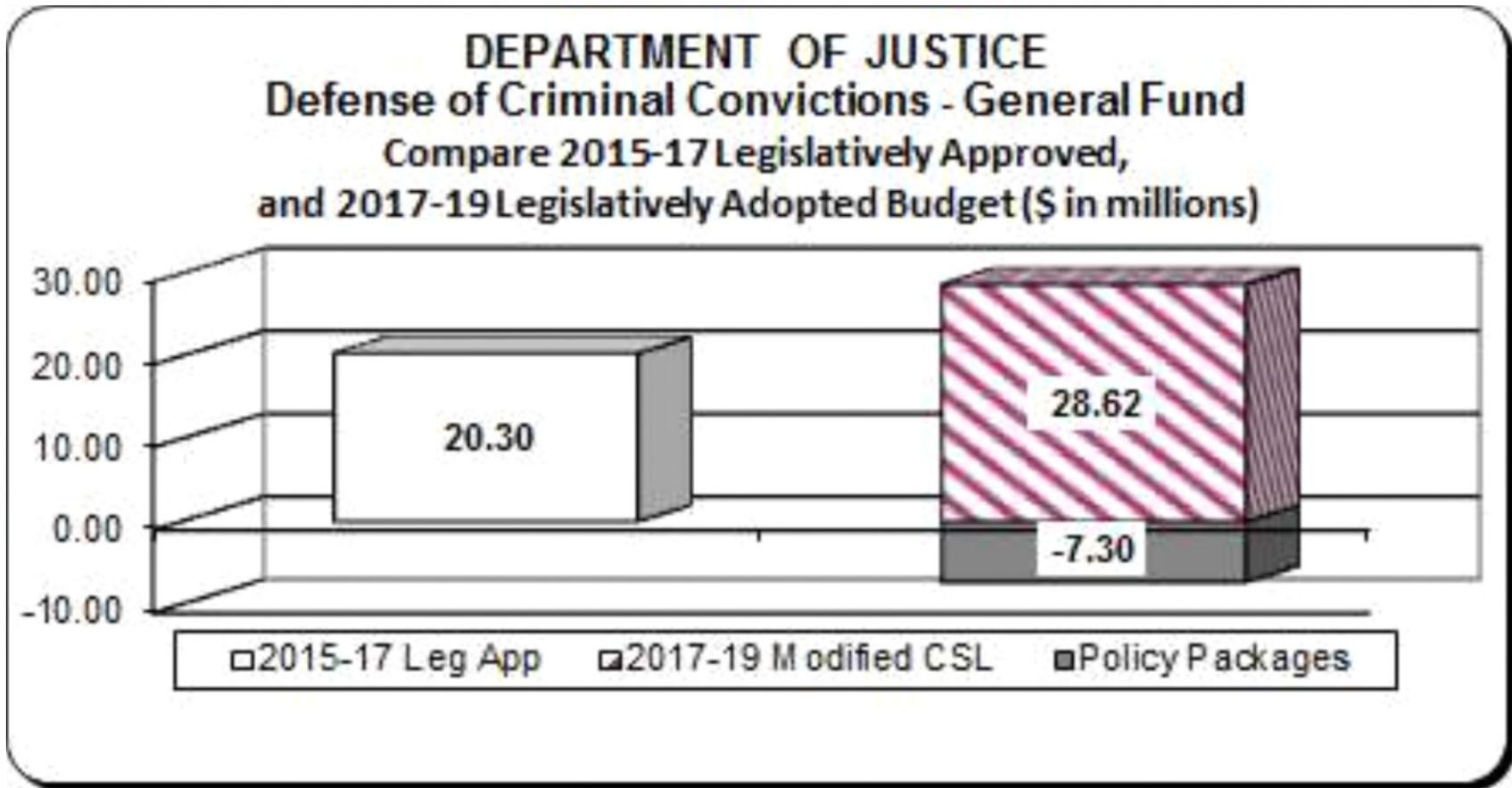


Legislatively Adopted Budget

Defense of Criminal Convictions



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Executive Summary

Primary Focus Area: Safer, Healthier Communities
Secondary Focus Area: Excellence in State Government
Program Contact: Steve Lippold, Chief Trial Counsel, 503.947.4700
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Program Overview

The Defense of Criminal Convictions Program (DCC) covers work performed in the Appellate and Trial Divisions. The purpose of the program is to preserve convictions and sentences obtained by the state's prosecutors, as well as to appeal from adverse trial court decisions that place criminal prosecutions in jeopardy. Oregon centralizes criminal post-conviction and appellate work in the Department of Justice. The goal of this centralization is to achieve top quality legal work and consistency in the legal positions the state takes in cases statewide and in a way that most efficiently utilizes limited resources. The program is categorized with the Safer, Healthier Communities focus area and supports the outcome goal of improving citizen access to justice and the ability to exercise their rights. It does this by ensuring competent and timely representation for the state to defend criminal convictions. The program also works closely with the courts and the public defenders to ensure that cases are resolved as quickly as possible and in the fairest manner possible. The program's work is also critical to public safety—by providing defense of criminal convictions, the program helps ensure that the justice system has its intended deterrent and punitive effect.

Program Description

There are three types of challenges to criminal convictions or sentences: (1) direct appeal, in which the convicted offender challenges the judgment of conviction based on alleged legal or factual errors that appear in the record of the criminal trial or pre-trial proceedings; (2) state post-conviction challenges, collateral challenges beginning in the state trial court, in which the offender is allowed a second challenge to his or her conviction based on claims that could not have been raised in the direct appeal; and (3) federal habeas corpus challenges, in which offenders can raise in federal district court and the Ninth Circuit Court of Appeals all claims of violations of federal constitutional rights that previously were raised on direct appeal or in state post-conviction proceedings.

The Trial Division represents the state in trial court post-conviction proceedings, as well as district court federal habeas corpus cases. The Appellate Division represents the state in direct appeals and state post-conviction challenges in the Oregon Court of Appeals and the Oregon Supreme Court, as well as in federal habeas corpus proceedings in the Ninth Circuit Court of Appeals. The same inmate's case often goes back and forth between the Trial and Appellate Divisions.

A typical case begins in the Oregon Court of Appeals. A party unhappy with his or her conviction or sentence seeks direct review by this appellate court and files a written brief describing the alleged errors and the relief sought. The Appellate Division then responds on behalf of the state in a written brief, and the court may hear a brief oral argument in which the judges can question the parties about the issues. The court then decides the case either by a written opinion or an order affirming without opinion.

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The typical case then is handled by the Trial Division when an inmate's petition for post-conviction relief is filed in state court. These petitions raise collateral challenges to criminal convictions filed after the defendant has exhausted any direct appeal. Petitions typically include claims that a criminal defense was ineffective or that a guilty plea was invalid. Division lawyers review the trial transcripts, pleadings and briefs; research legal questions; take depositions and secure testimony by affidavit; and present the state's case in post-conviction trials.

When the Trial Division is successful, the inmate may then appeal to the Oregon Court of Appeals the trial court's determination on his or her petition for post-conviction relief. At that point the case is once again handled by the Appellate Division through determination of that appeal in the Oregon Court of Appeals or Oregon Supreme Court.

Once an inmate's state relief is exhausted, the inmate may then file a petition for habeas corpus in federal District Court. The Trial Division represents the state's interests at that trial court level. There, the inmate usually raises federal constitutional issues related to his or her confinement.

When the Trial Division is successful at that stage, the inmate may appeal to the Ninth Circuit Court of Appeals. When they do, the Appellate Division then steps in once again to represent the state's interests on appeal.

The DCC caseload is a mandatory caseload. The number and complexity of these cases are driven by the decisions of individuals convicted of crimes to contest those convictions. That said, these cases must be defended regardless of the number of cases or appeals filed, or the complexity with which they are litigated. The Appellate and Trial Divisions have no control over the number or complexity of cases or appeals that are filed by other parties which accounts for over 95% of the DCC workload. In a much smaller number of appeals, the Solicitor General may approve the state's appeal of a lower-court decision. Those cases typically involve a challenge to the dismissal of criminal charges or the exclusion of evidence critical to the successful prosecution of the case. In a given biennium, the state will appeal approximately 50 such cases.

Another significant component of DCC's work is the analysis of major court decisions. Because it is critical that the state's prosecutors understand the implications of appellate court decisions for criminal law to avoid committing legal error in their cases, DCC attorneys analyze these decisions and provide informational material to District Attorneys, their deputies, and law-enforcement officers about how these changes in the law will affect law enforcement and trial court prosecutions. DCC attorneys also routinely answer questions from the state's prosecutors about charging decisions, pre-trial matters, and issues that come up mid-trial. The Appellate Division's DCC attorneys and staff also maintain a series of publications to help prosecutors and law enforcement stay up to date on Oregon criminal law, including:

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- weekly legal bulletins summarizing each Oregon appellate court case from the previous week;
- a Search and Seizure Manual, a several-hundred page, comprehensive guide to Oregon search and seizure law; and
- an Oregon Criminal Reporter (OCR), a detailed, comprehensive guide to all other areas of Oregon criminal law.

Prosecutors use the resources to advise and train law-enforcement officers, review warrants, prepare for motions hearings, and decide whether to commence a prosecution. This advice and information also helps prosecutors negotiate pleas or secure convictions and makes convictions and sentences less susceptible to reversal on appeal. DCC attorneys also present training directly to prosecutors and law-enforcement officials.

Capital cases

The DCC budget also funds the defense of appeals from death sentences, including collateral challenges to the convictions and sentences. Of all the criminal cases, death penalty cases are the most complex and require the most resources. Unlike other criminal cases reviewed first in the Court of Appeals and only occasionally in the Oregon Supreme Court, direct appeals from convictions where the death penalty is imposed are first considered by the Supreme Court. Appeals in death penalty cases raise more numerous and more complex legal issues. A single direct review appeal in a death penalty case may take 700 hours of attorney time to defend the conviction. Death penalty cases also are unlike other cases in that defendants often have little incentive to accelerate consideration of challenges to their sentence. If the conviction is overturned, defendants are generally not released; instead they are entitled to a new trial. If the conviction is upheld, the sentence is another step closer to being carried out. Consequently, delay is often an effective strategy for a death penalty defendant.

In addition, after a capital case is upheld on direct review; the defendant may pursue collateral challenges through state post-conviction and federal habeas as discussed in the section above. Because of the specialized nature of death-penalty work and the goal of more efficiently handling these cases by assigning attorneys already familiar with the extensive records, Appellate Division attorneys team up with Trial Division attorneys to handle the trial proceedings in those collateral challenges as well as any resulting appeals. At the federal-court level, the Federal Public Defenders are devoting significant resources to attacking the constitutionality of Oregon's death penalty laws, in part because the federal courts have not considered the validity of Oregon's laws since they were re-enacted in 1984. DCC attorneys are therefore confronted with many novel legal arguments that require additional time and resources to address.

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Program Justification and Link to Long Term Outcomes

The DCC program supports the primary goal of Safer, Healthier Communities. The program's work is critical to public safety—by providing defense of criminal convictions, the program helps ensure that the justice system has its intended deterrent and punitive effect on those who would put the public at risk. The program supports a secondary goal of Excellence in State Government by ensuring competent and timely representation for the state to defend criminal convictions. The program also works closely with the courts and the public defenders to ensure that cases are resolved as quickly as possible and in the fairest manner possible.

Program Performance

On the Appellate side, the DCC program's performance can be measured by the amount of time it takes for the state to file its briefs in appeals. Due to budget cuts in past biennia, the average length of time that it took both the defendant and the state to file a brief was around 350 days for each side's brief. Reducing that time was critical: if cases take too long to resolve on appeal, cases are more difficult to prosecute again if the courts overturn a conviction. And in cases where resolution takes too long, there is a greater risk that federal courts will intervene in state-court operations. The DCC program has worked closely with the state courts and the Office of Public Defense Services to bring down that amount of delay. The current goal is that briefs be filed within 210 days. In 2015, the program achieved that goal in 92% of cases.

On the Trial side, performance can be measured by the number of cases it handles and resolves, and by their outcome. From July 1, 2013 to June 30, 2015, the Trial Division opened 867 cases and, during that same period, closed 1126 cases. In cases closed during that time period, the state prevailed in 95% of its cases, settled 1% and received unfavorable results in 4%.

Enabling Legislation/Program Authorization

Under ORS 138.040, anyone convicted by a trial court may appeal their convictions in the Court of Appeals as a matter of right. The legislature has designated the Attorney General to represent the state on appeal in all criminal cases in the Court of Appeals and in the Supreme Court. ORS 180.060(1). Under ORS 138.650, a petitioner in a post-conviction case may appeal an adverse decision to the Court of Appeals as a matter of right. The legislature has also designated the Attorney General to represent the state in all post-conviction cases filed by anyone who is serving a prison sentence. ORS 138.570. In addition, the Attorney General represents the state in habeas corpus proceedings pursuant to ORS 180.060(4).

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Funding Streams

The DCC program is funded entirely with General Fund.

Significant Program Changes from 2015-17

Both Appellate and Trial Divisions' current service level includes additional positions to meet the anticipated growth in Defense of Criminal Convictions cases for 2017-19 that was projected during the development of the mandated caseload package (Package 040). All but one of these positions were removed in Package 090 due to a change in caseload projection.

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Defense of Criminal Convictions

031 – Standard Inflation and State Government Service Charge

Purpose: Standard inflation of 3.7% was applied to all services and supplies accounts except for Rent, Professional Services, Attorney General, and State Government Services Charges. The package adjusts the State Government Service Charges assessed by DAS, Secretary of State Audits Division, State Library, Supreme Court Library, Risk Management, and others based on the 2017-19 State of Oregon Price List of Goods and Services. Inflation of 6.9% was applied to Rent (uniform and non-uniform), 4.1% to Professional Services, and 13.14% to Attorney General line items.

How Achieved: Accounts were adjusted using the DAS published instructions.

2017-19/2019-21 Staffing Impact: None

Revenue Source: \$2,664,504 General Fund

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Defense of Criminal Convictions

040 DCC - Mandated Caseload for Defense of Criminal Convictions (DCC)

Purpose: To provide necessary resources to meet the anticipated growth in DCC workload for 2017-19.

Generally, the DCC program defends criminal convictions obtained by District Attorneys in the trial courts. DCC attorneys defend three categories of challenges to state court criminal convictions: (1) direct appeals to the state appellate courts; (2) post-conviction challenges in the state trial and appellate courts; and (3) federal habeas challenges in the federal trial and appellate courts. The Department has projected an estimated 3,166 non-capital cases in 2017-19.

Capital cases exacerbate the problem. As of July 2016, the Department has 20 capital cases on post-conviction review pending in the state courts. Thirteen of those cases have been pending for more than five years. Even more pressing, the Department now has 6 capital cases moving into federal habeas litigation for the first time since the death penalty was reinstated in Oregon. These federal habeas cases are the first ones challenging the state capital system; consequently, the federal public defender and the federal courts will exhaustively review all aspects of Oregon's legal system as it relates to the capital cases. The Department knows from the experience of other states, especially those under the jurisdiction of the Ninth Circuit Court of Appeals, that the examination of Oregon's system will be thorough and demanding, requiring significant commitment of time and resources to defend the legislative choices in this area. And the federal courts are unlikely to tolerate the length of delay DCC has utilized in the state courts to stretch DCC's available resources.

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Defense of Criminal Convictions

040 DCC - Mandated Caseload for Defense of Criminal Convictions (DCC) (continued)

How Achieved:

Case Type	Appellate Court					Trial Court				Combined
	Direct Appeals	PC Appeals	Federal Habeas Appeals	Supreme Court	Total	PC Trial	Federal Habeas Trial	PSRB/SHRP	Total	
2017-19 Projected FTE	15.98	3.39	1.27	2.35	22.99	14.62	14.22	1.80	30.64	53.64
Attorneys	14.83	3.13	1.21	2.29	21.46	9.68	8.94	1.21	19.84	41.30
Paralegals	0.37	0.16	0.04	0.06	0.63	2.78	3.76	0.27	6.81	7.44
Law Clerks	0.79	0.10	0.02	-	0.91	1.69	1.42	0.32	3.43	4.33
Investigators	-	-	-	-	-	0.47	0.10	-	0.57	0.57
2015-17 LAB FTE	15.51	3.05	1.35	2.36	22.27	10.51	8.03	1.49	20.03	42.30
Attorneys	14.50	2.89	1.28	2.28	20.95	6.82	5.01	1.18	13.01	33.96
Paralegals	0.37	0.09	0.03	0.08	0.57	1.36	1.86	0.01	3.23	3.80
Law Clerks	0.64	0.07	0.04	-	0.75	2.16	1.15	0.30	3.61	4.36
Investigators	-	-	-	-	-	0.17	0.01	-	0.18	0.18
Change from 2015-17 LAB	0.47	0.34	(0.08)	(0.01)	0.72	4.11	6.19	0.31	10.61	11.33
Attorneys	0.33	0.24	(0.07)	0.01	0.51	2.86	3.93	0.03	6.82	7.33
Paralegals	(0.00)	0.07	0.01	(0.02)	0.06	1.42	1.90	0.26	3.58	3.64
Law Clerks	0.15	0.03	(0.02)	-	0.16	(0.47)	0.27	0.02	(0.18)	(0.03)
Investigators	-	-	-	-	-	0.30	0.09	-	0.39	0.39

	Rate	Hours	FTE	Total Hours	GF Expenditures
Attorneys	\$ 198	3,200	7.33	23,470	\$ 4,647,111
Paralegals	\$ 91	2,658	3.64	9,672	\$ 880,163
Law Clerks	\$ 55	1,248	(0.03)	(34)	\$ (1,871)
Investigators	\$ 125	2,717	0.39	1,050	\$ 131,273
					<u>\$ 5,656,676</u> Total

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Defense of Criminal Convictions

040 DCC - Mandated Caseload for Defense of Criminal Convictions (DCC) (continued)

2017-19/2019-21 Staffing Impact: See corresponding Package 040 in Appellate and Trial

Quantifying Results:

APPELLATE: Results will be realized both in terms of efficiency and the quality of our representation. The best way to quantify efficiency gains will be through monitoring the number of briefs we are able to file, the extent to which we are able to keep pace with the DCC caseload without developing a backlog of cases, and the time it takes from the time we open a case until the time we file a brief. Specifically, we monitor as part of our key performance measures the percentage of cases that we are able to file a brief within 210 days from when the case enters the appellate division. That KPM has most recently been measured approximately 92% and our goal is to consistently achieve over 90%. Qualitative gains are difficult to measure, but the requested funds will allow us to spend slightly more hours per brief, which improves the quality of the analysis and increases the chances of the state prevailing on appeal. We do measure the percentage of cases in which the state's position is upheld, but this is not particularly accurate gauge as many factors (changes in controlling precedent, e.g.) are beyond our control.

TRIAL: Results will be measured in two ways: First, by tracking the success rate at various stages of litigation such as motions to dismiss, motions for summary judgment, alternative dispute resolution and trial, then comparing those rates to historical data to indicate whether the Division is meeting its objectives. Second, by tracking "pending cases" to determine whether, at current staffing levels, the Division is building up or reducing case backlog.

Revenue Source: \$5,656,676 General Fund

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ESSENTIAL AND POLICY PACKAGE FISCAL IMPACT SUMMARY

Justice, Dept of
Pkg: 031 - Standard Inflation

Cross Reference Name: Defense of Criminal Convictions
Cross Reference Number: 13700-100-00-00-00000

<i>Description</i>	General Fund	Lottery Funds	Other Funds	Federal Funds	Nonlimited Other Funds	Nonlimited Federal Funds	All Funds
Revenues							
General Fund Appropriation	2,664,504	-	-	-	-	-	2,664,504
Total Revenues	\$2,664,504	-	-	-	-	-	\$2,664,504
Services & Supplies							
Professional Services	1,336	-	-	-	-	-	1,336
Attorney General	2,663,168	-	-	-	-	-	2,663,168
Total Services & Supplies	\$2,664,504	-	-	-	-	-	\$2,664,504
Total Expenditures							
Total Expenditures	2,664,504	-	-	-	-	-	2,664,504
Total Expenditures	\$2,664,504	-	-	-	-	-	\$2,664,504
Ending Balance							
Ending Balance	-	-	-	-	-	-	-
Total Ending Balance	-	-	-	-	-	-	-

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ESSENTIAL AND POLICY PACKAGE FISCAL IMPACT SUMMARY

Justice, Dept of
Pkg: 040 - Mandated Caseload

Cross Reference Name: Defense of Criminal Convictions
Cross Reference Number: 13700-100-00-00-00000

<i>Description</i>	General Fund	Lottery Funds	Other Funds	Federal Funds	Nonlimited Other Funds	Nonlimited Federal Funds	All Funds
Revenues							
General Fund Appropriation	5,656,676	-	-	-	-	-	5,656,676
Total Revenues	\$5,656,676	-	-	-	-	-	\$5,656,676
Services & Supplies							
Attorney General	5,656,676	-	-	-	-	-	5,656,676
Total Services & Supplies	\$5,656,676	-	-	-	-	-	\$5,656,676
Total Expenditures							
Total Expenditures	5,656,676	-	-	-	-	-	5,656,676
Total Expenditures	\$5,656,676	-	-	-	-	-	\$5,656,676
Ending Balance							
Ending Balance	-	-	-	-	-	-	-
Total Ending Balance	-	-	-	-	-	-	-

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Defense of Criminal Convictions

090 – Analyst Adjustments

Purpose: This package reduces General Fund appropriation to reverse most of the additions in Package 040, the mandated caseload package. The reversal of the mandated caseload package in this program is linked to reversals in the Appellate and Trial divisions. The Defense of Criminal Convictions (DCC) program supplies the revenue to support the DCC activities carried out by the Appellate and Trial divisions.

How Achieved: Accounts were adjusted using the DAS published instructions.

2017-19/2019-21 Staffing Impact: None

Revenue Source: (\$4,986,330) General Fund

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ESSENTIAL AND POLICY PACKAGE FISCAL IMPACT SUMMARY

Justice, Dept of
Pkg: 090 - Analyst Adjustments

Cross Reference Name: Defense of Criminal Convictions
Cross Reference Number: 13700-100-00-00-00000

<i>Description</i>	General Fund	Lottery Funds	Other Funds	Federal Funds	Nonlimited Other Funds	Nonlimited Federal Funds	All Funds
Revenues							
General Fund Appropriation	(4,986,330)	-	-	-	-	-	(4,986,330)
Total Revenues	(\$4,986,330)	-	-	-	-	-	(\$4,986,330)
Services & Supplies							
Professional Services	202,043	-	-	-	-	-	202,043
Attorney General	(5,188,373)	-	-	-	-	-	(5,188,373)
Total Services & Supplies	(\$4,986,330)	-	-	-	-	-	(\$4,986,330)
Total Expenditures							
Total Expenditures	(4,986,330)	-	-	-	-	-	(4,986,330)
Total Expenditures	(\$4,986,330)	-	-	-	-	-	(\$4,986,330)
Ending Balance							
Ending Balance	-	-	-	-	-	-	-
Total Ending Balance	-	-	-	-	-	-	-

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Defense of Criminal Convictions

810 – Statewide Adjustments

Purpose: This package represents changes to State Government Service Charges, DAS price list charges for services and Attorney General charges made for the Legislatively Adopted Budget. This package adjusts Attorney General rates from the published price list at ARB of \$198/hour to \$182/hour. Because this agency division has no existing budget for many of these charges, the adjustment has been made in the Attorney General account.

How Achieved: Accounts were adjusted using the DAS published instructions.

2017-19/2019-21 Staffing Impact: None

Revenue Source: (\$2,311,204) General Fund

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ESSENTIAL AND POLICY PACKAGE FISCAL IMPACT SUMMARY

Justice, Dept of
Pkg: 810 - Statewide Adjustments

Cross Reference Name: Defense of Criminal Convictions
Cross Reference Number: 13700-100-00-00-00000

<i>Description</i>	General Fund	Lottery Funds	Other Funds	Federal Funds	Nonlimited Other Funds	Nonlimited Federal Funds	All Funds
Revenues							
General Fund Appropriation	(2,311,204)	-	-	-	-	-	(2,311,204)
Total Revenues	(\$2,311,204)	-	-	-	-	-	(\$2,311,204)
Services & Supplies							
Professional Services	(1,336)	-	-	-	-	-	(1,336)
Attorney General	(2,309,868)	-	-	-	-	-	(2,309,868)
Total Services & Supplies	(\$2,311,204)	-	-	-	-	-	(\$2,311,204)
Total Expenditures							
Total Expenditures	(2,311,204)	-	-	-	-	-	(2,311,204)
Total Expenditures	(\$2,311,204)	-	-	-	-	-	(\$2,311,204)
Ending Balance							
Ending Balance	-	-	-	-	-	-	-
Total Ending Balance	-	-	-	-	-	-	-

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DETAIL OF LOTTERY FUNDS, OTHER FUNDS, AND FEDERAL FUNDS REVENUE – Not Applicable

BPR012 – Not Applicable