



JUDICIAL BRANCH

OREGON JUDICIAL DEPARTMENT

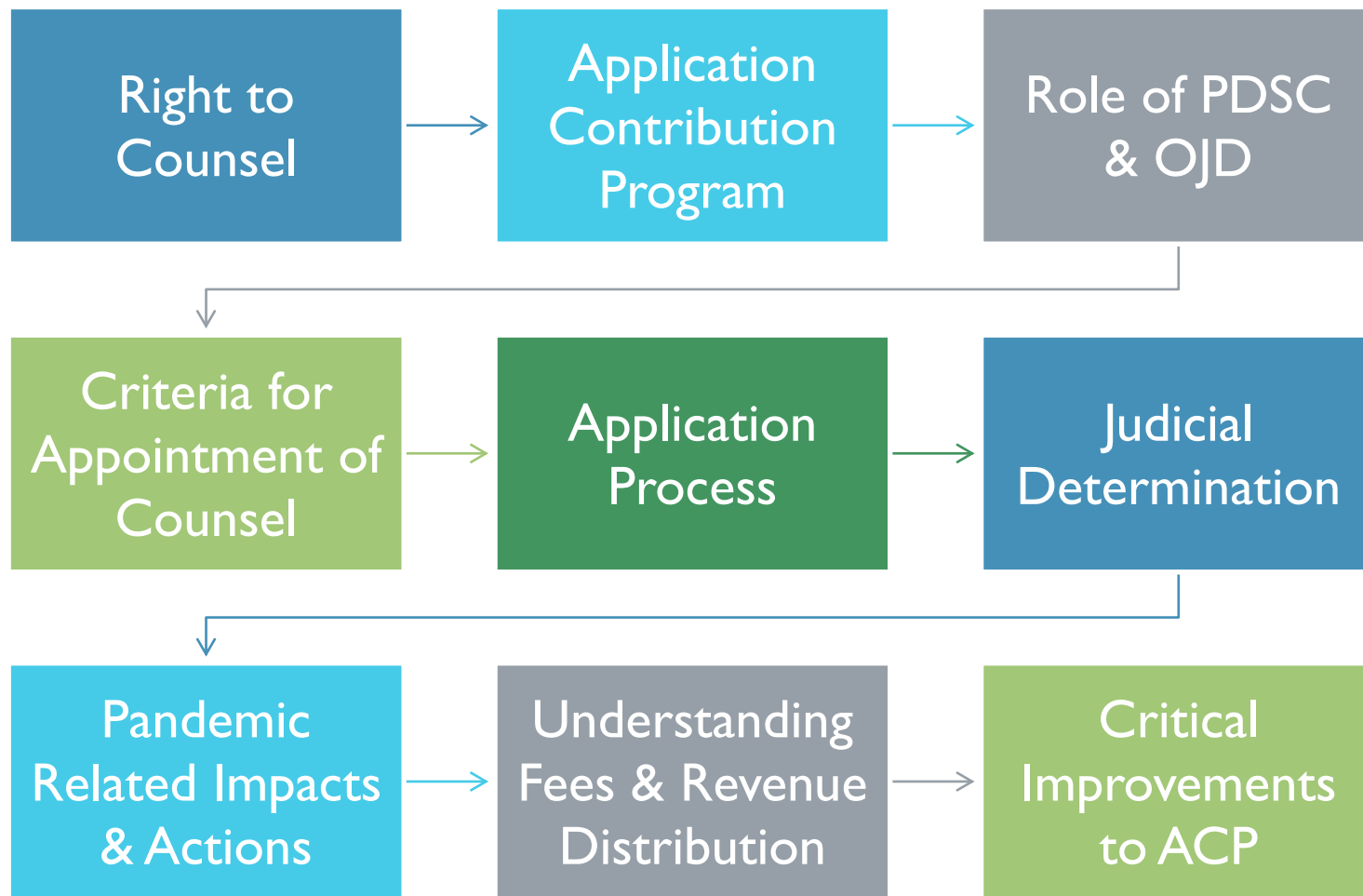
APPLICATION CONTRIBUTION PROGRAM (ACP)

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

April 24, 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

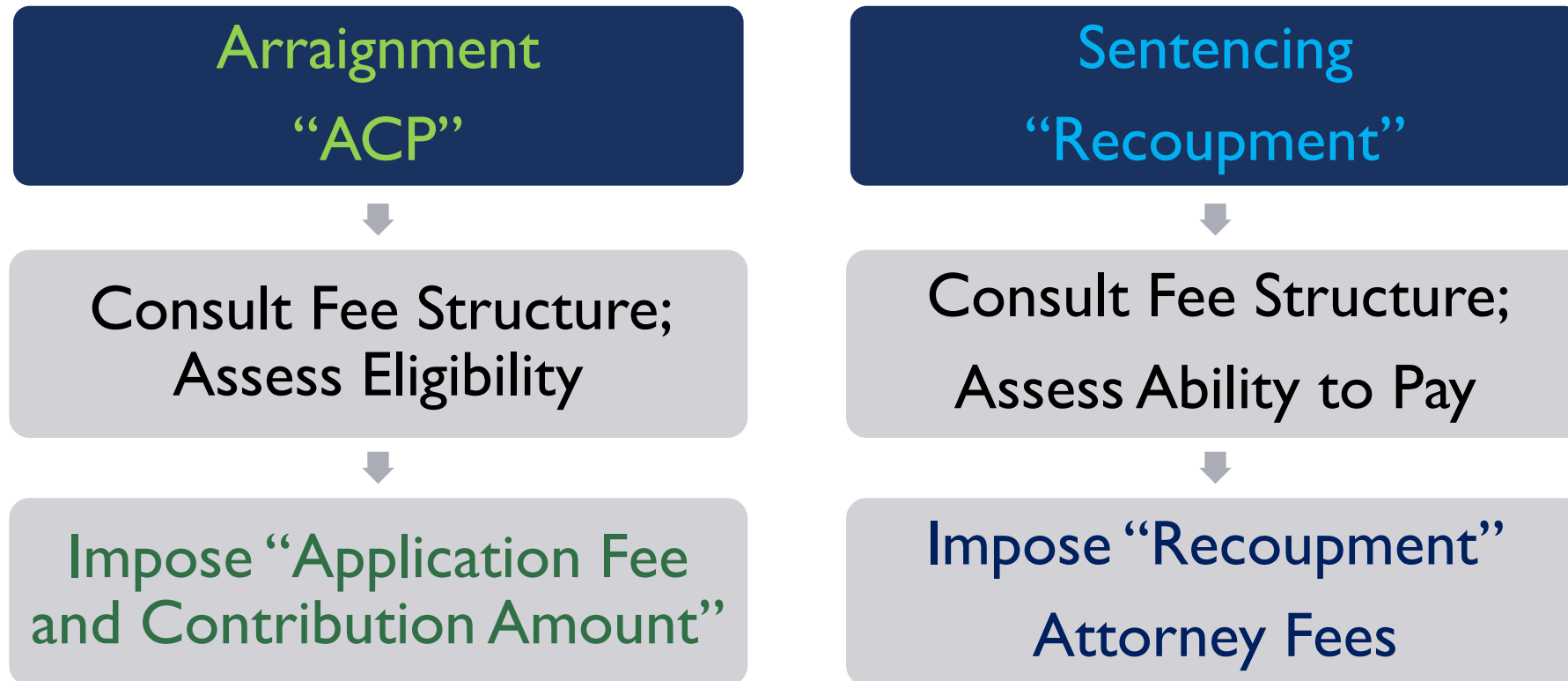
THE RIGHT TO COUNSEL – AND AUTHORITY TO IMPOSE FEES



Fuller v. Oregon, 417 US 40, 94 S Ct 2116 (1974)

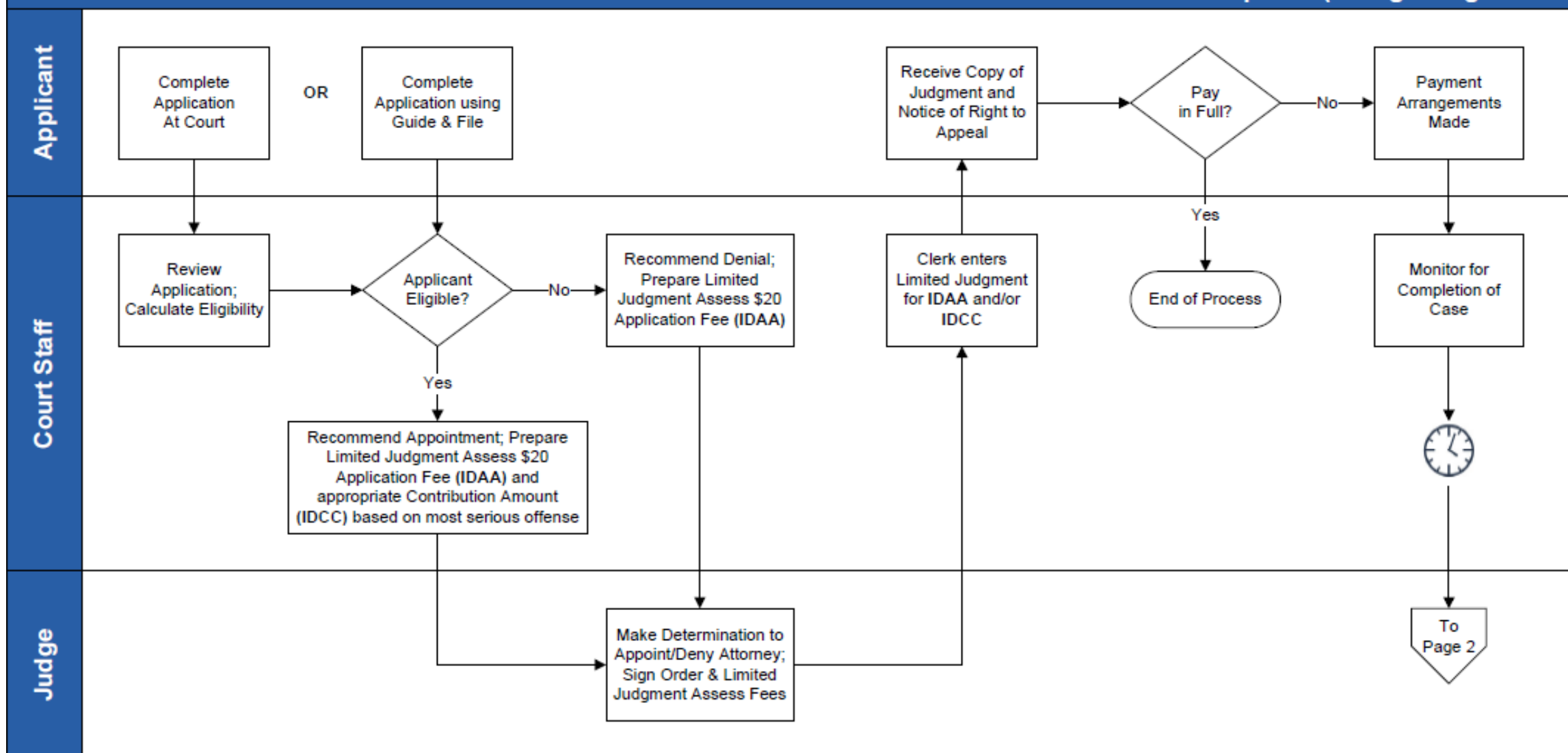
The fact that a person “who accepts state-appointed legal representation knows that he might someday be required to repay the costs of these services in no way affects his eligibility to obtain counsel. The Oregon statute is carefully designed to insure that only those who actually become capable of repaying the State will ever be obliged to do so. Those who remain indigent or for whom repayment would work ‘manifest hardship’ are forever exempt from any obligation to repay.” *Fuller*, 417 US at 53.

COURT PROCESSES RELATED TO ATTORNEY FEES



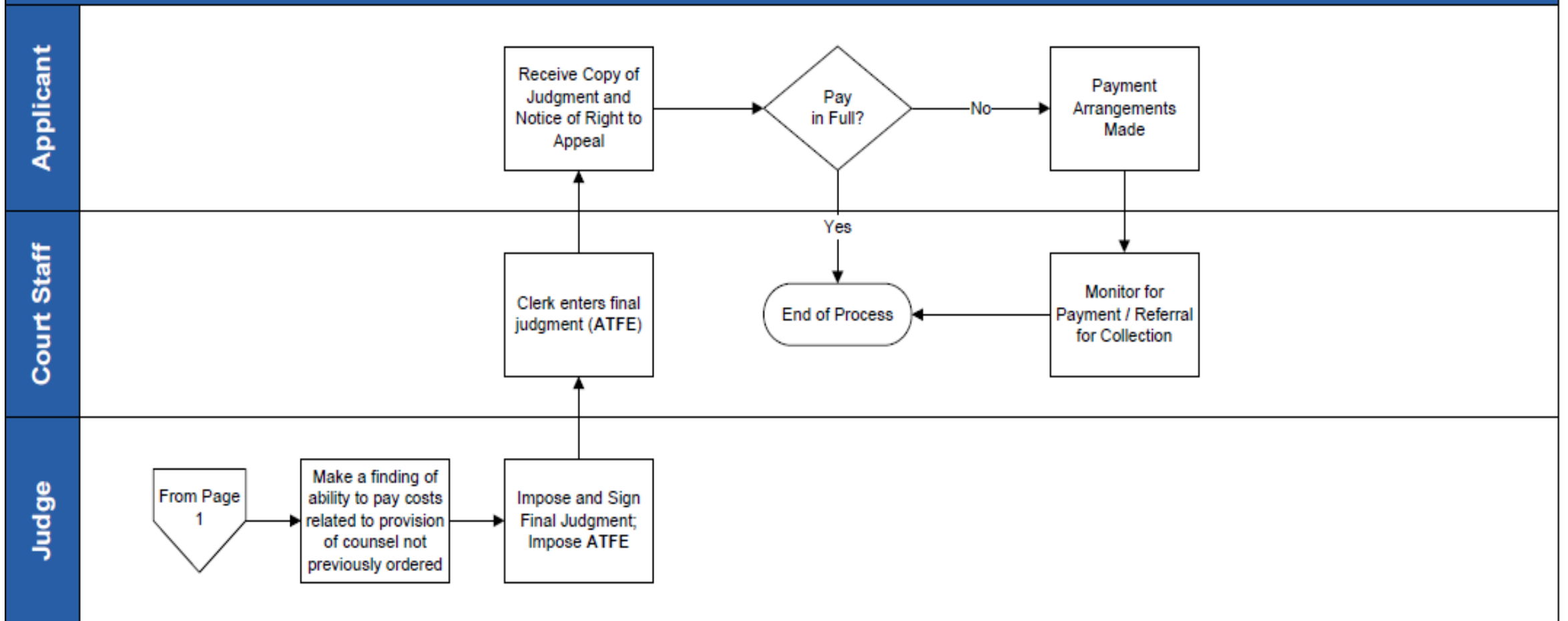
ABCs of ACP

Assessment of Fees – Upfront (at beginning of case)



ABCs of ACP

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



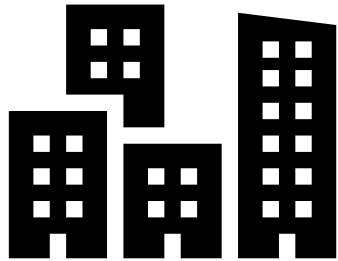
APPLICATION CONTRIBUTION PROGRAM (ACP)



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

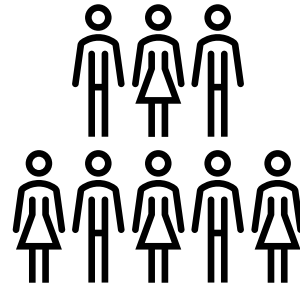
ACP PARTNERSHIP



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
- Issue limited judgment for application and contribution amount
- Assess ability to pay again at the end of a case and impose additional fees if appropriate

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



CRIMINAL

- ❖ Felony and Misdemeanor. ORS 135.050(5) and ORS 135.055(3)
- ❖ Hearings to determine whether the court shall impose a material witness order. ORS 136.611(3)(b)
- ❖ Death warrant hearing. ORS 137.463
- ❖ Legal advisor for eligible person who waives counsel. ORS 138.504(2)
- ❖ Judicial review of state Board of Parole and Post-Prison Supervision order. ORS 144.337(2)

CIVIL

- ❖ Post-conviction relief or habeas corpus cases. ORS 138.590 and ORS 34.355
- ❖ Civil commitment.* ORS 426.100(1)(e), ORS 426.307(3), and ORS 161.346(11)
- ❖ Psychiatric Security Review Board hearings. ORS 161.346(11)
- ❖ Contempt. ORS 33.055 and ORS 33.065

CASE TYPES WITH RIGHT TO APPOINTED COUNSEL

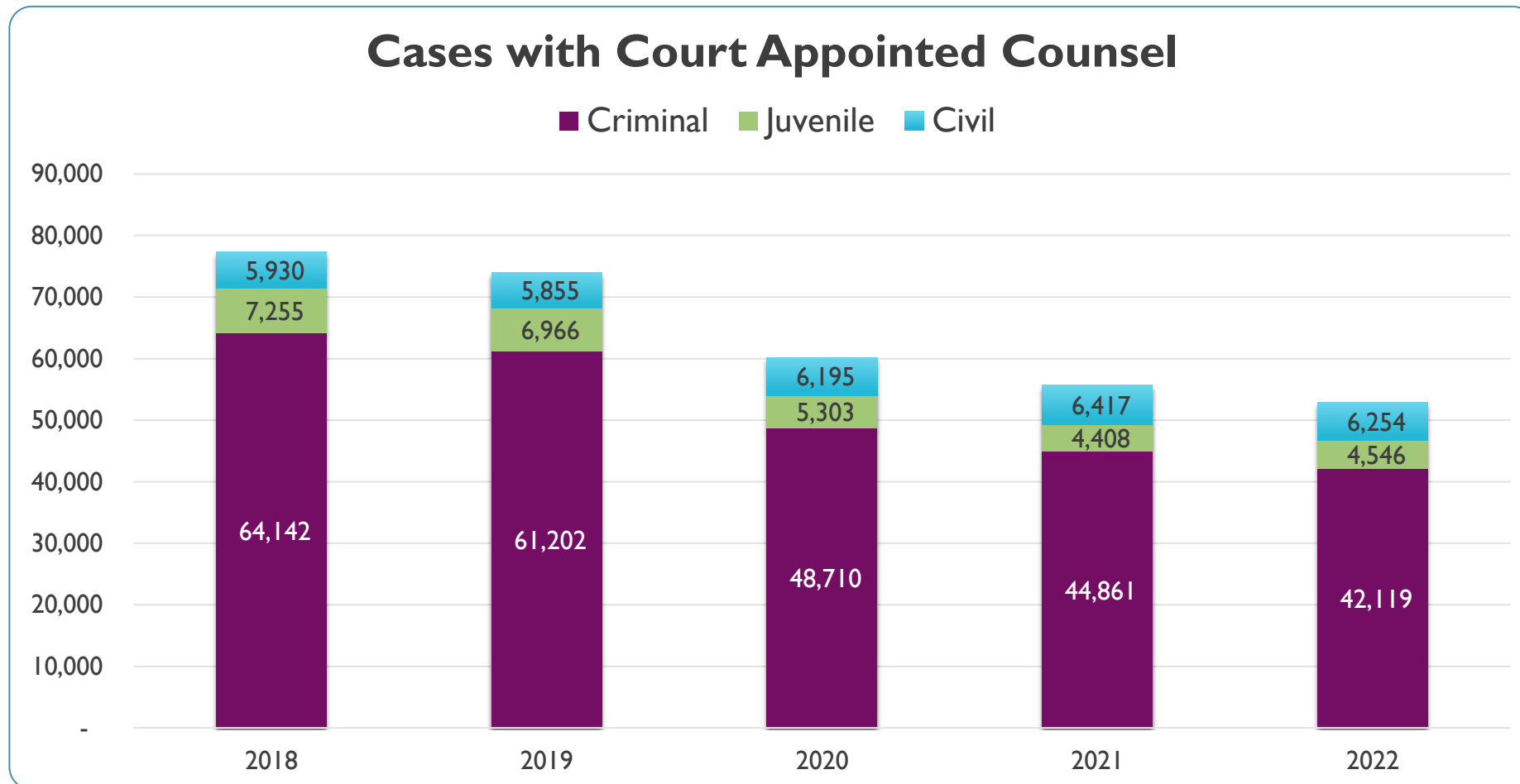


JUVENILE

- ❖ Parents and children in dependency cases and termination of parental rights cases. ORS 419B.195, ORS 419B.205, and ORS 419B.518
- ❖ Youth in delinquency cases and cases waived to adult court.* ORS 419C.005, ORS 419C.200, ORS 419C.245, ORS 419C.349, ORS 419C.352, and ORS 419C.364
- ❖ A youth under 18 within court's jurisdiction when filing 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)
- ❖ Parents of the youth in a delinquency case at time of disposition. ORS 419C.285(2)(b)
- ❖ Parents, prior to hearing regarding whether to order parents to participate in drug or alcohol treatment. ORS 419C.575
- ❖ Appeals. ORS 419A.211, ORS 426.135, ORS 419B.195, ORS 427.295, and ORS 436.315

* Not required to complete application

CASE TYPES WITH APPOINTED COUNSEL



ACP APPLICATION PROCESS

Prior to first appearance or arraignment, applicant receives and completes application forms; 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	\$1,216	\$14,595	\$281
2	\$2,136	\$25,636	\$1,645	\$19,740	\$516
3	\$2,693	\$32,318	\$2,074	\$24,885	\$740
4	\$3,250	\$39,000	\$2,503	\$30,030	\$939
5	\$3,807	\$45,682	\$2,931	\$35,175	\$1,116
6	\$4,364	\$52,364	\$3,360	\$40,320	\$1,339
7	\$4,921	\$59,046	\$3,789	\$45,465	\$1,480
8	\$5,477	\$65,728	\$4,218	\$50,611	\$1,691
Each Additional	\$557	\$6,682	\$429	\$5,145	\$211

- PDSC established \$20 fee
- Court may impose fee even if
 - Applicant is determined to be ineligible for counsel
 - Case is dismissed
- PDSC guidelines use Federal Poverty Level (FPL) to determine eligibility

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

ACP CONTRIBUTION AMOUNT

Payment toward the cost of representation

- Ordered at the time of appointment
- Up to 50% of the total cost of representation pursuant to the PDSC Maximum Contribution Schedule

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



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

Oregon Employment Department

Tax Returns

Recent Paystubs

Contacting Employers

DMV Oregon Driver Records

Real and Personal Property Records

Equifax Credit Reports

Financial Institutions

Social Security Administration

RECOUPMENT = ATTORNEY FEES IMPOSED AT THE END OF A CASE

-
- Recoupment fees are
 - In addition to the “application and contribution” fees imposed at the start of the case
 - Permitted regardless of case outcome

**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

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 P3d 573 (2012). See also *State v. Mendoza*, 286 Or App 548, 549, 401 P3d 288 (2017) (citing *State v. Coverstone*, 260 Or App 714, 716, 320 P3d 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.

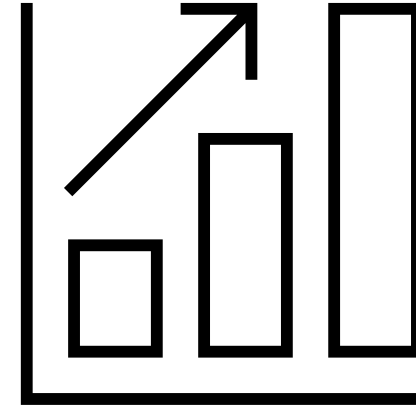
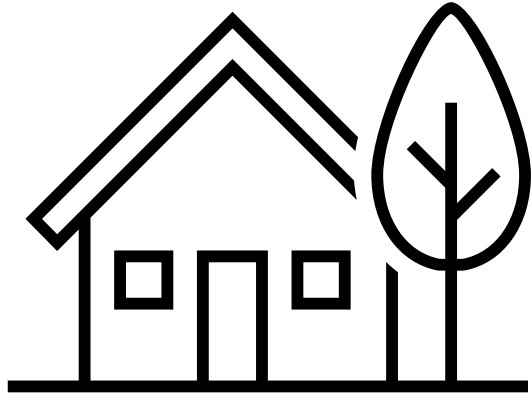


Courts shifted away from imposing contribution amounts at the start of a case, and began imposing more costs at the conclusion of the case.



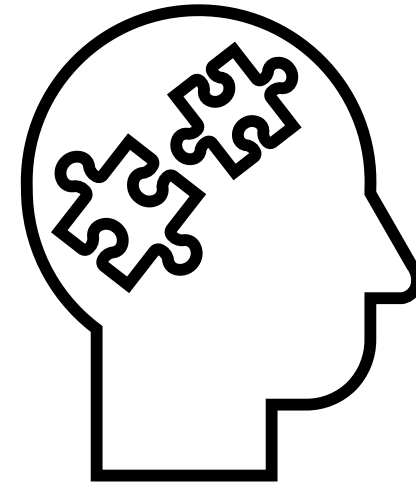
The right to counsel is a constitutional right and must be honored regardless of paperwork status.

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 header with the OJD logo and the text "OJD Guide & File" followed by "In the Oregon Circuit Courts". To the right of this, there is a link in red text: "Para ver esta información en español, seleccione la opción Español". Below the header is a navigation bar with a hamburger menu icon and four links: "OGF Home", "Home", "Start a Filing", and "My Interviews". The main content area has a blue background with the heading "What You'll Need" in white. Below this heading is a list of five numbered items: 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, there is a text prompt: "Then click 'Start Your Legal Process' to select a form and begin the interview!". At the bottom of the main content area, there is a dark blue button with the text "Start Your Legal Process" and a right-pointing arrow. In the background of the main content area, there are images of legal forms, including "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

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

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

Arraignment

Assess Eligibility

Impose "Application Fee and
Contribution Amount"

Collection

Public Defense Services Account
ORS 151.225

Sentencing

Inquire Regarding
Ability to Pay

Impose "Recoupment" Attorney
Fees

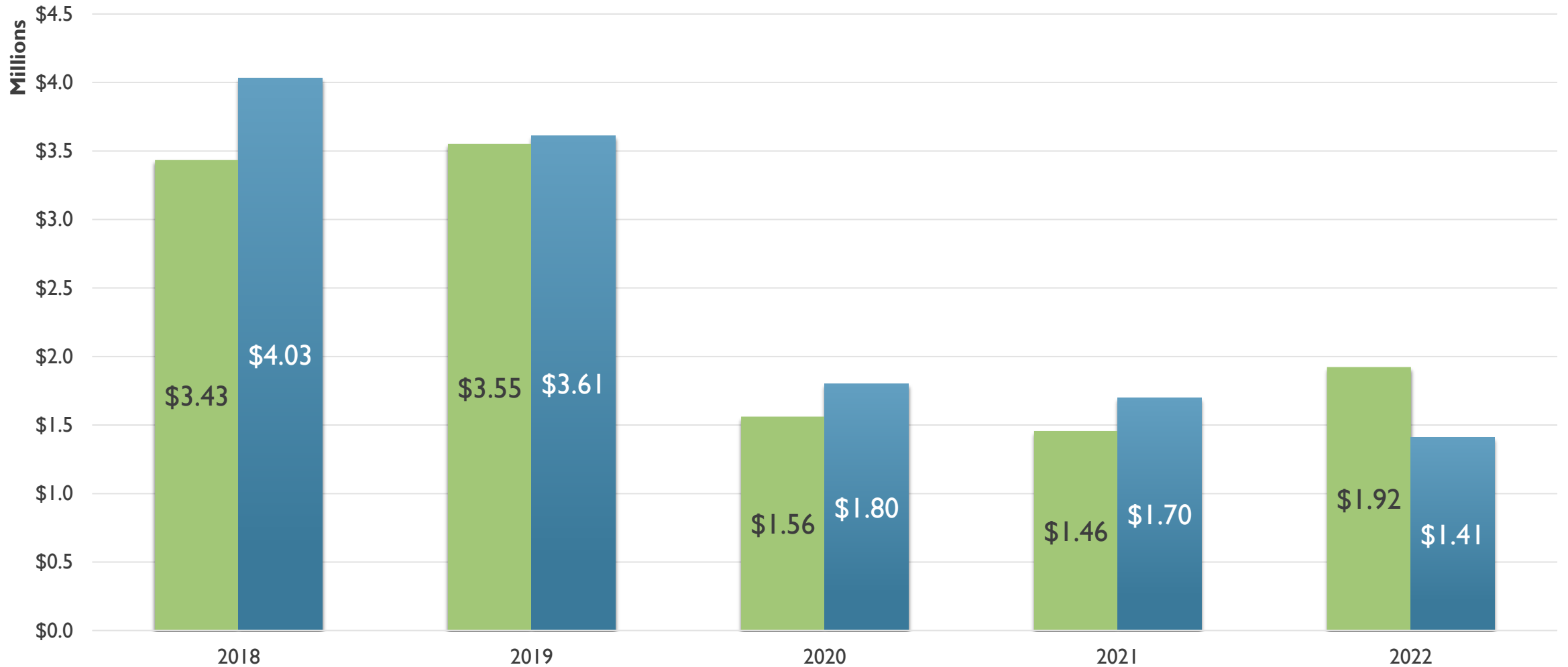
Collection

Criminal Fine Account
ORS 151.505(5)

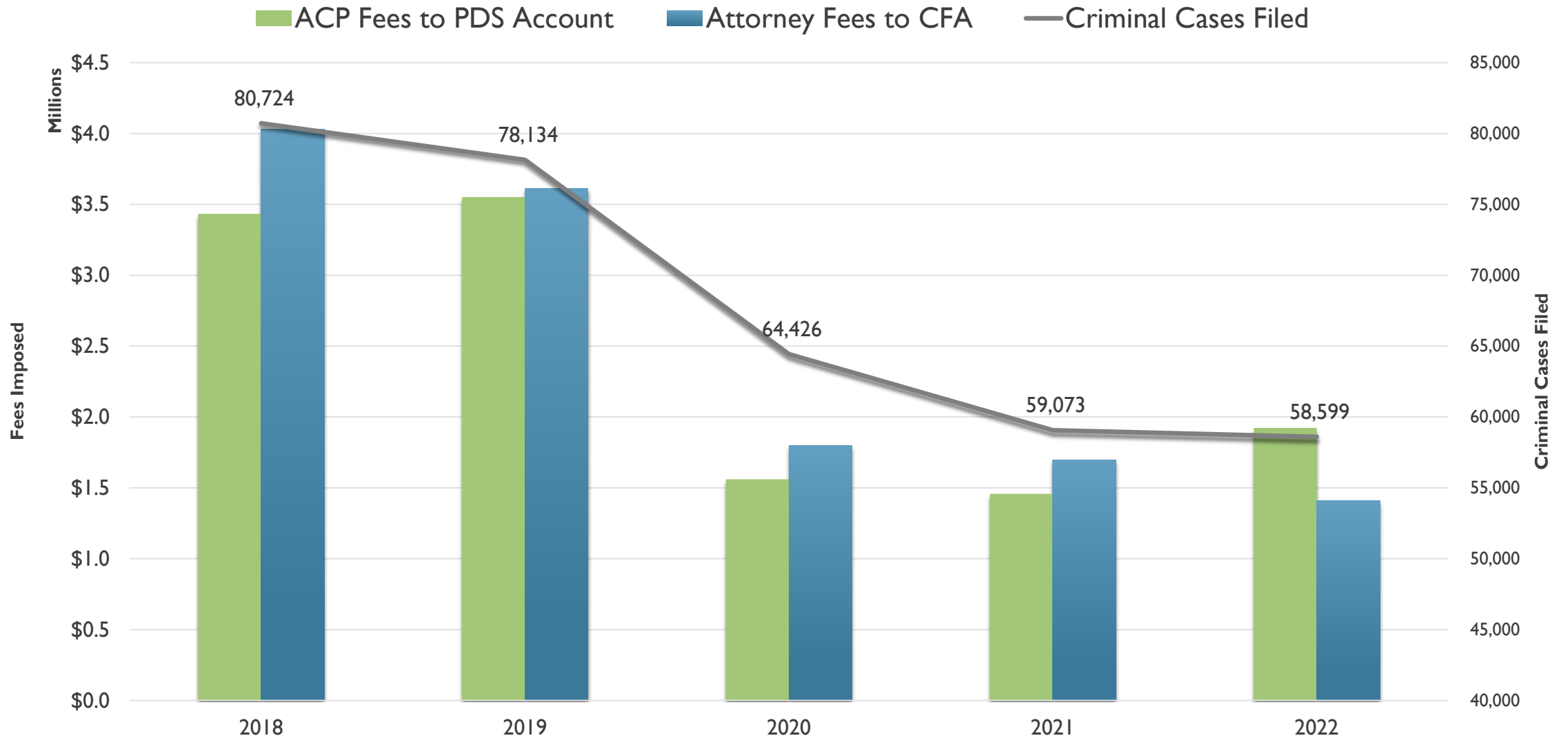
Fees Imposed (in millions)

■ ACP Fees to PDS Account

■ Attorney Fees to CFA



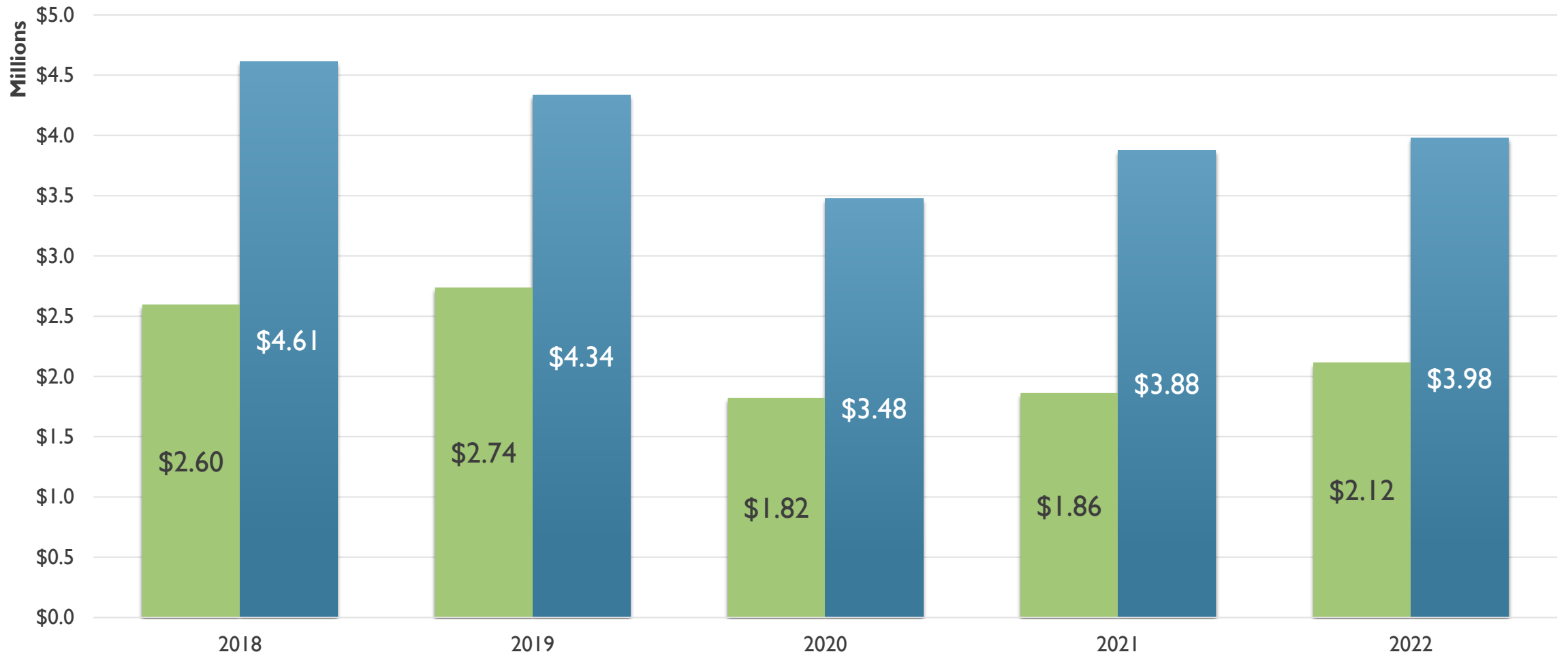
Fee Imposed and Criminal Cases Filed



Fees Collected (in millions)

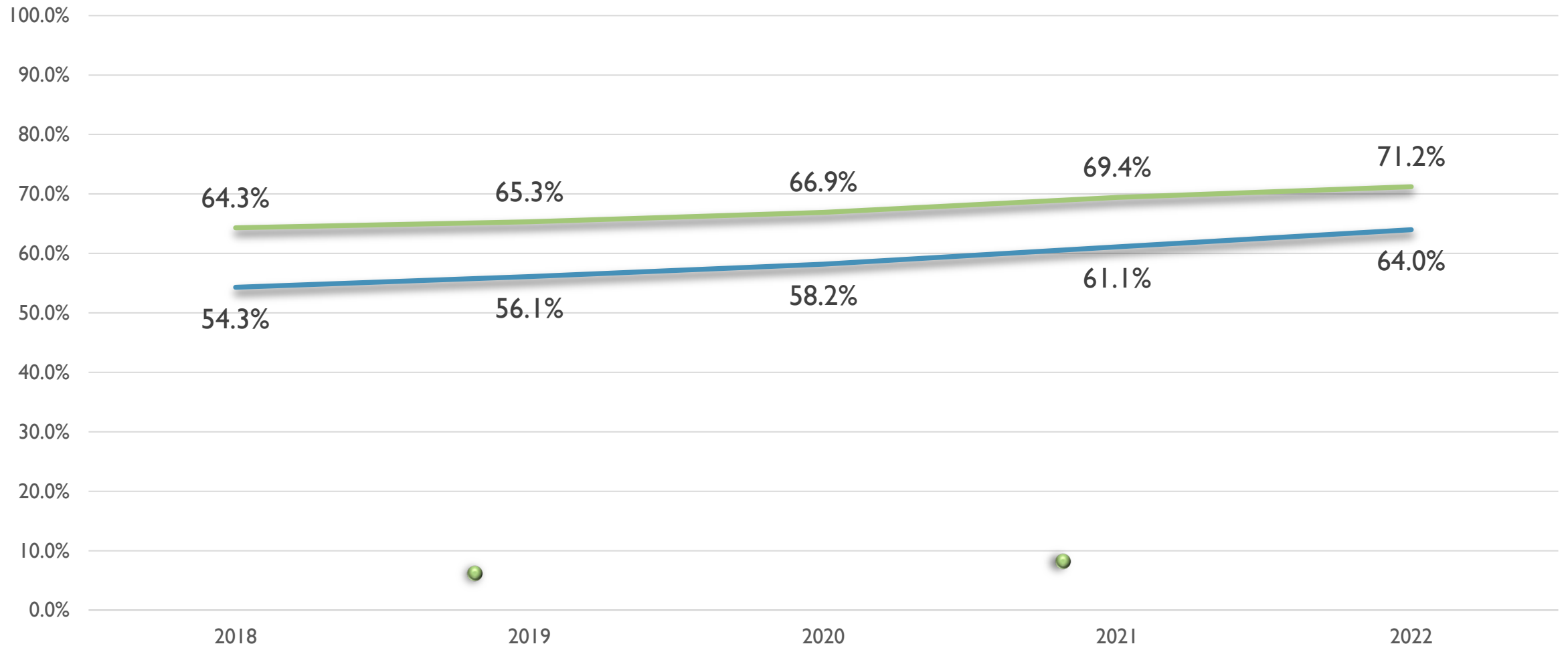
■ ACP Fees to PDS Account

■ Attorney Fees to CFA



Overall Collection Rate

● ACP Fees to PDS Account ● Attorney Fees to CFA



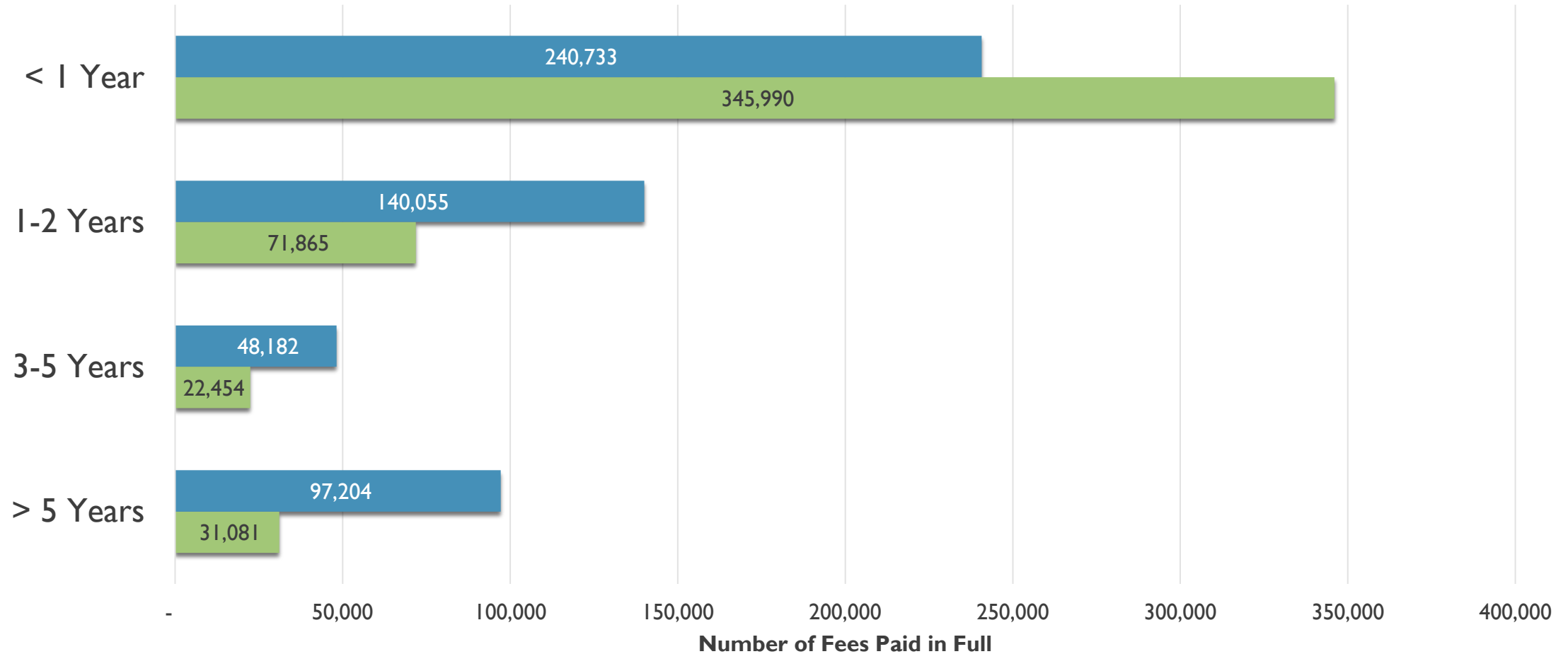
Total Amounts Imposed (in millions) by Collection Status

■ Collected ■ Outstanding



Time to Collect Payment in Full

■ Attorney Fees to CFA ■ ACP Fees to PDS

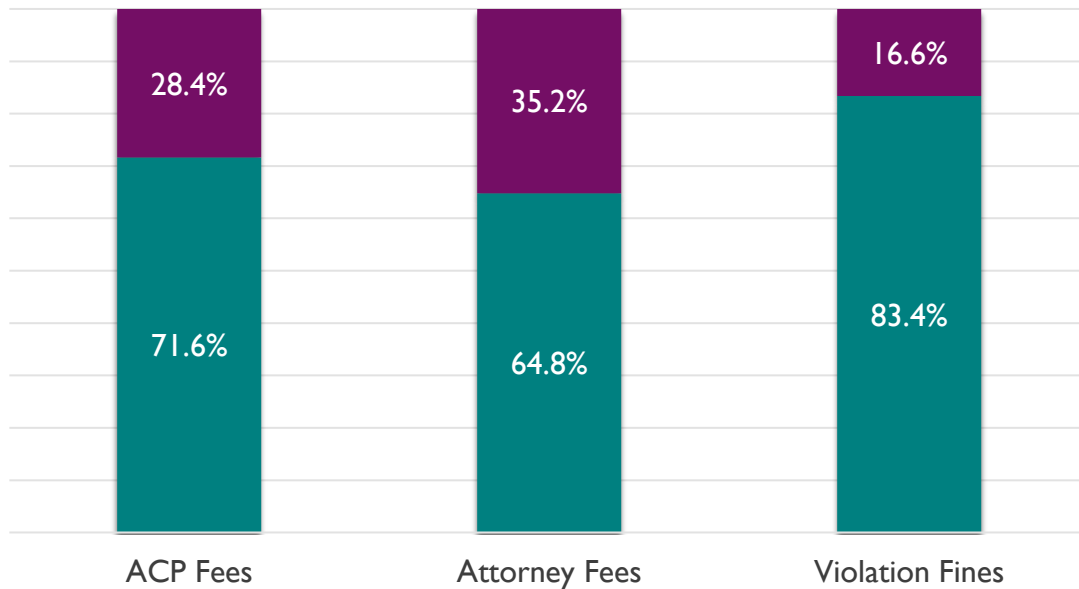


COLLECTABILITY OF AMOUNTS IMPOSED

ABILITY TO PAY MATTERS

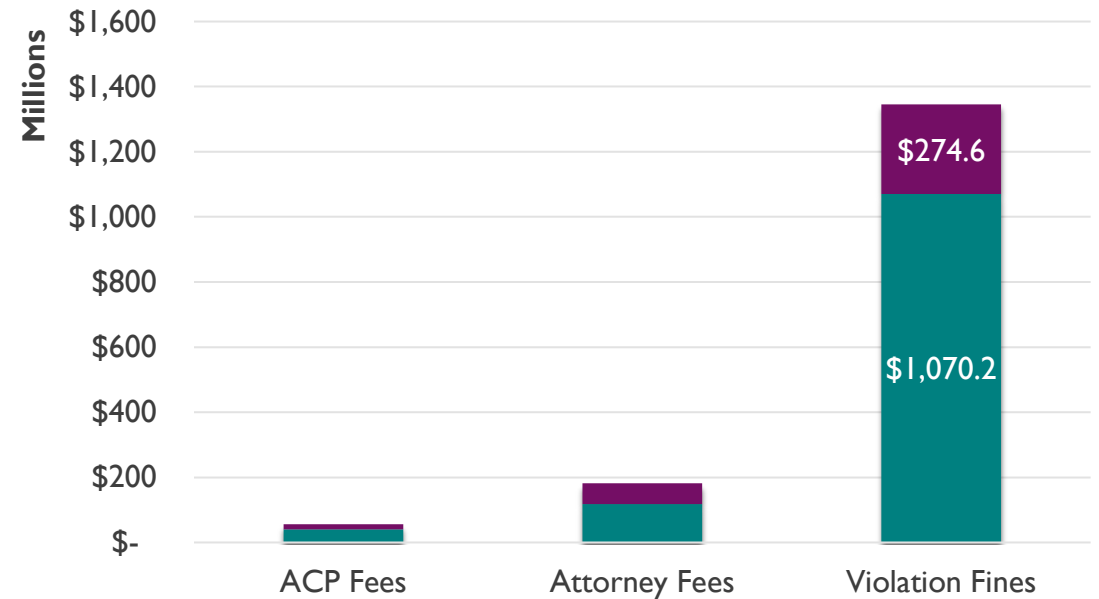
Comparison to Violations – Percent Collected

■ Collected ■ Outstanding

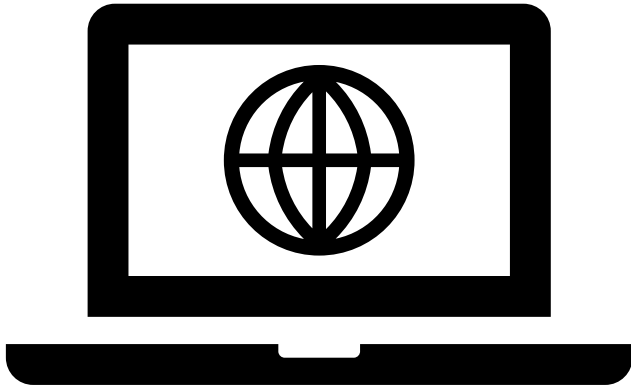


Comparison to Violations – Amounts Collected

■ 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 online forms before their first appearance.
- Courts work with their local jail and pretrial 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



THANK YOU!
QUESTIONS?