

2023 Joint Committee on Ways & Means Public Safety Subcommittee Presentation Defense of Criminal Convictions – Forecast Update

April 12, 2023

Oregon Department of Justice

Ellen F. Rosenblum, Attorney General



Department of Justice Defense of Criminal Convictions

Presenters: **William O'Donnell**
 Chief Financial Officer

Steve Lippold, Chief Counsel
 Trial Division

Ben Gutman, Solicitor General
 Appellate Division

DCC – Budget Forecasting

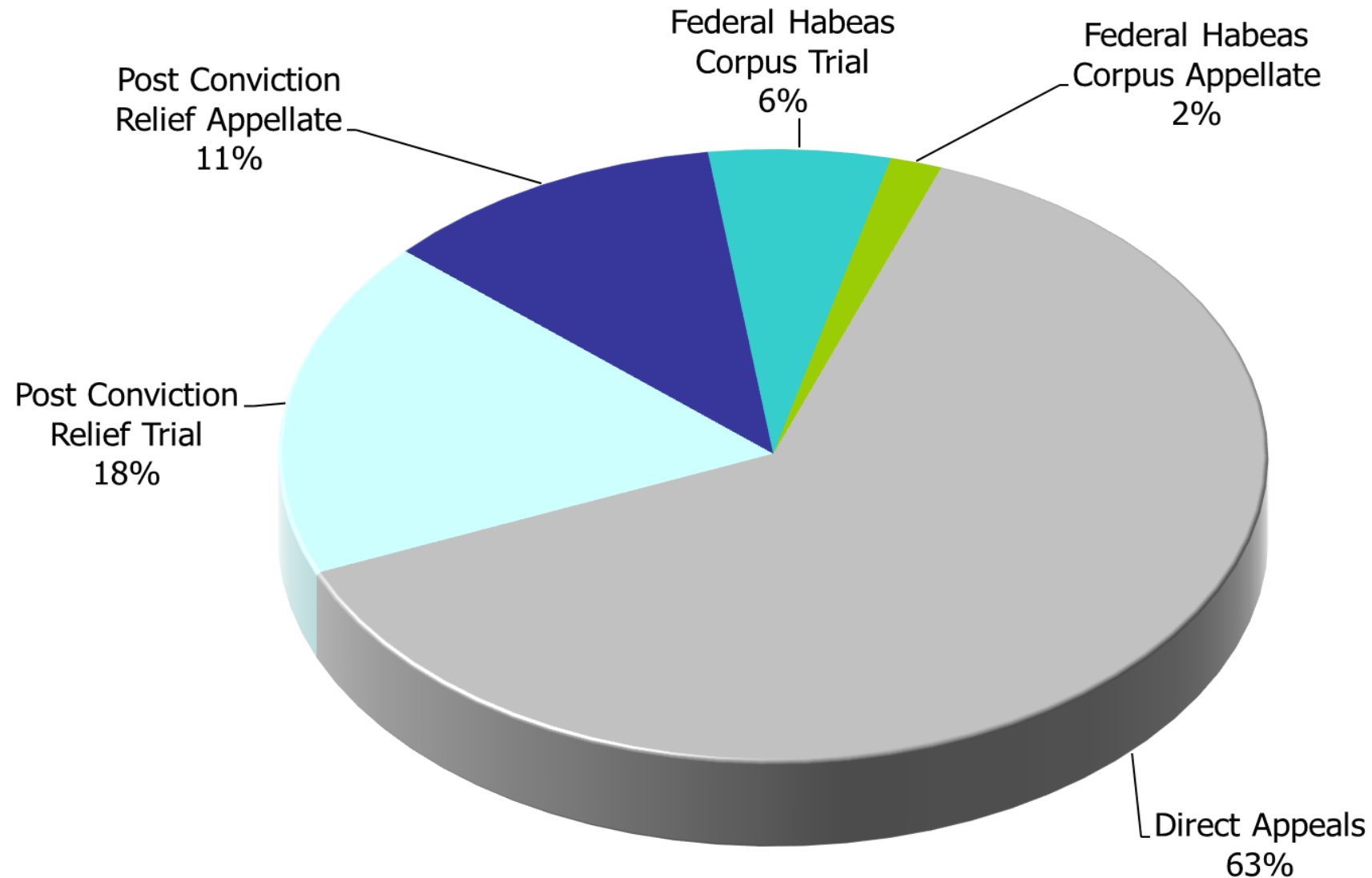
Oregon Department of Justice

Ellen F. Rosenblum, Attorney General

Department of Justice: Defense of Criminal Convictions



DCC – Major Case Types



DCC Caseload Data

- History to DCC Caseload analyzed from 2013-15 biennium forward to present day
- 20 DCC Case Categories for tracking in DOJ system
- For each Case Category, we track data for:
 - Actual cases each biennium
 - Billable Hours for each case category
 - Billable Dollars for each case category
 - Average Hours for each case category
- Active Trends in Caseload – Upward or downward

Forecasting Methodology

- 10 Year History of the Case Type reveals upward or downward trends.
- Recent workload numbers provide more relevant information that confirms trends or signals a change in the trend or a new trend.
- Current Biennium tracked and reviewed at least quarterly.
- Division current workloads, court system information, and future expectations.
- Historic average hours per case type serve as a basis for average hours on projected caseload and that translates into projected billable hours.
- Billable hours are the basis for billable dollars.
- Identifying variances between actual v. projected to update projections during the biennium and for the next biennium.

DCC Caseload History Tracking

	Post Conviction Habeas Corp	Direct Appeals	Post Conviction Appeals	Federal Habeas Appeals	DA Advice Publications & Habeas	Appeal Mandamus & Civil	Juvenile Dependency	Sex Offender Registry	Cases - Direct Appeals	Capital Cases - PCR Trial	Capital Cases - PCR Appeals	Capital Cases - Fed Hab Trial	Cases - Fed Hab Appeals	Total Capital Cases	Total Appellate	Post Conviction Trial	Federal Habeas Trial	SHRP	PSRB	Total Trial	DCC Total*
2013-15 Actual Data																					
Cases	-	2,763	580	54	4	25	-	-	23	20	29	8	-	80	3,506	850	366	126	13	1,355	
Billable Hours	-	48,177	10,863	3,056	3,255	777	-	-	3,342	8,792	1,380	1,660	-	15,174	81,302	22,338	15,004	906	2,302	40,550	12
Average Hours / Case	-	17	19	57	814	31	-	-	145	440	48	208	-	840	1,778	26	41	7	177	252	
Attorney General Charges	-	7,454,538	1,700,619	484,179	515,945	120,479	-	-	506,344	1,241,054	206,890	213,884	-	2,168,172	12,443,932	3,024,990	1,819,493	124,625	361,120	5,330,228	\$ 17,774
2015-17 Actual Data																					
Cases	1	2,551	536	49	5	12	4	-	14	18	29	11	1	73	3,231	849	356	98	73	1,376	
Billable Hours	1	48,697	8,892	1,914	3,524	545	61	-	1,506	9,346	1,846	1,430	5	14,133	77,765	26,699	14,822	513	1,754	43,787	12
Average Hours / Case	1	19	17	39	705	45	15	-	108	519	64	130	5	826	1,667	31	42	5	24	102	
Attorney General Charges	88	8,319,494	1,534,314	334,847	604,268	94,881	10,745	-	235,124	1,436,308	305,727	205,630	733	2,183,520	13,082,155	4,194,128	2,047,419	87,081	301,067	6,629,694	\$ 19,711
2017-19 Actual Data																					
Cases	-	2,696	552	48	4	21	-	-	8	12	20	12	-	52	3,373	825	353	32	110	1,320	
Billable Hours	-	51,829	11,997	2,175	2,408	604	-	-	804	9,759	2,020	1,191	-	13,773	82,786	29,774	13,831	196	1,464	45,265	12
Average Hours / Case	-	19	22	45	602	29	-	-	100	813	101	99	-	1,114	1,831	36	39	6	13	95	
Attorney General Charges		9,138,437	2,166,341	395,577	436,045	109,855	-	-	128,346	1,514,780	356,866	206,515	-	2,206,507	14,452,763	4,811,630	2,089,273	35,690	266,412	7,203,005	\$ 21,655
2019-21 Actual Data																					
Cases	1	2,675	476	28	5	31	-	1	6	23	12	10	-	51	3,268	1,089	302	14	146	1,551	
Billable Hours	4.3	59,379.1	12,016.1	1,113.7	2,828.1	1,883.4	-	6.7	1,361.5	7,293.2	572.9	705.1	-	9,933	87,164	35,364	15,031	39	1,679	52,113	13
Average Hours / Case	4.3	22.2	25.2	39.8	565.6	60.8	-	6.7	226.9	317.1	47.7	70.5	-	662.3	1,386.9	32.5	49.8	2.8	11.5	96.5	
Attorney General Charges	920	12,173,490	2,537,734	238,309	595,640	380,729	-	1,434	262,825	1,390,927	102,526	140,428	-	1,896,706	17,824,960	6,523,918	2,645,367	8,367	359,380	9,537,033	\$ 27,36
NEW PROJECTION (Dec 2022): July 2021 - June 2023																					
Cases	-	1,943	536	31	9	27	-	1	3	24	12	11		50	2,597	1,282	221	6	51	1,560	
Billable Hours	-	51,353	12,437	1,281	2,378	832	-	1	253	9,247	3,137	154		12,791	81,071	46,638	13,797	10	1,954	62,399	14
Average Hours / Case		26.43	23.20	41.31	264.22	30.81	-	0.50	84.22	385.29	261.42	13.99	-	255.81	31.22	36.38	62.43	1.69	38.31	40.00	
Attorney General Charges		\$ 12,427,442	\$ 3,009,641	\$ 309,921	\$ 575,476	\$ 201,344	\$ -	\$ 121	\$ 61,145	\$ 2,237,774	\$ 759,154	\$ 37,236		3,095,309	19,619,255	\$11,286,299	\$ 3,338,955	\$ 2,456	\$ 472,868	15,100,578	\$ 34,719

Appellate Division Historical Data

	Conviction Habeas Corp	Direct Appeals	Post Conviction Appeals	Federal Habeas Appeals	DA Advice Publications & Habeas	Appeal Mandam us &	Juvenile Dependen cy	Sex Offender Registry	Cases - Direct Appeals	Capital Cases - PCR Trial	Cases - PCR Appeals	Cases - Fed Hab Trial	al Cases - Fed	Total Capital Cases	Total Appellate
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Billable Hours	1	48,697	8,892	1,914	3,524	545	61	-	1,506	9,346	1,846	1,430	5	14,133	77,765
Average Hours / Case	1	19	17	39	705	45	15	-	108	519	64	130	5	826	1,667
Attorney General Charges	88	8,319,494	1,534,314	334,847	604,268	94,881	10,745	-	235,124	1,436,308	305,727	205,630	733	2,183,520	13,082,155
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Cases	-	2,696	552	48	4	21	-	-	8	12	20	12	-	52	3,373
Billable Hours	-	51,829	11,997	2,175	2,408	604	-	-	804	9,759	2,020	1,191	-	13,773	82,786
Average Hours / Case	-	19	22	45	602	29	-	-	100	813	101	99	-	1,114	1,831
Attorney General Charges		9,138,437	2,166,341	395,577	436,045	109,855	-	-	128,346	1,514,780	356,866	206,515	-	2,206,507	14,452,763
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Average Hours / Case	4.3	22.2	25.2	39.8	565.6	60.8	-	6.7	226.9	317.1	47.7	70.5	-	662.3	1,386.9
Attorney General Charges	920	12,173,490	2,537,734	238,309	595,640	380,729	-	1,434	262,825	1,390,927	102,526	140,428	-	1,896,706	17,824,960
NEW PROJECTION (Dec 2022): July 2021 - June 2023															
Cases	-	1,943	536	31	9	27	-	1	3	24	12	11		50	2,597
Billable Hours	-	51,353	12,437	1,281	2,378	832	-	1	253	9,247	3,137	154		12,791	81,071
Average Hours / Case		26.43	23.20	41.31	264.22	30.81	-	0.50	84.22	385.29	261.42	13.99	-	255.81	31.22
Attorney General Charges		\$ 12,427,442	\$ 3,009,641	\$ 309,921	\$ 575,476	\$ 201,344	\$ -	\$ 121	\$ 61,145	\$ 2,237,774	\$ 759,154	\$ 37,236		3,095,309	19,619,255

Trial Division – Historical Data

	Post Conviction Trial	Federal Habeas Trial	SHRP	PSRB	Total Trial
2013-15 Actual Data					
Cases	850	366	126	13	1,355
Billable Hours	22,338	15,004	906	2,302	40,550
Average Hours / Case	26	41	7	177	252
Attorney General Charges	3,024,990	1,819,493	124,625	361,120	5,330,228
2015-17 Actual Data					
Cases	849	356	98	73	1,376
Billable Hours	26,699	14,822	513	1,754	43,787
Average Hours / Case	31	42	5	24	102
Attorney General Charges	4,194,128	2,047,419	87,081	301,067	6,629,694
2017-19 Actual Data					
Cases	825	353	32	110	1,320
Billable Hours	29,774	13,831	196	1,464	45,265
Average Hours / Case	36	39	6	13	95
Attorney General Charges	4,811,630	2,089,273	35,690	266,412	7,203,005

DCC Case and Budget History

<u>Biennium</u>	<u>Actual Cases</u>	<u>Actual Hours</u>	<u>DCC Expenses</u>
2013-15	4,861	121,852	\$17,774,160
2015-17	4,607	121,564	\$19,711,849
2017-19	4,693	128,051	\$21,655,767
2019-21	4,819	139,277	\$27,361,993

<u>Biennium</u>	<u>Estimated Cases</u>	<u>Est Hours</u>	<u>Est DCC Expenses</u>
2021-23	4,157	143,470	\$34,719,833
2023-25	4,511	148,688	\$35,982,496*

*Estimated at current legal rate.

2021-23 - DCC Budget

- 2021-23 Legislatively Approved Budget \$37,922,023
- 2021-23 Projected AG Charges \$34,719,833
- **Projected Budget Surplus** **\$ 3,202,191**
- HB 5045 (2023) Section 2 – Decrease (\$ 3,200,000)

2023-25 - DCC Workload Budget

- 2021-23 Legislatively Approved Budget \$37,922,023
- HB 5045 (2023) Section 2 – Decrease (\$ 3,200,000)
- Final 2021-23 DCC Budget \$34,722,023
- Projected 2023-25 DCC Budget \$35,982,496*

*At current legal rate for comparison purposes – 3.6%  from actual
5.1%  from budgeted

DOJ Legal Rate Information

- Current 2021-23 Attorney Legal Rate \$242/hour
- Preliminary 2023-25 Attorney Legal Rate \$293/hour
- Governor's Rec. Budget – 2023-25 Legal Rate \$278/hour
- Leg. Adopted Budget – 2023-25 Legal Rate TBD

2023-25 - DCC Workload Budget

- 2023-25 CSL Budget (inflation to \$293 rate) \$44,634,221
- Projected 2023-25 DCC Budget @ \$293 \$43,565,584
- Budget Savings from CSL \$ 1,068,637

Note: Budget will be adjusted for final approved Legal Rate.

Trial Division

Oregon Department of Justice

Ellen F. Rosenblum, Attorney General

Department of Justice: Trial Division



Trial Division – CCR Section - DCC

Criminal and Collateral Remedies:

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

Criminal and Collateral Remedies

- Historical Average Pre-Ramos: 825 PCR cases per biennium
- Post-Ramos 2019-21: 1,089 PCR cases
- Current biennium: 1,218 new cases thru 1/15/23

Trial Division – DCC Resources

- Nearly 1,700 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.

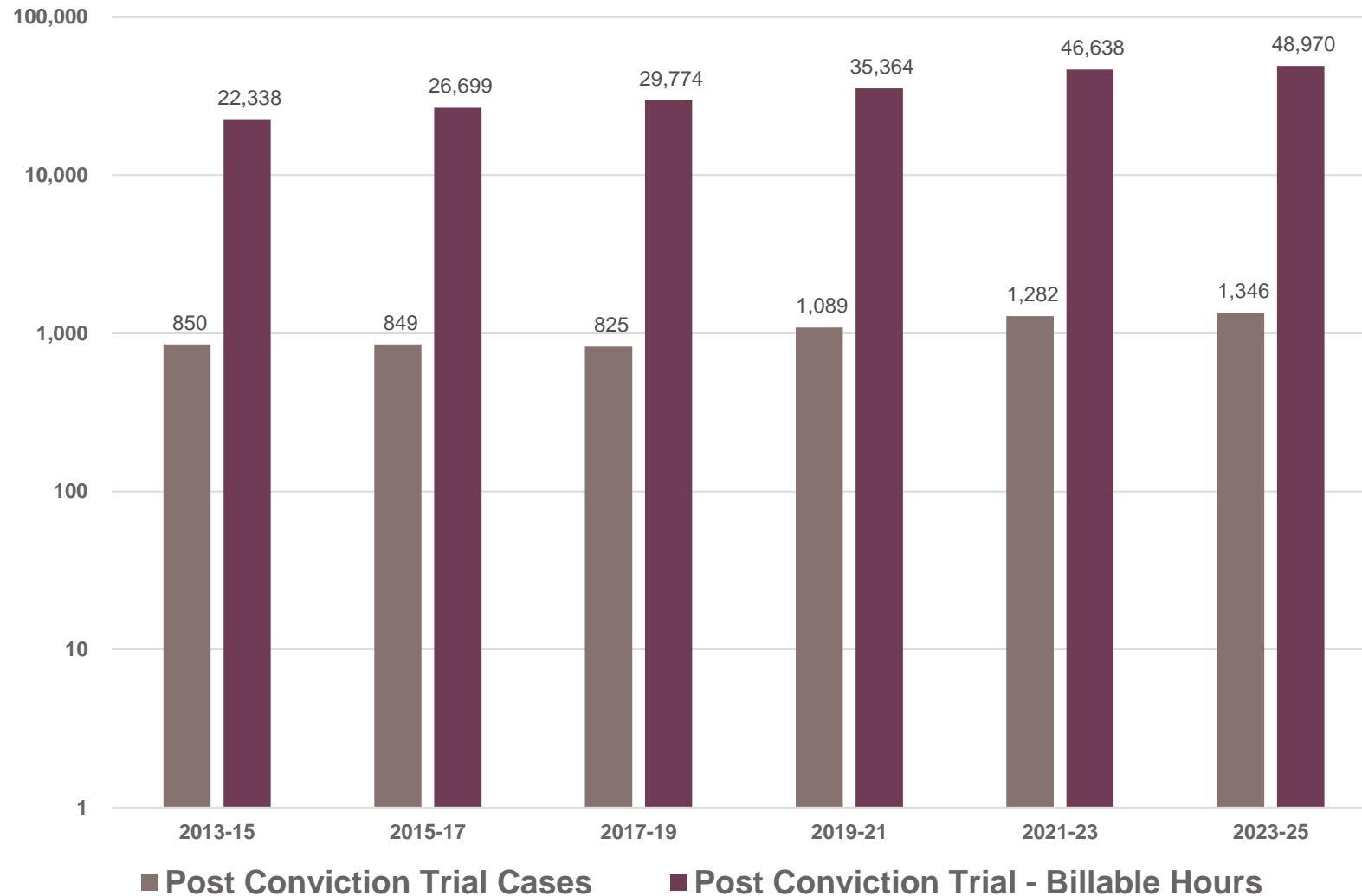
Factors Affecting Workload

Caseload Entirely Dependent Upon Others

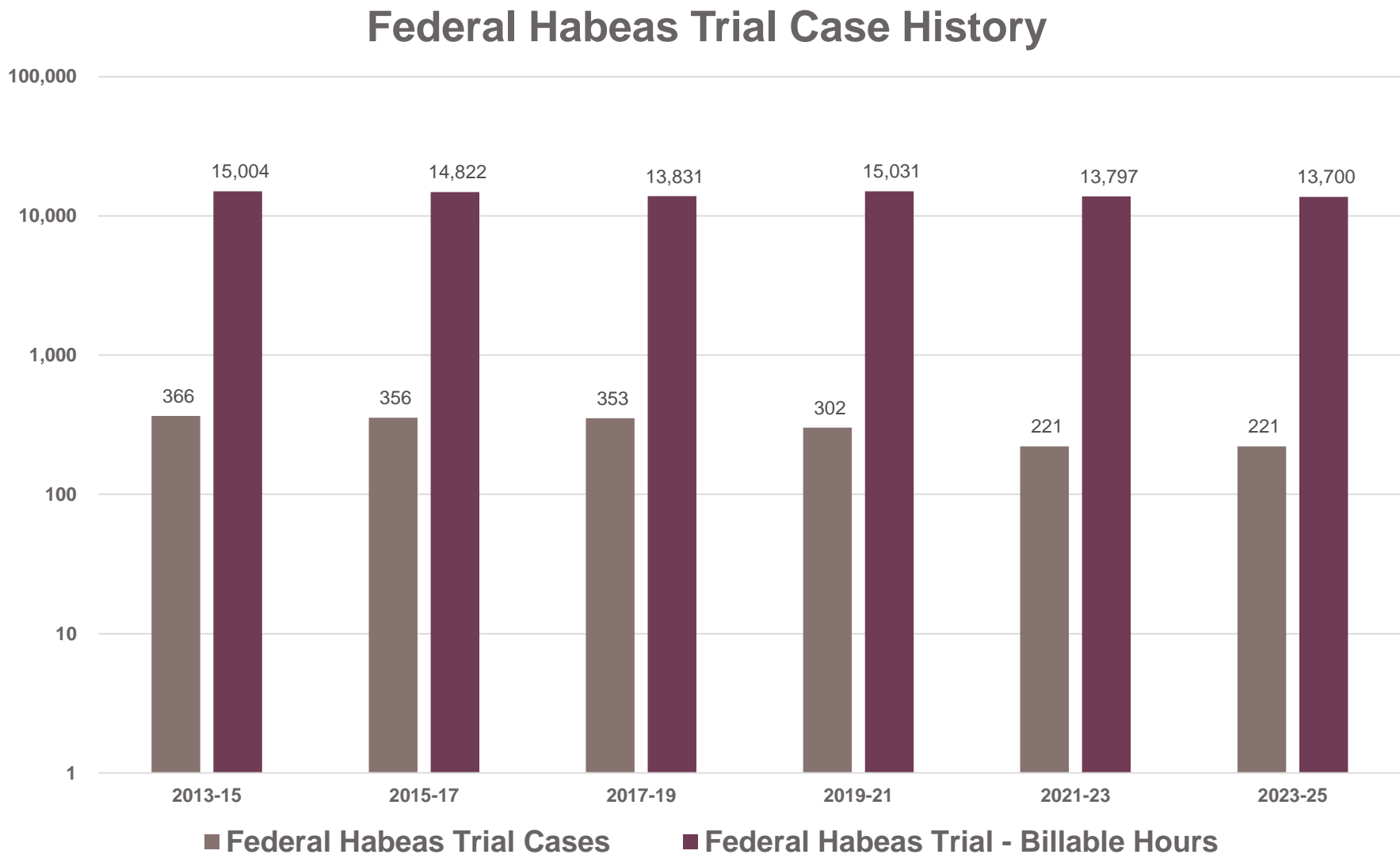
- Lawsuits for money damages or to compel state action
- SB 1584 Wrongful Conviction Compensation
 - 23 Notices of Intent to File
 - Impact of Ramos/Watkins
- Oregon Department of Transportation highway improvement projects (250 new cases so far this biennium)
- Convicted criminals (usually Measure 11)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

Trial Division – DCC Workload

Post Conviction Relief Case History



Trial Division – DCC Workload (continued)



Appellate Division

Oregon Department of Justice

Ellen F. Rosenblum, Attorney General

Department of Justice: Appellate Division



Appellate Division – DCC Work

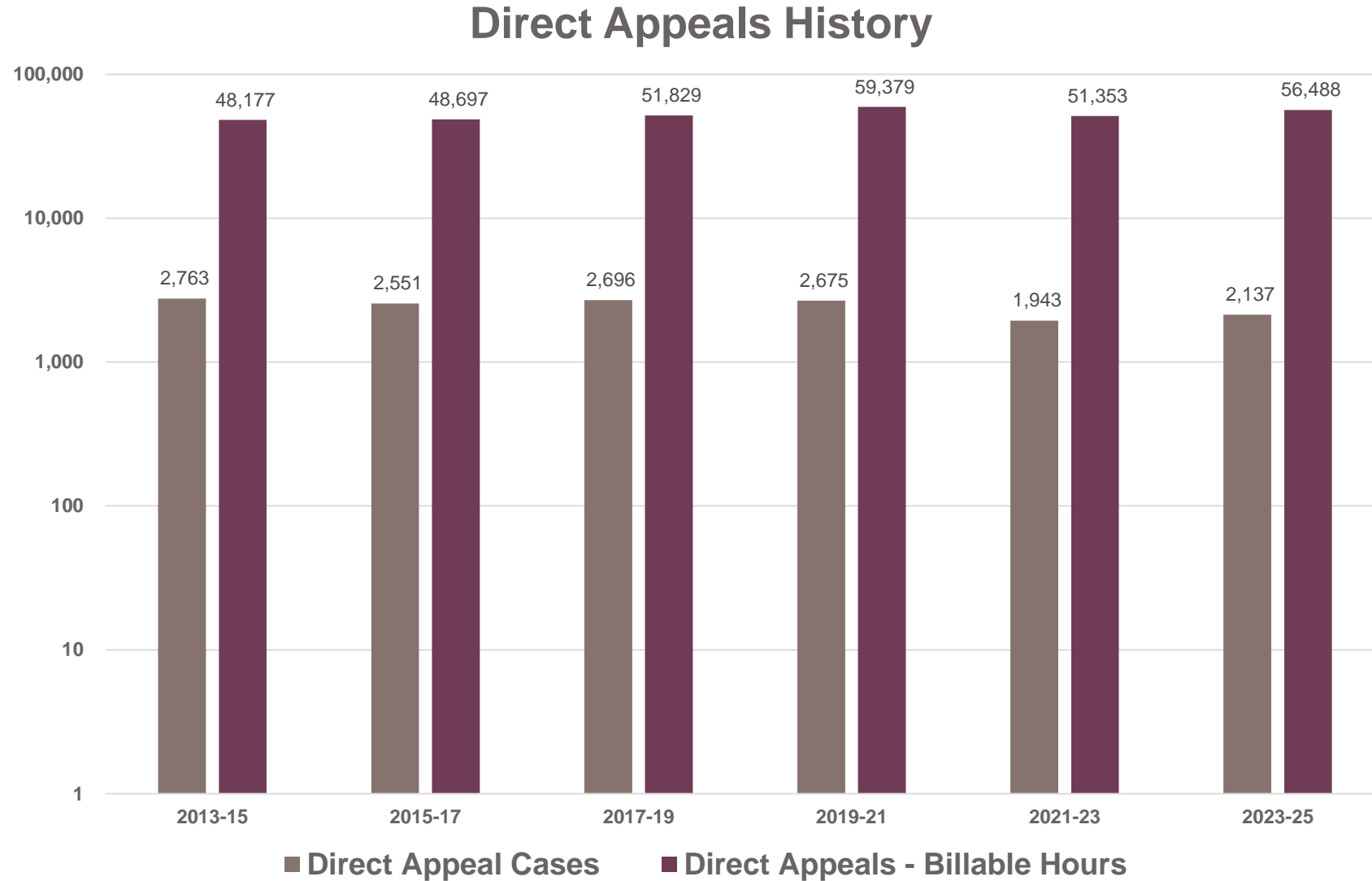
Majority of Work in the following Case Types:

- Direct Appeals
- Post Conviction Appeals
- Federal Habeas Appeals
- Capital Cases

Workload

- Average: 2,400 new cases per biennium
- Current biennium:
 - estimated 2,597 total active cases
 - Estimated 81,071 billable hours

Appellate Division - DCC History



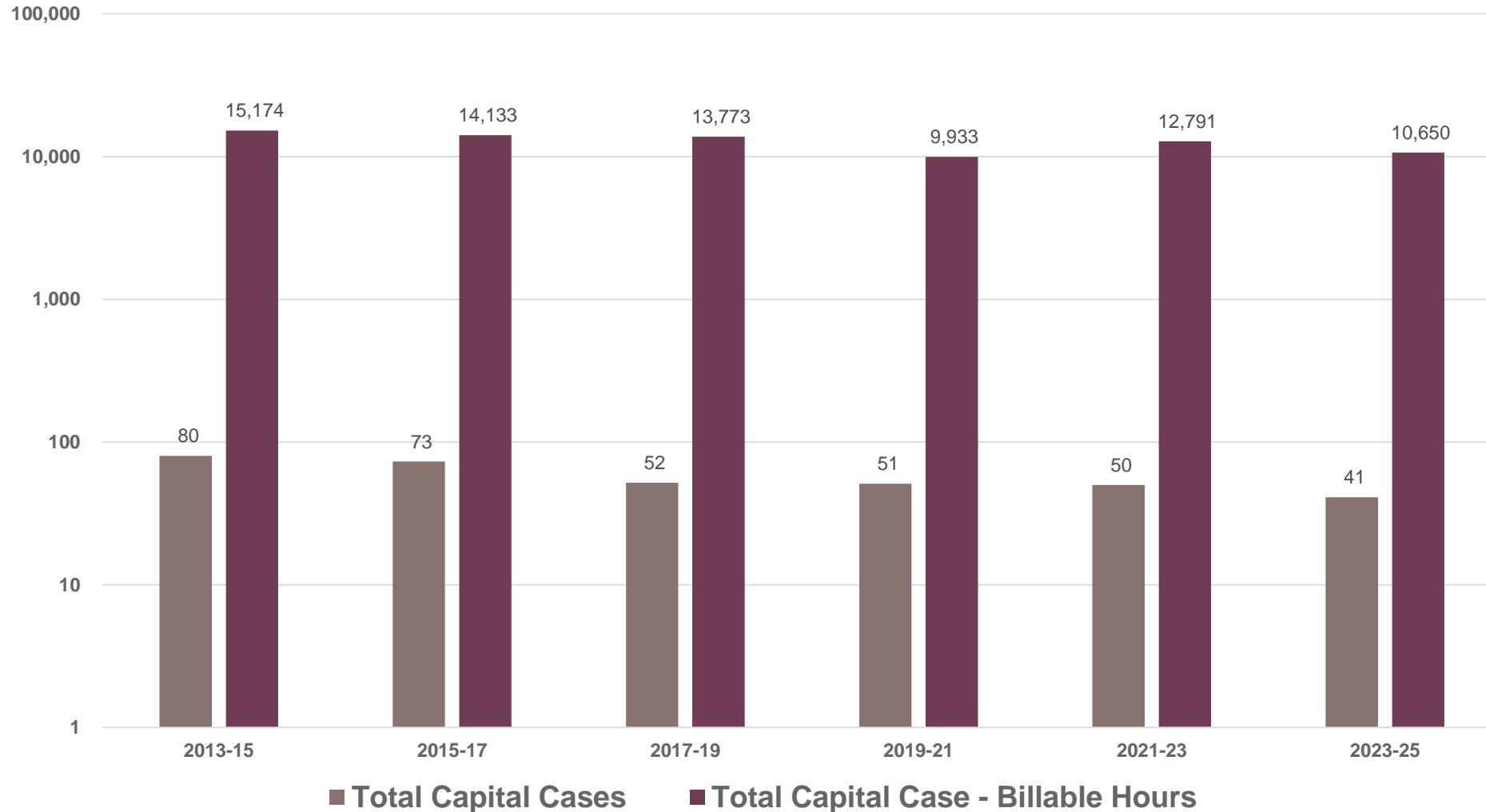
Appellate Division - DCC History

Post Conviction Appeals History



Appellate Division – DCC History

Total Capital Cases History



DCC – Legal Update

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Department of Justice: Defense of Criminal Convictions



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

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

Questions?