

## FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: SB 337 - B10

82nd Oregon Legislative Assembly – 2023 Regular Session

Legislative Fiscal Office

*Only Impacts on Original or Engrossed Versions are Considered Official*

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### Measure Description:

Establishes Oregon Public Defense Commission within judicial branch.

### Government Unit(s) Affected:

Public Defense Services Commission, Department of Administrative Services, Criminal Justice Commission, Judicial Department, Office of the Governor

### Summary of Fiscal Impact:

See analysis.

### Analysis:

The measure reforms the public defense system and seeks to address the unrepresented defendant/persons crisis. The measure declares an emergency and is effective on passage; however, the measure includes various operative dates, including the repeal of select provisions.

The measure modifies the makeup of the current Public Defense Service Commission (or newly formed Oregon Public Defense Commission) to include appointments or recommendations from each branch of government (operative January 1, 2024); transfers the commission from the judicial branch to the executive branch (operative January 1, 2025) and provides that until July 1, 2027, the executive director and commission members serve at the pleasure of the Governor; beginning July 1, 2027, the executive director serves at the pleasure of the voting members of the commission and commission members may be removed by the Governor only for inefficiency, neglect of duty or malfeasance in office; disallows economic incentives or disincentives in the pay structure that could interfere with the ability of appointed counsel to provide effective assistance of counsel and prohibits flat fee model (operative July 1, 2025); requires commission to hire trial-level employee attorneys (operative January 1, 2024); directs the commission to contract directly with providers, making the commission responsible for selecting, appointing, paying, and supervising the individual attorneys appointed to represent indigent defendants (operative July 1, 2025); prohibits subcontracting with an exception for nonprofits (operative July 1, 2027); requires the commission to promulgate and enforce standards, provide oversight and supervision, collect specific data, and regularly report to the Legislative Assembly on progress and needs (operative January 1, 2024).

The measure directs the presiding judge of each judicial district to develop and implement a coordinated public safety unrepresented defendant crisis plan and submit the plan to Oregon Criminal Justice Commission as soon as practicable, but no later than September 1, 2023. Presiding judges of judicial districts with a population over 100,000 shall convene a crisis team comprised of at least the presiding judge, district attorney(s), and the Executive Director of the PDSC or director's designee, to coordinate the development and implementation of a public safety unrepresented defendant crisis plan. The Chief Justice may issue orders related to resolving the unrepresented defendant crisis. Presiding judges may enter standing orders related to resolving the unrepresented defendant crisis that are consistent with the orders of the Chief Justice. The Criminal Justice Commission shall conduct a review of each judicial district's coordinated public safety unrepresented defendant crisis plan and report to the legislature by no later than October 1, 2023. PDSC shall promulgate and disseminate guidance related to the development of judicial district coordinated public safety unrepresented defendant crisis plans, by no later than August 1, 2023, and develop a training plan for public defense providers specific to the

unrepresented defendant crisis, in consultation and cooperation with public defense provider associations and organizations, by no later than September 1, 2023. Provisions of this section of the measure repeal on June 30, 2025.

The measure appropriates a total of \$42.1 million General Fund, which includes funding for 60 new limited duration and permanent full-time positions (32.68 FTE). The measure appropriates \$40 million General Fund to PDSC and provides funding for 30 positions (24.55 FTE). The measure appropriates \$2.1 million General Fund to the Judicial Department and provides funding for 30 positions (8.13 FTE).

The major fiscal provisions of the measure relating to the unrepresented defendant/persons crisis include:

- Court and administrative staff for each judicial district (\$1.9 million General Fund and 29 positions (7.25 FTE))
- A pilot program for the hiring of state employees to serve as trial-level appointed counsel and staff in two geographic regions (\$4.6 million General Fund and 17 positions (14.17 FTE))
- Expedited Case Resolution Docket in the 4th Judicial District - Multnomah County Circuit Court (\$386,316 General Fund)
- Acquisition and delivery of a training program (\$525,000 General Fund)

The major fiscal provisions of the measure relating to the reform of public defense system include:

- Compensation of commission members (\$112,234 General Fund)
- Continued funding of a financial and case management system (\$7.9 million and five positions (5.00 FTE))
- Increases in hourly rates of pay for attorneys, investigators, and interpreters (\$14.6 million General Fund)
- One-time incentive compensation for the retention of contract providers (\$9.9 million)
- PDSC staff for project management, training, policy and procedure development, human resources, and accounting (\$1.6 million General Fund and eight positions (5.38 FTE))
- Funding for a survey and economic analysis to calculate minimum hourly pay for appointed counsel (\$250,000 General Fund)
- Contract funds for forecasting (\$35,508 General Fund)

The costs associated with the transfer of the commission from the judicial branch to the executive branch should be minimized given the fact that PDSC has been expected to have been operating in reasonable conformity with all other agencies of state government.

The provisions of the measure related to both calculating and then adjusting the rate of hourly pay of panel counsel by the percentage amount of any positive cost of living adjustment granted to employees in the management service in other executive branch is indeterminate.

Outside the scope of a two-biennia fiscal impact is Oregon Public Defense Commission moving from to a model of at least 20% state employees and 80% contract providers (January 1, 2031, which is the 2031-33 biennium) and then moving from to a model of at least 30% state employees and 70% contract providers (January 1, 2035, which is the 2035-37 biennium).

The Governor's Office has no fiscal impact and the Department of Administrative Services and the Criminal Justice Commission report having minimal fiscal impacts.