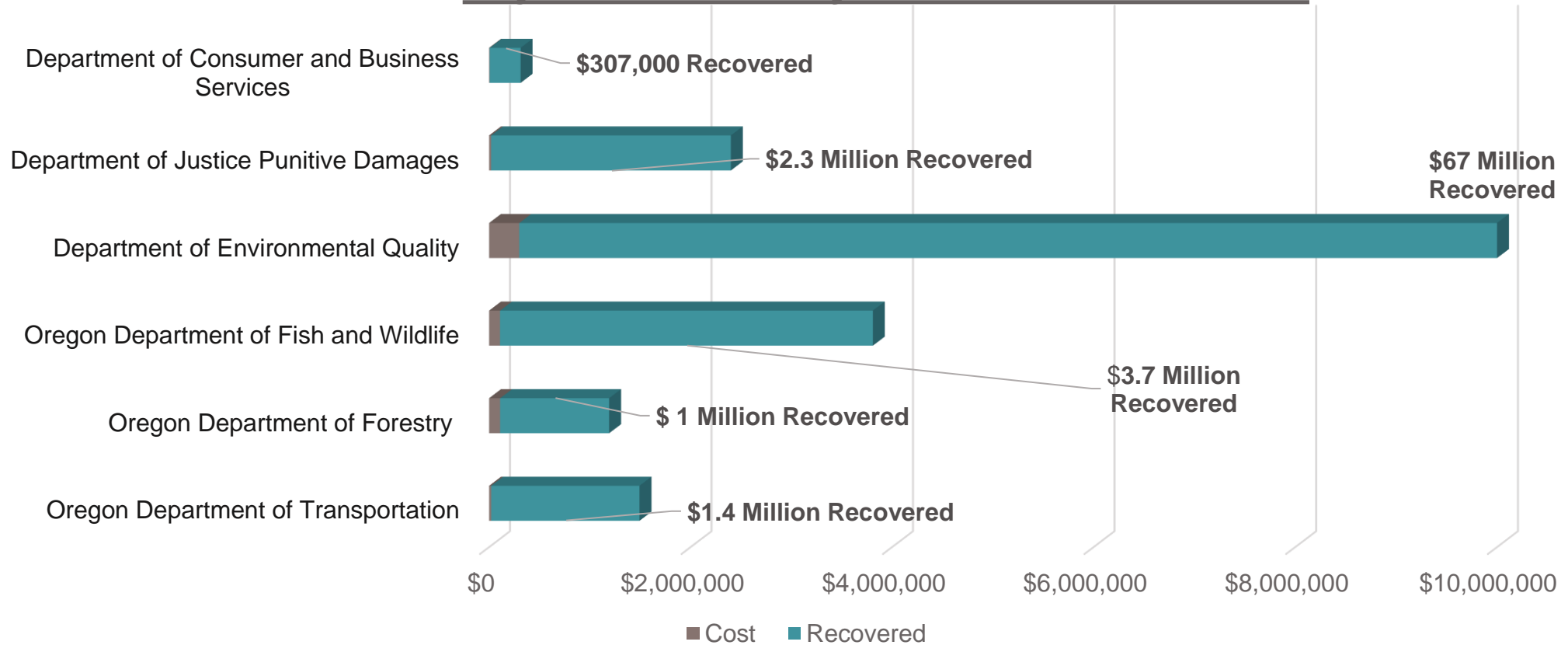
Civil Recovery

Case Recovery and Direct Litigation Expense Comparison



Civil Recovery

Major Case Recovery Over the Past Two Years



Civil Recovery



REPRESENTATION OF THE DIVISION OF CHILD SUPPORT

- Establish, modify and ensure compliance with child support orders; establish paternity/ parentage; pursue contempt actions when the paying parent does not pay support
- Training and education:
 - Child Support Bench Book
 - Training to DCS staff, private attorneys, DDAs and OJD

RECOVERIES

- Payments to Oregon families increases after contempt actions are filed
- Holistic, problem-solving approach – emphasis on consistent payments and employment
- Flexibility in responding to changing conditions, including pandemic and wildfires



Civil Recovery – Wildfire Investigations and Cost Recovery



The Oregon Dept. of Forestry (ODF) investigates wildfires that start on state-protected land. We assist ODF with many of its larger investigations and help state agencies recover their fire-related losses.



The US Forest Service and Bureau of Land Management investigate fires that start on federal land. If those fires spread to state-protected lands, we represent ODF and other state agencies in cost recovery actions if a responsible party is identified.

Civil Recovery - Tobacco

PROTECT THE TOBACCO MASTER SETTLEMENT AGREEMENT (MSA) INCOME STREAM

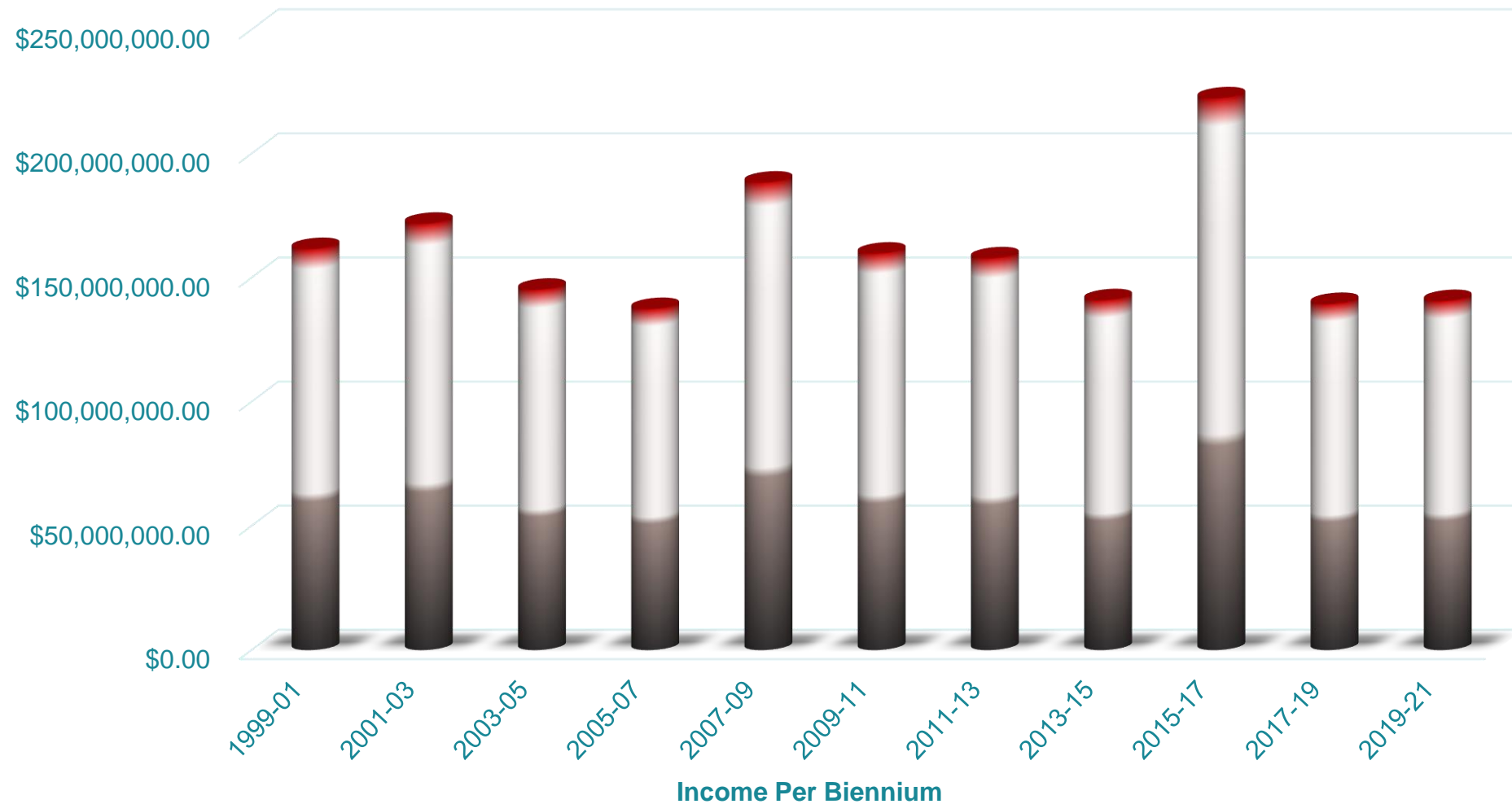
- \$140-\$160 million to State Treasury each biennia
- More than \$1.8 Billion to date
- Payment obligation into perpetuity

REGULATION OF CIGARETTE SALES IN OREGON

- Obligation to enforce “NPM Escrow Statutes”
- Maintain directory of products approved for sale

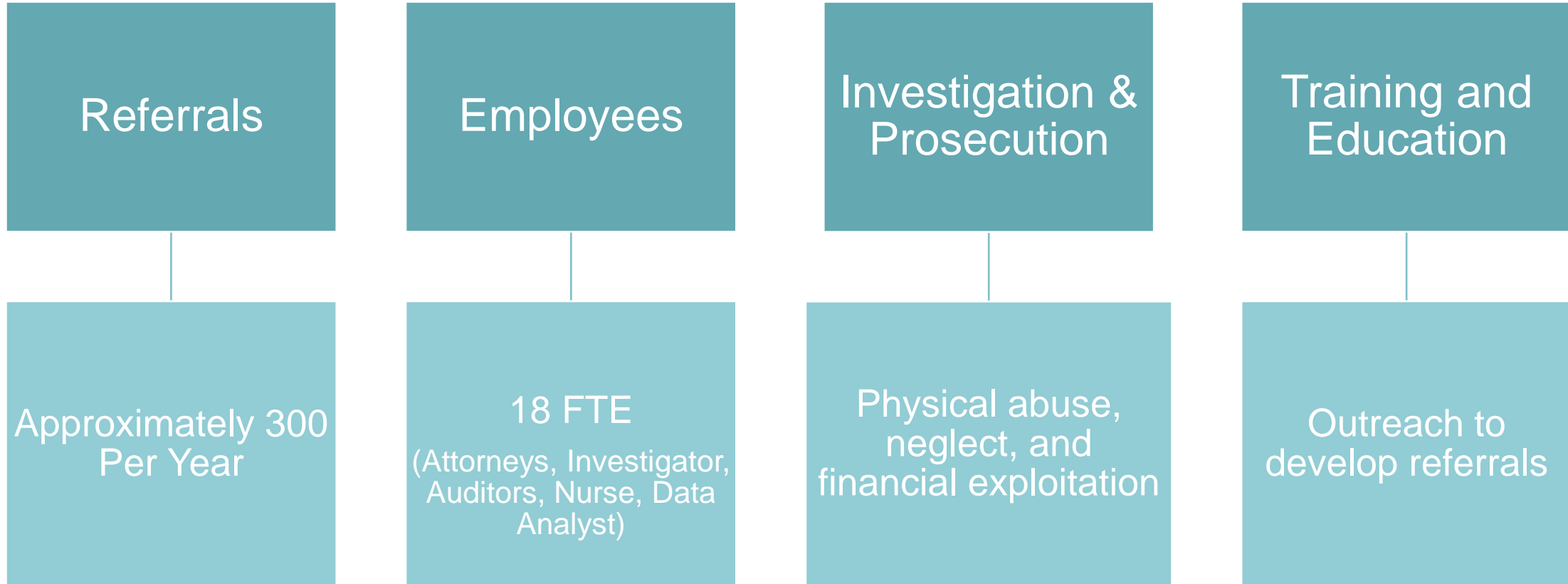
Civil Recovery - Tobacco

Tobacco MSA Income

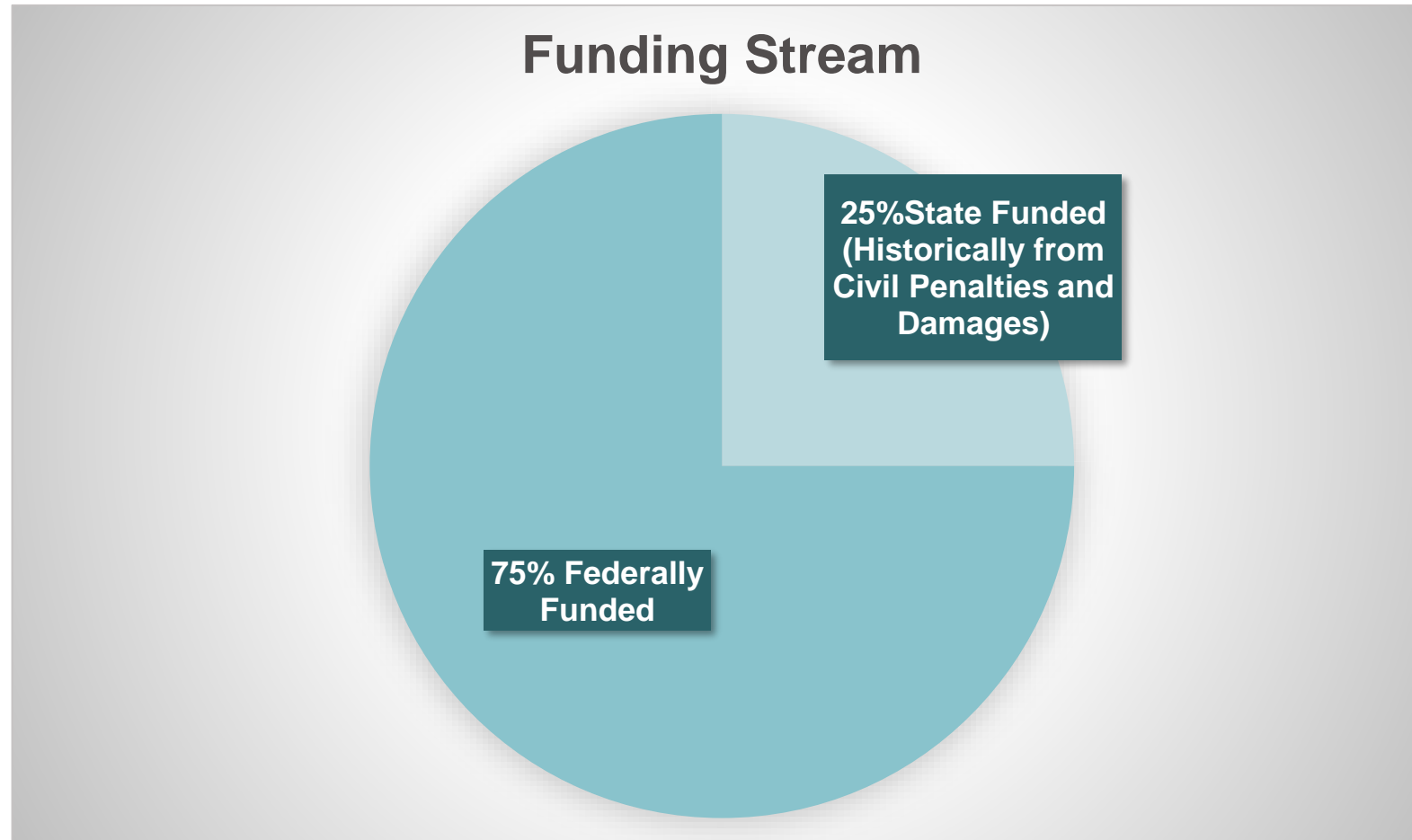


Medicaid Fraud Control Unit

Medicaid Fraud Control Unit



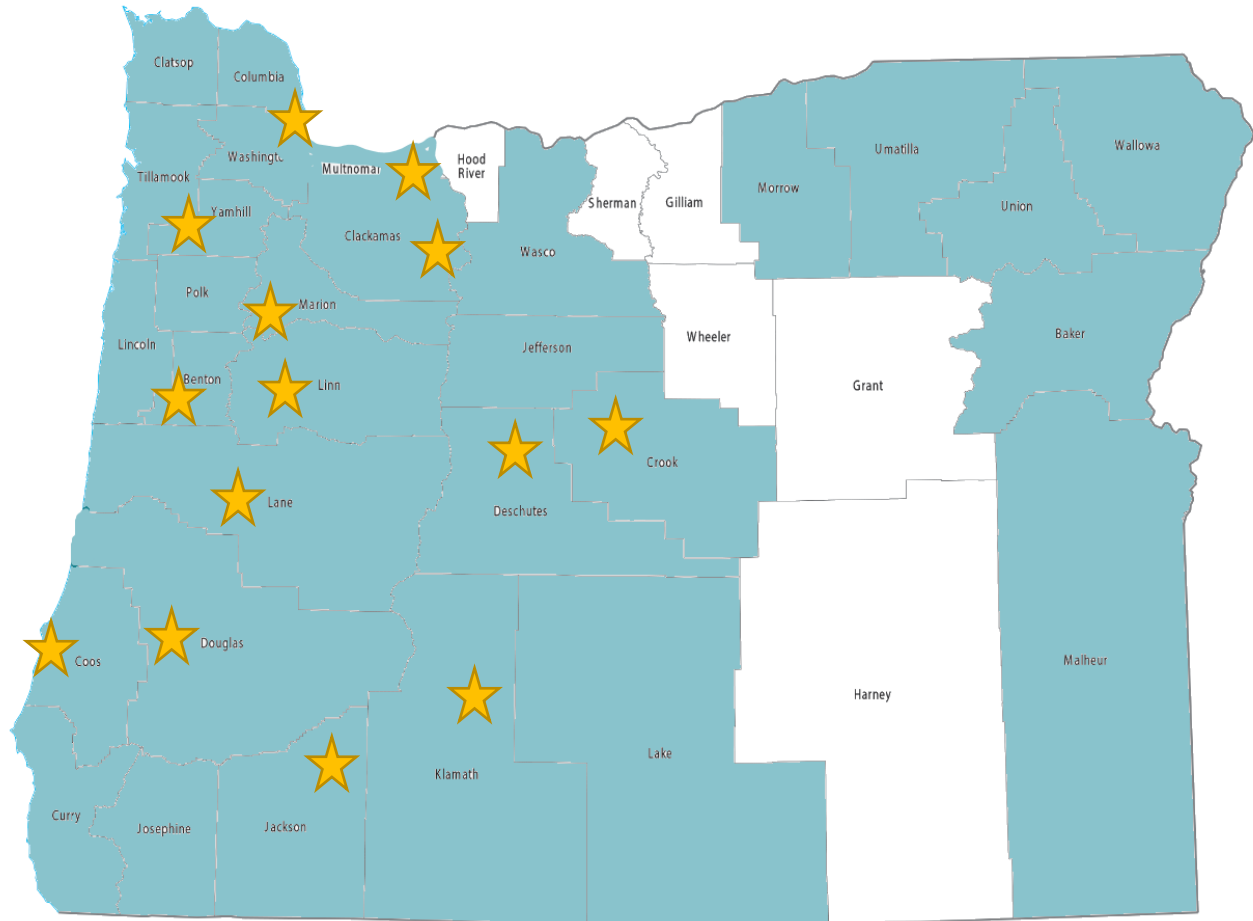
Medicaid Fraud Control Unit



Medicaid Fraud Control Unit Statewide Impact

14 counties served in the
last biennium. ★

31 counties served in the
last 10 years.



Charitable Activities Section

Charitable Activities

Protecting Charities and Charitable Activities

- Registration/Regulation
- Education
- Enforcement

Regulate Charitable Gaming

Public Outreach and Education

- Section staff process 3,000 to 4,000 contacts per month to and from charitable organizations and the public.
- Hosts frequent webinars and conferences concerning compliance requirements for: Nonprofit organizations; Members of the Oregon State Bar; and Accounting firms



*100% Supported by Fees
Sliding Scale*

Charitable Activities Enforcement

Protecting the public's interest in charitable organizations

The preservation of charitable assets

Board governance

Investigating misleading solicitations

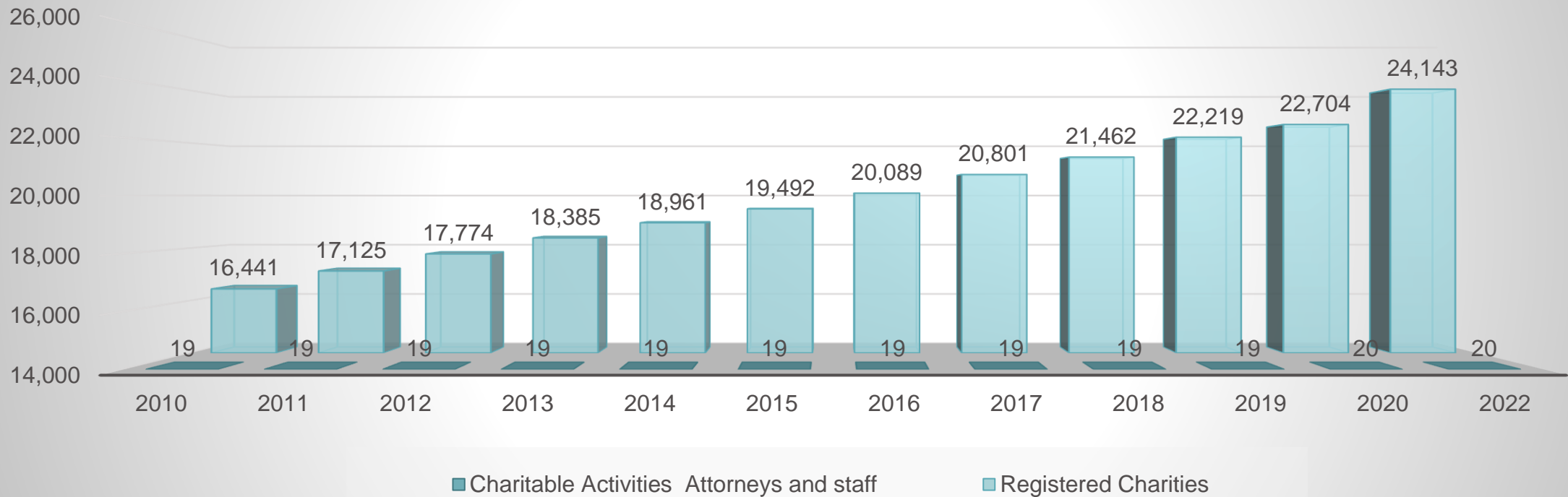
Conflicts of interest

Misuse of grant funds

Protecting donor intent through participation in will contests and probate matters

Charitable Activities

Registered Charities to Employee Comparison 2010 - 2022



Civil Enforcement - Policy Packages

		<u>Agency Request</u> <u>Budget</u>	<u>Governor's Budget</u>
Package 092 -	Statewide AG Adjustment	\$ - 0 -	(\$430,082) OF
Package 093 –	Statewide Adjustment DAS Charges	\$ - 0 -	(\$99,903) OF (\$13,748) FF
Package 100 –	Reconcile Intra-Agency Charges	\$539,161 OF \$172,629 FF	\$239,459 OF \$120,841 FF
Package 101 –	Hardware Lifecycle Replacement	\$91,100 OF	\$91,100 OF

Civil Enforcement - Policy Packages

		<u>Agency Request Budget</u>		<u>Governor's Budget</u>	
Package 201 -	Budget Shift: Child Advocacy Program	(\$73.49M)	OF	(\$73.49M)	OF
Package 251 –	Compliance with State Labor Agreement	(\$19,564)	OF	(\$19,564)	OF

15% Budget Reduction Options

Civil Enforcement					
Reduction %	Other Funds	Federal Funds	Total Funds	Positions	FTE
5%	\$ (3,276,185)	\$ (404,789)	\$ (3,680,974)	(9)	(11.12)
5%	\$ (3,307,285)	\$ (381,852)	\$ (3,689,137)	(5)	(7.86)
5%	\$ (3,419,671)	\$ (393,623)	\$ (3,813,294)	(16)	(14.29)

Child Advocacy Division

Oregon Department of Justice

Ellen F. Rosenblum, Attorney General

Department of Justice: Child Advocacy Division



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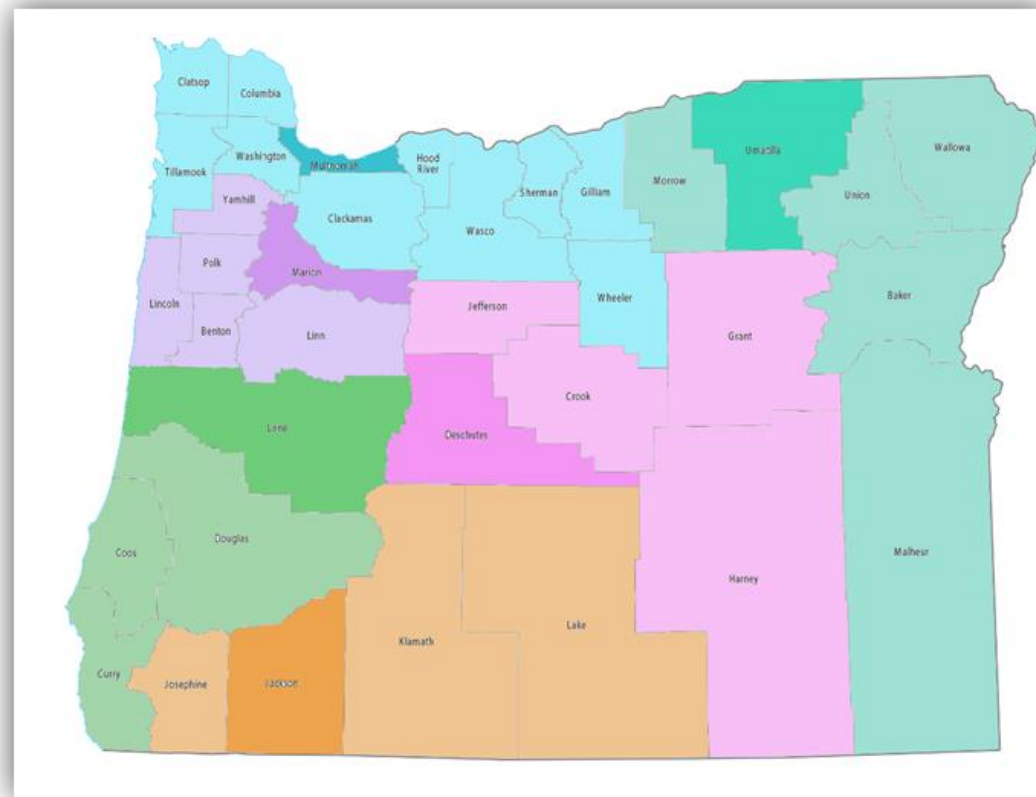
Child Advocacy

Program attorneys represent the Oregon Department of Human Services Child Welfare Division (ODHS) in matters of child safety and supporting families:

- Provide litigation support and legal advice in all Juvenile Dependency and Termination of Parental Rights cases
- Appear at administrative hearings regarding licensing and foster care certification cases and prepare agency final orders
- Responsible for general legal advice specific to issues impacting child welfare and child safety

Dependency Caseloads & Attorney FTE

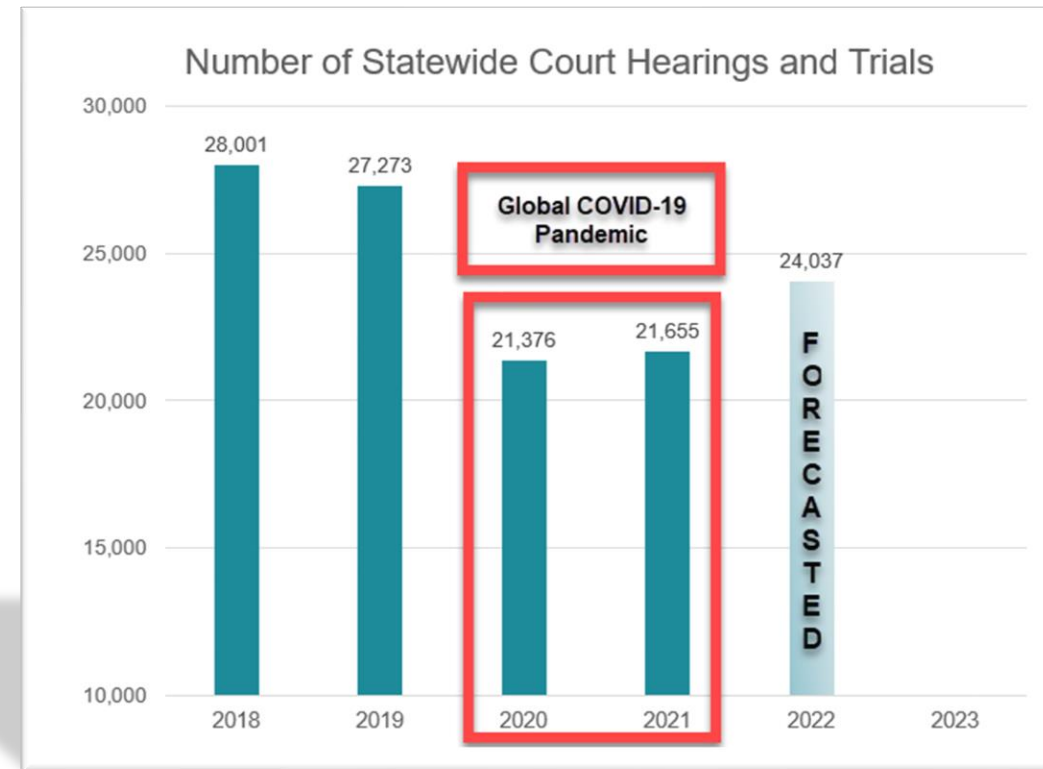
Child Advocacy Office	Number of Dependency Cases	Attorney FTE
Portland	1556	28.6
Pendleton	287	5.0
Salem	738	12.5
Bend	233	3.0
Eugene	971	15.5
Medford	524	9.0
Statewide Totals	4,309	58.5



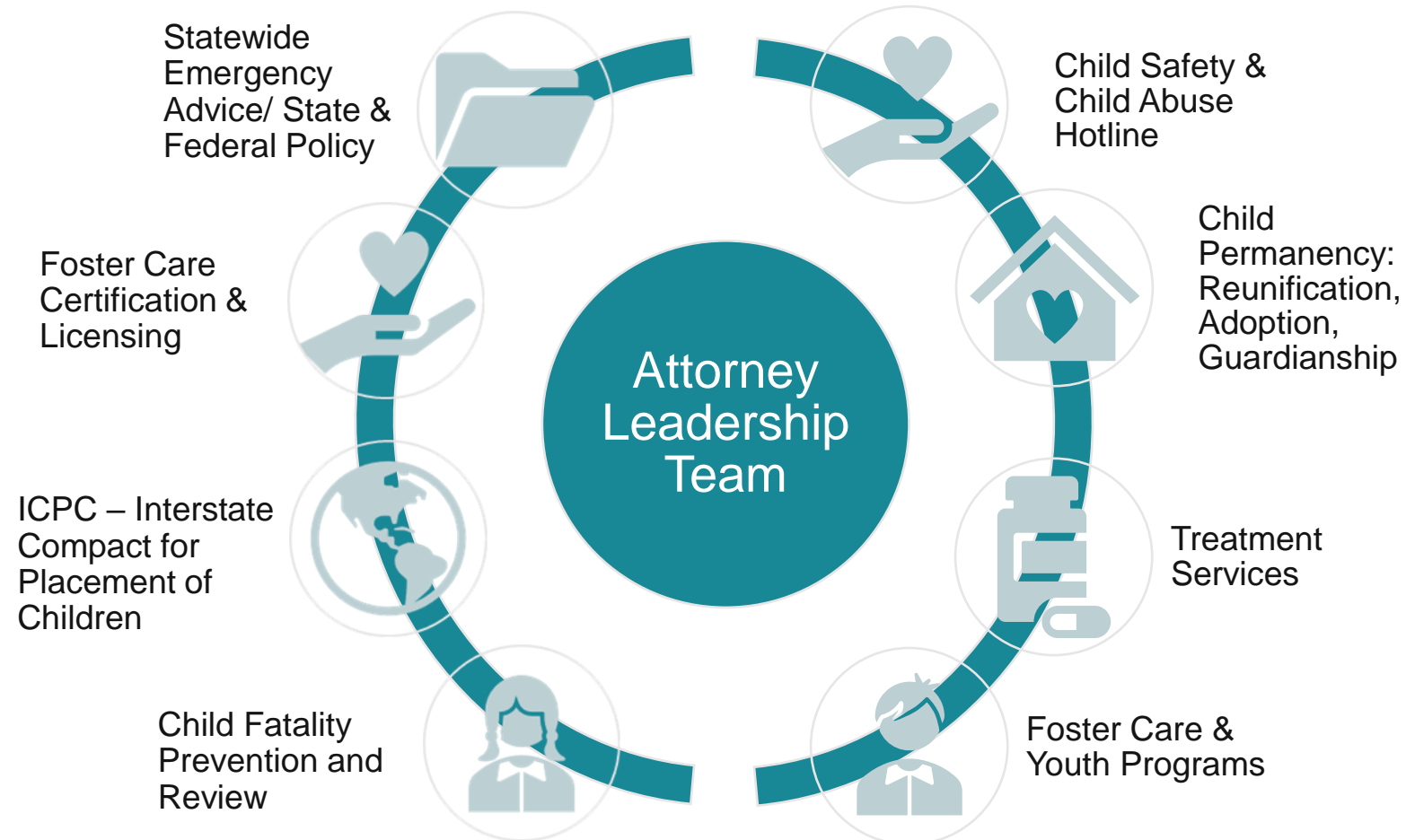
Court Hearings and Trials

Attorneys prepare for and appear on behalf of ODHS caseworkers at a significant number of court hearings statewide, including many complex multi-day trials. Preparation can include:

- witness and exhibit preparation
- subpoenas
- legal service
- filing pleadings
- drafting judgments
- settlement discussions
- reviewing voluminous discovery

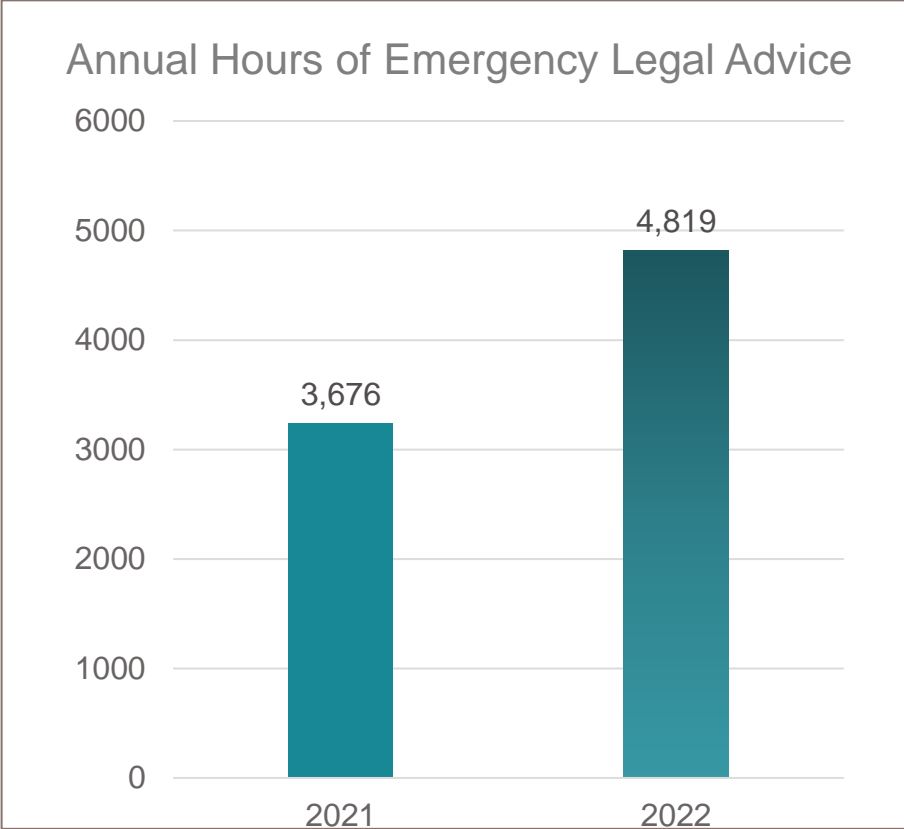


Legal Advice to Child Welfare Programs



Pre-Removal Emergency Legal Advice

Attorneys provide emergency consultation to Child Welfare caseworkers in all counties to determine whether ODHS has legal sufficiency to remove a child and to prevent unnecessary trauma of removal



Impact of Emergency Legal Advice



Number of children entering foster care during FFY 2021 decreased 13.7% from the FFY 2020 level, aligning with and supporting ODHS Child Welfare's work in their Vision for Transformation

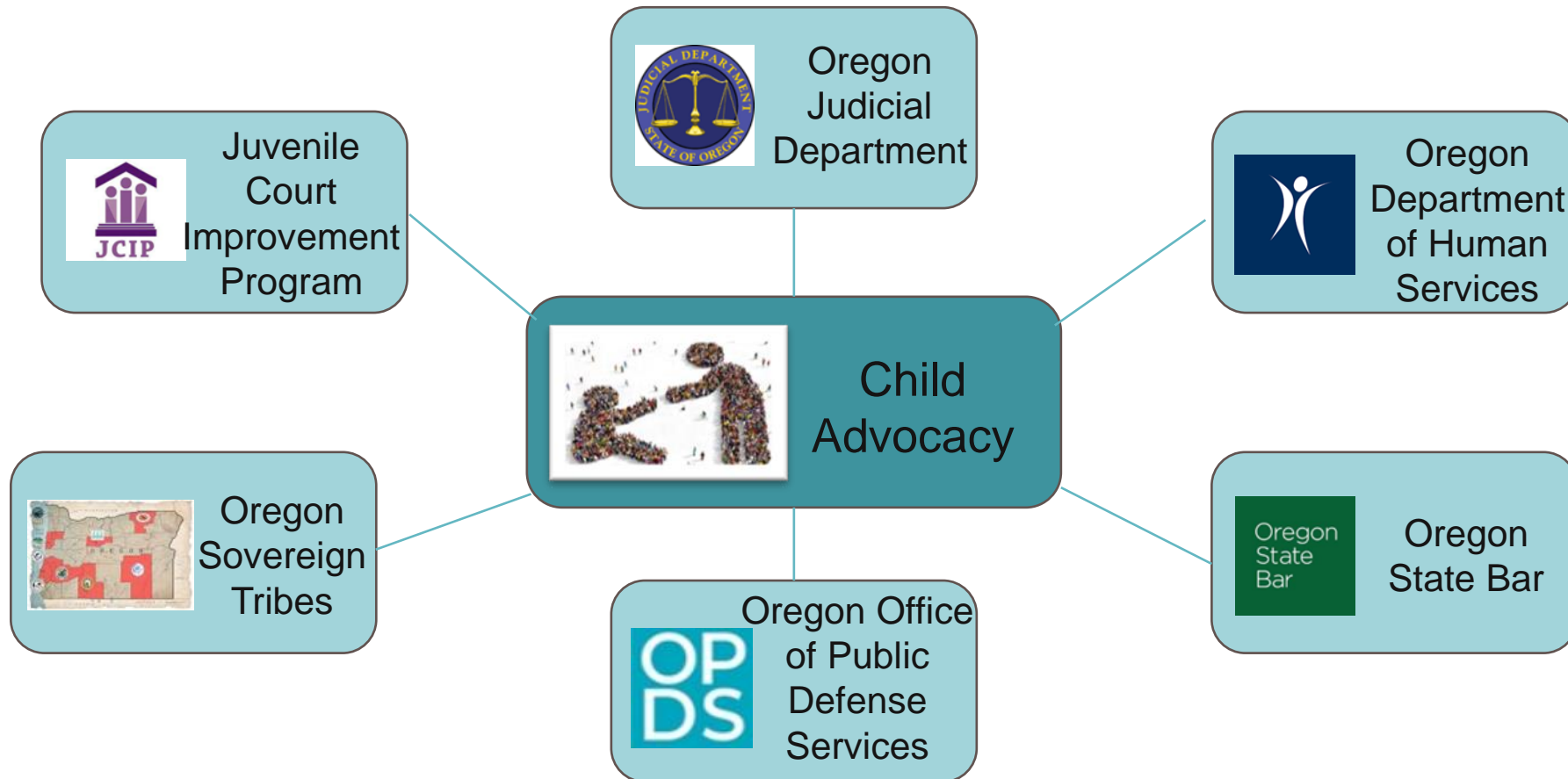


Number of juvenile dependency petitions filed in court statewide in 2021 decreased 20% from the number filed in 2020



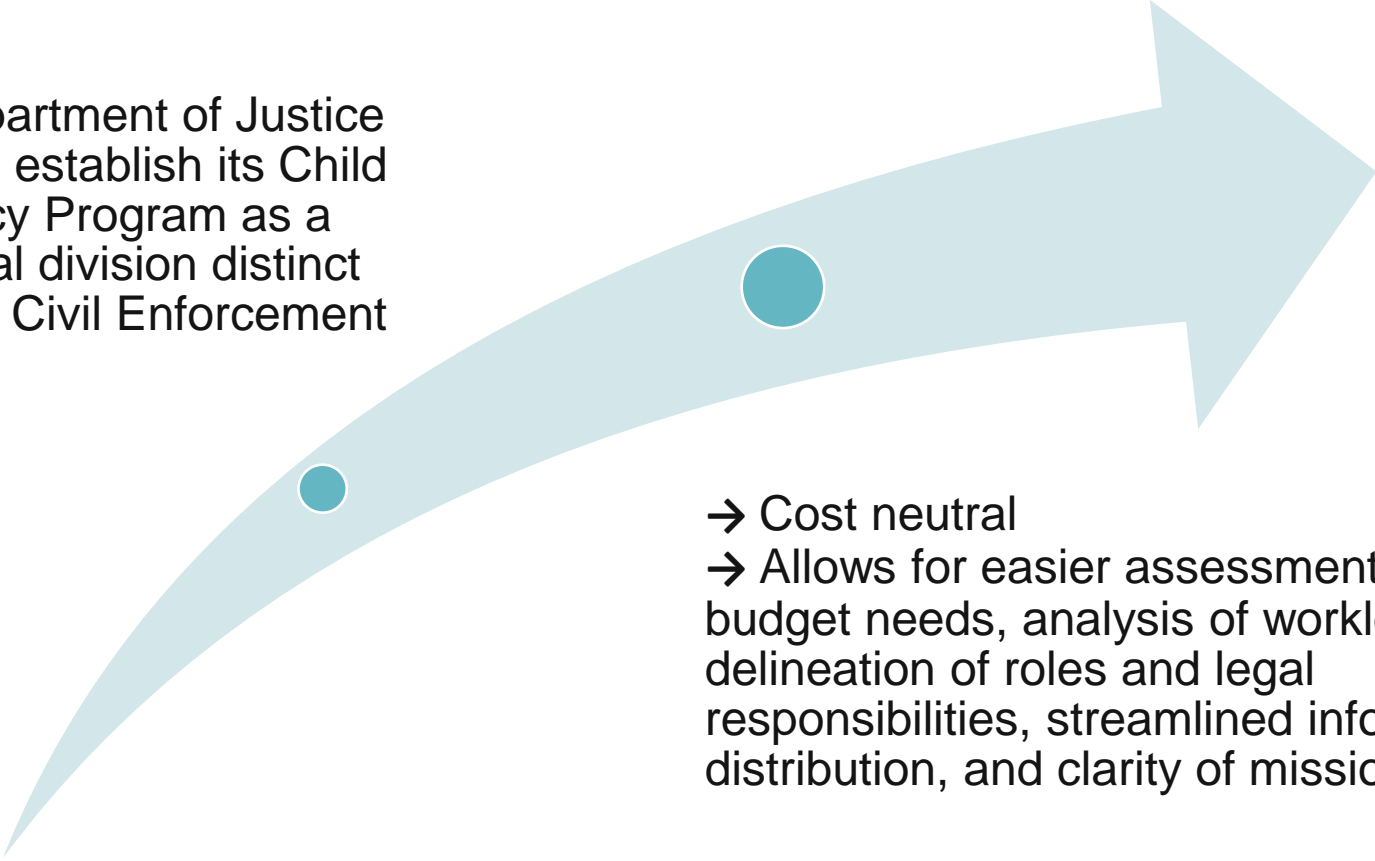
Number of emergency shelter/removal court hearings held in 2021 decreased 10.7% from the number held in 2020

Statewide Partnerships



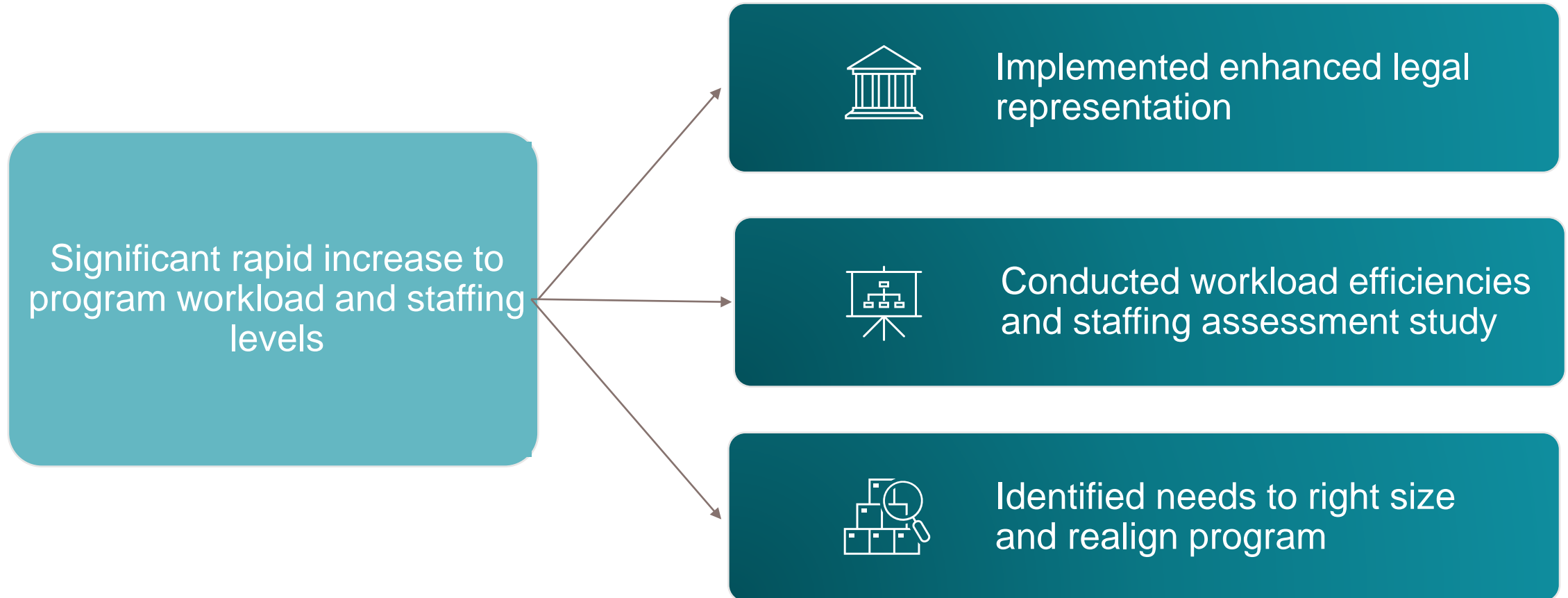
Shift to New Legal Division - POP #201

The Department of Justice seeks to establish its Child Advocacy Program as a new legal division distinct from the Civil Enforcement Division.

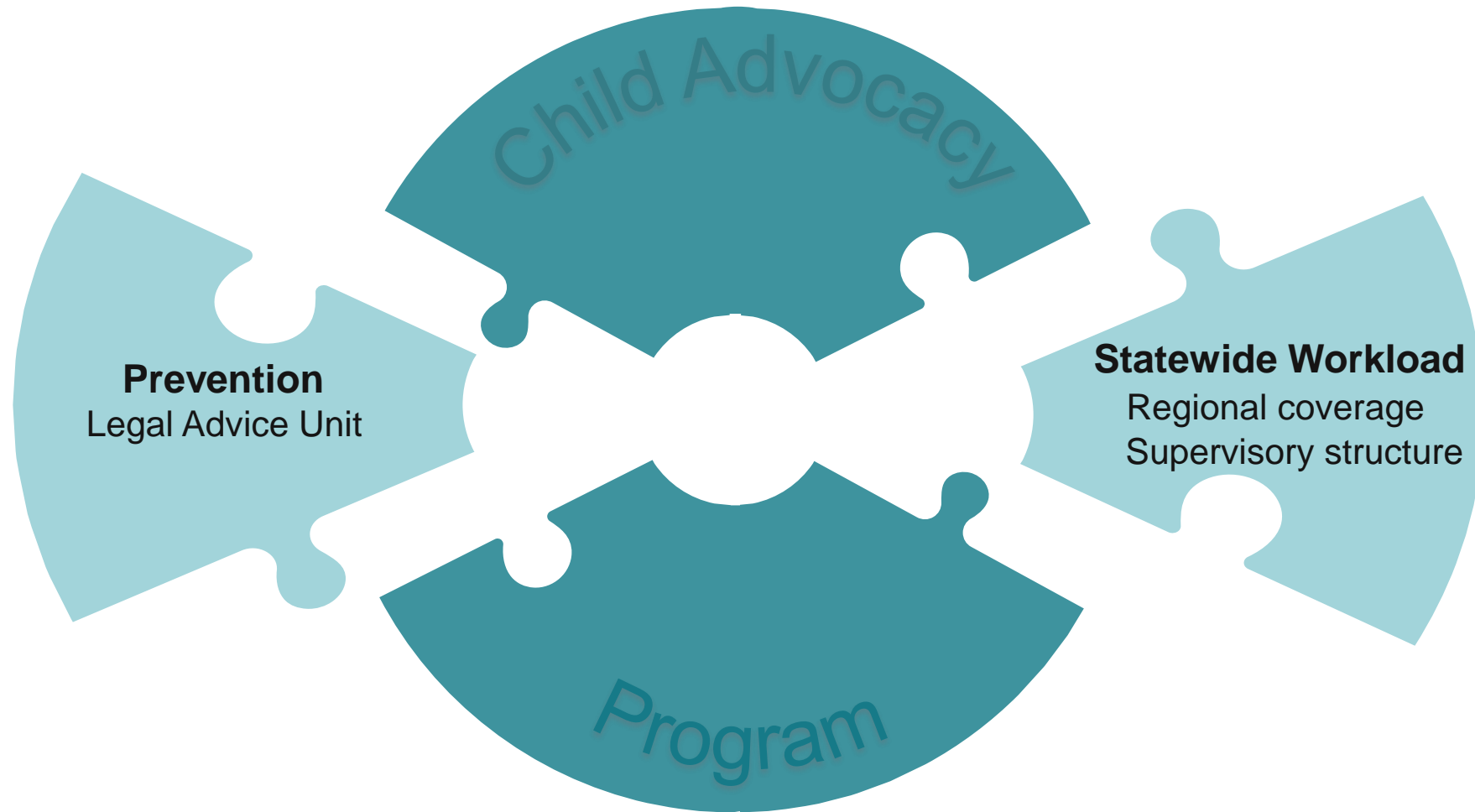
- 
- Cost neutral
 - Allows for easier assessment of budget needs, analysis of workload, delineation of roles and legal responsibilities, streamlined information distribution, and clarity of mission.

Organization Structure Realignment

POP #210



Organization Structure Realignment POP #210



Child Advocacy - Policy Packages

		<u>Agency Request</u> <u>Budget</u>	<u>Governor's Budget</u>
Package 093 -	Statewide Adjustment DAS Charges	\$ - 0 -	(\$162,952) OF
Package 100 –	Reconcile Intra-Agency Charges	\$1.25 M OF	\$518,544 OF
Package 201 –	Budget Shift: Child Advocacy Program	\$73.49 M OF	\$73.49M OF
Package 210 –	Organizational Structure Realignment	\$6.94 M OF	\$6.94M OF

15% Budget Reduction Options

Child Advocacy			
Reduction %	Other Funds	Positions	FTE
5%	\$ (3,683,691)	(13)	(13.85)
5%	\$ (3,668,443)	(12)	(12.70)
5%	\$ (3,883,766)	(10)	(10.00)

Trial Division

Oregon Department of Justice

Ellen F. Rosenblum, Attorney General

Department of Justice: Trial Division

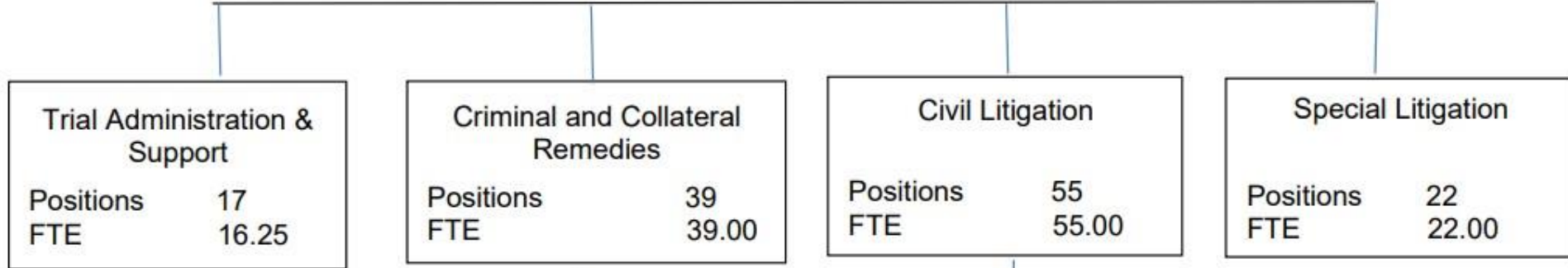


Program Summary

- The Trial Division defends the State when it is sued for money damages or someone petitions the court to order the State to take or refrain from action.
- **If the State does not appear in the case, or fails to respond to a motion, a judgment can be entered in favor of the opposing party.**

Trial Division

Chief Counsel Office
2 position / 2.00 FTE



Essential Package #040
DCC Mandated Caseload

Positions	2
FTE	1.76

Policy Package #400
Reduce Need for
Outsourced Legal
Counsel

Positions	4
FTE	3.52

2021-23 Legislatively Approved Budget	
Positions	135
FTE	134.25

2023-25 Agency Request Budget	
Positions	141
FTE	139.53

Change to 2021-23 Legislatively Approved Budget	
Positions	6
FTE	5.28

Trial Division Sections

Civil Litigation:

- Employment
- Civil rights
- Highway projects
- Defense of administrative orders
- Torts: personal injury, property damage, malicious prosecution, abuse

Special Litigation:

- Environmental
- Elections
- Constitutional challenges
- Water law
- Disputes between Oregon and the Federal Government

Trial Division Sections (continued)

Criminal and Collateral Remedies:

- Post-conviction Relief
- Federal Habeas Corpus
- Psychiatric Security Review Board

Workload

- **Civil Litigation/Special Litigation Unit**
- Average: 1,229 new cases each biennium
- Current biennium: 2,019* thru 1/15/23
- *600 State Habeas due to Covid 19

- **Criminal and Collateral Remedies**
- Average: 847 new cases per biennium
- Current biennium: 1,218 new cases thru 1/15/23

Factors Affecting Workload

Caseload Entirely Dependent Upon Others

- Lawsuits for money damages or to compel state action
- SB 1584 Wrongful Conviction Compensation
 - 23 Notices of Intent to File
 - Impact of Ramos/Watkins
- Oregon Department of Transportation highway improvement projects (250 new cases so far this biennium)
- Convicted criminals (usually Measure 11) suing to overturn their convictions
- Licensees/others attempt to overturn agency orders
- Public records requests

Trial Division – DCC Resources

- 39 of 135 Positions devoted to Defense of Criminal Convictions.
- \$16.47 million budget for DCC work.
- Nearly 3,500 cases for the 23-25 biennium.
 - Post Conviction Trial
 - Federal Habeas Trial
 - PSRB – Psychiatric Security Review Board
- Approximately 65,000 hours of work for the 23-25 biennium.

POP 400 – Reduce Need for Outsourced Legal Counsel

- The volume of civil cases has increased to the point where the division has had to outsource many cases to private law firms.
- Private law firms charge, at times, twice the rate of DOJ attorneys and paralegals.
- Based on 18 months of private firm invoices, the state could have saved \$1,786,556 had DOJ attorneys and paralegals performed the work.

Trial Division - Policy Packages

		<u>Agency Request</u> <u>Budget</u>	<u>Governor's Budget</u>
Package 093 -	Statewide Adjustment DAS Charges	\$ - 0 -	(\$123,046) OF
Package 100 –	Reconcile Intra-Agency Charges	\$812,518 OF	\$336,027 OF
Package 101 –	Hardware Lifecycle Replacement	\$44,050 OF	\$44,050 OF
Package 251 -	Compliance with State Labor Agreement	(\$7,479) OF	(\$7,479) OF
Package 400 –	Reduce Need for Outsourced Legal Counsel	\$1.1M OF	\$1.1M OF

15% Budget Reduction Options

Trial Division					
Reduction %	General Fund	Other Funds	Total Funds	Positions	FTE
5%	\$ -	\$ (2,874,570)	\$ (2,874,570)	(12)	(12.50)
5%	\$ -	\$ (2,837,932)	\$ (2,837,932)	(9)	(10.60)
5%	\$ -	\$ (2,869,949)	\$ (2,869,949)	(7)	(7.00)

Defense of Criminal Convictions

Oregon Department of Justice

Ellen F. Rosenblum, Attorney General

Department of Justice: Defense of Criminal Convictions

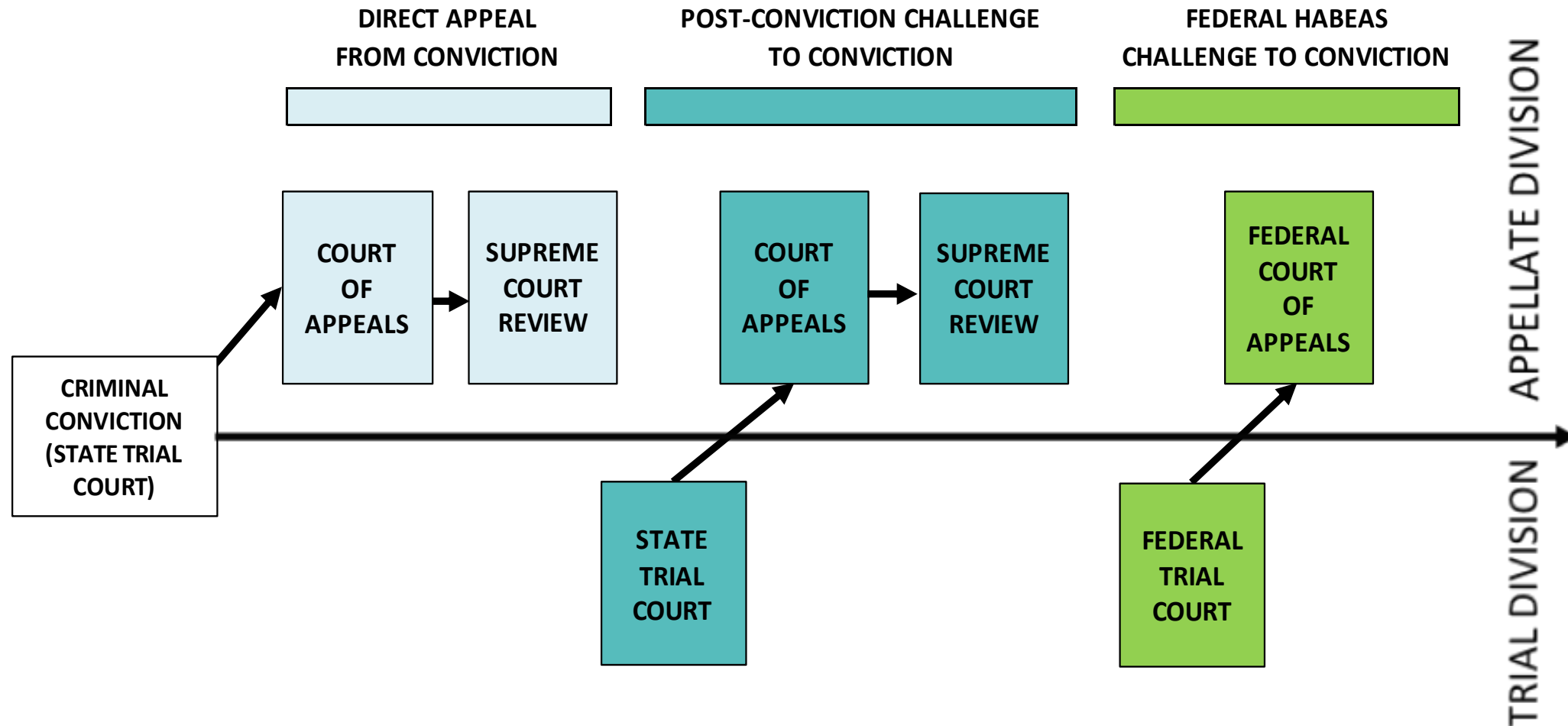


Program Summary

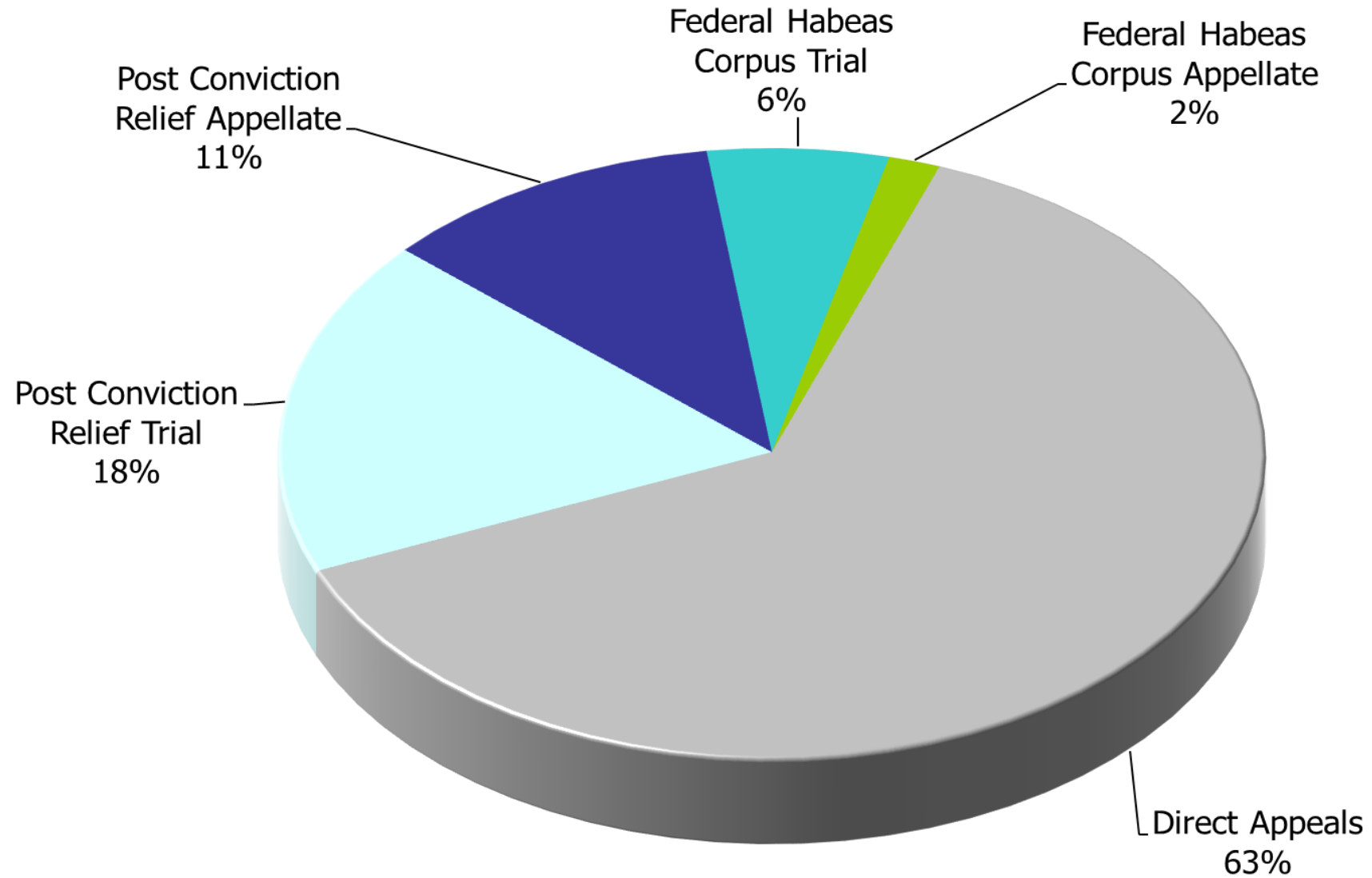
Mission

- Defend convictions and sentences that state's prosecutors properly obtained
- Work to secure just outcomes when challenges have merit
- **This is a mandated caseload**

Overview of the Process



Caseload



Recent changes in the law

Nonunanimous juries

- ***Apodaca v. Oregon*** (1972): Sixth Amendment allows nonunanimous juries in state court
- ***Ramos v. Louisiana*** (U.S. Sup. Ct. 2020): Sixth Amendment requires unanimous jury

Implementation

- 470+ cases on direct appeal reversed and sent back for new trials

Recent changes in the law

Nonunanimous juries (continued)

- ***Watkins v. Ackley*** (Or. Sup. Ct. 2022): State statute requires new trials in cases that were final before *Ramos* was decided

Implementation

- Conceding relief for post-1989 convictions where there is a clear record of only nonunanimous verdict(s)
- Continuing to litigate disputed claims
 - Cases with unanimous and nonunanimous verdicts
 - Cases with no jury poll; juror contact
 - Cases with no jury trial (e.g., guilty plea)
 - Convictions that became final before 1989

Recent changes in the law

Capital cases

- ***State v. Bartol*** (Or. Sup. Ct. 2021): Death penalty unconstitutional if not eligible under current law
 - Effectively invalidate death penalty in almost all pending capital cases
- Governor Brown commuted all pending death sentences to life without the possibility of parole
- Cases continue as non-capital (but still enormously complex) litigation if person is seeking a new trial or lower sentence

DCC - Budget Package

		<u>Agency Request Budget</u>	<u>Governor's Budget</u>
Package 092 -	Statewide AG Adjustment	\$ - 0 -	(\$2.06M) GF

15% Budget Reduction Options

Defense of Criminal Convictions					
Reduction %	General Fund	Other Funds	Total Funds	Positions	FTE
5%	\$ (2,245,769)	\$ -	\$ (2,245,769)	0	0.00
5%	\$ (2,245,769)	\$ -	\$ (2,245,769)	0	0.00
5%	\$ (2,245,769)	\$ -	\$ (2,245,769)	0	0.00

Appellate Division

Oregon Department of Justice

Ellen F. Rosenblum, Attorney General

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

Decisions from these courts set statewide (or nationwide) precedent

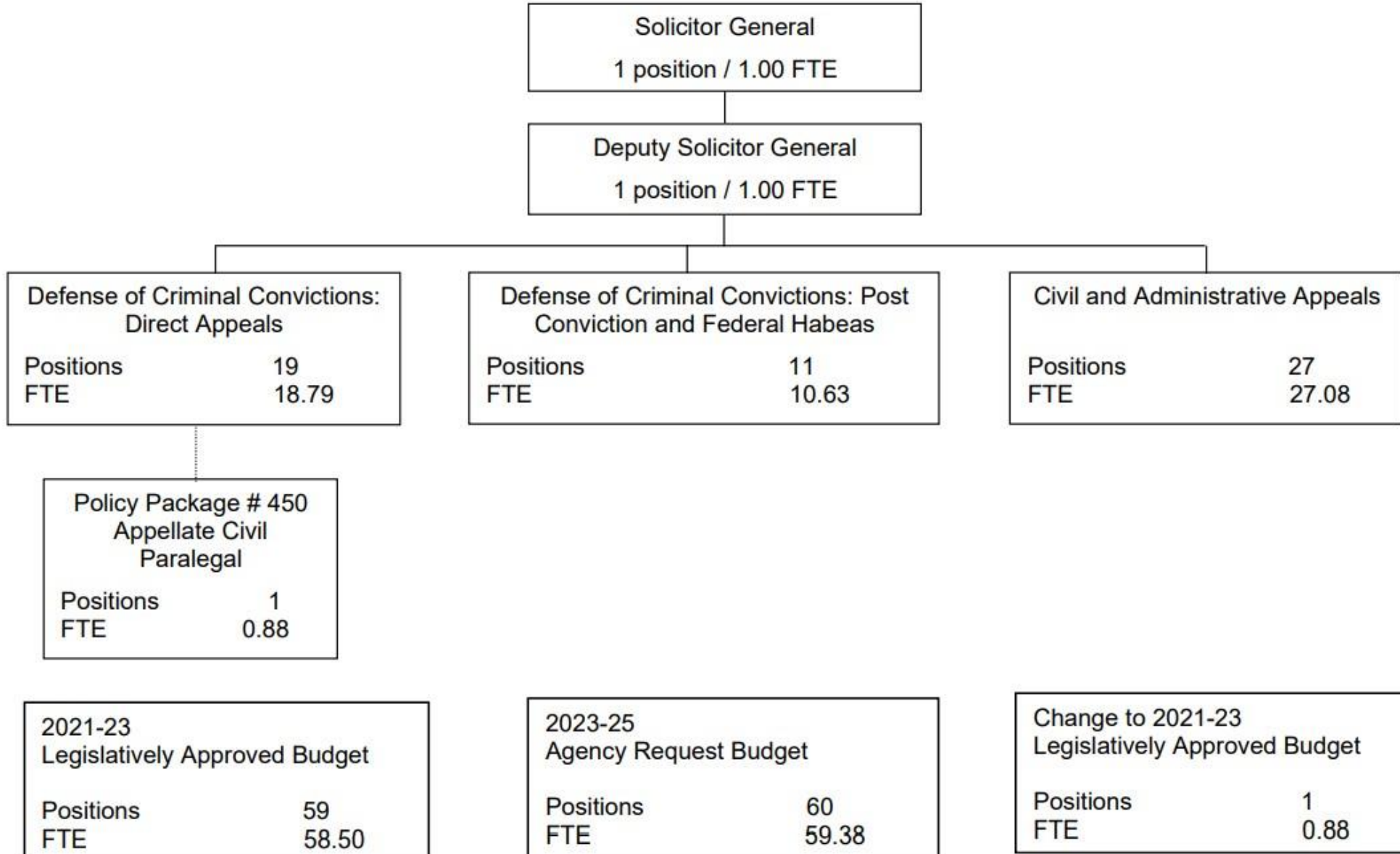
Program Summary

Write briefs and argue cases in:

- Oregon Court of Appeals
 - State is a party in every criminal and post-conviction case and most civil cases
- Oregon Supreme Court
 - State is a party in most cases
- Federal appellate courts

Prepare ballot titles for legislative referrals and initiatives

Appellate Division



Types of Cases

- **Defense of criminal convictions**
 - Direct appeals, post-conviction appeals, and federal habeas corpus appeals
- **Civil**
 - Tax, contracts, torts, civil commitment, juvenile dependency, challenges to statutes
- **Administrative**
 - Professional and other licenses, regulatory decisions that impose fines or other penalties, benefits decisions, rule challenges

**We are the respondent in almost all of these cases:
The other side has appealed and we must respond.**

Recent Examples

- ***County of Linn v. State*** (Oregon Court of Appeals)
Overturned \$1.1 billion verdict against the state over management of state forests.
- ***Whitehead v. Fagan*** (Oregon Supreme Court)
Signatures from voters with inactive registration do not count for initiative petitions.
- ***Murdoch v. DMV*** (Oregon Supreme Court)
DMV properly suspended license of person who refused a breath test.

Previous Budget Action

- The 2021 Legislature approved Package #441 – Nonunanimous Jury Appeals to add 1 position (0.88 FTE) to allow the Appellate Division to handle the additional caseload associated with expected appeals related to nonunanimous juries.
 - We have largely addressed cases on direct appeal; the recent decision in *Watkins v. Ackley* should help move forward the post-conviction appeals.
- The 2022 Legislature added 1 position (0.21 FTE) to handle appeals in the new proceedings for compensation for wrongful convictions. Those cases have not yet made it up on appeal.

POP #450 – Appellate Civil Paralegal

- To provide for the most efficient way to process judicial review and rule challenges in the Oregon Court of Appeals. Position will also draft motions, affidavits and responses in juvenile dependency, civil, and administrative appeals. This position will perform these duties and administrative records work at a lower cost to client state agencies.

Appellate Division - Policy Packages

		<u>Agency Request</u> <u>Budget</u>	<u>Governor's Budget</u>
Package 092 -	Statewide AG Adjustment	\$ - 0 -	(\$20,627) GF
Package 093 -	Statewide Adjustment DAS Charges	\$ - 0 -	(\$53,618) OF
Package 100 -	Reconcile Intra-Agency Charges	\$488,781 OF	\$202,142 OF
Package 101 -	Hardware Lifecycle Replacement	\$26,240 OF	\$26,240 OF
Package 251 -	Compliance with State Labor Agreement	(\$4,499) OF	(\$4,499) OF
Package 450 -	Appellate Civil Paralegal	\$230,679 OF	\$230,679 OF

15% Budget Reduction Options

Appellate Division					
Reduction %	General Fund	Other Funds	Total Funds	Positions	FTE
5%	\$ (22,324)	\$ (1,491,924)	\$ (1,514,248)	(4)	(4.25)
5%	\$ (22,324)	\$ (1,502,848)	\$ (1,525,172)	(1)	(3.93)
5%	\$ (22,324)	\$ (1,479,978)	\$ (1,502,302)	(2)	(2.80)