

HB 3145 A STAFF MEASURE SUMMARY

Joint Committee On Ways and Means

Prepared By: Gregory Jolivette, Budget Analyst

Meeting Dates: 6/19, 6/20

WHAT THE MEASURE DOES:

Defines key terms. Moves the Public Defense Services Commission (PDSC) from the judicial branch to the executive branch as an independent entity. Requires the appointment of an 11-member PDSC to govern the Office of Public Defense Services (OPDS) with appointments from the Governor's Office, Chief Justice of the Oregon Supreme Court, the Speaker of the House and the Senate President. Requires all appointees to have demonstrated a commitment to criminal defense, juvenile delinquency defense, or representing parents and children in dependency proceedings. Requires the PDSC to: establish a trial division in addition to its appellate division; adopt contracting policies that ensure that contract attorneys and staff receive fees commensurate with the OPDS trial division and other state agencies; support data collection and training requirements; and provide for reasonable overhead costs. Requires PDSC to establish operational and contracting systems that allow for oversight, promote transparency, consider equity and inclusion, and ensure that defense services are provided in a manner consistent with the Oregon and United States Constitution and Oregon and national standards of justice. Requires PDSC to adopt reasonable caseload standards that are to be reexamined and, if necessary, recalculated every four years and a workload plan based on those standards. Requires the PDSC to adopt policies, procedures, standards, and guidelines that establish training and continuing education requirements and that provide for oversight of both employees of the trial division of OPDS and contract public defense counsel. Prohibits PDSC from authorizing any flat fee compensation structure or a per case payment structure. Permits PDSC to authorize a contract based on a full-time equivalent compensation model, a workload model, or any other model that pays public defense attorneys hourly at a reasonable market rate. Authorizes the OPDS executive director to develop data collection policies; develop performance metrics; establish policies and standards for quality assurance and oversight; establish training requirements; provide training; implement a statewide case management system; and ensure that all policies and procedures allow public defense attorneys to provide zealous advocacy on behalf of their clients. Prohibits the OPDS executive director from authorizing any flat fee compensation structure or a per case payment structure. Permits OPDS executive director to authorize a contract based on a full-time equivalent compensation model, a workload model or any other model that pays public defense attorneys hourly at a reasonable market rate. Requires contracts to include access to attorney case files, excluding legally protected material; to require sharing of data and information with OPDS; to allow OPDS to monitor caseloads and compensation; and to include terms that allow OPDS to ensure that the contract and a contractor is providing representation consistent with the Oregon and United States Constitution and Oregon and national standards. Clarifies the contents of the executive director's annual report to PDSC and the biennial reported annually to the Legislative Assembly. Declares emergency, effective on passage. Creates a Task Force on Municipal Court Public Defense. Sunsets the Task Force on Municipal Court Public Defense December 31, 2021.

ISSUES DISCUSSED:

- Sixth Amendment Center Report
- Need for immediate action
- Potential litigation

EFFECT OF AMENDMENT:

HB 3145 A STAFF MEASURE SUMMARY

Establishes a 17-member task force to evaluate statutes, case law, standards and best practices related to the delivery of indigent public defense services and provide a progress report to the Legislature by February 1, 2020, and a final written report with recommendations and an implementation plan by December 30, 2020. The task force will be appointed by the Legislature (4), Governor (7), and Chief Justice (6), and staffed by the Legislative Policy and Research Office.

BACKGROUND:

In 1963, the U.S. Supreme Court declared in *Gideon v. Wainwright*, 372 U.S. 335(1963) that anyone accused of a crime who cannot afford the cost of a lawyer “cannot be assured a fair trial unless counsel is provided for him.” Under *Gideon*, the Sixth Amendment right to effective counsel is an obligation of the states via the due process clause of the Fourteenth Amendment. In Oregon, the PDSC oversees the OPDS as the state agency responsible for establishing and maintaining a public defense system that provides effective defense counsel for indigent defendants in criminal proceedings, youth in delinquency proceedings, and parents and children in dependency proceedings.

In 2018, the Sixth Amendment Center, a nonpartisan, nonprofit organization that provides technical assistance and evaluation services to policymakers focusing on the constitutional requirement to provide effective assistance of counsel, assessed the PDSC, OPDS, and the systems they maintain to provide public defense for indigent defendants in Oregon's criminal Justice system. That assessment found:

[T]he state has created a complex bureaucracy that collects a significant amount of indigent defense data, yet does not provide sufficient oversight or financial accountability. In some instances, the complex bureaucracy is itself a hindrance to effective assistance of counsel. Moreover, the report concludes that this complex bureaucracy obscures an attorney compensation plan that is at root a fixed fee contract system that pits appointed lawyers' financial self-interest against the due process rights of their clients, and is prohibited by national public defense standards.

In light of those findings, the Sixth Amendment Center recommended the following changes to Oregon's defense system:

1. The State of Oregon should require that services be provided free of conflicts of interest, as is constitutionally required, by abolishing fixed fee contracting and other forms of compensation that produce financial disincentives for public defense lawyers to provide effective assistance of counsel.
2. With the abolition of fixed fee contracting, PDSC/OPDS should pay private lawyers at an hourly rate that accounts for both actual overhead and a reasonable fee, and/or hire government-employed attorneys for trial level services. OPDS should have the appropriate resources to provide oversight of such a private attorney and state public defender employee system.
3. The composition of the Public Defense Services Commission does not adhere to national standards, in that all commissioners are appointed by the judiciary, while the legislative and executive branches of government have no equal voice in the commission's affairs.
4. The Public Defense Services Commission lacks the necessary statutory scope to ensure the state's Fourteenth Amendment obligation to provide effective Sixth Amendment assistance of counsel in every courthouse in Oregon.

House Bill 3145 revises the authorizing statutes for the Public Defense Services Commission and the Office of Public Defense Services to address the Sixth Amendment Center's recommendations and ensure that the provision of public defense in Oregon is constitutional.