



# JUDICIAL BRANCH

OREGON JUDICIAL DEPARTMENT

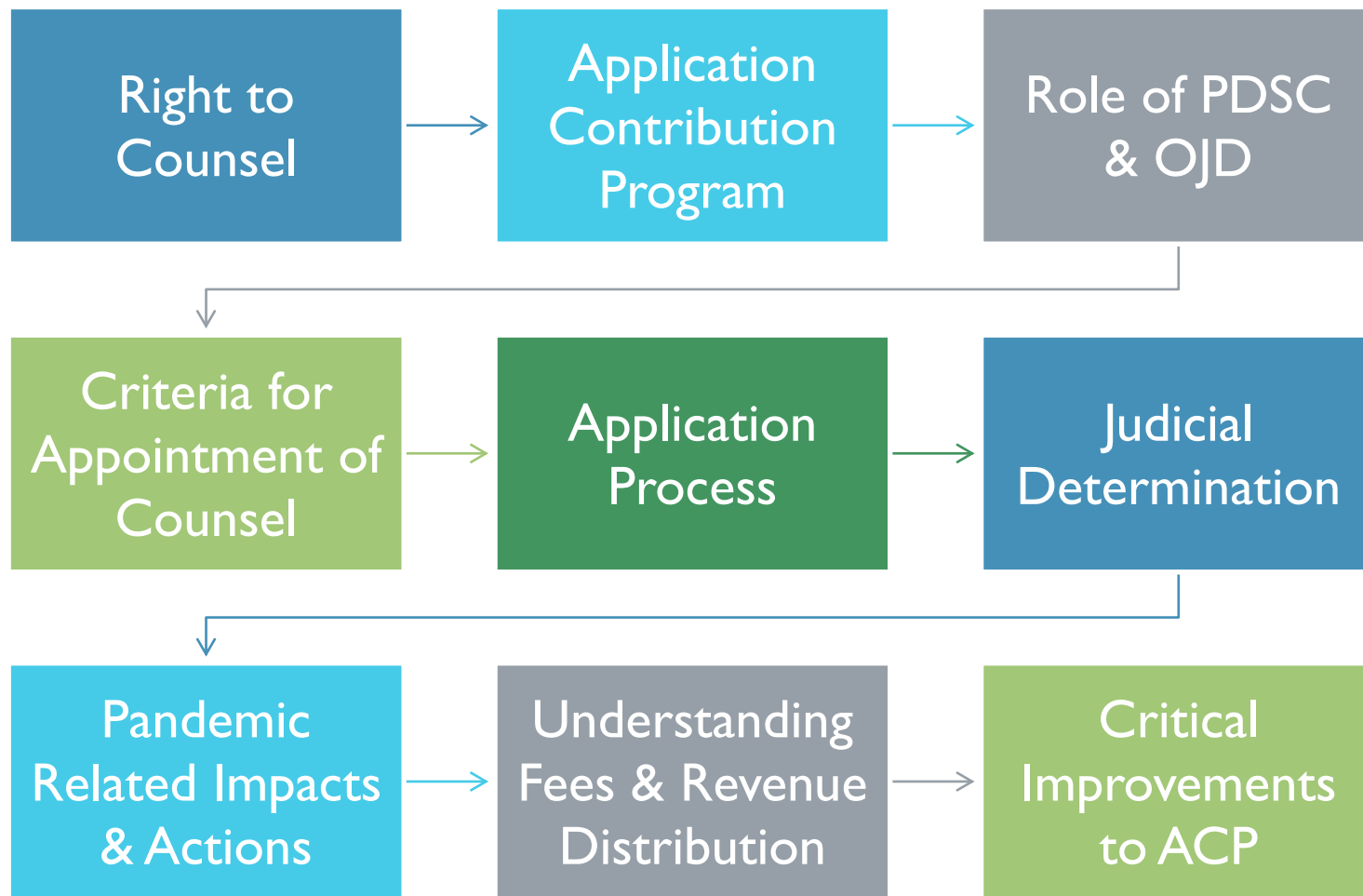
## APPLICATION CONTRIBUTION PROGRAM (ACP)

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Presented to Joint Committee On Ways and Means Subcommittee On Public Safety

April 13, 2023



## OVERVIEW

# CONSTITUTIONAL AND STATUTORY RIGHT TO COUNSEL

## State and Federal Constitutional Right to Counsel

- 6th and 14th Amendments to the U.S. Constitution; Article I, section 11, of the Oregon Constitution
- All cases in which a person may be sentenced to a term of incarceration or deprived of liberty and any direct appeal in those cases
- Includes criminal cases, juvenile delinquency proceedings, and civil commitment hearings

## Statutory Right to Counsel

- Other case types where there is a potential deprivation of liberty, including post-conviction relief proceedings, protective proceedings, and juvenile dependency matters

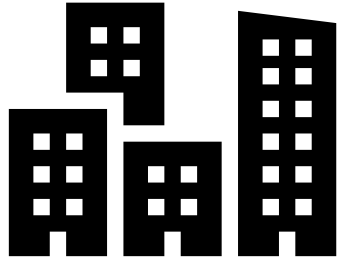
# APPLICATION CONTRIBUTION PROGRAM (ACP)



The Application Contribution Program (ACP) went into effect in January 1998

- Intent was to create a process to properly identify those who have a constitutional or statutory right to counsel at state expense
- Allows contribution toward costs of representation and administrative costs of determining eligibility based on ability to pay

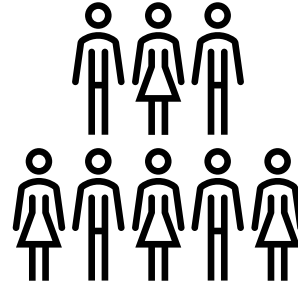
# ACP PARTNERSHIP



## Public Defense Services Commission

ORS 151.216, 151.487

- Authority to set standards and procedures for determining eligibility and costs of representation
- Responsible for setting guidelines for ACP
- Contracts with local consortiums and attorneys for assignment



## Verification Specialists (OJD)

ORS 151.485-151.495

- Interview and assist applicants in completing appropriate forms
- Calculate eligibility and ability to pay
- Make recommendations to the judge
- Verify financial information provided in application



## Judge (OJD)

ORS 151.487, 151.505

- Make determination to appoint/deny attorney and may impose application fee
- May issue limited judgment for contribution amount upfront based on ability to pay or waive fees
- Make finding on ability to pay additional attorney fees above and beyond contribution amount at conclusion of case
- May impose attorney fees at final judgment or waive fees

# CRITERIA FOR APPOINTMENT OF COUNSEL AT STATE EXPENSE

## ORS 151.485

A person is financially eligible for appointed counsel at state expense if the person “is determined to be financially unable to retain adequate counsel without substantial hardship in providing **basic economic necessities** to the person or the person’s **dependent family**.” (Emphasis added)

### Does the Case Qualify?

- Case must be one for which there is a right to appointed counsel that statute specifically says will be paid under ORS Chapter 151

### Are They Financially Eligible?

- PDSC Adopted Income Guidelines
- Privately Hired Attorney Fee Schedule



Also have a constitutional obligation to appoint on cases when an individual cannot afford an attorney.

## GENERAL

A person may apply for appointed counsel if the applicant is before the court on any of the following matters:

- ❖ Criminal [felony or misdemeanor] (ORS 135.050(5)(a))
- ❖ Extradition (ORS 135.050(5)(c))
- ❖ Any proceeding concerning a probation order (ORS 135.050(5)(d))
- ❖ Enhanced sentence hearing when proceedings may result in felony sentence [e.g., Blakely issue] (ORS 135.050(5)(b))
- ❖ Contempt (ORS 33.055 and ORS 33.065)
- ❖ A hearing to determine whether the court shall impose a Material Witness Order (ORS 136.611(3)(b))
- ❖ Death warrant hearing (ORS 137.463)
- ❖ Resentencing hearing for sexually violent dangerous offender (ORS 137.771(2))
- ❖ In a criminal forfeiture matter if charged together with a criminal case
- ❖ In a post-conviction relief or habeas corpus case (ORS 138.590 and ORS 34.355)
- ❖ Civil commitment (ORS 426.100(1)(e), ORS 426.307(3), and ORS 161.346(11) **(Counsel automatically appointed, not required to complete application)**)
- ❖ Legal advisor for defendant who waives counsel (ORS 138.504(2))
- ❖ Judicial review of State Board of Parole and Post-Prison Supervision order (ORS 144.337(2))
- ❖ Psychiatric Security Review Board hearings (ORS 161.346 (11))
- ❖ A youth waived to adult court (ORS 419C.349, 419C.352, 419C.364)
- ❖ Parents in termination of parental rights cases (ORS 419B.518)
- ❖ For the child in dependency cases under certain circumstances (ORS 419B.195)
- ❖ Appeals (ORS 138.480, ORS 138.500 ORS 161.327(6), ORS 161.346(11), ORS 419B.195, ORS 427.295, and ORS 436.315)
- ❖ A request, for determination of eligibility despite retained counsel, for non-routine expenses (ORS 135.055(3))

## WHO MAY APPLY FOR APPOINTED COUNSEL



## JUVENILE

### Juvenile - Who is Entitled to Appointed Counsel

The youth or parent/guardian of the youth is entitled to appointed counsel at no cost and does not require an application or eligibility determination if before the court on any of the following matters: See, [Juvenile ACP Financial Eligibility Quick Reference Guide](#)

- ❖ A youth, prior to entering into formal accountability agreement (ORS 419C.245)
- ❖ A youth charged with a violation (e.g., MIP) (ORS 419C.005)
- ❖ A youth charged as an adult with an offense set out in ORS 137.707
- ❖ A youth in a delinquency case (ORS 419C.200)
- ❖ A youth under 18; still under court's jurisdiction, to file a petition for relief from sex offender reporting requirements (ORS 163A.130(12))
- ❖ A youth or young adult for a hearing on the issue of sex offender reporting for youth offenders (ORS 163A.030(3)(4))
- ❖ For the legal parents of the youth in a delinquency case at time of disposition (ORS 419C.285(2)(b))
- ❖ For parents, prior to hearing whether to order parents to participate in drug or alcohol treatment (ORS 419C.575)
- ❖ Appeals (ORS 419A.211 and ORS 426.135)
- ❖ A request, for determination of eligibility despite retained counsel, for non-routine expenses for matters listed in this section (ORS 135.055(3))

### Juvenile - Who May Apply for Appointed Counsel

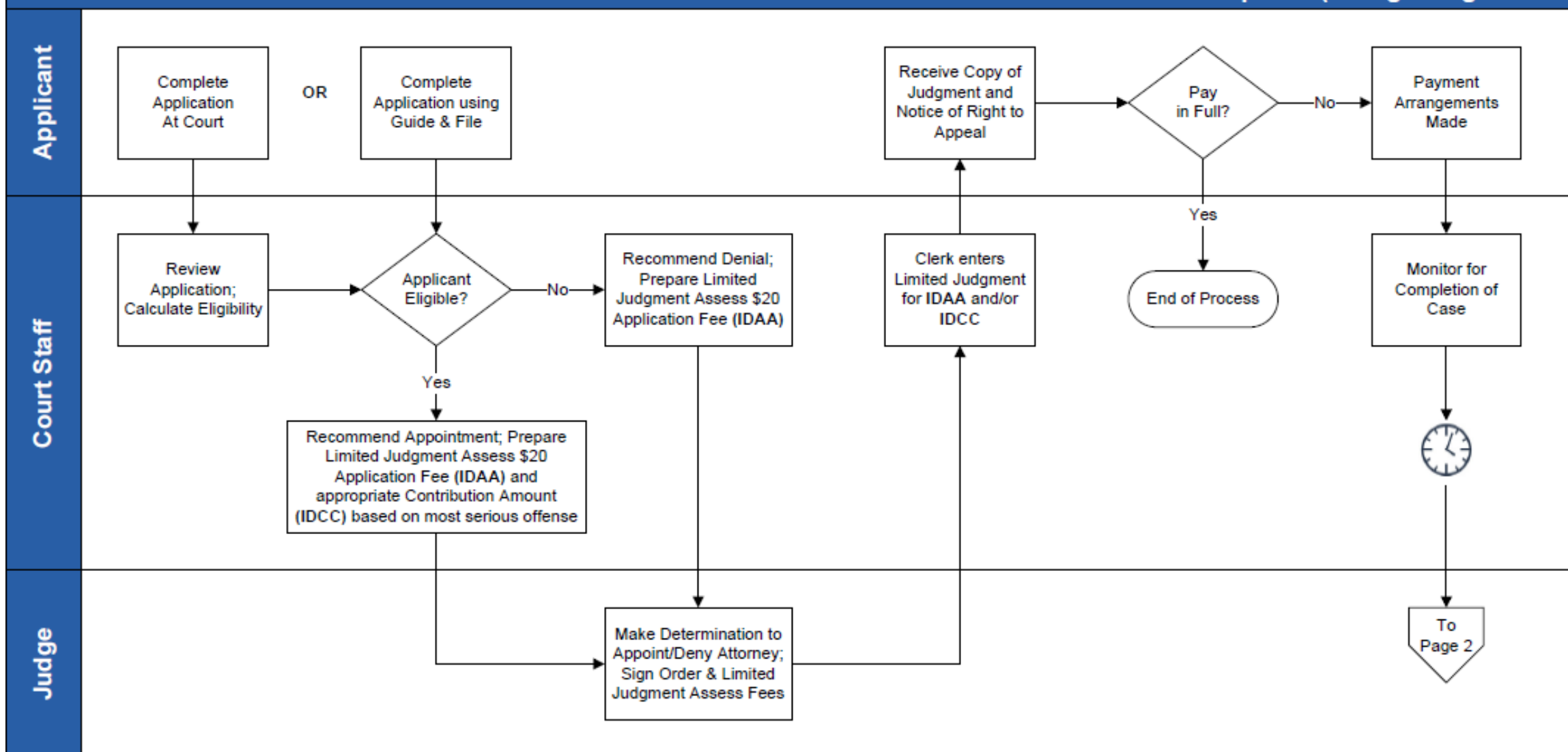
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## ABCs of ACP

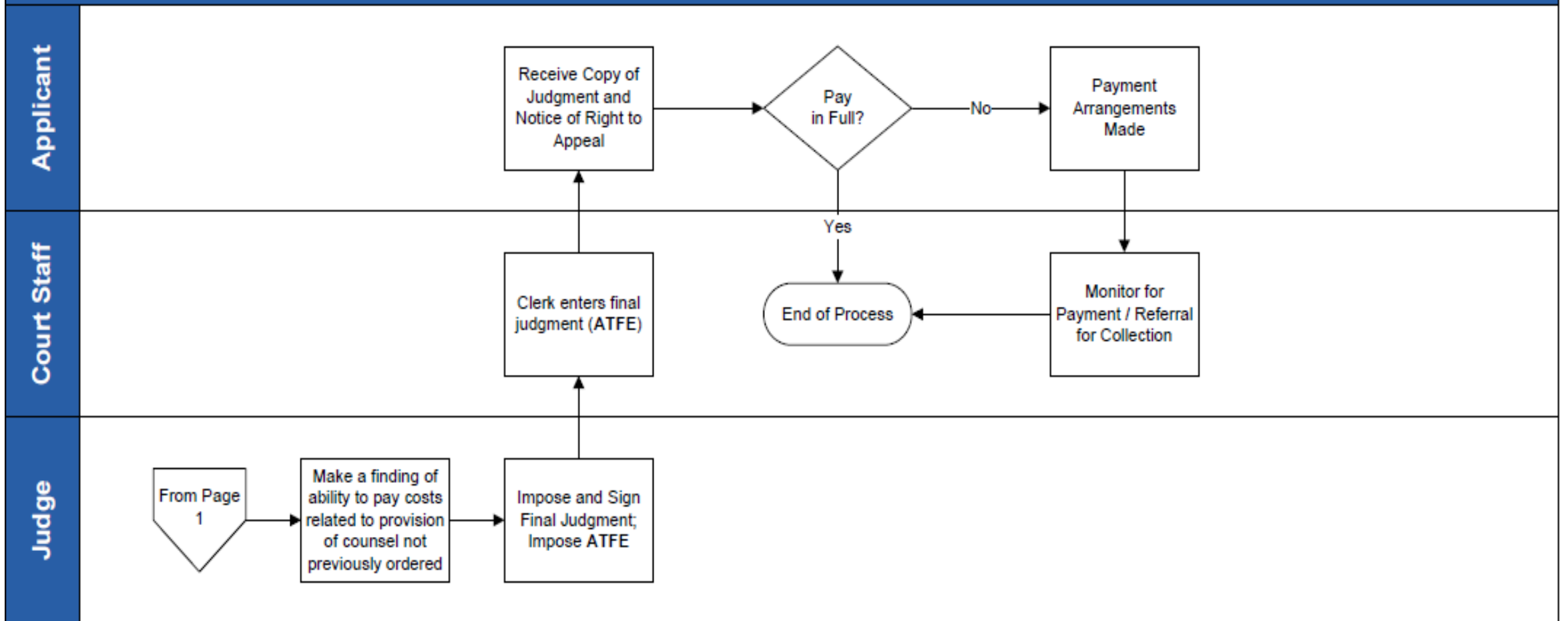
### Assessment of Fees – Upfront (at beginning of case)





## ABCs of ACP

### Fees Assessed at the Conclusion of Case as Attorney Fees (Recoupment)



# ACP APPLICATION PROCESS

Prior to first appearance or arraignment, applicant receives and completes application forms and court staff are available to assist.

- [Information and Advice of Rights](#)
- [Release of Information](#)
- [Application for Appointment of Counsel & Declaration in Support](#)
- [Guide & File Packet](#) 

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
Plaintiff/Petitioner  
v.  
\_\_\_\_\_  
Defendant/Respondent

Case No. \_\_\_\_\_

## APPLICATION FOR APPOINTMENT OF COUNSEL & DECLARATION IN SUPPORT

Applicant Name: \_\_\_\_\_  
(Name of person to be represented) First Middle Last

**ACCESS TO THIS DOCUMENT IS RESTRICTED TO PROTECT THE PRIVACY OF PARTIES**

I am the ☐ plaintiff/petitioner ☐ defendant/respondent ☐ other: \_\_\_\_\_

1. I am applying for appointment of counsel in this case because I cannot pay for a lawyer without substantial financial hardship
2. I understand that payment is a debt to the state of Oregon. Additional fees may be added for administrative and collection costs.
3. I understand that if I am appointed counsel, I may be ordered to pay a portion of the cost based on my financial ability
4. I understand that if any information provided on this application is not true, I may be required to pay the full cost of my representation. I understand I may be charged with a crime and/or contempt of court.

# APPLICATION FEE AND ELIGIBILITY CRITERIA

HOUSEHOLD SIZE	GROSS INCOME (130% of FPL)		NET INCOME (77% of Gross Income)		*SNAP Payment Standard
	MONTHLY	ANNUAL	MONTHLY	ANNUAL	
1	\$1,580	\$18,954	<b>\$1,216</b>	\$14,595	\$281
2	\$2,136	\$25,636	<b>\$1,645</b>	\$19,740	\$516
3	\$2,693	\$32,318	<b>\$2,074</b>	\$24,885	\$740
4	\$3,250	\$39,000	<b>\$2,503</b>	\$30,030	\$939
5	\$3,807	\$45,682	<b>\$2,931</b>	\$35,175	\$1,116
6	\$4,364	\$52,364	<b>\$3,360</b>	\$40,320	\$1,339
7	\$4,921	\$59,046	<b>\$3,789</b>	\$45,465	\$1,480
8	\$5,477	\$65,728	<b>\$4,218</b>	\$50,611	\$1,691
Each Additional	\$557	\$6,682	<b>\$429</b>	\$5,145	\$211

- PDSC established \$20 Fee
- Court may impose fee even if
  - applicant is determined to be ineligible for counsel
  - case is dismissed
  - case type is changed to one where there is no authority to appoint counsel
- PDSC guidelines use Federal Poverty Level (FPL) to determine eligibility
- Fees collected go into the Public Defense Services (PDS) Account for PDSC and OJD costs

# ELIGIBILITY PROCESS AND ABILITY TO PAY ORS 151.485, 151.487

Court staff

- Review and verify
- Calculate eligibility
- Prepare recommendation
  - appointment
  - application fee
  - contribution amount

ACP FEE CALCULATOR - Updated 2/2023		
Name	Case Number	Degree
Enter		
<b>Private Attorney Fee Schedule</b>	<b>Determining Eligibility</b>	
<b>ACP Contribution Schedule</b>	Monthly NET Household Income	\$0
Interpreter - Enter \$150 if needed	Assets/Alternative Assets	n/a
	SUBTOTAL	\$0
<b>Household Size</b>	Monthly Expenses	\$1,216
Applicant	Available Resources	-\$1,216
Spouse		
Dependents		
Other		
<b>TOTAL</b>	<b>Total Cost of Private Representation</b>	<b>\$0</b>
	<b>CAC RECOMMENDATION</b>	<b>ALLOW</b>
<b>Monthly NET Household Income</b>	<b>APPLICATION FEE RECOMMENDATION</b>	<b>WAIVE</b>
Applicant	Application Fee	\$0
Spouse (if applicable)	Available Resources Less Application Fee	-\$1,216
Social Security / SSI	<b>Allowed Assets</b>	\$100
Unemployment Benefit	Remaining Resources to Contribute	-\$1,316
Retirement Distributions (Pension, 401K, IRA)	<b>CONTRIBUTION AMOUNT RECOMMENDATION</b>	<b>\$0</b>
Tribal Benefits		
Spousal / Child Support Received	Notes	
Other		
<b>TOTAL</b>		
<b>Federal Poverty Guideline Amount</b>		
\$1,216		
<b>Additional Allowable Expenses</b>		
Medical / Insurance Monthly Payments		
Court Payments (need receipt)		
Wage Garnishment or Support		
Child Care		
Student Loan Payments		
<b>Total Eligible Expenses</b>		
\$1,216		
<b>Assets</b>		
Real Estate (equity)		
Vehicle(s) (Equity over \$6,000)		
ATVs, recreational equipment, RVs, etc.		
Cash		
Savings		
Bank Account(s)		
Stock / Bonds / Securities		
Other		
<b>TOTAL</b>		
\$0		
<b>Unemployed Applicant w/Assets</b>		
n/a		

## ACP CONTRIBUTION AMOUNT

- Payment toward the cost of representation
  - Ordered at the time of appointment in limited judgment
  - Up to 50% of the total cost of representation pursuant to the PDSC Maximum Contribution Schedule
- Amounts collected go into the PDS account (ORS 151.225)

PUBLIC DEFENSE SERVICE COMMISSION GUIDELINE MAXIMUM CONTRIBUTION AMOUNT SCHEDULE Effective April 1, 2016	
Aggravated Murder and Murder	\$20,862
Jessica's Law	\$10,084
Measure 11 Felony	\$2,353
Non-Measure 11 - Class A Felony	\$870
Non-Measure 11 - Class B Felony	\$638
Class C or U Felony	\$381
Misdemeanor, Contempt, Extradition	\$215
FAPA & Support	\$318
Probation Violations	\$119
Habeas Corpus	\$1,494
Post Conviction Relief	\$2,587
Civil Commitment	\$213
Juvenile - Felony	\$765
Juvenile - Misdemeanor	\$246
Juvenile - Probation Violation	\$127
Juvenile - Dependency	\$491
Termination of Parental Rights	\$1,562

# ACP JUDICIAL DETERMINATION

- At the individual's first appearance, the judge reviews the application and staff recommendation
- The judge will
  - Ask clarifying questions if needed
  - Deny or appoint counsel
  - Impose or waive the application fee
  - Impose or waive a contribution amount
- Any amounts collected go to the PDS Account



# ACP VERIFICATION PROCESS

Verification specialists verify financial information

- ☑ Verify wages or unemployment benefits
- ☑ Check for any vehicles registered in the applicant or their spouse's name
- ☑ Determine the value of all vehicles
- ☑ Inquire into any real property the applicant or applicant's spouse may have recorded in their name(s)
- ☑ Obtain the real market value of any real property

Once the verification process is complete, the verifier will initiate the process to withdraw appointed counsel or increase the contribution amount if verification reveals the applicant has additional financial resources.

# ACP VERIFICATION RESOURCES

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Oregon Employment Department

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Tax Returns

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Recent Paystubs

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Contacting Employers

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DMV Oregon Driver Records

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Real and Personal Property Records

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Equifax Credit Reports

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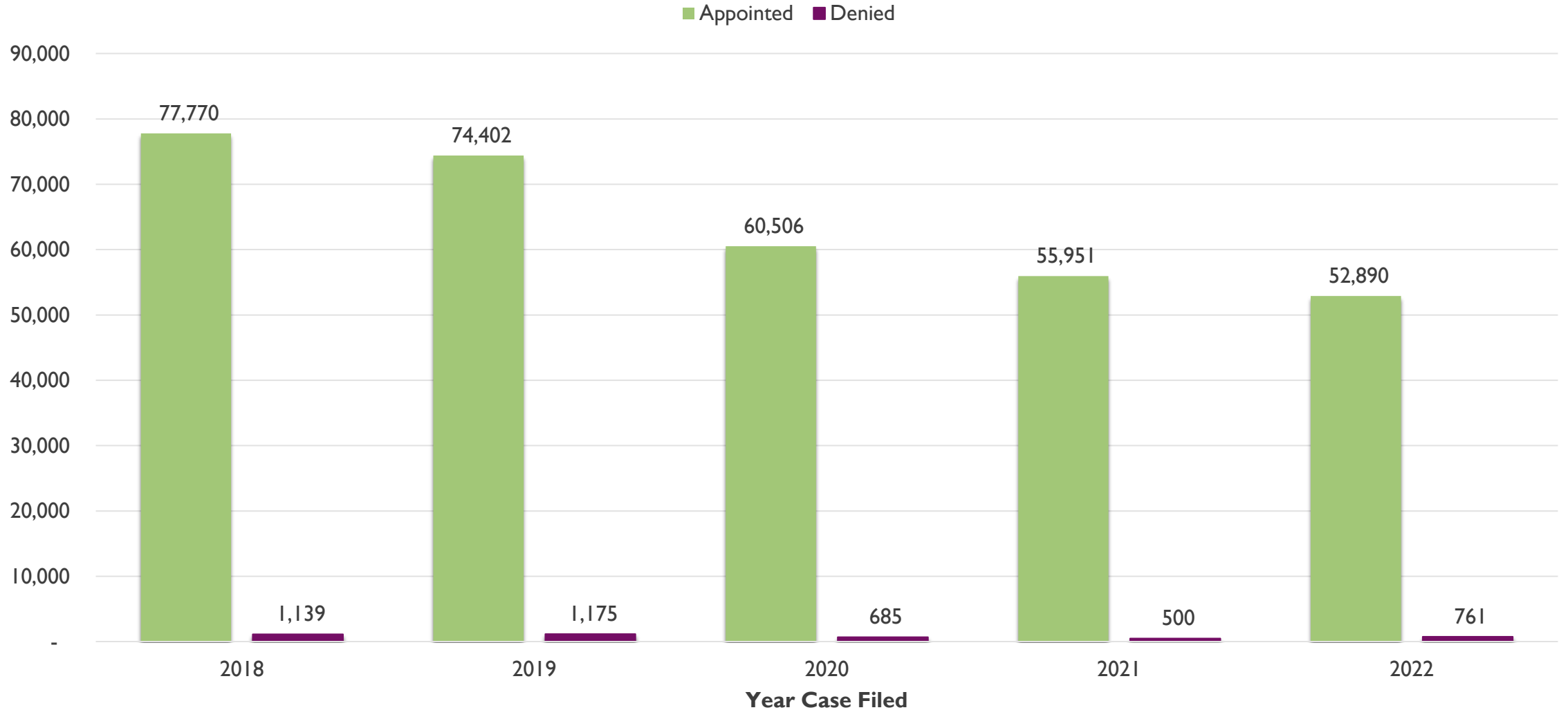
Financial Institutions

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Social Security Administration

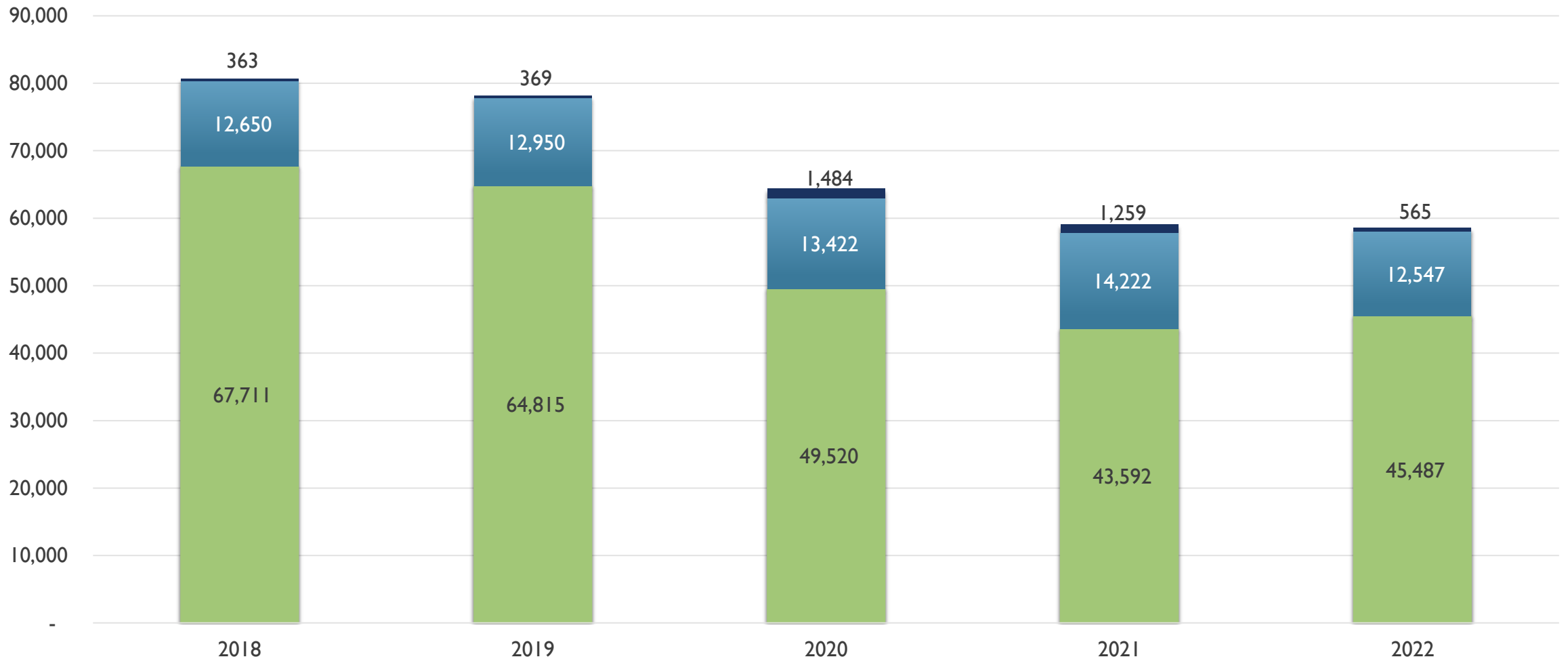


## Cases with Judicial Determination For Appointed Counsel



## Criminal Cases Filed by Representation Status

■ Court Appointed   ■ Privately Retained   ■ Self-Represented or Unrepresented



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# RECOUPMENT = ATTORNEY FEES IMPOSED AT THE END OF A CASE

- 
- Recoupment fees
    - Are in addition to the “contribution” imposed at the start of the case
    - Are permitted whether the person was convicted or acquitted

PDSC Schedule of Compensation for Purposes of Recoupment Pursuant to ORS 151.505(2) - Effective January 1, 2016			
Offense Type	Typical Contract Rate	Average Expenses (rounded)	Total Cost
Murder	\$18,437	\$23,287	\$41,724
Measure 11 Felony	\$1,908	\$2,797	\$4,705
Non-Measure 11 Class A Felony	\$1,146	\$593	\$1,739
Non-Measure 11 Class B Felony	\$955	\$320	\$1,275
Class C or U Felony	\$604	\$157	\$761
Misdemeanor/Contempt/Extradition	\$368	\$61	\$429
FAPA & Support	\$604	\$32	\$636
Probation Violation	\$230	\$7	\$237
Habeas Corpus	\$2,415	\$573	\$2,988
Post Conviction Relief	\$2,726	\$2,447	\$5,173
Civil Commitment	\$368	\$58	\$426
Juvenile Felony	\$853	\$676	\$1,529
Juvenile Misdemeanor	\$360	\$131	\$491
Juvenile Probation Violation	\$230	\$23	\$253
Juvenile Dependency	\$830	\$151	\$981
Termination of Parental Rights	\$2,711	\$413	\$3,124

## RECOUPMENT FEES

- Courts may impose a “reasonable attorney fee” based on
  - PDSC schedule of compensation
  - Ability to pay
- Amounts collected go to the Criminal Fine Account (CFA)

# ABILITY TO PAY AND RECOUPMENT FEES

ORS 151.505 and 161.665

- The court may not order a defendant to pay attorney fees unless the defendant “is or may be able” to pay them.
- A court may not impose fees based merely on speculation that a defendant has the funds to pay or will have funds to pay the fees in the future.” *State v. Pendergraph*, 251 Or App 630, 634, 284 P.3d 573 (2012). See also *State v. Mendoza*, 286 Or App 548, 549, 401 P.3d 288 (2017) (citing *State v. Coverstone*, 260 Or App 714, 716, 320 P.3d 670 (2014)).
- Upon a motion from a defendant who a court has previously ordered to pay attorney fees, the court “may enter a supplemental judgment that remits all or part of the amount due or modifies the method of payment,” if certain criteria are met. ORS 151.505(4)(a).
- A court may remit the amount or modify the payment method if (1) the person is not in “contumacious” default, and (2) the court finds that “the amount due will impose manifest hardship on the person ordered to repay or on the immediate family of the person, or will interfere with the ability of the person to complete an alcohol or drug treatment program.” ORS 151.505(4)(a); see also ORS 161.665(3).



Pandemic = Challenges to Traditional Approaches



Many proceedings were held remotely. Mailed applications for counsel were rarely returned, so the court made financial eligibility inquiries at the time of arraignment.



Verification is not permitted without written consent to access confidential financial records about the subject person.

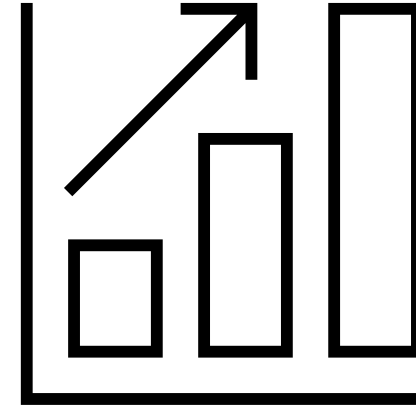
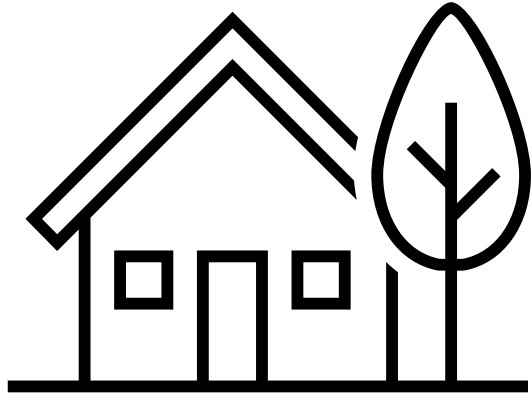


Courts shifted away from imposing contribution amounts at the start of a case, and began imposing more costs at the conclusion of the case.



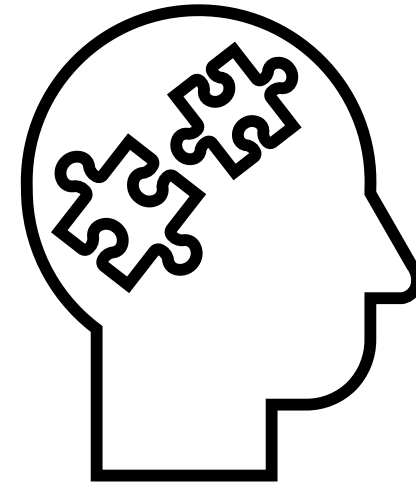
The right to counsel is a constitutional right and must be honored regardless of paperwork status.

## PANDEMIC-RELATED IMPACTS TO COURT PROCESSES



## PANDEMIC-RELATED IMPACTS TO OREGON POPULATION

- Significant increases in those struggling with
  - Houselessness
  - Mental health challenges





# OJD ACTIONS TO MAKE PROCESSES MORE ACCESSIBLE AND EFFICIENT



The screenshot shows the OJD Guide & File website. At the top, there is a logo and the text "OJD Guide & File" followed by "In the Oregon Circuit Courts" and a red link "Para ver esta información en español, seleccione la opción Español". Below this is a navigation bar with a hamburger menu icon and links for "OGF Home", "Home", "Start a Filing", and "My Interviews". The main content area has a blue header "What You'll Need" and a list of five requirements: 1. All related information: names, addresses, correspondence & documents (pdf format); 2. A credit card if you are going to eFile an iForm that requires a fee; 3. The ability to download and save your copy of the iForm; 4. Access to a printer if you need to file at the courthouse; 5. Watch the "How To" video. Help information is provided throughout the interview process. Below the list, it says "Then click 'Start Your Legal Process' to select a form and begin the interview!". At the bottom, there is a blue button that says "Start Your Legal Process >". In the background, there are images of legal forms titled "SMALL CLAIMS", "EVICTON", and "RENEW FAPA ORDE".

**OJD Guide & File** Para ver esta información en español, seleccione la opción Español  
In the Oregon Circuit Courts

OGF Home Home Start a Filing My Interviews

## What You'll Need

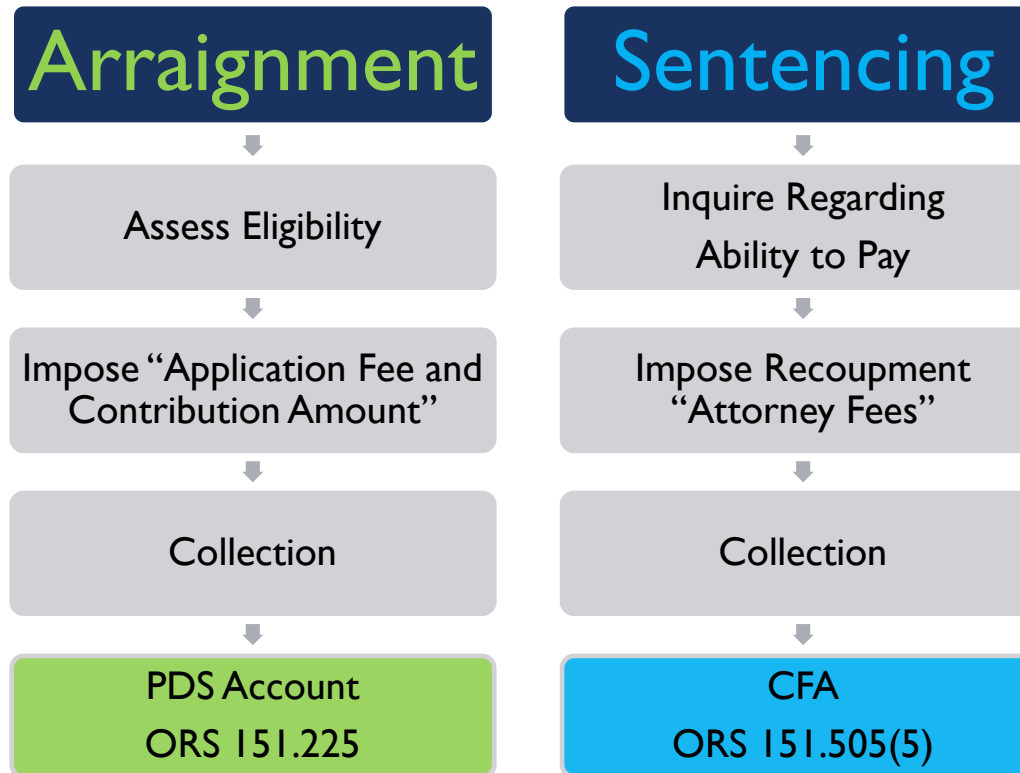
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Then click "Start Your Legal Process" to select a form and begin the interview!

Start Your Legal Process >

- Guide & File Application
  - Launched in February 2021
  - Online access
  - Streamlined interview
  - Reduced data entry
  - Auto-calculated eligibility recommendation
- Updated Application Process
  - Removed notarization requirement to allow forms to be completed without in-person contact

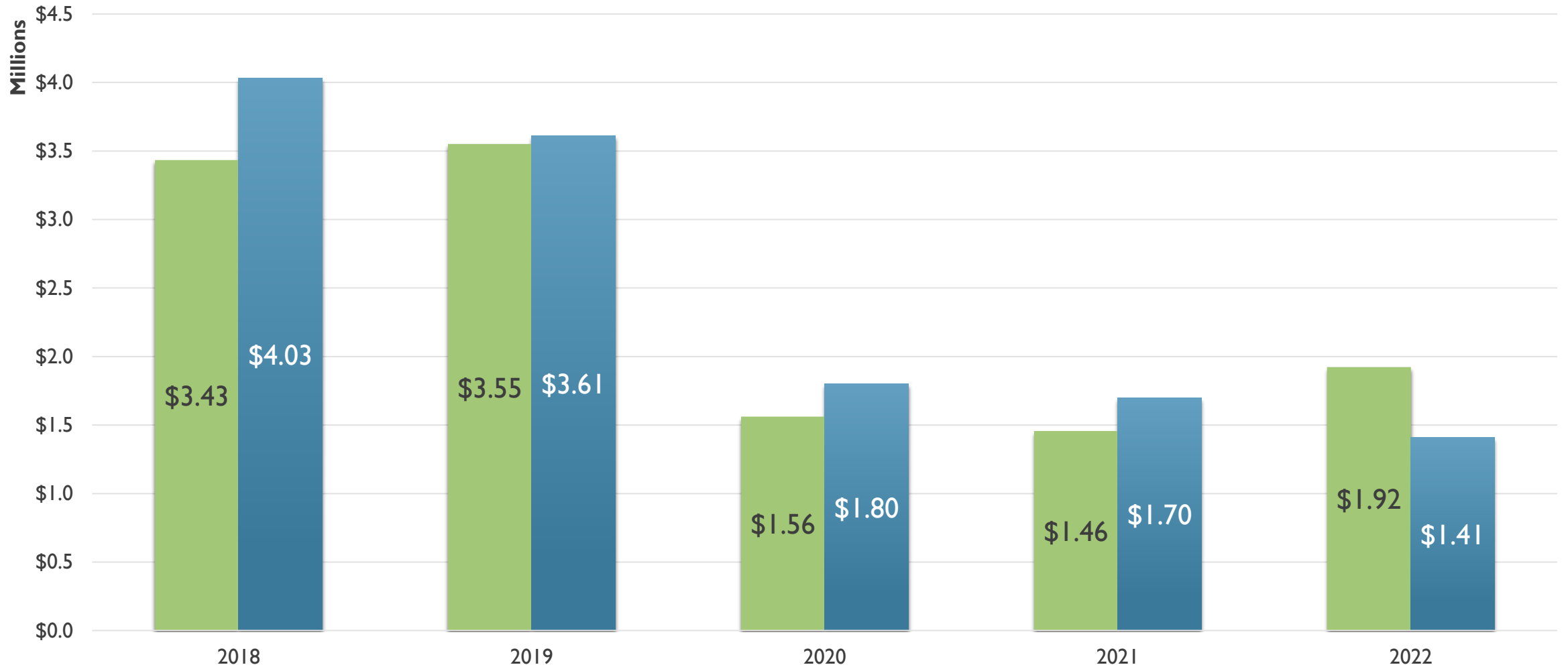
# FEES AND REVENUE DISTRIBUTION



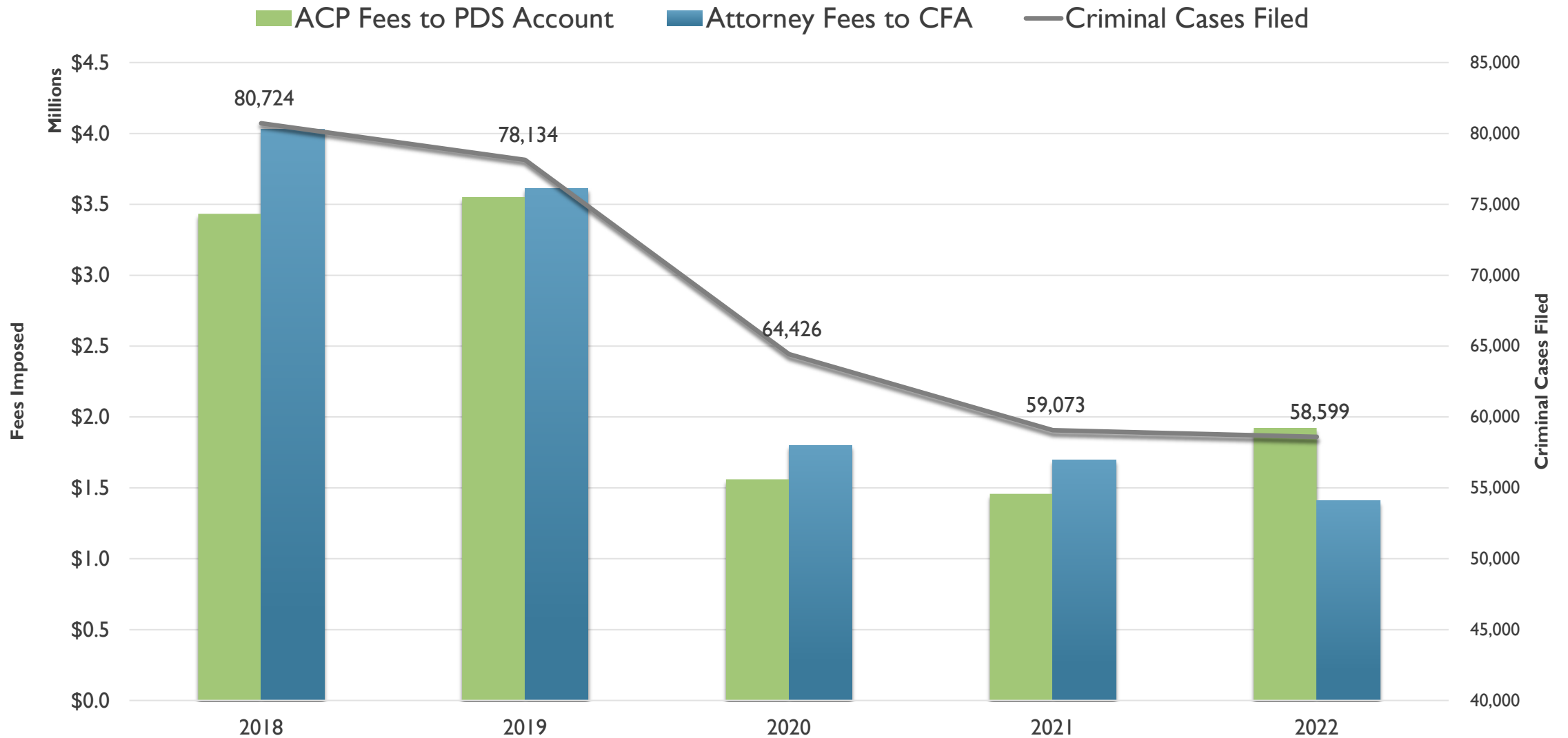
## Fees Imposed (in millions)

■ ACP Fees to PDS Account

■ Attorney Fees to CFA

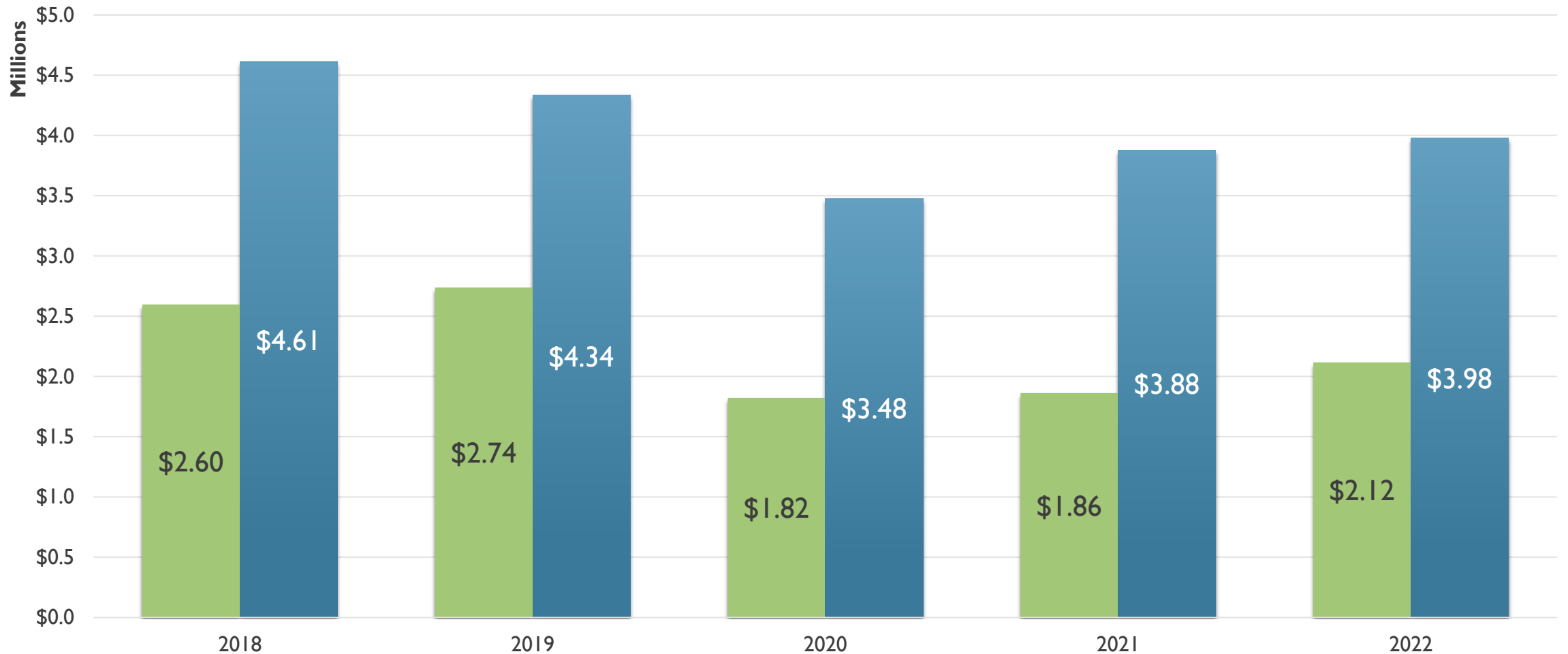


## Fee Imposed and Criminal Cases Filed



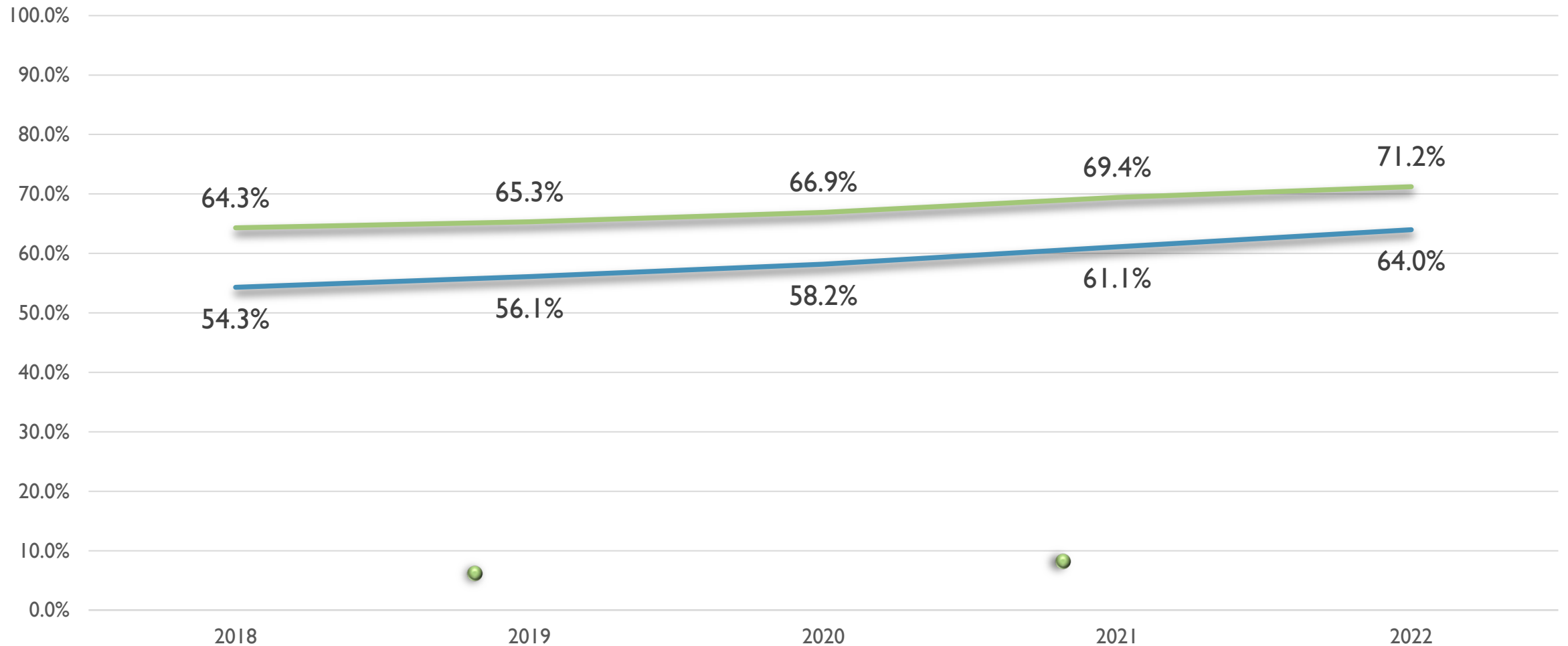
## Fees Collected (in millions)

■ ACP Fees to PDS Account ■ Attorney Fees to CFA



## Overall Collection Rate

● ACP Fees to PDS Account ● Attorney Fees to CFA



## Total Amounts Imposed (in millions) by Collection Status

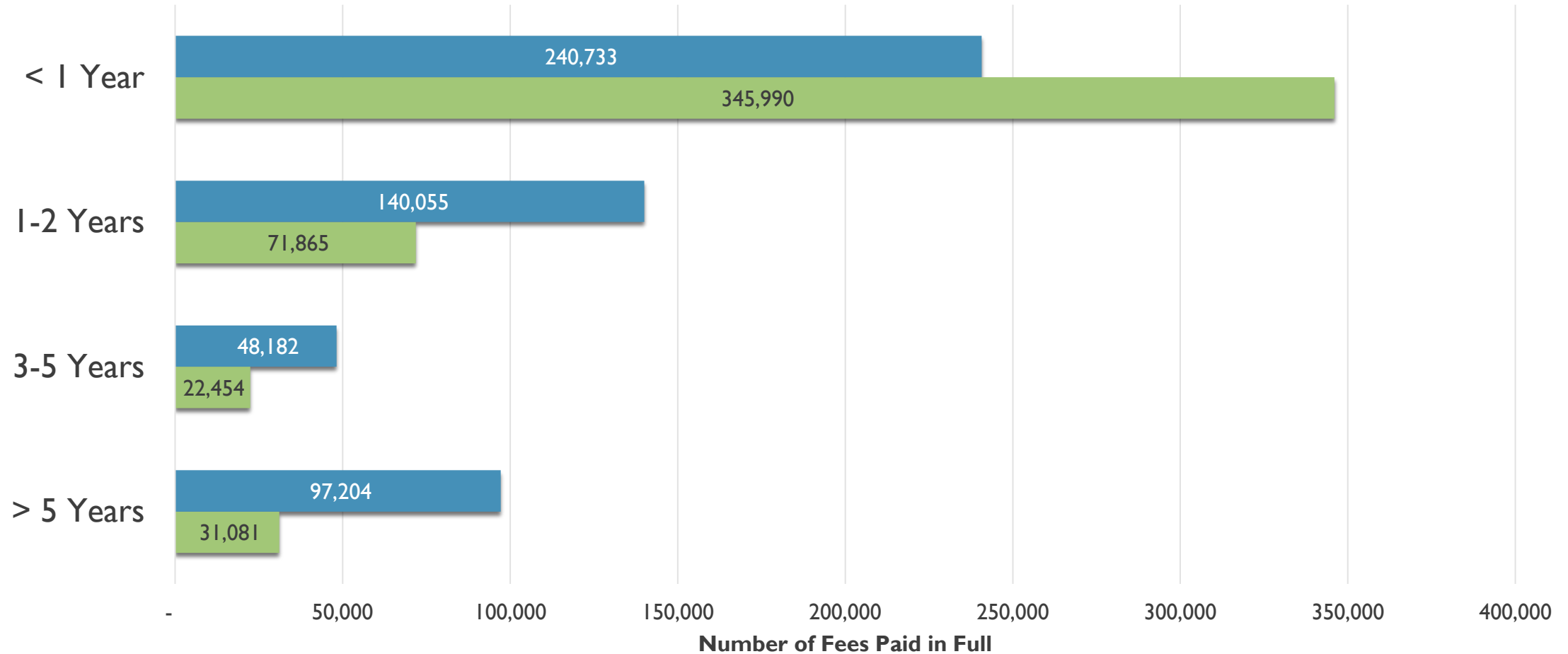
■ Collected ■ Outstanding





## Time to Collect Payment in Full

■ Attorney Fees to CFA   ■ ACP Fees to PDS

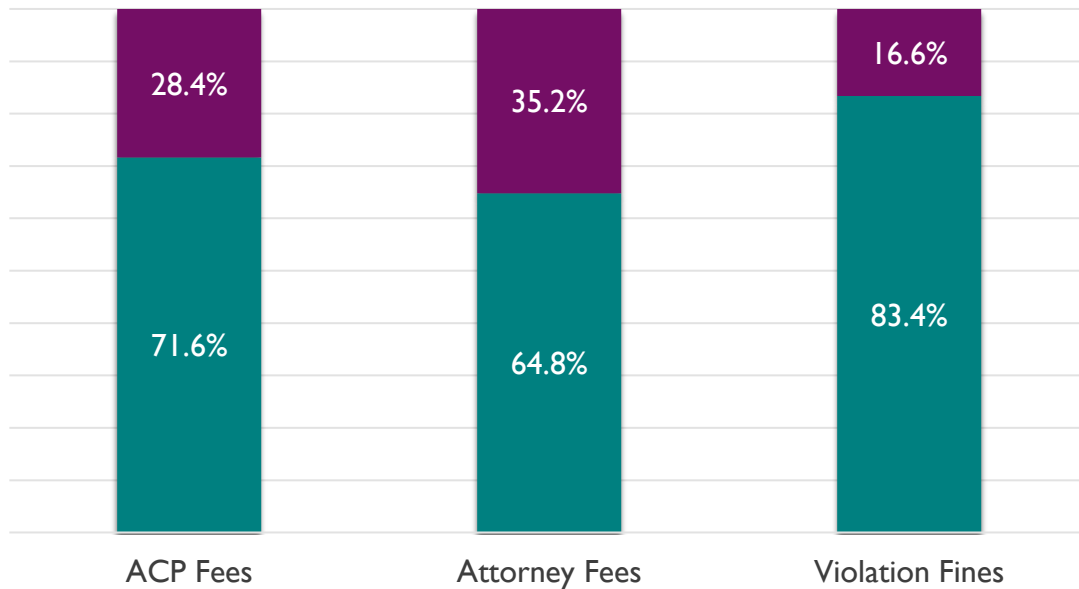


# COLLECTABILITY OF AMOUNTS IMPOSED

## ABILITY TO PAY MATTERS

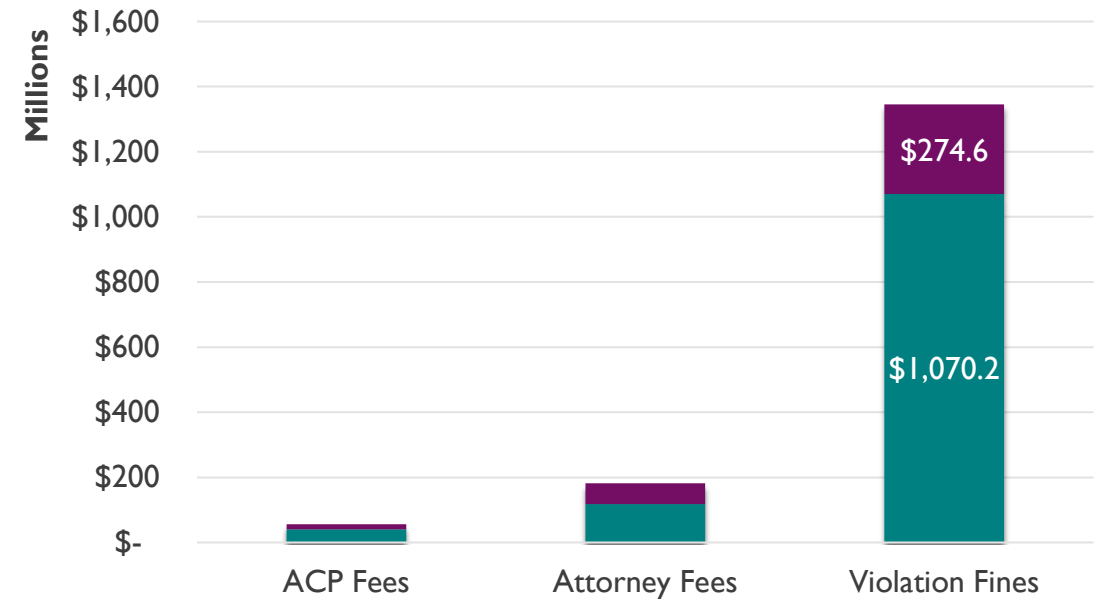
### Comparison to Violations - Percent Collected

■ Collected ■ Outstanding

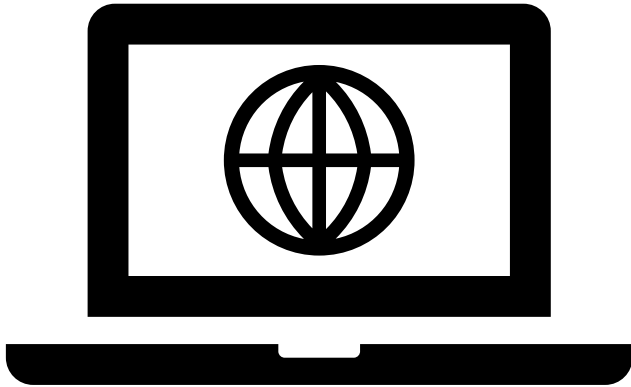


### Comparison to Violations – Amounts Collected

■ Collected ■ Outstanding



# CRITICAL IMPROVEMENTS IN ACP



Online ACP application can be accessed by anyone, anywhere!

The sooner eligibility can be determined, the sooner courts can communicate with their local public defense providers about availability of counsel.

- Individuals who are out-of-custody can complete and submit on-line forms before their first appearance.
- Courts work with their local jail and pre-trial release assistance officers to complete the ACP application at the time of arrest.

Looking Ahead: OJD will include a QR code on uniform citations that will direct people to the online ACP application.

# ACP - KEY TAKEAWAYS

## **The Application Contribution Program is a well-developed program that delivers measurable results**

- The ACP program is a tool used to ensure that Oregon honors people's constitutional and statutory rights to counsel
- Staff work from an extensive manual with detailed instructions
- Judges receive training regarding their responsibilities related to the imposition of fees
- OJD continuously evaluates and modernizes the program to get better engagement and better results

## **Courts impose fees at the start and end of a case**

- Fees imposed at the start of a case go to the PDS Account
- Fees imposed at the end of a case go to the CFA

## **Fees must be reasonable; calculated to ensure that they do not create hardship in people's lives**

- Imposing fees that exceed a person's ability to pay can cause expensive, unnecessary appellate litigation
- ACP judgments remain collectable for 20 years
- ACP debt tends to take a long time to collect, and can be modified if it is creating a hardship in a person's life
- ACP debt remains less collectable than some other types of debt



QUESTIONS?