



Oregon Department of Justice

Dan Rayfield, Attorney General

**2025 Joint Committee on Ways & Means
Public Safety Subcommittee Presentation
February 6, 2025**



Department of Justice Defense of Criminal Convictions

**Presenters: Ben Gutman, Solicitor General
Appellate Division**

**Kristen Boyd, Deputy Chief Trial
Counsel**



Defense of Criminal Convictions

Mission

- Defend convictions and sentences that the state's prosecutors properly obtained
- Work to secure just outcomes when challenges have merit



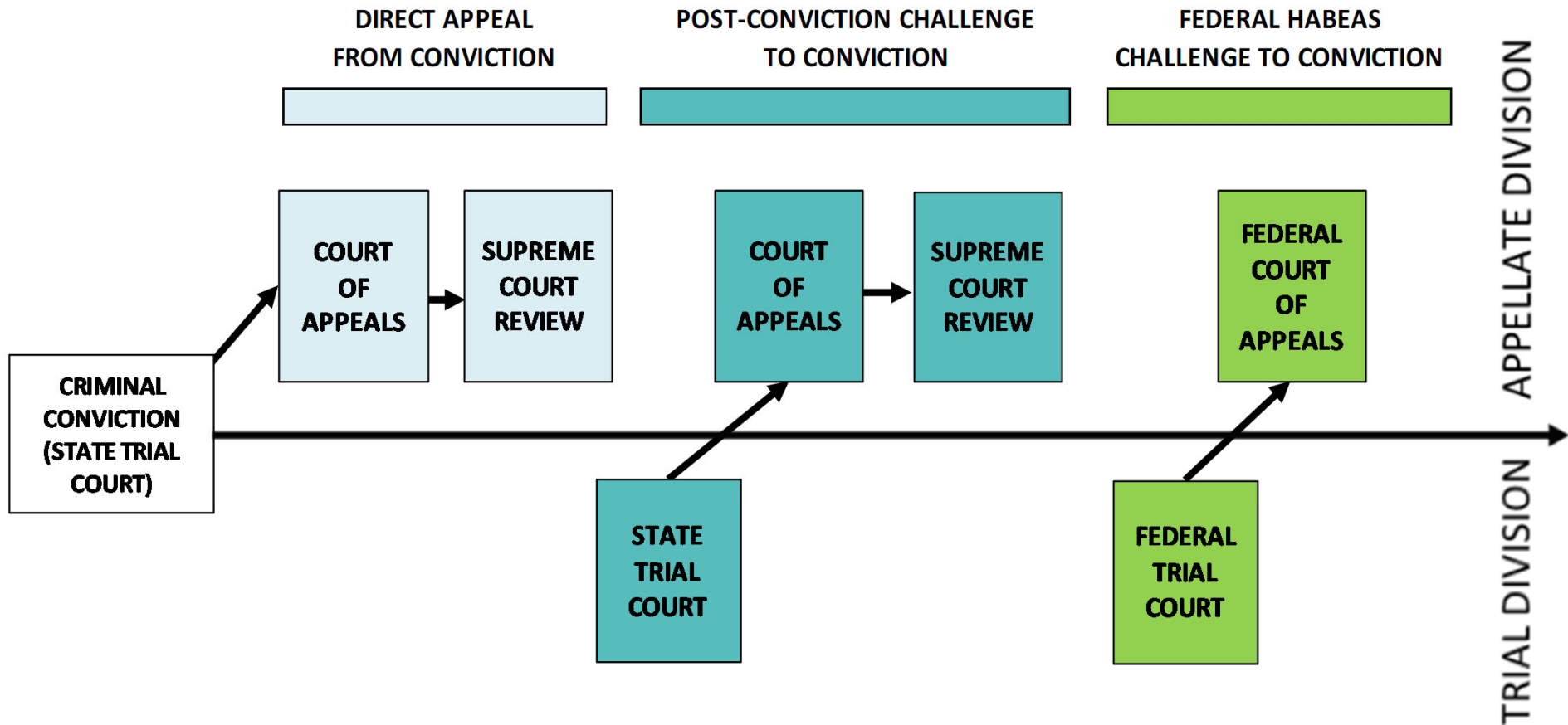
Program Summary

- Funds DOJ's legal work on appeals and collateral challenges to criminal convictions
- Budget is shared between the Appellate and Trial Divisions.
- 23-25 LAB is \$41 million
- About 150,000 hours of work at \$275/hour

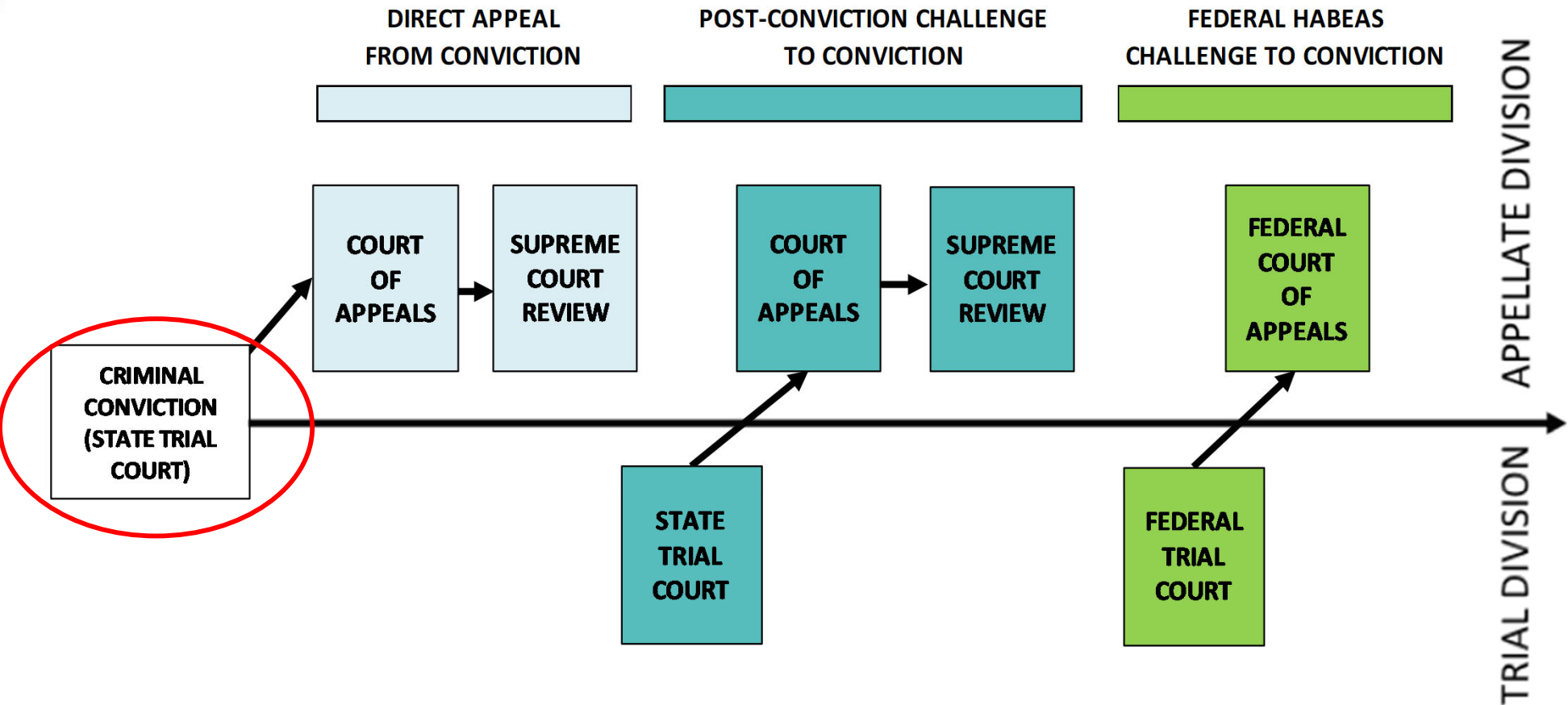
This is a mandated caseload



Overview of the Process



Overview of the Process



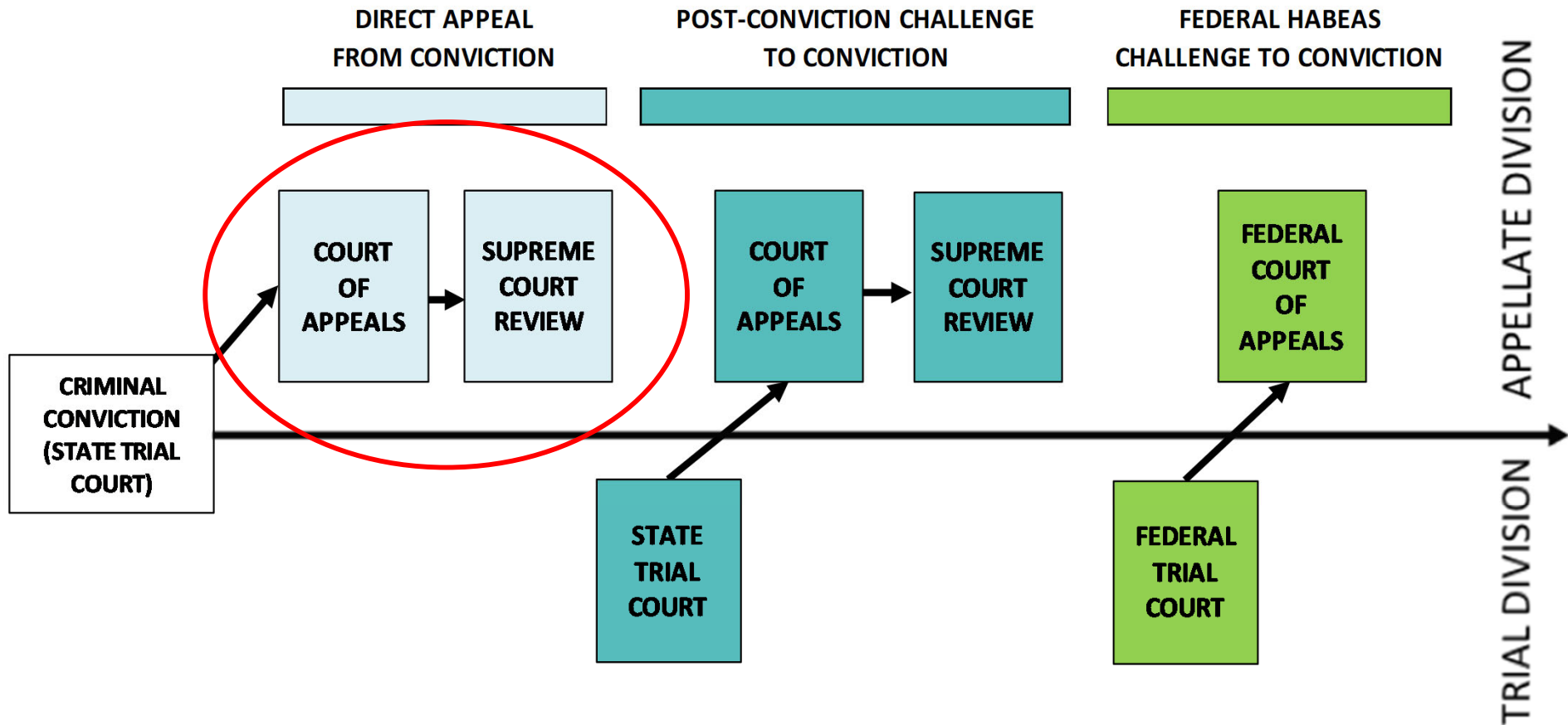
Overview of the Process

Criminal conviction

- Charges brought by a prosecutor (typically DA)
- If acquitted, that is the end of the case
- If convicted, could be sentenced to probation, jail, or prison
- Automatic right of appeal



Overview of the Process



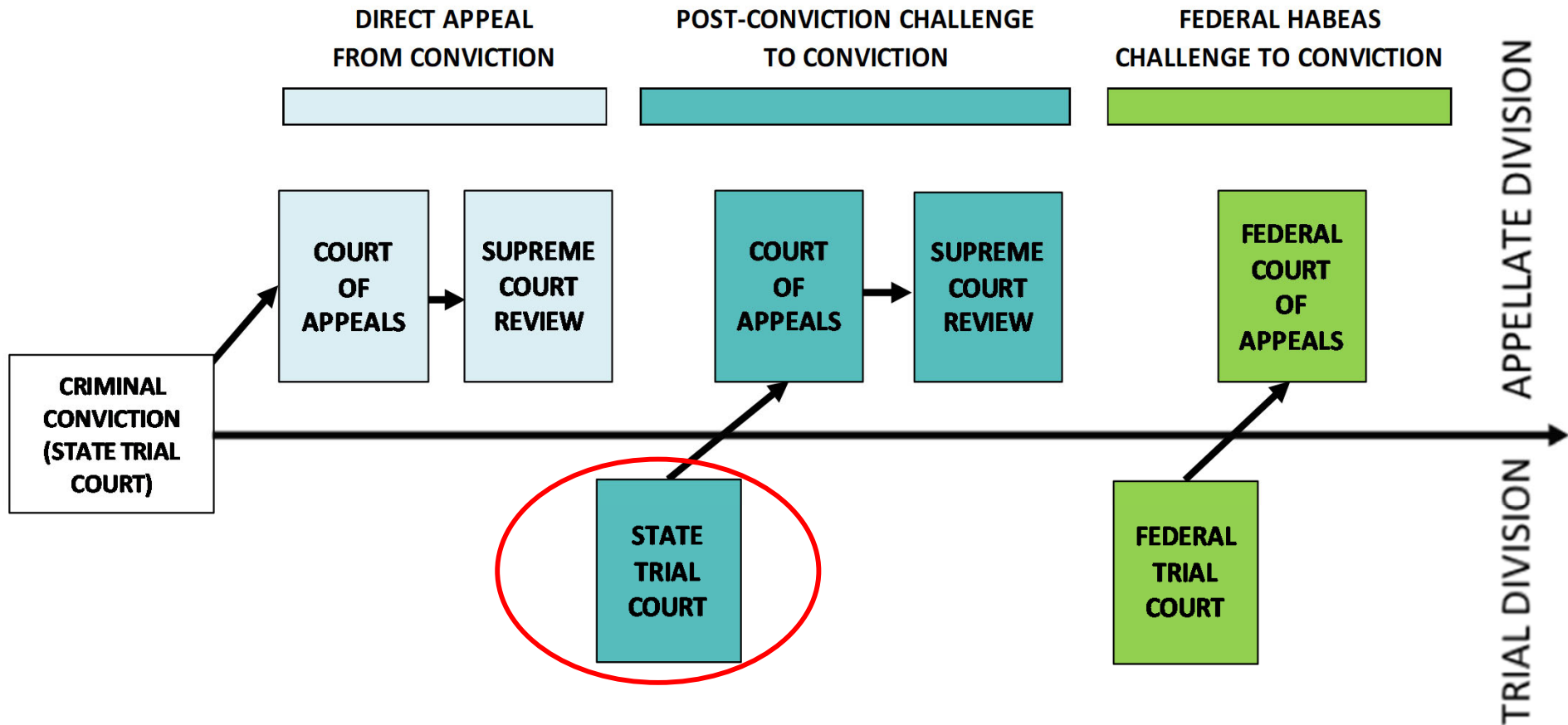
Overview of the Process

Direct appeals

- Challenge to any ruling by trial court (sufficiency of evidence, evidence rulings, jury instructions, etc.)
- Court of Appeals can affirm (uphold conviction or sentence) or reverse
- If reversed, result could be dismissal of charges, new trial, or new sentencing proceeding
- Either party may ask for discretionary review by Oregon Supreme Court or U.S. Supreme Court



Overview of the Process



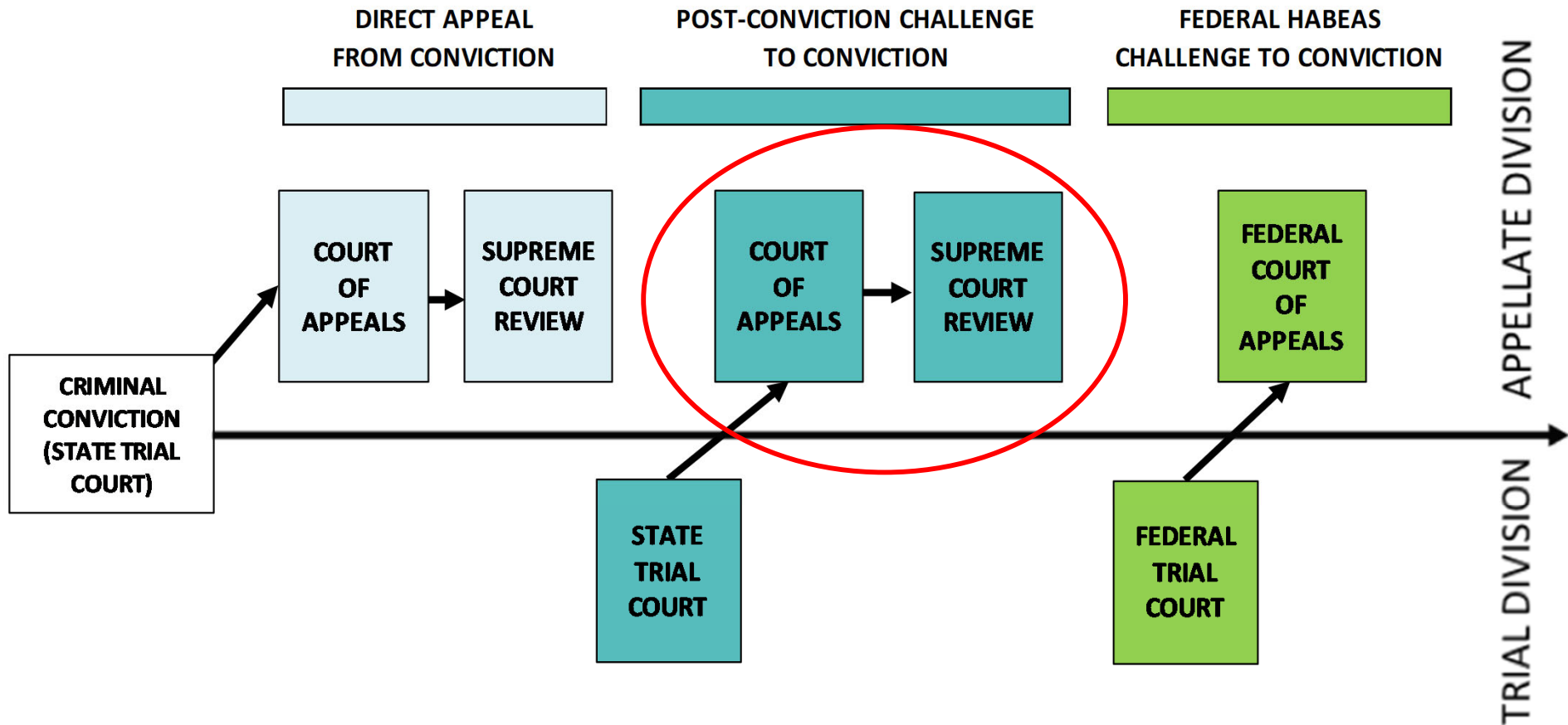
Overview of the Process

Post-conviction review

- New case in trial court
- Constitutional issues that could not be raised on direct appeal
 - Adequacy of defense counsel
 - Validity of a guilty plea
- DOJ Trial Division handles if petitioner is in prison or under post-prison supervision/parole; DA handles if not



Overview of the Process



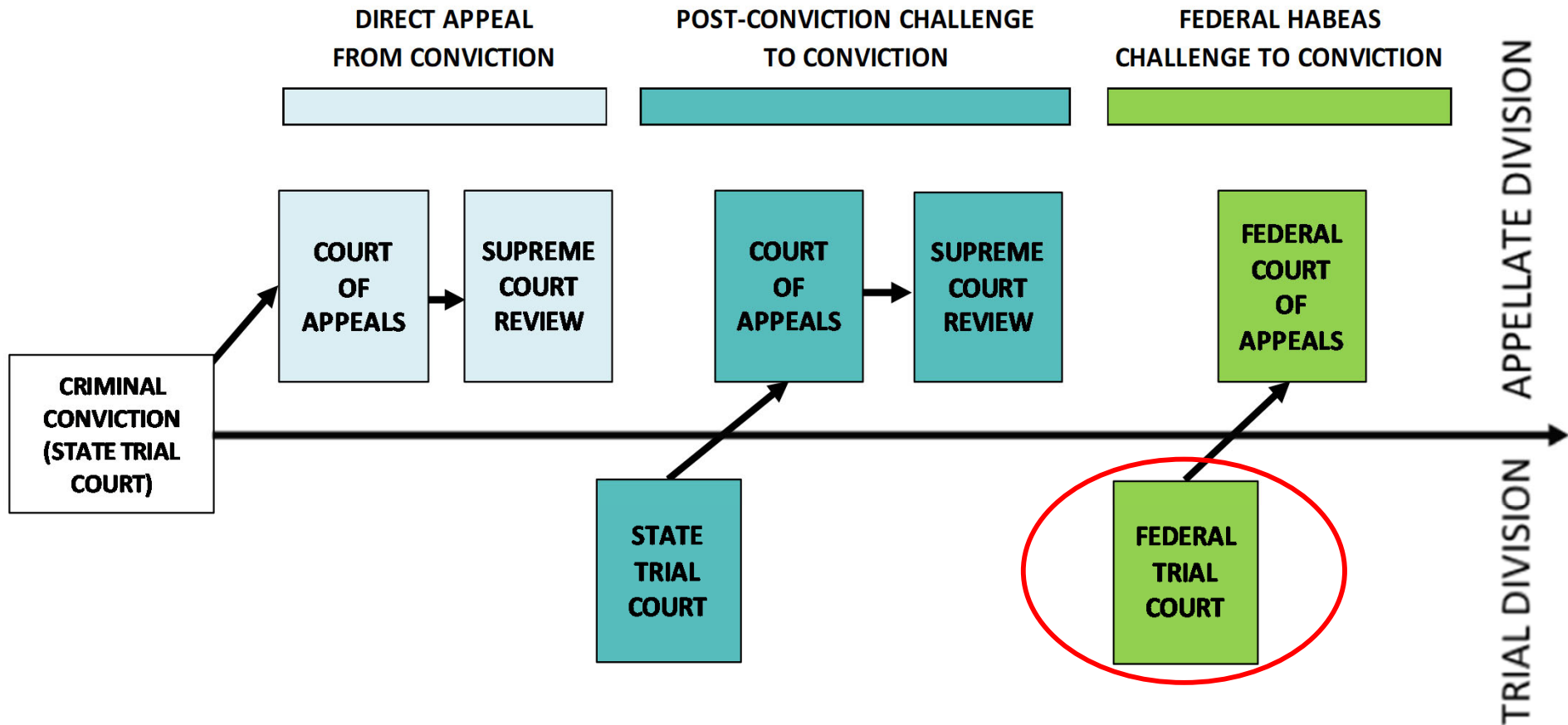
Overview of the Process

Post-conviction appeals

- Challenges to ruling of post-conviction trial court
- Appeal as of right to Court of Appeals; discretionary review by Supreme Court
- All handled by DOJ Appellate Division



Overview of the Process



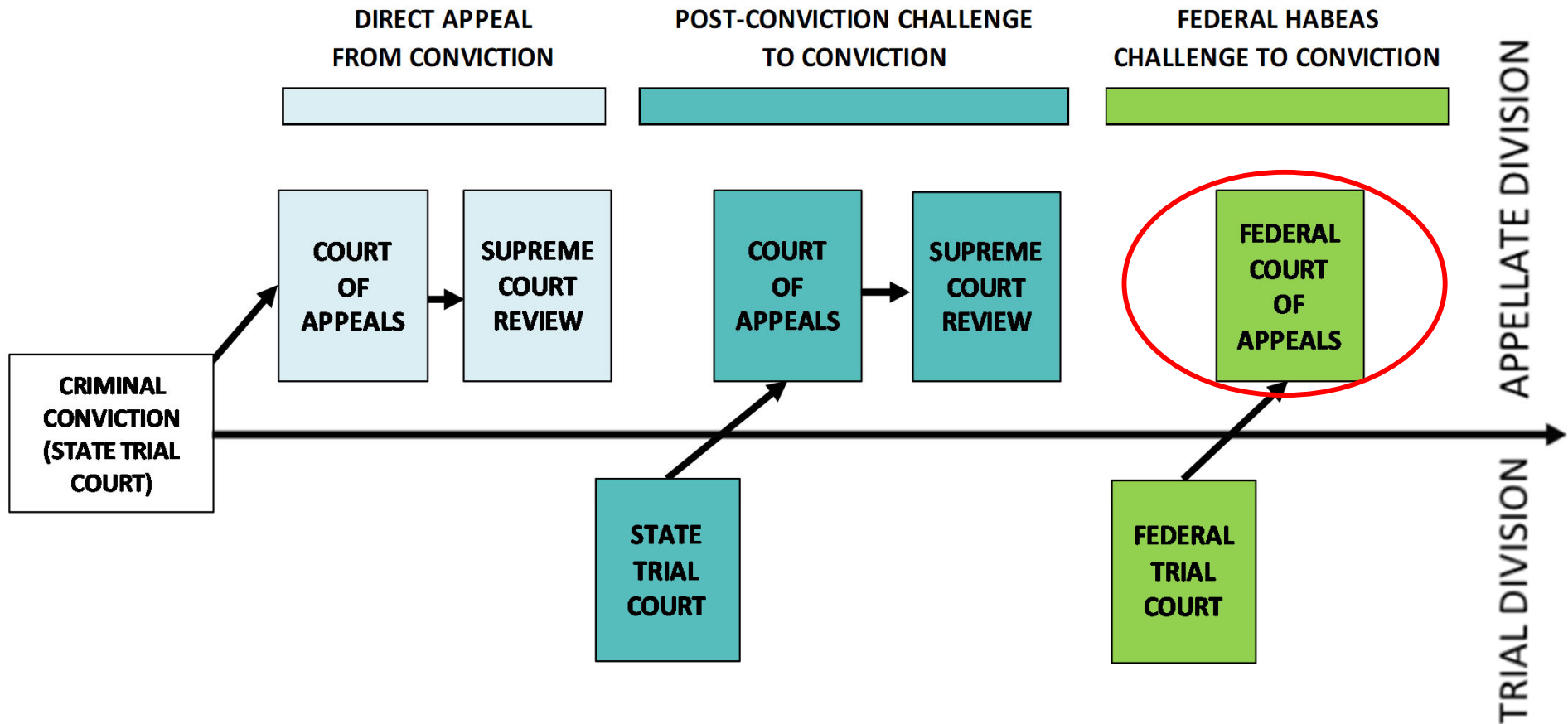
Overview of the Process

Federal habeas review

- Federal constitutional challenges to conviction or sentence
 - Constitutionality of criminal law
 - Adequacy of defense counsel
 - Constitutional challenges to trial procedures
- Brought in federal district court



Overview of the Process



Overview of the Process

Federal habeas appeals

- Challenges to federal district court's ruling on habeas petition
- U.S. Court of Appeals for the Ninth Circuit



Mandated caseload

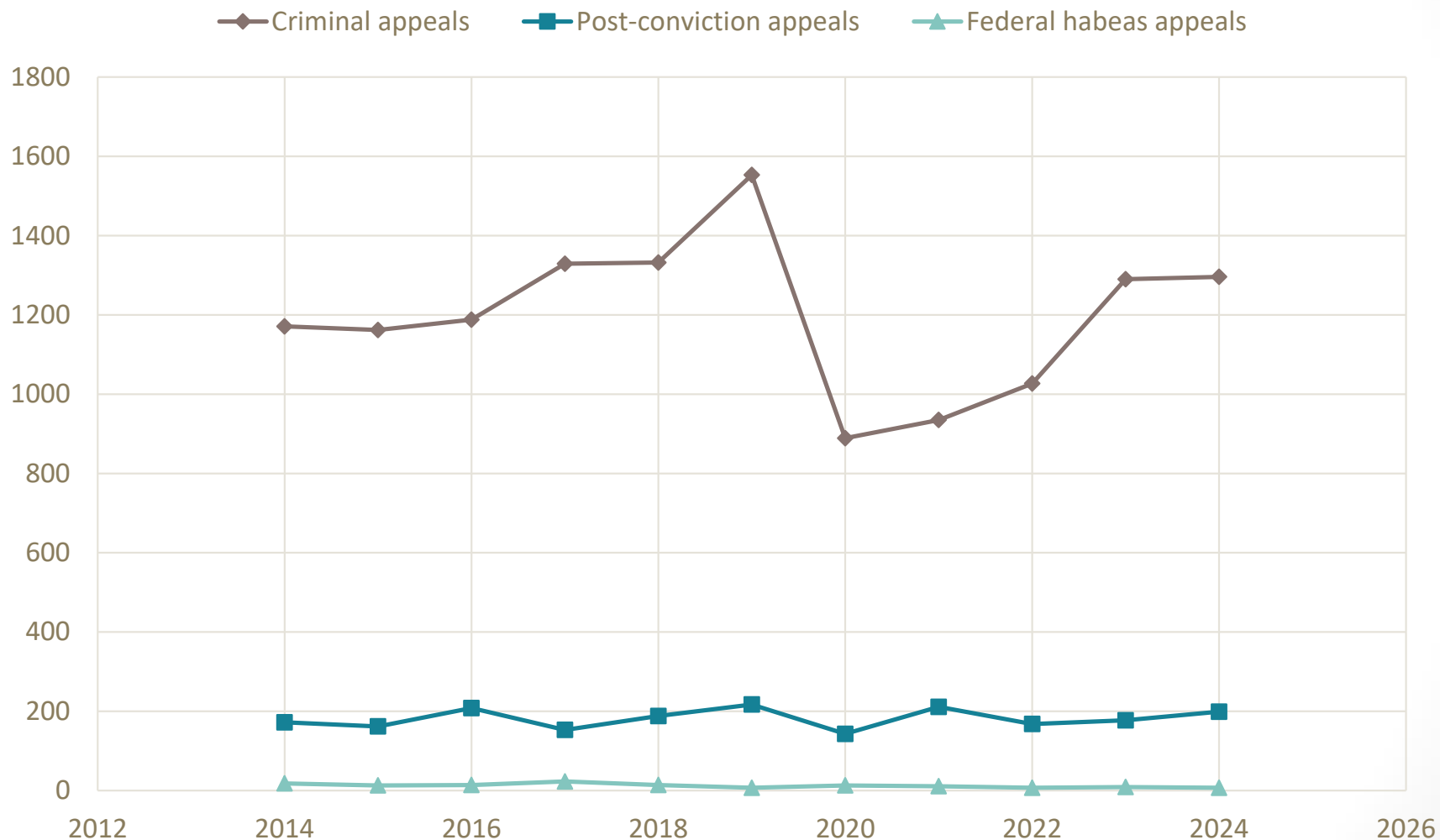
We have little control over the volume or complexity of the work

- The vast majority of proceedings are brought by the person convicted of a crime.
- The courts rely on us to present the state's legal arguments.
- If we do not respond, or do not respond adequately, courts may overturn valid convictions and sentences.
- Appellate decisions may set statewide precedent for cases going forward.



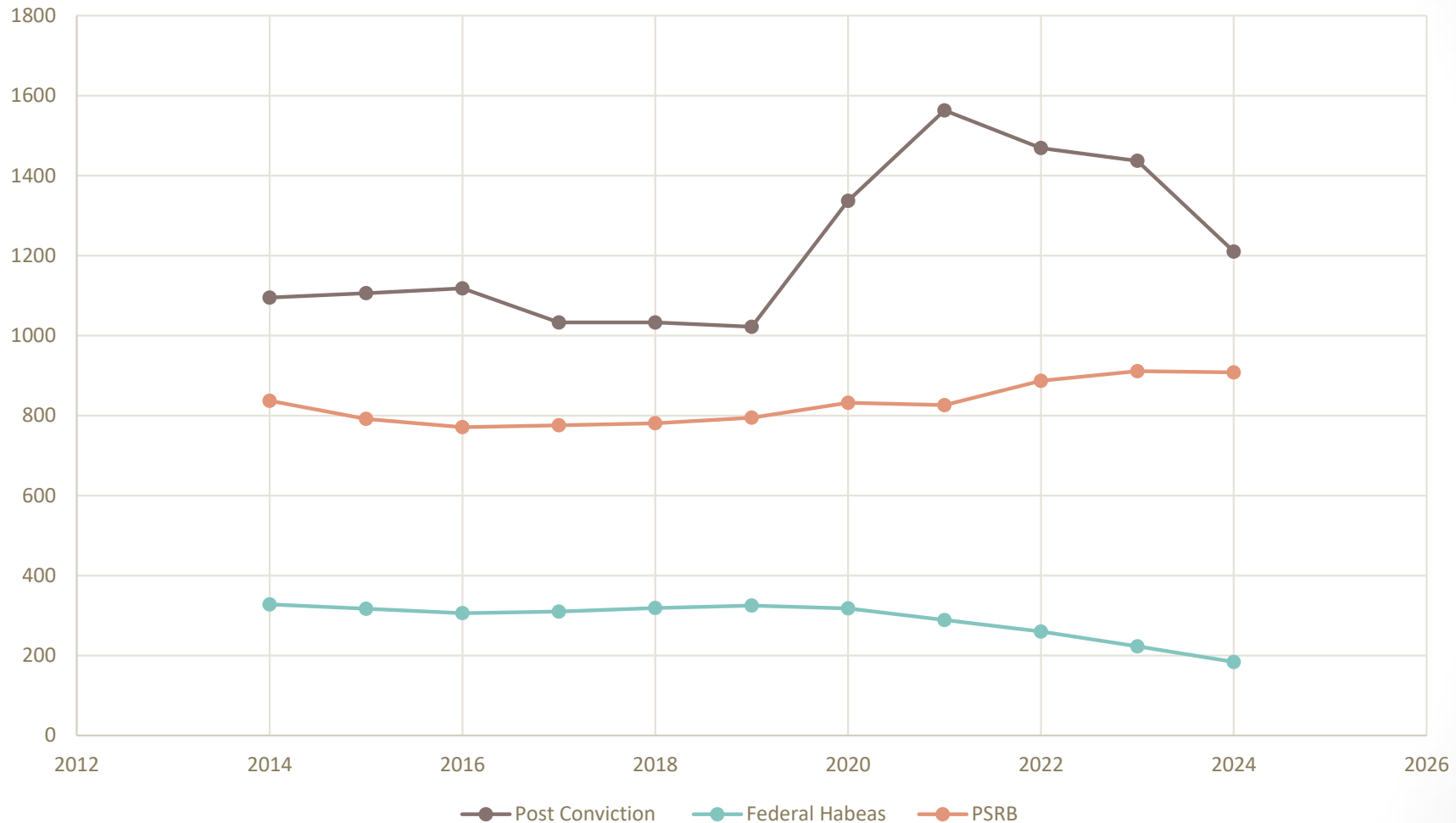
Appellate Caseload

CASES OPENED BY YEAR



Trial Caseload

PENDING CASES BY YEAR



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

- Almost 500 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

- Over 850 cases filed in the post-conviction trial court raising a nonunanimous jury verdict claim
- Conceding relief on convictions where there is a clear record a verdict is nonunanimous.
- Continuing to litigate disputed claims
 - Cases with no or unclear jury poll; juror contact
 - Cases with no jury trial (e.g., guilty plea)



Ramos/Watkins Consequences

- 120 post-conviction trial cases remain pending in which a nonunanimous verdict is asserted.
- Convictions by nonunanimous juries may be settled in the post-conviction court, returned to District Attorneys for new trials or resentencing, or release of the post-conviction petitioner.
- Despite receiving relief from a nonunanimous jury verdict, a post-conviction petitioner may remain incarcerated due to unanimous convictions on other counts.
- When a nonunanimous jury conviction is vacated and there is an acquittal on retrial or the charge is dismissed, the former defendant may file suit against the state for **wrongful conviction compensation**.



Changes affecting cases

- Decisions by the Oregon Supreme Court impacting cases
 - *State v. Hubbell*, 371 Or 340 (2023), overturned decades of precedent on possession with intent to deliver a controlled substance.
 - *Hill v. Miller*, 330 Or App 386 (2024), effectively eliminated the statute of limitations for post-conviction petitions for many cases.
- Public defense crisis



DCC 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	121,552	\$19,711,849
2017-19	4,693	128,051	\$21,655,767
2019-21	4,819	139,235	\$27,354,625
2021-23	4,208	151,425	\$34,052,233

<u>Biennium</u>	<u>Projected Cases</u>	<u>Est Hours</u>	<u>Est DCC Expenses</u>
2023-25	4,232	148,707	\$40,892,897
2025-27	4,388	149,224	\$48,362,491*

*Estimated at current legal rate. (\$322/hr)



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



Forecasting Methodology

- Based on 10-year historical data and analysis of expected trends.
- Assumes a 1% growth in cases, in line with population growth.
- 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.

