

A-Engrossed House Bill 3145

Ordered by the House April 22
Including House Amendments dated April 22

Sponsored by COMMITTEE ON JUDICIARY (at the request of Representative Jennifer Williamson)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Directs Public Defense Services Commission to conduct study on improving provision of public defense services and present report on findings to interim committees of Legislative Assembly related to judiciary on or before September 15, 2020.]

[Sunsets January 2, 2021.]

Defines terms related to provision of public defense services.

Moves Public Defense Services Commission from judicial to executive branch. Expands membership of commission from seven to 11 members. Modifies appointing authorities and qualifications of members. Modifies manner in which member may be removed.

Directs commission to establish Office of Public Defense Services with trial division in addition to appellate division. Modifies certain policies and procedures commission is required to adopt, including policies concerning contracting and oversight. Requires commission to adopt caseload standards and statewide workload plan. Prohibits commission from approving contract authorizing flat fee compensation structure.

Modifies duties of executive director of Office of Public Defense Services. Directs executive director to develop certain policies and standards for provision of public defense services including performance metrics, quality assurance standards and training requirements. Establishes requirements for contracts for provision of public defense services. Specifies contents of report by executive director to commission and Legislative Assembly.

Establishes Task Force on Municipal Court Public Defense to examine and make recommendations concerning provision of public defense services in municipal and justice court proceedings. Directs task force to submit report with recommendations to interim committees of Legislative Assembly related to judiciary no later than September 15, 2021.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to the Public Defense Services Commission; creating new provisions; amending ORS 1.009, 34.355, 135.055, 136.603, 138.310, 138.500, 138.590, 151.211, 151.213, 151.216, 151.219, 151.225, 151.485, 151.493, 161.309, 161.346, 161.348, 161.365, 161.665, 244.050, 419A.211, 419C.380, 419C.535, 426.135, 426.250, 427.265, 427.295 and 433.466; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

CHANGES TO PUBLIC DEFENSE SERVICES

SECTION 1. ORS 151.211 is amended to read:

151.211. For purposes of ORS 151.211 to 151.221:

(1) "Bar member" means an individual who is an active member of the Oregon State Bar.

[(2) "Chief Justice" means the Chief Justice of the Supreme Court.]

(2) "Caseload standard" means a limitation on the number of cases for which an individual public defense attorney can provide legal representation over a period of time based upon the amount of work that is generally required to provide effective assistance on a particular

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **type of case.**

2 (3) "Commission" means the Public Defense Services Commission.

3 (4) "Director" means the [*public defense services*] executive director **of the Office of Public**
4 **Defense Services** appointed under ORS 151.216.

5 (5) "Office [*of public defense services*]" means the Office **of Public Defense Services** established
6 by the commission under the **executive** director to handle the cases assigned and to carry out the
7 administrative policies and procedures for the public defense system.

8 (6) "**Public defense attorney**" means **counsel appointed to perform legal services for fi-**
9 **nancially eligible individuals as required by ORS 34.355, 135.055, 138.500, 138.590, 161.346,**
10 **161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209, 419C.408,**
11 **419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315, the Oregon**
12 **Constitution or the United States Constitution.**

13 (7) "**Public defense staff member**" means **a worker who supports and complements the**
14 **work of a public defense attorney or who is employed by or under contract with a public**
15 **defense attorney to perform work, including but not limited to investigators, paralegals, legal**
16 **assistants and case managers.**

17 (8) "**Workload plan**" means **the office's plan to provide legal representation to qualifying**
18 **individuals statewide based upon the office's caseload standards.**

19 **SECTION 2.** ORS 151.213 is amended to read:

20 151.213. (1)(a) The Public Defense Services Commission is established in the [*judicial*] **executive**
21 branch of state government. Except for the appointment [*or removal*] of commission members, the
22 commission and employees of the commission are not subject to the exercise of administrative au-
23 thority and supervision by the [*Chief Justice of the Supreme Court as the administrative head of the*
24 *Judicial Department*] **Governor.**

25 **(b) Except as otherwise provided by law, the commission shall exercise as an independent**
26 **entity all statutory authority, powers, duties and functions.**

27 (2)(a) The commission consists of [*seven*] **11** members appointed [*by order of the Chief Justice.*
28 *In addition to the seven appointed members, the Chief Justice serves as a nonvoting, ex officio member.*
29 *The Chief Justice shall appoint at least two persons who are not bar members, at least one person who*
30 *is a bar member and who is engaged in criminal defense representation and at least one person who*
31 *is a former Oregon state prosecutor. Except for the Chief Justice or a senior judge under ORS 1.300,*
32 *a member may not serve concurrently as a judge, a prosecuting attorney or an employee of a law*
33 *enforcement agency. A person who is primarily engaged in providing public defense services may not*
34 *serve as a member of the commission.*] **as follows:**

35 **(A) The Governor shall appoint:**

36 **(i) Two members of the public who are not attorneys and who have demonstrated an in-**
37 **terest in the criminal or juvenile justice systems and a commitment to diversity and inclu-**
38 **sion;**

39 **(ii) A bar member with experience in practicing civil rights law; and**

40 **(iii) A bar member who teaches or has taught criminal law;**

41 **(B) The Chief Justice of the Supreme Court shall appoint:**

42 **(i) A bar member, from a list of three bar members submitted to the Chief Justice by the**
43 **chief executive officer of the Oregon State Bar, with experience in representing historically**
44 **or currently underserved communities and who is not employed by or under contract with**
45 **the Office of Public Defense Services;**

1 (ii) A bar member, from a list of three bar members submitted to the Chief Justice by
2 the chief executive officer of the Oregon State Bar after consultation with statewide organ-
3 izations that support the criminal and juvenile delinquency defense legal community, with
4 experience representing criminal defendants or juveniles in delinquency cases and who is not
5 employed by or under contract with the Office of Public Defense Services; and

6 (iii) A former judge;

7 (C) The President of the Senate shall appoint:

8 (i) A former member of the Legislative Assembly; and

9 (ii) A bar member, from a list of three bar members submitted to the President by the
10 chief executive officer of the Oregon State Bar after consultation with statewide organiza-
11 tions that support the criminal and juvenile delinquency defense legal community, with ex-
12 perience representing criminal defendants or juveniles in delinquency cases and who is not
13 employed by or under contract with the Office of Public Defense Services; and

14 (D) The Speaker of the House of Representatives shall appoint:

15 (i) A former member of the Legislative Assembly; and

16 (ii) A bar member, from a list of three bar members submitted to the Speaker by the
17 chief executive officer of the Oregon State Bar after consultation with statewide organiza-
18 tions that support the criminal and juvenile delinquency defense legal community, with ex-
19 perience representing criminal defendants or juveniles in delinquency cases and who is not
20 employed by or under contract with the Office of Public Defense Services.

21 (b) The appointing authorities shall coordinate appointments to ensure that at least one
22 member of the commission has extensive experience in the practice of juvenile law.

23 (c) All members of the commission must have a demonstrated commitment to criminal
24 defense, juvenile delinquency defense or representing parents or children in dependency
25 proceedings.

26 (3)(a) The term of a member is four years beginning on the effective date of the [*order of the*
27 *Chief Justice appointing the member*] appointment. The appointing authorities shall assign the
28 initial terms of office of members so that the terms expire at staggered intervals. A member
29 is eligible for reappointment if qualified for membership at the time of reappointment.

30 (b) A term ends upon the expiration of the term, the resignation of the member or re-
31 moval of the member. A member may be removed from the commission by [*order of the Chief*
32 *Justice*] a two-thirds vote of the members of the commission.

33 (c) If a vacancy occurs for any cause before the expiration of the term of a member, the [*Chief*
34 *Justice*] appointing authority shall make an appointment to become immediately effective for the
35 unexpired term.

36 (4) The commission shall elect a chairperson who is a bar member and a vice chairperson
37 [*shall be appointed by order of the Chief Justice*] every two years with such functions as the com-
38 mission may determine. A member is eligible for reappointment as chairperson or vice chairperson.

39 (5) A majority of the [*voting*] members constitutes a quorum for the transaction of business.

40 (6) A member of the commission is not entitled to compensation for services as a member, but
41 is entitled to expenses as provided in ORS 292.495 (2).

42 **SECTION 3.** ORS 151.216 is amended to read:

43 151.216. (1) The Public Defense Services Commission shall:

44 (a) Establish and maintain a public defense system that ensures the provision of public defense
45 services in the most cost-efficient manner consistent with the Oregon Constitution, the United States

1 Constitution and Oregon and national standards of justice.

2 (b) Establish an Office of Public Defense Services **with a trial and an appellate division** and
3 appoint [a *public defense services*] **an** executive director **of the office** who serves at the pleasure
4 of the commission.

5 (c) **Adopt policies for contracting with public defense attorneys and public defense staff**
6 **members who are not employed by the office that:**

7 (A) **Ensure reasonable attorney fees commensurate with public defense attorneys and**
8 **public defense staff members who work for the office and other state agencies;**

9 (B) **Support data collection and training requirements; and**

10 (C) **Provide for reasonable overhead costs.**

11 (d) **Establish within the office operational and contracting systems that allow for over-**
12 **sight, ensure transparency, promote equity and inclusion and ensure that public defense**
13 **services are provided in a manner consistent with the Oregon Constitution, the United States**
14 **Constitution and Oregon and national standards of justice.**

15 (e) **Adopt reasonable and appropriate caseload standards for public defense attorneys that**
16 **provide for effective assistance of counsel under the Oregon Constitution, the United States**
17 **Constitution and Oregon and national standards of justice.**

18 (f) **Reexamine the appropriateness of the caseload standards described in paragraph (e)**
19 **of this subsection, and adopt new standards if necessary, every four years.**

20 (g) **Adopt a statewide workload plan based on the caseload standards described in para-**
21 **graph (e) of this subsection.**

22 [(c)] (h) Submit the budget of the commission and the office [*of public defense services*] to the
23 Legislative Assembly after the budget is submitted to the commission by the **executive** director and
24 approved by the commission. The [*Chief Justice of the Supreme Court*] **executive director** and the
25 chairperson of the commission shall present the budget to the Legislative Assembly.

26 [(d)] (i) Review and approve any public defense services contract negotiated by the **executive**
27 director before the contract can become effective.

28 [(e)] (j) Adopt a compensation plan, classification system, **organizational structure** and per-
29 sonnel plan for the office [*of Public Defense Services*] that are commensurate with other state agen-
30 cies.

31 [(f)] (k) Adopt policies, procedures, standards and guidelines regarding:

32 (A) The determination of financial eligibility of persons entitled to be represented by [*appointed*
33 *counsel*] **public defense attorneys** at state expense;

34 (B) The appointment of [*counsel*] **public defense attorneys;**

35 (C) The fair compensation of [*counsel appointed to represent a person financially eligible for ap-*
36 *pointed counsel at state expense*] **public defense attorneys;**

37 (D) [*Appointed counsel*] **Public defense attorney** compensation disputes;

38 (E) Any other costs associated with the representation of a person by [*appointed counsel*] **public**
39 **defense attorneys** in the state courts that are required to be paid by the state under ORS 34.355,
40 135.055, 138.500, 138.590, 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908,
41 419C.206, 419C.209, 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or
42 436.315 or any other provision of law that expressly provides for payment of such compensation,
43 costs or expenses by the commission;

44 (F) Professional qualifications, **training and continuing legal education requirements** for
45 [*counsel appointed to represent public defense clients*] **public defense attorneys and public defense**

1 **staff members;**

2 (G) Performance for legal representation;

3 (H) The contracting of public defense services;

4 (I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses
5 only if in-state expert witnesses are not available or are more expensive than out-of-state expert
6 witnesses; *[and]*

7 **(J) Oversight of public defense attorneys employed by the office or under contract with**
8 **the office for the provision of public defense services; and**

9 *[(J)]* **(K)** Any other matters necessary to carry out the duties of the commission.

10 *[(g)]* **(L)** Establish a peer review system for the approval of nonroutine fees and expenses in-
11 curred in cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The
12 review shall be conducted by a panel of attorneys who practice in the area of criminal defense.

13 *[(h)]* **(m)** Establish a complaint process that allows district attorneys, criminal defense counsel
14 and the public to file complaints concerning the payment from public funds of nonroutine fees and
15 expenses incurred in cases.

16 *[(i)]* **(n)** Reimburse the State Court Administrator from funds deposited in the Public Defense
17 Services Account established by ORS 151.225 for the costs of personnel and other costs associated
18 with location of eligibility verification and screening personnel pursuant to ORS 151.489 by the State
19 Court Administrator.

20 *[(2) Policies, procedures, standards and guidelines adopted by the commission supersede any con-*
21 *flicting rules, policies or procedures of the Public Defender Committee, State Court Administrator, cir-*
22 *cuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review Board*
23 *related to the exercise of the commission's administrative responsibilities under this section and trans-*
24 *ferred duties, functions and powers as they occur.]*

25 *[(3)]* **(2)** The commission may accept gifts, grants or contributions from any source, whether
26 public or private. However, the commission may not accept a gift, grant or contribution if accept-
27 ance would create a conflict of interest. Moneys accepted under this subsection shall be deposited
28 in the Public Defense Services Account established by ORS 151.225 and expended for the purposes
29 for which given or granted.

30 *[(4)]* **(3)** The commission may not:

31 (a) Make any decision regarding the handling of any individual case;

32 (b) Have access to any case file; *[or]*

33 (c) Interfere with the **executive** director or any member of the staff of the **executive** director
34 in carrying out professional duties involving the legal representation of public defense clients; **or**

35 **(d) Approve a contract authorizing any flat fee compensation structure, including but not**
36 **limited to a contract authorizing a flat fee to be paid over a set period of time on a per case**
37 **basis.**

38 **(4) Nothing in subsection (3) of this section prohibits the commission from approving a**
39 **contract that provides compensation to public defense attorneys based on a full-time equiv-**
40 **alent model or a workload model, or that pays public defense attorneys hourly at a reason-**
41 **able market rate.**

42 **SECTION 4.** ORS 151.219 is amended to read:

43 151.219. (1) The *[public defense services]* executive director **of the Office of Public Defense**
44 **Services** shall:

45 (a) Recommend to the Public Defense Services Commission how to establish and maintain, in a

1 cost-effective manner, the delivery of legal services to persons entitled to, and financially eligible
2 for, *[appointed counsel]* **a public defense attorney appointed** at state expense under Oregon stat-
3 utes, the Oregon Constitution[,] **and** the United States Constitution and consistent with Oregon and
4 national standards of justice.

5 (b) Implement and ensure compliance with contracts, policies, procedures, standards and guide-
6 lines adopted by the commission or required by statute.

7 (c) Prepare and submit to the commission for its approval the biennial budget of the commission
8 and the Office of Public Defense Services.

9 (d) **Subject to subsection (2) of this section**, negotiate contracts, as appropriate, for providing
10 legal services to persons financially eligible for *[appointed counsel]* **a public defense attorney ap-**
11 **pointed** at state expense. *[No contract so negotiated is binding or enforceable until the contract has*
12 *been reviewed and approved by the commission as provided in ORS 151.216.]*

13 (e) Employ personnel or contract for services as necessary to carry out the responsibilities of
14 the **executive** director and the Office of Public Defense Services.

15 (f) Supervise the personnel, operation and activities of the Office of Public Defense Services.

16 (g) Provide services, facilities and materials necessary for the performance of the duties, func-
17 tions and powers of the Public Defense Services Commission.

18 (h) Pay the expenses of the commission and the Office of Public Defense Services.

19 (i) Prepare and submit to the commission an annual report of the activities of the Office of
20 Public Defense Services **containing the information described in subsection (3) of this section.**

21 (j) Prepare and submit to the Legislative Assembly a biennial report on the activities of the
22 Office of Public Defense Services **containing the information described in subsection (3) of this**
23 **section.**

24 (k) Provide for legal representation, advice and consultation for the commission, its members,
25 the **executive** director and staff of the Office of Public Defense Services who require such services
26 **in relation to the performance of official duties, functions and responsibilities**, or who are
27 named as defendants in lawsuits arising from their **performance of official** duties, functions and
28 responsibilities. If requested by the **executive** director, the Attorney General may also provide for
29 legal representation, advice and consultation for the commission, its members, the **executive** direc-
30 tor and staff of the Office of Public Defense Services in litigation **arising from their performance**
31 **of official duties, functions and responsibilities.**

32 (L) **Develop policies for the collection of data from public defense attorneys and public**
33 **defense staff members.**

34 (m) **Develop performance metrics for public defense attorneys and public defense staff**
35 **members for the provision of public defense services.**

36 (n) **Establish policies and standards for quality assurance and oversight in the provision**
37 **of public defense services, including allowing for the investigation, auditing and review of**
38 **public defense attorneys and public defense staff members to determine compliance with the**
39 **office's metrics, policies and standards.**

40 (o) **Establish training requirements for public defense attorneys and public defense staff**
41 **members and, as appropriate, develop trainings that include but are not limited to the pro-**
42 **vision of culturally specific services.**

43 (p) **Implement a case management system that allows for transparency and oversight.**

44 (q) **Ensure that all office policies and procedures allow public defense attorneys to pro-**
45 **vide zealous advocacy on behalf of their clients.**

1 **(2)(a) A contract negotiated by the executive director under subsection (1) of this section**
2 **is not binding or enforceable until the contract has been reviewed and approved by the**
3 **commission as provided in ORS 151.216.**

4 **(b) The executive director may not negotiate or enter into a contract authorizing any flat**
5 **fee compensation structure, including but not limited to a contract authorizing a flat fee to**
6 **be paid over a set period of time on a per case basis.**

7 **(c) Nothing in this subsection prohibits the executive director from negotiating or en-**
8 **tering into a contract that provides compensation to public defense attorneys based on a**
9 **full-time equivalent model or a workload model, or that pays public defense attorneys hourly**
10 **at a reasonable market rate.**

11 **(d) Contracts negotiated and entered into by the executive director must include terms**
12 **requiring:**

13 **(A) Access to attorney case files by the executive director, excluding legally protected**
14 **material; and**

15 **(B) The sharing of data and information between the public defense attorneys and public**
16 **defense staff members and the office sufficient for the office to:**

17 **(i) Monitor the caseloads and compensation of each public defense attorney and public**
18 **defense staff member; and**

19 **(ii) Determine whether the terms of each contract are sufficient for public defense at-**
20 **torneys and public defense staff members to meet office standards and provide represen-**
21 **tation in a manner consistent with the Oregon Constitution, the United States Constitution**
22 **and Oregon and national standards of justice.**

23 **(e) As used in this subsection, “legally protected material” means:**

24 **(A) Information and records of a client of the office that are protected by attorney-client**
25 **privilege held by the client; and**

26 **(B) Attorney work product prepared in the course of providing legal services to the cli-**
27 **ent.**

28 **(3) The annual report to the commission and the biennial report to the Legislative As-**
29 **sembly required by subsection (1) of this section must include but are not limited to the**
30 **following information:**

31 **(a) Public defense attorney caseloads and conformance with the caseload standards and**
32 **workload plan adopted by the commission;**

33 **(b) Public defense attorney and public defense staff member compensation;**

34 **(c) Retention and turnover of public defense attorneys and public defense staff members;**

35 **(d) Training and continuing legal education provided to or completed by public defense**
36 **attorneys;**

37 **(e) The frequency of work performed on cases by public defense staff members; and**

38 **(f) Whether performance metrics and quality assurance standards are being met by**
39 **public defense attorneys and public defense staff members.**

40 **[(2)] (4) The executive director may designate persons as representatives of the executive di-**
41 **rector for the purposes of determining and paying bills submitted to the Office of Public Defense**
42 **Services and determining preauthorization for incurring fees and expenses under ORS 135.055.**

43 **SECTION 5. Section 6 of this 2019 Act is added to and made a part of ORS 151.211 to**
44 **151.221.**

45 **SECTION 6. (1) Except as provided in subsection (2) of this section or as otherwise pro-**

1 vided by law, the provisions of ORS 180.220, 276.004, 276.410, 276.426, 276.428, 276.440, 276A.206,
2 279.835 to 279.855, 283.085 to 283.092, 292.210 to 292.250, 293.075 and 293.205 to 293.225 and ORS
3 chapters 279A, 279B, 279C, 282 and 283 do not apply to the Public Defense Services Commis-
4 sion or the Office of Public Defense Services.

5 (2) ORS 279A.100 and ORS chapter 236 apply to the commission and the office.

6
7 **TASK FORCE ON MUNICIPAL COURT PUBLIC DEFENSE**

8
9 **SECTION 7.** (1) The Task Force on Municipal Court Public Defense is established. The
10 purpose of the task force is to recommend to the Legislative Assembly public defense models
11 for municipal and justice court proceedings that:

12 (a) Protect the right of counsel under the Oregon and United States Constitutions;

13 (b) Take into consideration the complex needs of criminal defendants;

14 (c) Ensure that parties to a municipal or justice court proceeding are prepared to pro-
15 ceed; and

16 (d) Enable courts to resolve cases as quickly and efficiently as possible.

17 (2) The task force consists of 17 members appointed as follows:

18 (a) The President of the Senate shall appoint two members from among members of the
19 Senate.

20 (b) The Speaker of the House of Representatives shall appoint two members from among
21 members of the House of Representatives.

22 (c) The Governor shall appoint eight members as follows:

23 (A) Two members with experience providing public defense services in municipal or jus-
24 tice courts.

25 (B) Two members representing municipal prosecutors.

26 (C) One member representing the Public Defense Services Commission.

27 (D) One member representing the Association of Oregon Counties.

28 (E) One member representing city managers.

29 (F) One member representing chiefs of police.

30 (d) The Chief Justice of the Supreme Court shall appoint four members as follows:

31 (A) Two members who are judges presiding over municipal or justice court proceedings.

32 (B) One judge with experience on the circuit or appellate courts.

33 (C) One member representing a civil legal services provider for low-income Oregonians.

34 (e) The Attorney General shall appoint one member representing the Department of
35 Justice.

36 (3) The task force shall:

37 (a) Examine the role of municipal courts in the state justice system, the unique needs
38 and resources within each municipal court jurisdiction and statewide needs and resources;

39 (b) Examine and make recommendations regarding:

40 (A) The number of attorneys and staff members and the resources necessary to provide
41 sufficient public defense services in municipal and justice court criminal proceedings;

42 (B) Appropriate caseloads for attorneys providing public defense services in municipal
43 and justice court criminal proceedings;

44 (C) The administration and oversight of attorneys providing public defense services and
45 municipal and justice court criminal proceedings; and

1 (D) Funding models for attorneys providing public defense services in municipal and jus-
2 tice court criminal proceedings;

3 (c) Examine the effects of municipal and justice court convictions on future sentences
4 of criminal defendants;

5 (d) Examine whether models of holistic public defense would be appropriate and promote
6 better outcomes in municipal and justice courts;

7 (e) Examine ways to create and ensure statewide consistency in the provision of public
8 defense services in municipal and justice courts;

9 (f) Conduct surveys of:

10 (A) Each county in the state to identify models of public defense representations and
11 effective practices in municipal and justice court criminal proceedings; and

12 (B) Other states to identify models of effective representation and funding of public de-
13 fense services in municipal and justice courts;

14 (g) Review statutory and case law related to the provision of public defense as required
15 by the Oregon and United States Constitutions; and

16 (h) Identify obstacles in all counties to providing effective public defense services in
17 municipal and justice court criminal proceedings.

18 (4) The recommendations and proposed legislative changes of the task force must ensure
19 that:

20 (a) Public defense providers in municipal and justice court proceedings have workloads
21 that allow the attorneys to provide client-centered, competent and effective legal represen-
22 tation throughout the entire proceeding;

23 (b) Judicial and attorney resources are sufficient to protect the legal rights of defendants
24 in municipal and justice court criminal proceedings; and

25 (c) Oregon statutes are consistent with the models for legal representation proposed by
26 the task force.

27 (5) A majority of the voting members of the task force constitutes a quorum for the
28 transaction of business.

29 (6) Official action by the task force requires the approval of a majority of the voting
30 members of the task force.

31 (7) The task force shall elect one of its members to serve as chairperson.

32 (8) If there is a vacancy for any cause, the appointing authority shall make an appoint-
33 ment to become immediately effective.

34 (9) The task force shall meet at times and places specified by the call of the chairperson
35 or of a majority of the voting members of the task force.

36 (10) The task force may adopt rules necessary for the operation of the task force.

37 (11) The task force shall submit a report, with the recommendations of the task force
38 and proposed legislative changes, in the manner provided by ORS 192.245 to the interim
39 committees of the Legislative Assembly related to the judiciary no later than September 15,
40 2021.

41 (12) The Office of Public Defense Services shall provide staff support to the task force.

42 (13) Members of the Legislative Assembly appointed to the task force are nonvoting
43 members of the task force and may act in an advisory capacity only.

44 (14) Members of the task force who are not members of the Legislative Assembly are not
45 entitled to compensation, but may be reimbursed for actual and necessary travel and other

1 expenses incurred by them in the performance of their actual duties and in the manner and
2 amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions
3 of the task force shall be paid out of funds appropriated to the Governor for purposes of the
4 task force.

5 (15) All agencies of state government, as defined in ORS 174.111, are directed to assist
6 the task force in the performance of the duties of the task force and, to the extent permitted
7 by laws relating to confidentiality, to furnish information and advice the members of the task
8 force consider necessary to perform their duties.

9
10 **CONFORMING AMENDMENTS**

11
12 **SECTION 8.** ORS 1.009 is amended to read:

13 1.009. (1) The Judicial Department Operating Account is established in the State Treasury, sep-
14 arate and distinct from the General Fund. Interest earned by the account shall be credited to the
15 account. All moneys in the account are continuously appropriated to the Judicial Department and
16 may be used only to pay the operating expenses of the department.

17 (2) All moneys received by the department pursuant to ORS 151.216 [(1)(i)] **(1)(n)** shall be de-
18 posited in the Judicial Department Operating Account.

19 (3) The department may accept gifts, grants or contributions from any source, whether public
20 or private, for deposit in the Judicial Department Operating Account.

21 **SECTION 9.** ORS 34.355 is amended to read:

22 34.355. If counsel is appointed by a court to represent, in an initial proceeding by habeas corpus
23 or on appeal as provided in ORS 34.710, a person who is imprisoned or otherwise restrained of lib-
24 erty by virtue of a charge or conviction of crime and who is determined to be financially eligible
25 for appointed counsel at state expense, the [public defense services] executive director **of the Office**
26 **of Public Defense Services** shall determine compensation for counsel and costs and expenses of the
27 person in the proceeding or on appeal. Compensation for counsel and expenses of the person in an
28 initial proceeding or in a circuit court on appeal shall be determined and paid as provided in ORS
29 135.055. Compensation for counsel and costs and expenses of the person on appeal to the Court of
30 Appeals or on review by the Supreme Court shall be determined and paid as provided in ORS
31 138.500. The compensation and expenses so allowed in an initial proceeding in a county court shall
32 be paid by the county in which the person was charged or convicted of crime.

33 **SECTION 10.** ORS 135.055 is amended to read:

34 135.055. (1) Counsel appointed pursuant to ORS 135.045 or 135.050 shall be paid fair compen-
35 sation for representation in the case:

36 (a) By the county, subject to the approval of the governing body of the county, in a proceeding
37 in a county or justice court.

38 (b) By the [public defense services] executive director **of the Office of Public Defense Services**
39 from funds available for the purpose, in a proceeding in a circuit court.

40 (2) Except for counsel appointed pursuant to contracts or counsel employed by the [public de-
41 fense services] executive director **of the Office of Public Defense Services**, compensation payable
42 to appointed counsel under subsection (1) of this section:

43 (a) In a proceeding in a county or justice court may not be less than \$30 per hour.

44 (b) In a proceeding in a circuit court is subject to the applicable compensation established under
45 ORS 151.216.

1 (3)(a) A person determined to be eligible for appointed counsel is entitled to necessary and
2 reasonable fees and expenses for investigation, preparation and presentation of the case for trial,
3 negotiation and sentencing. The person or the counsel for the person shall upon written request
4 secure preauthorization to incur fees and expenses that are not routine to representation but are
5 necessary and reasonable in the investigation, preparation and presentation of the case, including
6 but not limited to nonroutine travel, photocopying or other reproduction of nonroutine documents,
7 necessary costs associated with obtaining the attendance of witnesses for the defense, investigator
8 fees and expenses, expert witness fees and expenses and fees for interpreters and assistive commu-
9 nication devices necessary for the purpose of communication between counsel and a client or wit-
10 ness in the case. Preauthorization to incur a fee or expense does not guarantee that a fee or expense
11 incurred pursuant to the preauthorization will be determined to be necessary or reasonable when
12 the fee or expense is submitted for payment.

13 (b) In a county or justice court, the request must be in the form of a motion to the court. The
14 motion must be accompanied by a supporting affidavit that sets out in detail the purpose of the re-
15 quested expenditure, the name of the service provider or other recipient of the funds, the dollar
16 amount of the requested expenditure that may not be exceeded without additional authorization and
17 the date or dates during which the service will be rendered or events will occur for which the ex-
18 penditure is requested.

19 (c) In a circuit court, the request must be in the form and contain the information that is re-
20 quired by the policies, procedures, standards and guidelines of the Public Defense Services Com-
21 mission. If the [*public defense services*] executive director **of the Office of Public Defense Services**
22 denies a request for preauthorization to incur nonroutine fees and expenses, the person making the
23 request may appeal the decision to the presiding judge of the circuit court. The presiding judge has
24 final authority to preauthorize incurring nonroutine fees and expenses under this paragraph.

25 (d) Entitlement under subsection (7) of this section to payment for fees and expenses in circuit
26 court is subject to the policies, procedures, standards and guidelines adopted under ORS 151.216.
27 Entitlement to payment of nonroutine fees and expenses is dependent upon obtaining preauthori-
28 zation from the court, if the case is in county or justice court, or from the [*public defense services*]
29 executive director **of the Office of Public Defense Services**, if the case is in circuit court, except
30 as otherwise provided in paragraph (c) of this subsection and in the policies, procedures, standards
31 and guidelines adopted under ORS 151.216. Fees and expenses shall be paid:

32 (A) By the county, in respect to a proceeding in a county or justice court.

33 (B) By the [*public defense services*] executive director **of the Office of Public Defense Services**
34 from funds available for the purpose, in respect to a proceeding in a circuit court.

35 (C) By the city, in respect to a proceeding in municipal court.

36 (4) Upon completion of all services by the counsel of a person determined to be eligible for ap-
37 pointed counsel, the counsel shall submit a statement of all necessary and reasonable fees and ex-
38 penses of investigation, preparation and presentation and, if counsel was appointed by the court, a
39 statement of all necessary and reasonable fees and expenses for legal representation, supported by
40 appropriate receipts or vouchers and certified by the counsel to be true and accurate.

41 (5) In a county or justice court, the total fees and expenses payable under this section must be
42 submitted to the court by counsel or other providers and are subject to the review of the court. The
43 court shall certify that such amount is fair reimbursement for fees and expenses for representation
44 in the case as provided in subsection (6) of this section. Upon certification and any verification as
45 provided under subsection (6) of this section, the amount of the fees and expenses approved by the

1 court and not already paid shall be paid by the county.

2 (6) In a county or justice court, the court shall certify to the administrative authority respon-
3 sible for paying fees and expenses under this section that the amount for payment is reasonable and
4 that the amount is properly payable out of public funds.

5 (7) In a circuit court, the total fees and expenses payable under this section must be submitted
6 to and are subject to review by the [*public defense services*] executive director **of the Office of**
7 **Public Defense Services**. The [*public defense services*] executive director shall determine whether
8 the amount is necessary, reasonable and properly payable from public funds for fees and expenses
9 for representation in the case as provided by the policies, procedures, standards and guidelines of
10 the Public Defense Services Commission. The [*public defense services*] executive director shall pay
11 the amount of the fees and expenses determined necessary, reasonable and properly payable out of
12 public funds. The court shall provide any information identified and requested by the [*public defense*
13 *services*] executive director as needed for audit, statistical or any other purpose pertinent to ensure
14 the proper disbursement of state funds or pertinent to the provision of appointed counsel compen-
15 sated at state expense.

16 (8) If the [*public defense services*] executive director **of the Office of Public Defense Services**
17 denies, in whole or in part, fees and expenses submitted for review and payment, the person who
18 submitted the payment request may appeal the decision to the presiding judge of the circuit court.
19 The presiding judge or the designee of the presiding judge shall review the [*public defense services*]
20 executive director's decision for abuse of discretion. The decision of the presiding judge or the
21 designee of the presiding judge is final.

22 (9) The following may not be disclosed to the district attorney prior to the conclusion of a case:

23 (a) Requests and administrative or court orders for preauthorization to incur nonroutine fees
24 and expenses in the investigation, preparation and presentation of the case; and

25 (b) Billings for such fees and expenses submitted by counsel or other providers.

26 (10) Notwithstanding subsection (9) of this section, the total amount of moneys determined to
27 be necessary and reasonable for nonroutine fees and expenses may be disclosed to the district at-
28 torney at the conclusion of the trial in the circuit court.

29 (11) As used in this section unless the context requires otherwise, "counsel" includes a legal
30 advisor appointed under ORS 135.045.

31 **SECTION 11.** ORS 136.603 is amended to read:

32 136.603. (1)(a) Whenever any person attends any court, grand jury or committing magistrate as
33 a witness on behalf of the prosecution or of any person accused of a crime upon request of the
34 district attorney or city attorney or pursuant to subpoena, or by virtue of a recognizance for that
35 purpose, and it appears that the witness has come from outside the state or that the witness is in-
36 digent, the court may, by an order entered in its records, direct payment to the witness of such sum
37 of money as the court considers reasonable for the expenses of the witness. The order of the court,
38 so entered, is sufficient authority for the payment.

39 (b) Except as otherwise specifically provided by law, if a witness who is to be paid expenses
40 pursuant to this subsection:

41 (A) Attends a grand jury, a circuit court or judge thereof, a judge of a county court or a justice
42 of the peace, on behalf of the prosecution, payment shall be made by the county.

43 (B) Attends a municipal court or judge thereof on behalf of the prosecution, payment shall be
44 made by the city.

45 (C) Attends a circuit court or judge thereof on behalf of a financially eligible defendant, payment

1 shall be made by the [*public defense services*] executive director **of the Office of Public Defense**
2 **Services.**

3 (D) Attends a judge of the county court or a justice of the peace on behalf of a financially eli-
4 gible defendant, payment shall be made by the county.

5 (E) Attends a municipal court or judge thereof on behalf of a financially eligible defendant,
6 payment shall be made by the city.

7 (F) Attends any court on behalf of a defendant who is not financially eligible, payment shall be
8 made by the defendant, and the court shall so order.

9 (2) In the case of a prisoner of a jurisdiction outside of this state who is required to attend as
10 a witness in this state, whether for the prosecution or the defense, the sheriff shall be responsible
11 for transporting the witness to the proper court of this state, and the sheriff shall assume any costs
12 incurred in connection with the witness while the witness is in the custody of the sheriff. However,
13 the sheriff and not the witness shall be entitled to the witness fees, mileage and expenses to which
14 the witness would otherwise be entitled under this section and ORS 136.627 or other applicable law.

15 **SECTION 12.** ORS 138.310 is amended to read:

16 138.310. When the [*public defense services*] executive director **of the Office of Public Defense**
17 **Services** pays costs, expenses or compensation under ORS 138.500 (5) on appeal in a criminal action,
18 the [*public defense services*] executive director shall notify the court below of the costs, expenses and
19 compensation paid in order that the court below may exercise its discretion under ORS 151.505 or
20 161.665 (2).

21 **SECTION 13.** ORS 138.500 is amended to read:

22 138.500. (1) If a defendant in a criminal action or a petitioner in a proceeding pursuant to ORS
23 138.510 to 138.680 wishes to appeal from an appealable adverse final order or judgment of a circuit
24 court and if the person is without funds to employ suitable counsel possessing skills and experience
25 commensurate with the nature and complexity of the case for the appeal, the person may request
26 the circuit court from which the appeal is or would be taken to appoint counsel to represent the
27 person on appeal. The following apply to a request under this subsection:

28 (a) The request shall be in writing and shall be made within the time during which an appeal
29 may be taken or, if the notice of appeal has been filed, at any time thereafter. The request shall
30 include a brief statement of the assets, liabilities and income in the previous year of the person
31 unless the court already determined the person to be financially eligible for appointed counsel at
32 state expense for purposes of the specific case, in which instance, the written request need only so
33 indicate. However, if a request relies on a court's previous determination that the person is finan-
34 cially eligible, the court, in its discretion, may require the person to submit a new statement of as-
35 sets, liabilities and income.

36 (b) If, based upon a request under paragraph (a) of this subsection, the court finds that petitioner
37 or defendant previously received the services of appointed counsel or currently is without funds to
38 employ suitable counsel for an appeal, the court shall appoint counsel to represent petitioner or
39 defendant on the appeal.

40 (2)(a) Notwithstanding subsection (1) of this section, when a defendant has been sentenced to
41 death, the request for appointed counsel shall be made to the Supreme Court. The Supreme Court
42 shall appoint suitable counsel to represent the defendant on the appeal.

43 (b) After the notice of appeal has been filed, the Court of Appeals has concurrent authority to
44 appoint or substitute counsel or appoint or substitute a legal advisor for the defendant under ORS
45 138.504.

1 (c) The Supreme Court has concurrent authority to appoint or substitute counsel or appoint or
2 substitute a legal advisor for the defendant under ORS 138.504 in connection with review of a Court
3 of Appeals decision under ORS 2.520.

4 (d) Neither the Court of Appeals nor the Supreme Court may substitute one appointed counsel
5 for another under paragraph (b) or (c) of this subsection except pursuant to the policies, procedures,
6 standards and guidelines of the Public Defense Services Commission.

7 (3) Whenever a defendant in a criminal action or a petitioner in a proceeding pursuant to ORS
8 138.510 to 138.680 has filed a notice of appeal from an appealable adverse final order or judgment
9 of a circuit court and the person is without funds to pay for a transcript, or portion thereof, nec-
10 essary to present adequately the case upon appeal, the person may request the [*public defense ser-*
11 *vices*] executive director **of the Office of Public Defense Services** to have the transcript, or
12 portion thereof, prepared for purposes of appeal. The following apply to a request under this sub-
13 section:

14 (a) The [*public defense services*] executive director **of the Office of Public Defense Services**
15 shall authorize the preparation of a transcript after a court has determined that the person is eli-
16 gible for court-appointed counsel or, if the person has not applied for court-appointed counsel, the
17 person submits a statement of the person's assets, liabilities and income in the previous year and
18 the director determines that the person is eligible for preparation of a transcript at state expense.

19 (b) The cost of the transcript preparation under paragraph (a) of this subsection shall be in the
20 amount prescribed in ORS 21.345 and paid for as provided by the policies, procedures, standards and
21 guidelines of the Public Defense Services Commission.

22 (4) After submission of the original brief by counsel, the [*public defense services*] executive di-
23 rector **of the Office of Public Defense Services** shall determine the cost of briefs and any other
24 expenses of appellant, except transcripts, necessary to appellate review and a reasonable amount
25 of compensation for counsel appointed under this section. Compensation payable to appointed coun-
26 sel shall be as established under ORS 151.216. On any review by the Supreme Court of the judgment
27 of the Court of Appeals the [*public defense services*] executive director shall similarly determine the
28 costs of briefs and any other expenses necessary for review and a reasonable amount of compen-
29 sation for counsel appointed under this section.

30 (5) Costs, expenses and compensation determined by the [*public defense services*] executive di-
31 rector **of the Office of Public Defense Services** under subsection (4) of this section shall be paid
32 by the [*public defense services*] executive director from funds available for that purpose.

33 (6) If the [*public defense services*] executive director **of the Office of Public Defense Services**
34 denies, in whole or in part, costs, expenses and compensation submitted for review and payment, the
35 person who submitted the payment request may appeal the decision to the Chief Judge of the Court
36 of Appeals, if the appeal is in the Court of Appeals, or to the Chief Justice of the Supreme Court,
37 if the appeal is in the Supreme Court. The Chief Judge, Chief Justice or the designee of the Chief
38 Judge or Chief Justice, as appropriate, shall review the [*public defense services*] executive director's
39 decision for abuse of discretion. The decision of the Chief Judge, the Chief Justice or the designee
40 of the Chief Judge or Chief Justice is final.

41 (7) The provisions of this section shall apply in favor of the defendant in a criminal action or
42 the petitioner in a proceeding pursuant to ORS 138.510 to 138.680 when the person is respondent in
43 an appeal taken by the state in a criminal action or by the defendant in a proceeding pursuant to
44 ORS 138.510 to 138.680.

45 (8) As used in this section, "criminal action" does not include an action that involves only vio-

1 lations.

2 (9) As used in subsection (4) of this section, “counsel” includes a legal advisor appointed under
3 ORS 138.504.

4 **SECTION 14.** ORS 138.590 is amended to read:

5 138.590. (1) Any petitioner who is unable to pay the expenses of a proceeding pursuant to ORS
6 138.510 to 138.680 or to employ suitable counsel possessing skills and experience commensurate with
7 the nature of the conviction and complexity of the case for the proceeding may proceed as a finan-
8 cially eligible person pursuant to this section upon order of the circuit court in which the petition
9 is filed.

10 (2) If the petitioner wishes to proceed as a financially eligible person, the person shall file with
11 the petition an affidavit stating inability to pay the expenses of a proceeding pursuant to ORS
12 138.510 to 138.680, including, but not limited to, the filing fee required by ORS 138.560, or to employ
13 suitable counsel for such a proceeding. The affidavit shall contain a brief statement of the
14 petitioner’s assets and liabilities and income during the previous year. If the circuit court is satisfied
15 that the petitioner is unable to pay such expenses or to employ suitable counsel, it shall order that
16 the petitioner proceed as a financially eligible person. If the court finds that a petitioner who has
17 been sentenced to death is not competent to decide whether to accept or reject the appointment of
18 counsel, the court shall appoint counsel to represent the petitioner. However, when a circuit court
19 orders petitioner’s case transferred to another circuit court as provided in ORS 138.560 (4), the
20 matter of petitioner’s proceeding as a financially eligible person shall be determined by the latter
21 court.

22 (3) If a petitioner who has been sentenced to death qualifies for the appointment of counsel un-
23 der this section but rejects the appointment, the court shall determine, after a hearing if necessary,
24 whether the petitioner rejected the offer of counsel and made the decision with an understanding
25 of its legal consequences. The court shall make appropriate findings on the record.

26 (4) In the order to proceed as a financially eligible person, the circuit court shall appoint suit-
27 able counsel to represent petitioner. Counsel so appointed shall represent petitioner throughout the
28 proceedings in the circuit court. The court may not substitute one appointed counsel for another
29 except pursuant to the policies, procedures, standards and guidelines of the Public Defense Services
30 Commission.

31 (5) If counsel appointed by the circuit court determines that the petition as filed by petitioner
32 is defective, either in form or in substance, or both, counsel may move to amend the petition within
33 15 days following counsel’s appointment, or within a further period as the court may allow. The
34 amendment shall be permitted as of right at any time during this period. If appointed counsel be-
35 lieves that the original petition cannot be construed to state a ground for relief under ORS 138.510
36 to 138.680, and cannot be amended to state a ground for relief, counsel shall, in lieu of moving to
37 amend the petition, inform the petitioner and notify the circuit court of counsel’s belief by filing an
38 affidavit stating the belief and the reasons therefor with the clerk of the circuit court. This affidavit
39 does not constitute a ground for denying the petition prior to a hearing upon its sufficiency, but the
40 circuit court may consider the affidavit in deciding upon the sufficiency of the petition at the
41 hearing.

42 (6) When a petitioner has been ordered to proceed as a financially eligible person, the expenses
43 which are necessary for the proceedings upon the petition in the circuit court and the compensation
44 to appointed counsel for petitioner as provided in this subsection shall be paid by the [*public defense*
45 *services*] executive director **of the Office of Public Defense Services** from funds available for the

1 purpose. At the conclusion of proceedings on a petition pursuant to ORS 138.510 to 138.680, the
 2 [public defense services] executive director shall determine and pay, as provided by the policies,
 3 procedures, standards and guidelines of the Public Defense Services Commission, the amount of ex-
 4 penses of petitioner and compensation for the services of appointed counsel in the proceedings in
 5 the circuit court.

6 (7) If the [public defense services] executive director **of the Office of Public Defense Services**
 7 denies, in whole or in part, expenses and compensation submitted for review and payment, the per-
 8 son who submitted the payment request may appeal the decision to the presiding judge of the circuit
 9 court. The presiding judge or the designee of the presiding judge shall review the [public defense
 10 services] executive director's decision for abuse of discretion. The decision of the presiding judge or
 11 the designee of the presiding judge is final.

12 (8)(a) When a petitioner has been authorized to proceed as a financially eligible person, all court
 13 fees in the circuit court, except for the filing fee required by ORS 138.560, are waived.

14 (b) When a petitioner is allowed to file a petition without payment of the fee required by ORS
 15 138.560 due to inability to pay, the fee is not waived but may be drawn from, or charged against,
 16 the petitioner's trust account if the petitioner is an inmate in a correctional facility.

17 (9) Notwithstanding any other provision of this chapter, a court may not appoint as counsel for
 18 a petitioner who has been sentenced to death a counsel who previously represented the petitioner
 19 at trial or on automatic and direct review in the case resulting in the death sentence unless the
 20 petitioner and the counsel expressly request continued representation.

21 **SECTION 15.** ORS 151.225 is amended to read:

22 151.225. (1) The Public Defense Services Account is established in the State Treasury, separate
 23 and distinct from the General Fund. The Public Defense Services Account is continuously appropri-
 24 ated to the Public Defense Services Commission to:

25 (a) Reimburse the actual costs and expenses, including personnel expenses, incurred in admin-
 26 istration and support of the public defense system;

27 (b) Reimburse the State Court Administrator under ORS 151.216 [(1)(i)] **(1)(n)**; and

28 (c) Pay other expenses in connection with the legal representation of persons for which the
 29 commission is responsible by law, including expenses incurred in the administration of the public
 30 defense system.

31 (2) All moneys received by the Judicial Department under ORS 135.050 (8), 151.487 (1), 419A.211,
 32 419B.198 (1), 419C.203 (1) or 419C.535 (2) shall be deposited in the Public Defense Services Account.

33 (3) All gifts, grants or contributions accepted by the commission under ORS 151.216 shall be
 34 deposited in a separate subaccount created in the Public Defense Services Account to be used by
 35 the commission for the purpose for which the gift, grant or contribution was given or granted.

36 **SECTION 16.** ORS 151.485 is amended to read:

37 151.485. (1) For purposes of determining the financial eligibility for appointed counsel of persons
 38 with a constitutional or statutory right to counsel in matters before the state courts and whose
 39 counsel is authorized to be paid by the [public defense services] executive director **of the Office of**
 40 **Public Defense Services** under ORS 151.219, a person is financially eligible for appointed counsel
 41 if the person is determined to be financially unable to retain adequate counsel without substantial
 42 hardship in providing basic economic necessities to the person or the person's dependent family
 43 under standards established by the Public Defense Services Commission under ORS 151.216.

44 (2) A determination of financial eligibility shall be made upon the basis of information contained
 45 in a detailed financial statement submitted by the person for whom counsel is requested or appointed

1 or, in an appropriate case, by the person's parent, guardian or custodian. The financial statement
 2 shall be in the form prescribed by the Public Defense Services Commission. The form shall contain
 3 a full disclosure of all assets, liabilities, current income, dependents and other information required
 4 by ORS 135.050 (4) and, in addition, any information required by the commission and state courts
 5 as necessary to determine eligibility. The commission shall adopt uniform statewide guidelines and
 6 procedures that prescribe how to use the form and determine financial eligibility for appointed
 7 counsel.

8 (3) If at any time after the appointment of counsel the court having jurisdiction of the case finds
 9 that the defendant is financially able to obtain counsel, the court may terminate the appointment
 10 of counsel. If at any time during criminal proceedings the court having jurisdiction of the case finds
 11 that the defendant is financially unable to pay counsel whom the defendant has retained, the court
 12 may appoint counsel as provided in this section.

13 (4) In addition to any criminal prosecution, a civil proceeding may be initiated by any public
 14 body that has expended moneys for the defendant's legal assistance within two years of judgment
 15 if the defendant was not qualified for legal assistance in accordance with subsections (1) and (2) of
 16 this section. As used in this subsection, "legal assistance" includes legal counsel, transcripts, wit-
 17 ness fees and expenses and any other goods or services required by law to be provided to a finan-
 18 cially eligible person at state expense under ORS 151.216 and 151.219.

19 (5) The civil proceeding shall be subject to the exemptions from execution as provided for by
 20 law.

21 **SECTION 17.** ORS 151.493 is amended to read:

22 151.493. (1) Notwithstanding any other provision of law, any state agency as defined in ORS
 23 192.311 that receives a request for release of information from the state courts for the purpose of
 24 verifying the financial eligibility of a person under ORS 151.485 to 151.497 shall release all requested
 25 information to the state court. The court shall forward to the state agency a certification signed by
 26 the person about whom the requested information is sought that authorizes the release of the in-
 27 formation.

28 (2) Upon its own motion or motion of the [*public defense services*] executive director **of the Of-**
 29 **ice of Public Defense Services**, a court that has appointed counsel for a person by reason of fi-
 30 nancial eligibility may order the release of any information relating to the person's financial
 31 situation held by any other person.

32 **SECTION 18.** ORS 161.309 is amended to read:

33 161.309. (1) The defendant may not introduce evidence on the issue of insanity under ORS
 34 161.295, unless the defendant:

35 (a) Gives notice of intent to do so in the manner provided in subsection (3) of this section; and

36 (b) Files with the court a report of a psychiatric or psychological evaluation, conducted by a
 37 certified evaluator, in the manner provided in subsection (4) of this section.

38 (2) The defendant may not introduce in the case in chief expert testimony regarding partial re-
 39 sponsibility or diminished capacity under ORS 161.300 unless the defendant gives notice of intent to
 40 do so in the manner provided in subsection (3) of this section.

41 (3) A defendant who is required under subsection (1) or (2) of this section to give notice shall
 42 file a written notice of purpose at the time the defendant pleads not guilty. The defendant may file
 43 the notice at any time after the plea but before trial when just cause for failure to file the notice
 44 at the time of making the plea is shown. If the defendant fails to file notice, the defendant may not
 45 introduce evidence for the establishment of a defense under ORS 161.295 or 161.300 unless the court,

1 in its discretion, permits the evidence to be introduced where just cause for failure to file the notice
2 is shown.

3 (4) A defendant who is required under subsection (1) of this section to file a report of a psy-
4 chiatric or psychological evaluation shall file the report before trial. The report must be based on
5 an evaluation conducted after the date of the alleged offense and must address the issue of insanity
6 under ORS 161.295 and the dispositional determination described in ORS 161.325. If the defendant
7 fails to file a complete report before trial, the defendant may not introduce evidence for the estab-
8 lishment of a defense under ORS 161.295 unless:

9 (a) The court, in its discretion, permits the evidence to be introduced when just cause for failure
10 to file the report is shown; and

11 (b) If the defendant is charged with a felony, the defendant is tried by a jury.

12 (5)(a) A court may not accept a plea of guilty except for insanity to a felony unless a report
13 described in subsection (4) of this section is filed with the court. If the report has not been filed, the
14 court may order that a psychiatric or psychological evaluation of the defendant be conducted by a
15 certified evaluator and a report of the evaluation be filed with the court.

16 (b) When the court orders an evaluation of a financially eligible person under this subsection,
17 the court shall order the [*public defense services*] executive director **of the Office of Public Defense**
18 **Services** to pay a reasonable fee for the evaluation from funds available for that purpose.

19 (c) A certified evaluator performing an evaluation of a defendant on the issue of insanity under
20 this subsection is not obligated to evaluate the defendant for fitness to proceed unless, during the
21 evaluation, the certified evaluator determines that the defendant's fitness to proceed is drawn in
22 question.

23 (6) As used in this section, "certified evaluator" means a psychiatrist or psychologist who holds
24 a valid certification under the provisions of ORS 161.392.

25 **SECTION 19.** ORS 161.346 is amended to read:

26 161.346. (1) When the Psychiatric Security Review Board conducts a hearing under ORS 161.315
27 to 161.351, the board shall enter an order and make findings in support of the order. If the board
28 finds that a person under the jurisdiction of the board:

29 (a) Is no longer affected by a qualifying mental disorder, or, if so affected, no longer presents
30 a substantial danger to others, the board shall order the person discharged from commitment and
31 conditional release.

32 (b) Is still affected by a qualifying mental disorder and is a substantial danger to others, but can
33 be controlled adequately if conditionally released with treatment as a condition of release, the board
34 shall order the person conditionally released as provided in ORS 161.336.

35 (c) Has not recovered from the qualifying mental disorder, is a substantial danger to others and
36 cannot adequately be controlled if conditionally released on supervision, the board shall order the
37 person committed to, or retained in, a state hospital, or if the person is under 18 years of age, a
38 secure intensive community inpatient facility, for care, custody and treatment.

39 (2) To assist the board in making the determination described in subsection (1) of this section,
40 the board may, at any time, appoint a psychiatrist or licensed psychologist to examine the person
41 and to submit a report to the board. The report must include an opinion as to the mental condition
42 of the person, whether the person presents a substantial danger to others and whether the person
43 could be adequately controlled with treatment as a condition of release.

44 (3) The board may make the determination regarding discharge or conditional release based
45 upon the written reports submitted pursuant to this section. If any member of the board desires

1 further information from the examining psychiatrist or licensed psychologist who submitted the re-
2 port, the board shall summon the person to give testimony. The board shall consider all evidence
3 available to it that is material, relevant and reliable regarding the issues before the board. The ev-
4 idence may include but is not limited to the record of trial, the information supplied by the attorney
5 representing the state or by any other interested party, including the person, and information con-
6 cerning the person's mental condition and the entire psychiatric and criminal history of the person.
7 All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their
8 serious affairs shall be admissible at hearings. Testimony shall be taken upon oath or affirmation
9 of the witness from whom received. The officer presiding at the hearing shall administer oaths or
10 affirmations to witnesses.

11 (4) The board shall furnish to the person about whom the hearing is being conducted, the at-
12 torney representing the person, the Attorney General and the district attorney of the county from
13 which the person was committed written notice of any hearing pending under this section within a
14 reasonable time prior to the hearing. The notice shall include:

15 (a) The time, place and location of the hearing.

16 (b) The nature of the hearing and the specific action for which a hearing has been requested,
17 the issues to be considered at the hearing and a reference to the particular sections of the statutes
18 and rules involved.

19 (c) A statement of the legal authority and jurisdiction under which the hearing is to be held.

20 (d) A statement of all rights under subsection (6) of this section.

21 (5) Prior to the commencement of the hearing, the board shall serve personally or by mail a
22 written notice to each party as provided in ORS 183.413 (2).

23 (6) At the hearing, the person about whom the hearing is being held shall have the right:

24 (a) To appear at all proceedings held pursuant to this section, except for deliberations.

25 (b) To cross-examine all witnesses appearing to testify at the hearing.

26 (c) To subpoena witnesses and documents as provided in ORS 161.395.

27 (d) To be represented by suitable legal counsel possessing skills and experience commensurate
28 with the nature and complexity of the case, to consult with counsel prior to the hearing and, if fi-
29 nancially eligible, to have suitable counsel appointed at state expense.

30 (e) To examine all information, documents and reports that the board considers. If then available
31 to the board, the information, documents and reports shall be disclosed to the person so as to allow
32 examination prior to the hearing.

33 (7) A record shall be kept of all hearings conducted under ORS 161.315 to 161.351, except for
34 deliberations.

35 (8) Upon request of any party, or on motion of the board, the hearing may be continued for a
36 reasonable period not to exceed 60 days to obtain additional information or testimony or for other
37 good cause shown.

38 (9) Within 30 days following the conclusion of the hearing, the board shall provide to the person,
39 the attorney representing the person, the Attorney General or other attorney representing the state,
40 if any, written notice of the order entered by the board.

41 (10) The burden of proof on all issues at hearings under ORS 161.315 to 161.351 shall be by a
42 preponderance of the evidence.

43 (11) If the board determines that the person about whom the hearing is being held is financially
44 eligible, the board shall appoint suitable counsel to represent the person. Counsel so appointed shall
45 be an attorney who satisfies the professional qualifications established by the Public Defense Ser-

1 vices Commission under ORS 151.216. The [*public defense services*] executive director **of the Office**
 2 **of Public Defense Services** shall determine and allow fair compensation for counsel appointed un-
 3 der this subsection and the reasonable expenses of the person in respect to the hearing. Compen-
 4 sation payable to appointed counsel shall not be less than the applicable compensation level
 5 established under ORS 151.216. The compensation and expenses so allowed shall be paid by the
 6 [*public defense services*] executive director from funds available for the purpose.

7 (12) The Attorney General may represent the state at contested hearings under ORS 161.315 to
 8 161.351 unless the district attorney of the county from which the person was committed elects to
 9 represent the state. The district attorney of the county from which the person was committed shall
 10 cooperate with the Attorney General in securing the material necessary for presenting a contested
 11 hearing. If the district attorney elects to represent the state, the district attorney shall give timely
 12 written notice of such election to the Attorney General, the board and the attorney representing the
 13 person.

14 **SECTION 20.** ORS 161.348 is amended to read:

15 161.348. (1) When a person over whom the Psychiatric Security Review Board exercises juris-
 16 diction under ORS 161.315 to 161.351 or 419C.544 is adversely affected or aggrieved by a final order
 17 of the board, the person is entitled to judicial review of the final order. The person is entitled on
 18 judicial review to suitable counsel possessing skills and experience commensurate with the nature
 19 and complexity of the case. If the person is financially eligible, suitable counsel shall be appointed
 20 by the reviewing court in the manner provided in ORS 138.500 (1). If the person is financially eligi-
 21 ble, the [*public defense services*] executive director **of the Office of Public Defense Services** shall
 22 determine and pay, as provided in ORS 138.500, the cost of briefs, any other expenses of the person
 23 necessary to the review and compensation for counsel appointed for the person. The costs, expenses
 24 and compensation so allowed shall be paid as provided in ORS 138.500.

25 (2) The order and the proceedings underlying the order are subject to review by the Court of
 26 Appeals upon petition to that court filed within 60 days of the order for which review is sought. The
 27 board shall submit to the court the record of the proceeding or, if the person agrees, a shortened
 28 record. The record may include a certified true copy of a tape recording of the proceedings at a
 29 hearing in accordance with ORS 161.346. A copy of the record transmitted shall be delivered to the
 30 person by the board.

31 (3) The court may affirm, reverse or remand the order on the same basis as provided in ORS
 32 183.482 (8).

33 (4) The filing of the petition does not stay the order of the board, but the board or the Court
 34 of Appeals may order a stay upon application on such terms as are deemed proper.

35 **SECTION 21.** ORS 161.365 is amended to read:

36 161.365. (1) When the court has reason to doubt the defendant's fitness to proceed by reason of
 37 incapacity as described in ORS 161.360, the court may call any witness to its assistance in reaching
 38 its decision and shall order that a community mental health program director or the director's
 39 designee consult with the defendant to determine whether services and supervision necessary to
 40 safely restore the defendant's fitness to proceed are available in the community. After the consul-
 41 tation, the program director or the director's designee shall provide to the court a copy of the
 42 findings resulting from the consultation. If the court determines the assistance of a psychiatrist or
 43 psychologist would be helpful, the court may:

44 (a) Order that a psychiatric or psychological examination of the defendant be conducted by a
 45 certified evaluator as defined in ORS 161.309 and a report of the examination be prepared; or

1 (b) Order the defendant to be committed for the purpose of an examination for a period not ex-
2 ceeding 30 days to a state mental hospital or other facility designated by the Oregon Health Au-
3 thority if the defendant is at least 18 years of age, or to a secure intensive community inpatient
4 facility designated by the authority if the defendant is under 18 years of age.

5 (2) The report of an examination described in this section must include, but is not necessarily
6 limited to, the following:

7 (a) A description of the nature of the examination;

8 (b) A statement of the mental condition of the defendant;

9 (c) If the defendant suffers from a qualifying mental disorder, an opinion as to whether the de-
10 fendant is incapacitated within the description set out in ORS 161.360; and

11 (d) If the defendant is incapacitated within the description set out in ORS 161.360, a recom-
12 mendation of treatment and services necessary to restore capacity.

13 (3) Except when the defendant and the court both request to the contrary, the report may not
14 contain any findings or conclusions as to whether the defendant as a result of a qualifying mental
15 disorder was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal act
16 charged.

17 (4) If the examination by the psychiatrist or psychologist cannot be conducted by reason of the
18 unwillingness of the defendant to participate in the examination, the report must so state and must
19 include, if possible, an opinion as to whether the unwillingness of the defendant was the result of
20 a qualifying mental disorder affecting capacity to proceed.

21 (5) The report must be filed with the clerk of the court, who shall cause copies to be delivered
22 to the district attorney and to counsel for defendant.

23 (6)(a) When upon motion of the court or a financially eligible defendant, the court has ordered
24 a psychiatric or psychological examination of the defendant, a county or justice court shall order
25 the county to pay, and a circuit court shall order the [*public defense services*] executive director **of**
26 **the Office of Public Defense Services** to pay from funds available for the purpose:

27 (A) A reasonable fee if the examination of the defendant is conducted by a psychiatrist or psy-
28 chologist in private practice; and

29 (B) All costs including transportation of the defendant if the examination is conducted by a
30 psychiatrist or psychologist in the employ of the Oregon Health Authority or a community mental
31 health program established under ORS 430.610 to 430.670.

32 (b) When an examination is ordered at the request or with the acquiescence of a defendant who
33 is determined not to be financially eligible, the examination shall be performed at the defendant's
34 expense. When an examination is ordered at the request of the prosecution, the county shall pay for
35 the expense of the examination.

36 (7) The Oregon Health Authority shall establish by rule standards for the consultation described
37 in subsection (1) of this section.

38 **SECTION 22.** ORS 161.665 is amended to read:

39 161.665. (1) Except as provided in ORS 151.505, the court, only in the case of a defendant for
40 whom it enters a judgment of conviction, may include in its sentence thereunder a money award for
41 all costs specially incurred by the state in prosecuting the defendant. Costs include a reasonable
42 attorney fee for counsel appointed pursuant to ORS 135.045 or 135.050 and a reasonable amount for
43 fees and expenses incurred pursuant to preauthorization under ORS 135.055. A reasonable attorney
44 fee is presumed to be a reasonable number of hours at the hourly rate authorized by the Public
45 Defense Services Commission under ORS 151.216. Costs do not include expenses inherent in provid-

1 ing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and
 2 operation of government agencies that must be made by the public irrespective of specific violations
 3 of law.

4 (2) Except as provided in ORS 151.505, the court, after the conclusion of an appeal of its initial
 5 judgment of conviction, may include in its general judgment, or enter a supplemental judgment that
 6 includes, a money award that requires a convicted defendant to pay a reasonable attorney fee for
 7 counsel appointed pursuant to ORS 138.500, including counsel who is appointed under ORS 151.216
 8 or counsel who is under contract to provide services for the proceeding under ORS 151.219, and
 9 other costs and expenses allowed by the [*public defense services*] executive director **of the Office**
 10 **of Public Defense Services** under ORS 138.500 (4). A reasonable attorney fee is presumed to be a
 11 reasonable number of hours at the hourly rate authorized by the commission under ORS 151.216.

12 (3) For purposes of subsections (1) and (2) of this section, compensation of counsel is determined
 13 by reference to a schedule of compensation established by the commission under ORS 151.216.

14 (4) The court may not sentence a defendant to pay costs under this section unless the defendant
 15 is or may be able to pay them. In determining the amount and method of payment of costs, the court
 16 shall take account of the financial resources of the defendant and the nature of the burden that
 17 payment of costs will impose.

18 (5) A defendant who has been sentenced to pay costs under this section and who is not in
 19 contumacious default in the payment of costs may at any time petition the court that sentenced the
 20 defendant for remission of the payment of costs or of any unpaid portion of costs. If it appears to
 21 the satisfaction of the court that payment of the amount due will impose manifest hardship on the
 22 defendant or the immediate family of the defendant, the court may enter a supplemental judgment
 23 that remits all or part of the amount due in costs, or modifies the method of payment under ORS
 24 161.675.

25 (6) Except as provided in subsection (7) of this section, all moneys collected or paid under this
 26 section shall be paid into the Criminal Fine Account.

27 (7) The court may, in the judgment of conviction, include a money award requiring the defendant
 28 to pay the costs of extraditing the defendant to this state. Any amounts awarded to the state under
 29 this subsection must be listed separately in the money award portion of the judgment. All moneys
 30 collected or paid under this subsection shall be deposited into the Arrest and Return Account es-
 31 tablished by ORS 133.865.

32 **SECTION 23.** ORS 244.050 is amended to read:

33 244.050. (1) On or before April 15 of each year the following persons shall file with the Oregon
 34 Government Ethics Commission a verified statement of economic interest as required under this
 35 chapter:

36 (a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the
 37 Bureau of Labor and Industries, district attorneys and members of the Legislative Assembly.

38 (b) Any judicial officer, including justices of the peace and municipal judges, except any pro tem
 39 judicial officer who does not otherwise serve as a judicial officer.

40 (c) Any candidate for a public office designated in paragraph (a) or (b) of this subsection.

41 (d) The Deputy Attorney General.

42 (e) The Deputy Secretary of State.

43 (f) The Legislative Administrator, the Legislative Counsel, the Legislative Fiscal Officer, the
 44 Legislative Policy and Research Director, the Secretary of the Senate and the Chief Clerk of the
 45 House of Representatives.

- 1 (g) The president and vice presidents, or their administrative equivalents, in each public uni-
2 versity listed in ORS 352.002.
- 3 (h) The following state officers:
- 4 (A) Adjutant General.
5 (B) Director of Agriculture.
6 (C) Manager of State Accident Insurance Fund Corporation.
7 (D) Water Resources Director.
8 (E) Director of Department of Environmental Quality.
9 (F) Director of Oregon Department of Administrative Services.
10 (G) State Fish and Wildlife Director.
11 (H) State Forester.
12 (I) State Geologist.
13 (J) Director of Human Services.
14 (K) Director of the Department of Consumer and Business Services.
15 (L) Director of the Department of State Lands.
16 (M) State Librarian.
17 (N) Administrator of Oregon Liquor Control Commission.
18 (O) Superintendent of State Police.
19 (P) Director of the Public Employees Retirement System.
20 (Q) Director of Department of Revenue.
21 (R) Director of Transportation.
22 (S) Public Utility Commissioner.
23 (T) Director of Veterans' Affairs.
24 (U) Executive director of Oregon Government Ethics Commission.
25 (V) Director of the State Department of Energy.
26 (W) Director and each assistant director of the Oregon State Lottery.
27 (X) Director of the Department of Corrections.
28 (Y) Director of the Oregon Department of Aviation.
29 (Z) Executive director of the Oregon Criminal Justice Commission.
30 (AA) Director of the Oregon Business Development Department.
31 (BB) Director of the Office of Emergency Management.
32 (CC) Director of the Employment Department.
33 (DD) Chief of staff for the Governor.
34 (EE) Director of the Housing and Community Services Department.
35 (FF) State Court Administrator.
36 (GG) Director of the Department of Land Conservation and Development.
37 (HH) Board chairperson of the Land Use Board of Appeals.
38 (II) State Marine Director.
39 (JJ) Executive director of the Oregon Racing Commission.
40 (KK) State Parks and Recreation Director.
41 (LL) [*Public defense services*] executive director **of the Office of Public Defense Services.**
42 (MM) Chairperson of the Public Employees' Benefit Board.
43 (NN) Director of the Department of Public Safety Standards and Training.
44 (OO) Executive director of the Higher Education Coordinating Commission.
45 (PP) Executive director of the Oregon Watershed Enhancement Board.

- 1 (QQ) Director of the Oregon Youth Authority.
- 2 (RR) Director of the Oregon Health Authority.
- 3 (SS) Deputy Superintendent of Public Instruction.
- 4 (i) The First Partner, the legal counsel, the deputy legal counsel and all policy advisors within
- 5 the Governor's office.
- 6 (j) Every elected city or county official.
- 7 (k) Every member of a city or county planning, zoning or development commission.
- 8 (L) The chief executive officer of a city or county who performs the duties of manager or prin-
- 9 cipal administrator of the city or county.
- 10 (m) Members of local government boundary commissions formed under ORS 199.410 to 199.519.
- 11 (n) Every member of a governing body of a metropolitan service district and the auditor and
- 12 executive officer thereof.
- 13 (o) Each member of the board of directors of the State Accident Insurance Fund Corporation.
- 14 (p) The chief administrative officer and the financial officer of each common and union high
- 15 school district, education service district and community college district.
- 16 (q) Every member of the following state boards and commissions:
- 17 (A) Governing board of the State Department of Geology and Mineral Industries.
- 18 (B) Oregon Business Development Commission.
- 19 (C) State Board of Education.
- 20 (D) Environmental Quality Commission.
- 21 (E) Fish and Wildlife Commission of the State of Oregon.
- 22 (F) State Board of Forestry.
- 23 (G) Oregon Government Ethics Commission.
- 24 (H) Oregon Health Policy Board.
- 25 (I) Oregon Investment Council.
- 26 (J) Land Conservation and Development Commission.
- 27 (K) Oregon Liquor Control Commission.
- 28 (L) Oregon Short Term Fund Board.
- 29 (M) State Marine Board.
- 30 (N) Mass transit district boards.
- 31 (O) Energy Facility Siting Council.
- 32 (P) Board of Commissioners of the Port of Portland.
- 33 (Q) Employment Relations Board.
- 34 (R) Public Employees Retirement Board.
- 35 (S) Oregon Racing Commission.
- 36 (T) Oregon Transportation Commission.
- 37 (U) Water Resources Commission.
- 38 (V) Workers' Compensation Board.
- 39 (W) Oregon Facilities Authority.
- 40 (X) Oregon State Lottery Commission.
- 41 (Y) Pacific Northwest Electric Power and Conservation Planning Council.
- 42 (Z) Columbia River Gorge Commission.
- 43 (AA) Oregon Health and Science University Board of Directors.
- 44 (BB) Capitol Planning Commission.
- 45 (CC) Higher Education Coordinating Commission.

1 (DD) Oregon Growth Board.

2 (EE) Early Learning Council.

3 (r) The following officers of the State Treasurer:

4 (A) Deputy State Treasurer.

5 (B) Chief of staff for the office of the State Treasurer.

6 (C) Director of the Investment Division.

7 (s) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725
8 or 777.915 to 777.953.

9 (t) Every member of the board of directors of an authority created under ORS 441.525 to 441.595.

10 (u) Every member of a governing board of a public university listed in ORS 352.002.

11 (v) Every member of the board of directors of an authority created under ORS 465.600 to
12 465.621.

13 (2) By April 15 next after the date an appointment takes effect, every appointed public official
14 on a board or commission listed in subsection (1) of this section shall file with the Oregon Govern-
15 ment Ethics Commission a statement of economic interest as required under ORS 244.060, 244.070
16 and 244.090.

17 (3) By April 15 next after the filing deadline for the primary election, each candidate described
18 in subsection (1) of this section shall file with the commission a statement of economic interest as
19 required under ORS 244.060, 244.070 and 244.090.

20 (4) Not later than the 40th day before the date of the statewide general election, each candidate
21 described in subsection (1) of this section who will appear on the statewide general election ballot
22 and who was not required to file a statement of economic interest under subsections (1) to (3) of this
23 section shall file with the commission a statement of economic interest as required under ORS
24 244.060, 244.070 and 244.090.

25 (5) Subsections (1) to (3) of this section apply only to persons who are incumbent, elected or
26 appointed public officials as of April 15 and to persons who are candidates on April 15.

27 (6) If a statement required to be filed under this section has not been received by the commis-
28 sion within five days after the date the statement is due, the commission shall notify the public of-
29 ficial or candidate and give the public official or candidate not less than 15 days to comply with the
30 requirements of this section. If the public official or candidate fails to comply by the date set by the
31 commission, the commission may impose a civil penalty as provided in ORS 244.350.

32 **SECTION 24.** ORS 419A.211 is amended to read:

33 419A.211. (1) If the child, ward, youth, youth offender, parent or guardian is determined to be
34 entitled to, and financially eligible for, appointment of counsel at state expense in an appeal as
35 provided in ORS 419A.200 and 419A.208, the court, upon request of the person or upon its own mo-
36 tion, shall appoint suitable counsel to represent the person. Counsel appointed by the court shall
37 be paid compensation determined by the [*public defense services*] executive director **of the Office**
38 **of Public Defense Services** as provided in ORS 135.055 if the circuit court is the appellate court
39 or as provided in ORS 138.500 if the Court of Appeals or the Supreme Court is the appellate court.
40 The court may not substitute one appointed counsel for another except pursuant to the policies,
41 procedures, standards and guidelines of the Public Defense Services Commission.

42 (2)(a) When the court appoints counsel to represent the child, ward, youth or youth offender, it
43 may order the parent, if able, or guardian of the estate, if the estate is able, to pay to the Public
44 Defense Services Account established by ORS 151.225, through the clerk of the court, in full or in
45 part the administrative costs of determining the ability of the parents or estate to pay for legal

1 services and the costs of the legal and other services that are related to the provision of appointed
2 counsel.

3 (b) The test of the parent's or estate's ability to pay costs under paragraph (a) of this subsection
4 is the same test as applied to appointment of counsel for defendants under ORS 151.216. If counsel
5 is provided at state expense, the court shall apply this test in accordance with the guidelines
6 adopted by the Public Defense Services Commission under ORS 151.485.

7 (c) If counsel is provided at state expense, the court shall determine the amount the parents or
8 estate is required to pay for the costs of administrative, legal and other services related to the
9 provision of appointed counsel in the same manner as this amount is determined under ORS 151.487.

10 (d) The court's order of payment is enforceable in the same manner as an order of support under
11 ORS 419B.408 and 419C.600.

12 (3) When the court appoints counsel and the child, ward, youth, youth offender, parent or
13 guardian has been determined to be entitled to, and financially eligible for, appointed counsel at
14 state expense, the compensation for counsel and costs and expenses necessary to the appeal shall
15 be determined and paid as provided in ORS 135.055 if the circuit court is the appellate court or as
16 provided in ORS 138.500 if the Court of Appeals or the Supreme Court is the appellate court.

17 **SECTION 25.** ORS 419C.380 is amended to read:

18 419C.380. (1) An evaluation ordered under ORS 419C.378 must be conducted by a psychiatrist,
19 a licensed psychologist or a regulated social worker. If an evaluation is requested, the party at
20 whose request the evaluation was ordered shall notify the court and other parties of the date, time
21 and location of the evaluation and the name of the evaluator chosen by the party. A party or the
22 court may submit written information to the evaluator for consideration. When written information
23 that has not been provided to the court or an opposing party is submitted to the evaluator, the party
24 submitting the written information to the evaluator shall provide the written information to the
25 court and the opposing party.

26 (2)(a) Upon motion of the youth, or upon the court's own motion, a court shall determine
27 whether the youth is financially eligible under the policies, procedures, standards and guidelines of
28 the Public Defense Services Commission.

29 (b) If a county court or justice court determines that the youth is financially eligible, the court
30 shall order the county to pay the fees and costs described in subsection (3) of this section from funds
31 available for that purpose.

32 (c) If a circuit court determines that the youth is financially eligible, the court shall order the
33 [public defense services] executive director **of the Office of Public Defense Services** to pay the fees
34 and costs described in subsection (3) of this section from funds available for that purpose.

35 (3) If a court determines that a youth is financially eligible under subsection (2) of this section,
36 the court shall order that:

37 (a) A reasonable fee be paid to a psychiatrist, licensed psychologist or regulated social worker
38 in private practice who conducts the evaluation; and

39 (b) All costs, including transportation of the youth, be paid if the evaluation is conducted by a
40 psychiatrist, licensed psychologist or regulated social worker employed by the Department of Human
41 Services or is conducted by a community mental health program or community developmental disa-
42 bilities program established under ORS 430.610 to 430.695.

43 (4) If an evaluation is ordered under ORS 419C.378 at the request of or with the acquiescence
44 of a youth, and the youth is determined not to be financially eligible under subsection (2) of this
45 section, the evaluation shall be performed at the youth's expense.

1 (5) If an evaluation is ordered under ORS 419C.378 at the request of the district attorney or
2 juvenile department, the county shall pay for the expense of the evaluation.

3 (6) After a motion is made by the court or the youth under ORS 419C.378 (3), the state shall
4 have the right to seek an independent evaluation at its own expense.

5 (7) A youth may not be removed from the youth's current placement for the purpose of an
6 evaluation performed under this section unless the youth has been placed in a detention facility as
7 defined in ORS 419A.004 or a youth correction facility as defined in ORS 420.005.

8 **SECTION 26.** ORS 419C.535 is amended to read:

9 419C.535. (1) If the juvenile panel of the Psychiatric Security Review Board determines that a
10 young person about whom a hearing under ORS 419C.532 is being held is financially eligible, the
11 juvenile panel shall appoint suitable counsel to represent the young person. Counsel appointed must
12 be an attorney who satisfies the professional qualification standards established by the Public De-
13 fense Services Commission under ORS 151.216. The [*public defense services*] executive director **of the**
14 **Office of Public Defense Services** shall determine and allow fair compensation for counsel ap-
15 pointed under this subsection and the reasonable expenses of the young person in respect to the
16 hearing. Compensation payable to appointed counsel may not be less than the applicable compen-
17 sation level established under ORS 151.216. The [*public defense services*] executive director shall pay
18 compensation and expenses allowed from funds available for that purpose.

19 (2) When the juvenile panel appoints counsel to represent the young person, the juvenile panel
20 may order the young person, if able, parent, if able, or guardian of the estate, if the estate is able,
21 to pay to the Public Defense Services Account established by ORS 151.225, through the clerk of the
22 court, in full or in part, the administrative costs of determining the ability of the young person,
23 parent or estate to pay for legal services and the costs of the legal and other services that are re-
24 lated to the provision of appointed counsel. The juvenile panel's order of payment may be entered
25 in the County Clerk Lien Record and enforced as provided in ORS 205.126.

26 (3) The test of the young person's, parent's or estate's ability to pay costs under subsection (2)
27 of this section is the same test as applied to appointment of counsel for defendants under ORS
28 135.050 or under the rules adopted under ORS 151.216. If counsel is provided at state expense, the
29 juvenile panel shall apply this test in accordance with the guidelines adopted by the Public Defense
30 Services Commission under ORS 151.485.

31 (4) If counsel is provided at state expense, the juvenile panel shall determine the amount the
32 young person, parent or estate is required to pay for the costs of administrative, legal and other
33 services related to the provision of appointed counsel in the same manner as this amount is deter-
34 mined under ORS 151.487.

35 (5) The Attorney General may represent the state at contested hearings before the juvenile
36 panel unless the district attorney of the county in which the young person was adjudicated elects
37 to represent the state. The district attorney of the county in which the young person was adjudi-
38 cated shall cooperate with the Attorney General in securing the material necessary for presenting
39 a contested hearing before the juvenile panel. If the district attorney elects to represent the state,
40 the district attorney shall give timely written notice to the Attorney General, the juvenile panel and
41 the attorney representing the young person.

42 **SECTION 27.** ORS 426.135 is amended to read:

43 426.135. If a person determined to be a person with mental illness as provided in ORS 426.130,
44 or determined to be an extremely dangerous person with mental illness under ORS 426.701 or
45 426.702, appeals the determination or the disposition, and is determined to be financially eligible for

1 appointed counsel at state expense, upon request of the person or upon its own motion, the court
 2 shall appoint suitable legal counsel to represent the person. The compensation for legal counsel and
 3 costs and expenses necessary to the appeal shall be determined and paid by the [*public defense ser-*
 4 *vices*] executive director **of the Office of Public Defense Services** as provided in ORS 135.055 if
 5 the circuit court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or
 6 Supreme Court is the appellate court. The compensation, costs and expenses shall be paid as pro-
 7 vided in ORS 138.500.

8 **SECTION 28.** ORS 426.250 is amended to read:

9 426.250. The following is a nonexclusive list of responsibilities for payment of various costs re-
 10 lated to commitment proceedings under this chapter as described:

11 (1) Any physician or qualified professional recommended by the Oregon Health Authority who
 12 is employed under ORS 426.110 to make an examination as to the mental condition of a person al-
 13 leged to have a mental illness shall be allowed a fee as the court in its discretion determines rea-
 14 sonable for the examination.

15 (2) Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal
 16 cases, and are subject to compulsory attendance in the same manner as provided in ORS 136.567 to
 17 136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in
 18 ORS 136.623 to 136.637. The party who subpoenas the witness or requests the court to subpoena the
 19 witness is responsible for payment of the cost of the subpoena and payment for the attendance of
 20 the witness at a hearing. When the witness has been subpoenaed on behalf of a person alleged to
 21 have a mental illness who is represented by appointed counsel, the fees and costs allowed for that
 22 witness shall be paid pursuant to ORS 135.055. If the costs of witnesses subpoenaed by the person
 23 are paid as provided under this subsection, the procedure for subpoenaing witnesses shall comply
 24 with ORS 136.570.

25 (3) If a person with a right to a counsel under ORS 426.100, 426.701 or 426.702 is determined to
 26 be financially eligible for appointed counsel at state expense, the [*public defense services*] executive
 27 director **of the Office of Public Defense Services** shall determine and pay, as provided in ORS
 28 135.055, the reasonable expenses related to the representation of the person and compensation for
 29 legal counsel. The expenses and compensation so allowed shall be paid by the [*public defense*
 30 *services*] executive director from funds available for the purpose.

31 (4) The authority shall pay the costs of expenses incurred under ORS 426.100 by the Attorney
 32 General's office. Any costs for district attorneys or other counsel appointed to assume responsibility
 33 for presenting the state's case shall be paid by the county where the commitment hearing is held,
 34 subject to reimbursement under ORS 426.310.

35 (5) All costs incurred in connection with a proceeding under ORS 426.180, 426.701 or 426.702,
 36 including the costs of transportation, commitment and delivery of the person, shall be paid by the
 37 community mental health program in the county of which the person is a resident. If the person is
 38 not a resident of this state, then the costs incurred in connection with the proceeding shall be paid
 39 by the community mental health program in the county from which the emergency admission was
 40 made.

41 (6) All costs incurred in connection with a proceeding under ORS 426.180 for the commitment
 42 of a person from a reservation, including the cost of transportation, commitment and delivery of the
 43 person, shall be paid by the governing body of the reservation of which the person is a resident.

44 **SECTION 29.** ORS 427.265 is amended to read:

45 427.265. (1) At the time that a person who is alleged to have an intellectual disability and to

1 be in need of commitment for residential care, treatment and training is brought before the court,
 2 the court shall advise the person of the reason for being brought before the court, the nature of the
 3 proceedings and the possible results of the proceedings. The court shall also advise the person of
 4 the right to subpoena witnesses and to suitable legal counsel possessing skills and experience
 5 commensurate with the nature of the allegations and complexity of the case during the proceedings,
 6 and that if the person does not have funds with which to retain suitable legal counsel, the court
 7 shall appoint such legal counsel to represent the person. If the person does not request legal coun-
 8 sel, the legal guardian, relative or friend may request the assistance of legal counsel on behalf of
 9 the person.

10 (2) If no request for legal counsel is made, the court shall appoint suitable legal counsel.

11 (3) If the person is unable to afford legal counsel, the court, if the matter is before a county or
 12 justice court, or the [*public defense services*] executive director **of the Office of Public Defense**
 13 **Services**, if the matter is before the circuit court, shall determine and allow, as provided in ORS
 14 135.055, the reasonable expenses of the person and compensation for legal counsel. The expenses and
 15 compensation so allowed by a county court shall be paid by the county of residence of the person.
 16 The expenses and compensation determined by the [*public defense services*] executive director shall
 17 be paid by the [*public defense services*] executive director from funds available for the purpose. In
 18 all cases legal counsel shall be present at the hearing and may examine all witnesses offering tes-
 19 timony, and otherwise represent the person.

20 (4) The court may, for good cause, postpone the hearing for not more than 72 hours to allow
 21 preparation for the hearing and order the continuation of detention authorized under ORS 427.255
 22 during a postponement, if requested by the person, the legal counsel, parent or guardian of the
 23 person, an examiner or on the court's own motion.

24 **SECTION 30.** ORS 427.295 is amended to read:

25 427.295. If a person appeals a commitment order issued under ORS 427.290, the court, upon re-
 26 quest of the person or upon its own motion and upon finding that the person is financially eligible
 27 for appointed counsel at state expense, shall appoint suitable legal counsel to represent the person.
 28 The compensation for legal counsel and costs and expenses necessary to the appeal shall be deter-
 29 mined and paid by the [*public defense services*] executive director **of the Office of Public Defense**
 30 **Services** as provided in ORS 135.055 if the circuit court is the appellate court or as provided in
 31 ORS 138.500 if the Court of Appeals or Supreme Court is the appellate court. The compensation,
 32 costs and expenses so allowed shall be paid as provided in ORS 138.500.

33 **SECTION 31.** ORS 433.466 is amended to read:

34 433.466. (1) A person or group of persons subject to isolation or quarantine or other public
 35 health measure pursuant to ORS 433.121 or 433.123 has the right to be represented by legal counsel
 36 if the person or group of persons so elects. If the person or group of persons requests legal counsel
 37 and cannot afford counsel, the court shall appoint legal counsel. If no request for legal counsel is
 38 made, the court must appoint legal counsel unless counsel is expressly, knowingly and intelligently
 39 refused by the person or the group of persons. The person or the group of persons may request legal
 40 counsel at any time during the period of imposition of the isolation, quarantine or other public
 41 health measure.

42 (2) If a person is unable to afford legal counsel, the [*public defense services*] executive director
 43 **of the Office of Public Defense Services** shall determine and pay, as provided in ORS 135.055, the
 44 reasonable expenses of the person and compensation for legal counsel appointed to represent the
 45 person.

MISCELLANEOUS

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SECTION 32. Section 7 of this 2019 Act is repealed on December 31, 2021.

SECTION 33. The unit captions used in this 2019 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2019 Act.

SECTION 34. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.
