

# House Bill 2140

Sponsored by Representative MANNIX (Pre-session filed.)

## 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 **as introduced**.

Transfers provision of public defense services, other than in local courts or for appellate proceedings, from entities under contract with Public Defense Services Commission to county public defense offices. Directs governing bodies of counties to appoint chief public defender. Specifies powers and duties of chief public defender.

Modifies duties of commission. Directs commission to provide funds to counties on proportionate basis for provision of public defense services.

Directs court to take into account potential future ability of defendant to pay for costs of appointed counsel during time period before judgment remedies expire on judgment.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to public defense; creating new provisions; amending ORS 1.009, 34.355, 40.225, 125.080, 135.055, 136.603, 137.769, 138.590, 151.211, 151.216, 151.219, 151.225, 151.485, 151.493, 151.505, 161.309, 161.346, 161.365, 161.665, 181A.010, 419A.211, 419A.252, 419C.380, 419C.535, 426.135, 426.250, 427.265, 427.295 and 433.466; and prescribing an effective date.

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

## ESTABLISHMENT OF COUNTY PUBLIC DEFENSE OFFICES

**SECTION 1. (1) The governing body of each county shall establish a county office of public defense to provide public defense services to eligible persons within the county.**

**(2) The governing body of the county shall appoint a chief public defender to act as the executive director of the office.**

**(3) The chief public defender shall:**

**(a) Appoint a chief deputy public defender, subject to approval by the county governing body.**

**(b) Hire sufficient attorneys, investigators and other support staff to handle public defense matters within the county.**

**(c) Advise the governing body when contract attorneys are needed to handle matters for which the county office of public defense has a conflict of interest.**

**(d) Establish policies and procedures for the office, including:**

**(A) The authorization and payment of fees and expenses associated with representation, including fees and expenses for expert witnesses, travel, photocopying or other reproduction of documents, necessary costs associated with obtaining the attendance of witnesses for the defense, investigator fees and expenses, and fees for interpreters and assistive communication devices necessary for the purpose of communication between counsel and a client or witness in the case.**

**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       **(B) A compensation plan, classification system and personnel plan for the office that is**  
2 **commensurate with other county agencies and, for attorneys, commensurate with**  
3 **prosecutors within the county with comparable experience.**

4       **(e) Pay for fees and expenses reasonably associated with representation as provided in**  
5 **ORS 135.055.**

6       **(f) Determine and pay the cost of appointed counsel under ORS 135.055 and 151.219.**

7       **(g) Send to the Public Defense Services Commission a monthly accounting of the ex-**  
8 **penses of the office.**

9       **(4) Employees of the county office of public defense are county employees.**

10       **(5) A county may contract with attorneys who are not employees of the county office of**  
11 **public defense in order to provide public defense services in a particular matter when em-**  
12 **ployees of the office have a conflict of interest in the matter.**

13       **SECTION 2.** ORS 135.055 is amended to read:

14       135.055. *[(1) Counsel appointed pursuant to ORS 135.045 or 135.050 shall be paid fair compen-*  
15 *sation for representation in the case:]*

16       *[(a) By the county, subject to the approval of the governing body of the county, in a proceeding in*  
17 *a county or justice court.]*

18       *[(b) By the public defense services executive director from funds available for the purpose, in a*  
19 *proceeding in a circuit court.]*

20       *[(2) Except for counsel appointed pursuant to contracts or counsel employed by the public defense*  
21 *services executive director, compensation payable to appointed counsel under subsection (1) of this sec-*  
22 *tion:]*

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

24       *[(b) In a proceeding in a circuit court is subject to the applicable compensation established under*  
25 *ORS 151.216.]*

26       **(1)(a) In a proceeding in a county or justice court, counsel appointed pursuant to ORS**  
27 **135.045 or 135.050 shall be paid fair compensation for representation in the case by the**  
28 **county, subject to the approval of the governing body of the county.**

29       **(b) Compensation payable to appointed counsel under paragraph (a) of this subsection**  
30 **may not be less than \$30 per hour.**

31       **(2)(a) In a proceeding in a circuit court, counsel appointed pursuant to ORS 135.045 or**  
32 **135.050 shall be paid fair compensation:**

33       **(A) By the county chief public defender; or**

34       **(B) By the county, if the county has contracted with the appointed counsel due to the**  
35 **county office of public defense having a conflict of interest on the case.**

36       **(b) Compensation payable to appointed counsel under paragraph (a) of this subsection**  
37 **shall be made pursuant to:**

38       **(A) The compensation plan established by the county chief public defender; or**

39       **(B) The policies, procedures, standards and guidelines of the Public Defense Services**  
40 **Commission, for counsel described in paragraph (a)(B) of this subsection.**

41       **(3)(a)** A person determined to be eligible for appointed counsel is entitled to necessary and  
42 reasonable fees and expenses for investigation, preparation and presentation of the case for trial,  
43 negotiation and sentencing.

44       **(b) In a county or justice court,** the person or the counsel for the person shall upon written  
45 request secure preauthorization to incur fees and expenses that are not routine to representation

1 but are necessary and reasonable in the investigation, preparation and presentation of the case, in-  
 2 cluding but not limited to nonroutine travel, photocopying or other reproduction of nonroutine doc-  
 3 uments, necessary costs associated with obtaining the attendance of witnesses for the defense,  
 4 investigator fees and expenses, expert witness fees and expenses and fees for interpreters and  
 5 assistive communication devices necessary for the purpose of communication between counsel and  
 6 a client or witness in the case. Preauthorization to incur a fee or expense does not guarantee that  
 7 a fee or expense incurred pursuant to the preauthorization will be determined to be necessary or  
 8 reasonable when the fee or expense is submitted for payment.

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

15 (c) In a circuit court, *[the request must be in the form and contain the information that is required*  
 16 *by the policies, procedures, standards and guidelines of the Public Defense Services Commission. If the*  
 17 *public defense services executive director denies a request for preauthorization to incur nonroutine fees*  
 18 *and expenses, the person making the request may appeal the decision to the presiding judge of the*  
 19 *circuit court. The presiding judge has final authority to preauthorize incurring nonroutine fees and*  
 20 *expenses under this paragraph.]* **the county chief public defender shall authorize and approve**  
 21 **the payment of fees and expenses in accordance with this section and policies adopted under**  
 22 **section 1 of this 2023 Act. If appointed counsel is a contract attorney, the county shall ap-**  
 23 **prove the payment of fees and expenses in accordance with policies, procedures, standards**  
 24 **and guidelines of the Public Defense Services Commission.**

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 **authorization** from the *[public*  
 29 *defense services executive director]* **county chief public defender**, if the case is in circuit court,  
 30 *except as otherwise provided in paragraph (c) of this subsection and in the policies, procedures, stan-*  
 31 *dards 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]* **county chief public defender or the**  
 34 **county** 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*] **county chief public**  
 7 **defender**. The [*public defense services executive director*] **county chief public defender** shall deter-  
 8 mine whether the amount is necessary, reasonable and properly payable from public funds for fees  
 9 and expenses for representation in the case as provided by the policies, procedures, standards and  
 10 guidelines of the Public Defense Services Commission **and the policies of the county chief public**  
 11 **defender adopted under section 1 of this 2023 Act**. The [*public defense services executive*  
 12 *director*] **county chief public defender** shall pay the amount of the fees and expenses determined  
 13 necessary, reasonable and properly payable out of public funds. The court shall provide any infor-  
 14 mation identified and requested by the public defense services executive director as needed for au-  
 15 dit, statistical or any other purpose pertinent to ensure the proper disbursement of state funds or  
 16 pertinent to the provision of appointed counsel compensated at state expense.

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

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

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

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

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

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

32 **SECTION 3.** ORS 151.211 is amended to read:

33 151.211. For purposes of ORS 151.211 to 151.221:

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

35 (2) “Chief Justice” means the Chief Justice of the Supreme Court.

36 (3) “Commission” means the Public Defense Services Commission.

37 (4) “Director” means the public defense services executive director appointed under ORS  
 38 151.216.

39 (5) “Office of public defense services” means the office established by the commission under the  
 40 director to handle [*the cases assigned and to carry out the administrative policies and procedures for*  
 41 *the public defense system*] **criminal appeals and other matters before the Court of Appeals and**  
 42 **the Supreme Court for financially eligible persons**.

43 **SECTION 4.** ORS 151.216 is amended to read:

44 151.216. (1) The Public Defense Services Commission shall:

45 [*a*] *Establish and maintain a public defense system that ensures the provision of public defense*

1 *services consistent with the Oregon Constitution, the United States Constitution and Oregon and na-*  
 2 *tional standards of justice.]*

3 **(a) Distribute funds appropriated to the commission by the Legislative Assembly for**  
 4 **public defense services to each county, proportionate to the county’s population, to fund**  
 5 **county public defender offices described in section 1 of this 2023 Act.**

6 (b) Establish an office of public defense services **to handle criminal appeals and other mat-**  
 7 **ters before the Court of Appeals and the Supreme Court for financially eligible persons,** and  
 8 appoint a public defense services executive director who serves at the pleasure of the commission.

9 *[(c) Adopt policies for contracting for public defense providers not employed by the office of public*  
 10 *defense services that:]*

11 *[(A) Ensure compensation, resources and caseloads are in accordance with national and regional*  
 12 *best practices;]*

13 *[(B) Promote policies for public defense provider compensation and resources that are comparable*  
 14 *to prosecution compensation and resources;]*

15 *[(C) Ensure funding and resources to support required data collection and training requirements;*  
 16 *and]*

17 *[(D) Recognize the need to consider overhead costs that account for the cost of living and business*  
 18 *cost differences in each county or jurisdiction, including but not limited to rent, professional member-*  
 19 *ship dues, malpractice insurance and other insurance and other reasonable and usual operating*  
 20 *costs.]*

21 *[(d) Establish operational and contracting systems that allow for oversight, ensure transparency*  
 22 *and stakeholder engagement and promote equity, inclusion and culturally specific representation.]*

23 *[(e) Review the caseload policies described in paragraph (c)(A) of this subsection annually, and*  
 24 *revise the policies as necessary and at least every four years.]*

25 *[(f) Adopt a statewide workload plan, based on the caseload policies described in paragraph (c)(A)*  
 26 *of this subsection, that takes into account the needs of each county or jurisdiction, practice structure*  
 27 *and type of practice overseen by the office of public defense services.]*

28 **(c) Adopt policies concerning the fees and expenses related to representation that are to**  
 29 **be paid by the county office of public defense.**

30 *[(g)]* **(d)** Submit the budget of the commission and the office of public defense services to the  
 31 Legislative Assembly after the budget is submitted to the commission by the director and approved  
 32 by the commission. The Chief Justice of the Supreme Court and the chairperson of the commission  
 33 shall present the budget to the Legislative Assembly.

34 *[(h) Review and approve any public defense services contract negotiated by the director before the*  
 35 *contract can become effective.]*

36 *[(i)]* **(e)** Adopt a compensation plan, classification system and personnel plan for the office of  
 37 public defense services that are commensurate with other state agencies.

38 *[(j)]* **(f)** Adopt policies, procedures, standards and guidelines regarding:

39 **(A)** The determination of financial eligibility of persons entitled to be represented by appointed  
 40 counsel at state expense;

41 **(B)** The appointment of counsel, including the appointment of counsel at state expense regard-  
 42 less of financial eligibility in juvenile delinquency matters;

43 *[(C) The fair compensation of counsel appointed to represent a person financially eligible for ap-*  
 44 *pointed counsel at state expense;]*

45 *[(D) Appointed counsel compensation disputes;]*

1       **(C) A minimum hourly rate for the compensation of public defense counsel for:**

2       **(i) The calculation of reasonable attorney fees described in ORS 161.665; and**

3       **(ii) Attorneys who contract with counties to provide public defense services when the**  
 4 **county office of public defense has a conflict of interest;**

5       **(D) When the court may substitute one appointed counsel for another;**

6       (E) *[Any]* **The payment of other costs** associated with the representation of a person by ap-  
 7 pointed counsel in the state courts that are required to be paid by the state under ORS 34.355,  
 8 135.055, 138.500, 138.590, 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908,  
 9 419C.206, 419C.209, 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or  
 10 436.315 or any other provision of law that expressly provides for payment of such *[compensation,]*  
 11 costs or expenses by the commission **or the county office of public defense;**

12       (F) Professional qualifications for counsel appointed to represent public defense clients;

13       *[(G) Performance for legal representation;]*

14       *[(H) The contracting of public defense services;]*

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

18       **(G) The compensation of appellate counsel employed by or paid for by the office of public**  
 19 **defense services;**

20       **(H) The payment of fees and expenses by counties for appointed counsel that are con-**  
 21 **tracted to provide public defense services when the county office of public defense has a**  
 22 **conflict of interest; and**

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

24       *[(k) Establish a peer review system for the approval of nonroutine fees and expenses incurred in*  
 25 *cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The review shall*  
 26 *be conducted by a panel of attorneys who practice in the area of criminal defense.]*

27       *[(L)]* **(g)** Establish a complaint process that allows district attorneys, criminal defense counsel  
 28 and the public to file complaints concerning the payment from public funds of *[nonroutine]* fees and  
 29 expenses incurred in cases **that are not reasonably related to the representation.**

30       *[(m)]* **(h)** Reimburse the State Court Administrator from funds deposited in the Public Defense  
 31 Services Account established by ORS 151.225 for the costs of personnel and other costs associated  
 32 with location of eligibility verification and screening personnel pursuant to ORS 151.489 by the State  
 33 Court Administrator.

34       (2) Policies, procedures, standards and guidelines adopted by the commission supersede any  
 35 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-  
 36 tor, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review  
 37 Board related to the exercise of the commission's administrative responsibilities under this section  
 38 and transferred duties, functions and powers as they occur.

39       (3) The commission may accept gifts, grants or contributions from any source, whether public  
 40 or private. However, the commission may not accept a gift, grant or contribution if acceptance  
 41 would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the  
 42 Public Defense Services Account established by ORS 151.225 and expended for the purposes for  
 43 which given or granted.

44       (4) The commission may not:

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

1 (b) Have access to any case file; or

2 (c) Interfere with the director or any member of the staff of the director in carrying out pro-  
3 fessional duties involving the legal representation of public defense clients.

4 **SECTION 5.** ORS 151.219 is amended to read:

5 151.219. (1) The public defense services executive director shall:

6 [(a) *Recommend to the Public Defense Services Commission how to establish and maintain, in a*  
7 *cost-effective manner, the delivery of legal services to persons entitled to, and, where applicable, finan-*  
8 *cially eligible for, appointed counsel at state expense under Oregon statutes, the Oregon Constitution,*  
9 *the United States Constitution and consistent with Oregon and national standards of justice.*]

10 [(b)] (a) [*Implement and*] Ensure compliance with [*contracts,*] policies, procedures, standards and  
11 guidelines adopted by the commission or required by statute.

12 [(c)] (b) Prepare and submit to the commission for its approval the biennial budget of the com-  
13 mission and the office of public defense services.

14 [(d) *Negotiate contracts, as appropriate, for providing legal services to persons eligible for ap-*  
15 *pointed counsel at state expense. No contract so negotiated is binding or enforceable until the contract*  
16 *has been reviewed and approved by the commission as provided in ORS 151.216.*]

17 [(e)] (c) Employ personnel or contract for services as necessary to carry out the responsibilities  
18 of the director and the office of public defense services.

19 [(f)] (d) Supervise the personnel, operation and activities of the office of public defense services.

20 [(g)] (e) Provide services, facilities and materials necessary for the performance of the duties,  
21 functions and powers of the Public Defense Services Commission.

22 [(h)] (f) Pay the expenses of the commission and the office of public defense services.

23 [(i)] (g) Prepare and submit to the commission an annual report of the activities of the office  
24 of public defense services.

25 [(j)] (h) Prepare and submit to the Legislative Assembly a biennial report on the activities of  
26 the office of public defense services.

27 [(k)] (i) Provide for legal representation, advice and consultation for the commission, its mem-  
28 bers, the director and staff of the office of public defense services who require such services or who  
29 are named as defendants in lawsuits arising from their duties, functions and responsibilities. If re-  
30 quested by the director, the Attorney General may also provide for legal representation, advice and  
31 consultation for the commission, its members, the director and staff of the office of public defense  
32 services in litigation.

33 [(2) *The director may designate persons as representatives of the director for the purposes of de-*  
34 *termining and paying bills submitted to the office of public defense services and determining preau-*  
35 *thorization for incurring fees and expenses under ORS 135.055.*]

36 **(2) The chief public defender of each county shall ensure that when counsel is appointed**  
37 **under ORS 135.055 in a matter other than an appellate proceeding before an appellate court:**

38 **(a) The county office of public defense provides counsel; or**

39 **(b) If the county office of public defense has a conflict of interest in the case, the county**  
40 **is notified so that the county can contract with an attorney who is not employed by the of-**  
41 **fice to provide public defense services.**

42  
43 **REPAYMENT OF COSTS OF APPOINTED COUNSEL**

44  
45 **SECTION 6.** ORS 151.485 is amended to read:

1 151.485. (1) For purposes of determining the financial eligibility for appointed counsel of persons  
 2 with a constitutional or statutory right to counsel in matters before the state courts [*and whose*  
 3 *counsel is authorized to be paid by the public defense services executive director under ORS 151.219*],  
 4 a person is financially eligible for appointed counsel if the person is determined to be financially  
 5 unable to retain adequate counsel without substantial hardship in providing basic economic neces-  
 6 sities to the person or the person's dependent family under standards established by the Public De-  
 7 fense Services Commission under ORS 151.216.

8 (2) A determination of financial eligibility shall be made upon the basis of information contained  
 9 in a detailed financial statement submitted by the person for whom counsel is requested or appointed  
 10 or, in an appropriate case, by the person's parent, guardian or custodian. The financial statement  
 11 shall be in the form prescribed by the Public Defense Services Commission. The form shall contain  
 12 a full disclosure of all assets, liabilities, current income, dependents and other information required  
 13 by ORS 135.050 (4) and, in addition, any information required by the commission and state courts  
 14 as necessary to determine eligibility. The commission shall adopt uniform statewide guidelines and  
 15 procedures that prescribe how to use the form and determine financial eligibility for appointed  
 16 counsel.

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

22 (4) In addition to any criminal prosecution, a civil proceeding may be initiated by any public  
 23 body that has expended moneys for the defendant's legal assistance within [*two*] **10** years of judg-  
 24 ment if the defendant was not qualified for legal assistance in accordance with subsections (1) and  
 25 (2) of this section. As used in this subsection, "legal assistance" includes legal counsel, transcripts,  
 26 witness fees and expenses and any other goods or services required by law to be provided to a fi-  
 27 nancially eligible person at state expense under ORS 151.216 and 151.219.

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

30 **SECTION 7.** ORS 151.505 is amended to read:

31 151.505. (1) At the conclusion of a case or matter in which the first accusatory instrument or  
 32 petition in the trial court was filed after January 1, 1998, and in which the court appointed counsel  
 33 to represent a person, a trial, appellate or post-conviction court may include in its judgment a  
 34 money award requiring that the person repay in full or in part the administrative costs of deter-  
 35 mining the eligibility of the person for appointed counsel, and the costs of the legal and other ser-  
 36 vices that are related to the provision of appointed counsel, that have not previously been required  
 37 to be paid under a limited judgment entered under ORS 151.487. An award under this section is a  
 38 monetary obligation payable to the state.

39 (2) Costs that may be included in a money award under this section include a reasonable at-  
 40 torney fee for counsel appointed to represent the person and a reasonable amount for expenses au-  
 41 thorized under ORS 135.055. A reasonable attorney fee is presumed to be a reasonable number of  
 42 hours at the hourly rate authorized by the Public Defense Services Commission under ORS 151.216.  
 43 For purposes of this subsection, compensation of counsel is determined by reference to a schedule  
 44 of compensation established by the commission.

45 (3) The court may not require a person to pay costs under this section unless the person is or



1 may be able to pay the costs. In determining the amount and method of payment of costs, the court  
 2 shall take account of the **current** financial resources of the person, *[and]* the nature of the burden  
 3 that payment of costs will impose **and the potential future ability of the person to pay costs**  
 4 **during the time period before the judgment remedies for the judgment expire.**

5 (4)(a) A person who has been required to pay costs under this section and who is not in  
 6 contumacious default in the payment of the costs may at any time petition the court for remission  
 7 of the payment of costs or any unpaid portion of the costs. If it appears to the satisfaction of the  
 8 court that payment of the amount due will impose manifest hardship on the person ordered to repay  
 9 or on the immediate family of the person, or will interfere with the ability of the person to complete  
 10 an alcohol or drug treatment program, the court may enter a supplemental judgment that remits all  
 11 or part of the amount due or modifies the method of payment.

12 (b) In accordance with ORS 144.089, a person may enter into a written agreement to participate  
 13 in a community service exchange program as an alternative to paying costs imposed under this  
 14 section.

15 (5) All moneys collected or paid under a money award made pursuant to this section shall be  
 16 paid into the Criminal Fine Account. If the money award is part of a criminal judgment of con-  
 17 viction, the award is a Type 2, Level II obligation for the purpose of ORS 137.145 to 137.159.

18 **SECTION 8.** ORS 161.665 is amended to read:

19 161.665. (1) Except as provided in ORS 151.505, the court, only in the case of a defendant for  
 20 whom it enters a judgment of conviction, may include in its sentence thereunder a money award for  
 21 all costs specially incurred by the state in prosecuting the defendant. Costs include a reasonable  
 22 attorney fee for counsel appointed pursuant to ORS 135.045 or 135.050 and a reasonable amount for  
 23 fees and expenses *[incurred pursuant to preauthorization]* **authorized** under ORS 135.055. A reason-  
 24 able attorney fee is presumed to be a reasonable number of hours at the hourly rate authorized by  
 25 the Public Defense Services Commission under ORS 151.216. Costs do not include expenses inherent  
 26 in providing a constitutionally guaranteed jury trial or expenditures in connection with the main-  
 27 tenance and operation of government agencies that must be made by the public irrespective of spe-  
 28 cific violations of law.

29 (2) Except as provided in ORS 151.505, the court, after the conclusion of an appeal of its initial  
 30 judgment of conviction, may include in its general judgment, or enter a supplemental judgment that  
 31 includes, a money award that requires a convicted defendant to pay a reasonable attorney fee for  
 32 counsel appointed pursuant to ORS 138.500, *[including counsel who is appointed under ORS 151.216*  
 33 *or counsel who is under contract to provide services for the proceeding under ORS 151.219,]* and other  
 34 costs and expenses allowed by the public defense services executive director under ORS 138.500 (4).  
 35 A reasonable attorney fee is presumed to be a reasonable number of hours at the hourly rate au-  
 36 thorized by the commission under ORS 151.216.

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

39 (4) The court may not sentence a defendant to pay costs under this section unless the defendant  
 40 is or may be able to pay them. In determining the amount and method of payment of costs, the court  
 41 shall take account of the **current** financial resources of the defendant, *[and]* the nature of the bur-  
 42 den that payment of costs will impose **and the potential future ability of the person to pay costs**  
 43 **during the time period before the judgment remedies for the judgment expire.**

44 (5) A defendant who has been sentenced to pay costs under this section and who is not in  
 45 contumacious default in the payment of costs may at any time petition the court that sentenced the

1 defendant for remission of the payment of costs or of any unpaid portion of costs. If it appears to  
 2 the satisfaction of the court that payment of the amount due will impose manifest hardship on the  
 3 defendant or the immediate family of the defendant, the court may enter a supplemental judgment  
 4 that remits all or part of the amount due in costs, or modifies the method of payment under ORS  
 5 161.675.

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

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

13  
 14 **CONFORMING AMENDMENTS**  
 15

16 **SECTION 9.** ORS 1.009 is amended to read:

17 1.009. (1) The Judicial Department Operating Account is established in the State Treasury, sep-  
 18 arate and distinct from the General Fund. Interest earned by the account shall be credited to the  
 19 account. All moneys in the account are continuously appropriated to the Judicial Department and  
 20 may be used only to pay the operating expenses of the department.

21 (2) All moneys received by the department pursuant to ORS 151.216 [(1)(m)] **(1)(h)** shall be de-  
 22 posited in the Judicial Department Operating Account.

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

25 **SECTION 10.** ORS 34.355 is amended to read:

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

38 **SECTION 11.** ORS 40.225 is amended to read:

39 40.225. (1) As used in this section, unless the context requires otherwise:

40 (a) "Client" means:

41 (A) A person, public officer, corporation, association or other organization or entity, either  
 42 public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer  
 43 with a view to obtaining professional legal services from the lawyer.

44 (B) A person, public officer, corporation, association or other organization or entity, either  
 45 public or private, who consults a lawyer referral service with a view to obtaining professional legal

1 services from a lawyer.

2 (b) "Confidential communication" means a communication not intended to be disclosed to third  
3 persons other than those to whom disclosure is in furtherance of the rendition of professional legal  
4 services to the client or those reasonably necessary for the transmission of the communication.

5 (c) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized,  
6 to practice law in any state or nation.

7 (d) "Lawyer referral service" means an entity that, as a regular part of its business, refers po-  
8 tential clients to lawyers, including but not limited to a public nonprofit entity sponsored or oper-  
9 ated by the Oregon State Bar.

10 (e) "Representative of the client" means:

11 (A) A principal, an officer or a director of the client; or

12 (B) A person who has authority to obtain professional legal services, or to act on legal advice  
13 rendered, on behalf of the client, or a person who, for the purpose of effectuating legal represen-  
14 tation for the client, makes or receives a confidential communication while acting in the person's  
15 scope of employment for the client.

16 (f) "Representative of the lawyer" means one employed to assist the lawyer in the rendition of  
17 professional legal services, but does not include a physician making a physical or mental examina-  
18 tion under ORCP 44.

19 (2) A client has a privilege to refuse to disclose and to prevent any other person from disclosing  
20 confidential communications made for the purpose of facilitating the rendition of professional legal  
21 services to the client:

22 (a) Between the client or the client's representative and the client's lawyer or a representative  
23 of the lawyer;

24 (b) Between the client's lawyer and the lawyer's representative or the client's lawyer referral  
25 service;

26 (c) By the client or the client's lawyer to a lawyer representing another in a matter of common  
27 interest;

28 (d) Between representatives of the client or between the client and a representative of the cli-  
29 ent;

30 (e) Between lawyers representing the client; or

31 (f) Between the client or a representative of the client and a lawyer referral service.

32 (3) The privilege created by this section may be claimed by the client, a guardian or conservator  
33 of the client, the personal representative of a deceased client, or the successor, trustee, or similar  
34 representative of a corporation, association, or other organization, whether or not in existence. The  
35 person who was the lawyer or lawyer referral service or the lawyer's representative at the time of  
36 the communication is presumed to have authority to claim the privilege but only on behalf of the  
37 client.

38 (4) There is no privilege under this section:

39 (a) If the services of the lawyer or lawyer referral service were sought or obtained to enable  
40 or aid anyone to commit or plan to commit what the client knew or reasonably should have known  
41 to be a crime or fraud;

42 (b) As to a communication relevant to an issue between parties who claim through the same  
43 deceased client, regardless of whether the claims are by testate or intestate succession or by inter  
44 vivos transaction;

45 (c) As to a communication relevant to an issue of breach of duty by the lawyer or lawyer re-

1 ferral service to the client or by the client to the lawyer or lawyer referral service;

2 (d) As to a communication relevant to an issue concerning an attested document to which the  
3 lawyer or lawyer referral service is an attesting witness; or

4 (e) As to a communication relevant to a matter of common interest between two or more clients  
5 if the communication was made by any of them to a lawyer retained or consulted in common, when  
6 offered in an action between any of the clients.

7 *[(5) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communication  
8 made to the office of public defense services established under ORS 151.216 for the purpose of seeking  
9 preauthorization for or payment of nonroutine fees or expenses under ORS 135.055.]*

10 [(6)] (5) Notwithstanding subsection (4)(c) of this section and ORS 40.280, a privilege is main-  
11 tained under this section for a communication that is made to **a county office of public defense**  
12 **or** the office of public defense services established under ORS 151.216 for the purpose of making,  
13 or providing information regarding, a complaint against a lawyer providing public defense services.

14 [(7)] (6) Notwithstanding ORS 40.280, a privilege is maintained under this section for a commu-  
15 nication ordered to be disclosed under ORS 192.311 to 192.478.

16 **SECTION 12.** ORS 125.080 is amended to read:

17 125.080. (1) The court may require that a hearing be held on any petition or motion in a pro-  
18 tective proceeding.

19 (2) A hearing must be held on a petition or motion if the respondent or protected person makes  
20 or files an objection to the petition or motion and the objection is not withdrawn before the time  
21 scheduled for the hearing.

22 (3) A hearing must be held on a motion to modify a guardian's powers under ORS 125.323.

23 (4) The respondent or protected person may appear at a hearing in person or by counsel.

24 (5) If the hearing is regarding a petition for appointment of a guardian for a vulnerable youth  
25 or a petition involving a vulnerable youth guardianship, the court:

26 (a) May allow the respondent or protected person, proposed guardian, guardian or any other  
27 witness to appear by telephone, video or other remote technology;

28 (b)(A) May take testimony from or confer with the respondent or protected person and may ex-  
29 clude from the conference others if the court finds that doing so would be in the best interests of  
30 the respondent or protected person; and

31 (B) Notwithstanding subparagraph (A) of this paragraph, shall permit any attorney for the re-  
32 spondent or protected person to attend the conference and the conference must be reported;

33 (c) May not inquire into the nationality or current immigration status of the proposed guardian,  
34 guardian or any other witness; and

35 (d) May not inquire about any prior immigration status of the respondent or protected person  
36 or about the manner or place in which the respondent or protected person entered the United States  
37 of America.

38 (6)(a) If the court requires that a hearing be held or a hearing is otherwise required under this  
39 section, the court shall appoint counsel for the respondent or protected person when:

40 (A) The respondent or protected person requests that counsel be appointed;

41 (B) An objection is made or filed to the petition or motion by any person;

42 (C) The court has appointed a visitor under ORS 125.150, 125.160 or 125.605, and the visitor re-  
43 commends appointment of counsel for the respondent or protected person; or

44 (D) The court determines that the respondent or protected person is in need of legal counsel.

45 (b) The court is not required to appoint counsel under this subsection if the respondent or pro-

1 tected person is already represented by counsel or otherwise objects to appointment of counsel.

2 (7) If the court appoints counsel under subsection (6) of this section:

3 (a) The court shall order payment of attorney fees and costs from the guardianship or conser-  
 4 vatorship estate of the respondent or protected person if sufficient funds exist to pay all or a portion  
 5 of the attorney fees and costs due; or

6 (b) The court may determine that a respondent or protected person is financially eligible for  
 7 appointed counsel at state expense and, if so, the compensation for legal counsel and costs and ex-  
 8 penses necessary for representation of the respondent or protected person shall be determined and  
 9 paid by the *[public defense services executive director]* **county chief public defender** as provided  
 10 under ORS 135.055.

11 **SECTION 13.** ORS 136.603 is amended to read:

12 136.603. (1)(a) Whenever any person attends any court, grand jury or committing magistrate as  
 13 a witness on behalf of the prosecution or of any person accused of a crime upon request of the  
 14 district attorney or city attorney or pursuant to subpoena, or by virtue of a recognizance for that  
 15 purpose, and it appears that the witness has come from outside the state or that the witness is in-  
 16 digent, the court may, by an order entered in its records, direct payment to the witness of such sum  
 17 of money as the court considers reasonable for the expenses of the witness. The order of the court,  
 18 so entered, is sufficient authority for the payment.

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

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

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

25 (C) Attends a circuit court or judge thereof on behalf of a financially eligible defendant, payment  
 26 shall be made by the *[public defense services executive director]* **county chief public defender**.

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

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

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

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

39 **SECTION 14.** ORS 137.769 is amended to read:

40 137.769. (1) When a defendant is examined under ORS 137.767, the defendant may retain a psy-  
 41 chiatrist, psychologist or other expert to perform an examination on the defendant's behalf. A psy-  
 42 chiatrist, psychologist or other expert retained by the defendant must be provided reasonable access  
 43 to:

44 (a) The defendant for the purpose of the examination; and

45 (b) All relevant medical and psychological records and reports.

1 (2) If the defendant is financially eligible for appointed counsel at state expense, the defendant  
 2 may request [*preauthorization to incur*] **that the county chief public defender authorize and pay**  
 3 **for** the fees and expenses of a psychiatrist, psychologist or other expert as provided in ORS 135.055  
 4 [(3)].

5 **SECTION 15.** ORS 138.590 is amended to read:

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

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

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

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

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

43 (6) When a petitioner has been ordered to proceed as a financially eligible person, the expenses  
 44 which are necessary for the proceedings upon the petition in the circuit court and the compensation  
 45 to appointed counsel for petitioner as provided in this subsection shall be [*paid by the public defense*

1 *services executive director from funds available for the purpose] provided by the county chief public*  
 2 **defender.** *[At the conclusion of proceedings on a petition pursuant to ORS 138.510 to 138.680, the*  
 3 *public defense services executive director shall determine and pay, as provided by the policies, proce-*  
 4 *dures, standards and guidelines of the Public Defense Services Commission, the amount of expenses*  
 5 *of petitioner and compensation for the services of appointed counsel in the proceedings in the circuit*  
 6 *court.]*

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

12 *[(8)(a)] (7)(a)* When a petitioner has been authorized to proceed as a financially eligible person,  
 13 all court 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 adult in custody in a correctional facility.

17 *[(9)] (8)* Notwithstanding any other provision of this chapter, a court may not appoint as counsel  
 18 for a petitioner who has been sentenced to death a counsel who previously represented the  
 19 petitioner at trial or on automatic and direct review in the case resulting in the death sentence  
 20 unless the petitioner and the counsel expressly request continued representation.

21 **SECTION 16.** 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 for:

25 (a) Administration and support of the public defense system;

26 (b) Reimbursement of the State Court Administrator under ORS 151.216 *[(1)(m)] (1)(h)*; and

27 (c) Legal representation of parents and children involved in foster care for which matching  
 28 funds under 45 C.F.R. 1356.60(c) may be used.

29 (2) The following moneys shall be deposited in the Public Defense Services Account:

30 (a) Moneys received by the commission from the State Court Administrator under ORS 151.216  
 31 *[(1)(m)] (1)(h)*;

32 (b) Moneys received by the Judicial Department under ORS 135.050 (8), 151.487 (1), 419A.211 or  
 33 419B.198 (1);

34 (c) Federal matching funds received under 45 C.F.R. 1356.60(c); and

35 (d) Miscellaneous revenues and receipts of the commission.

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

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

40 151.493. (1) Notwithstanding any other provision of law, any state agency as defined in ORS  
 41 192.311 that receives a request for release of information from the state courts for the purpose of  
 42 verifying the financial eligibility of a person under ORS 151.485 to 151.497 shall release all requested  
 43 information to the state court. The court shall forward to the state agency a certification signed by  
 44 the person about whom the requested information is sought that authorizes the release of the in-  
 45 formation.

1 (2) Upon its own motion or motion of the [*public defense services executive director*] **county chief**  
 2 **public defender**, a court that has appointed counsel for a person by reason of financial eligibility  
 3 may order the release of any information relating to the person's financial situation held by any  
 4 other person.

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

6 161.309. (1) The defendant may not introduce evidence on the issue of insanity under ORS  
 7 161.295, unless the defendant:

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

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

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

14 (3)(a) A defendant who is required under subsection (1) or (2) of this section to give notice shall  
 15 file a written notice of purpose at least 45 days before trial.

16 (b) Notwithstanding paragraph (a) of this subsection, the court may, for good cause, permit the  
 17 defendant to file the notice within 45 days before trial.

18 (c) If the defendant fails to file notice under this subsection, the defendant may not introduce  
 19 evidence for the establishment of a defense under ORS 161.295 or 161.300 unless the court, in its  
 20 discretion, permits the evidence to be introduced where just cause for failure to file the notice is  
 21 shown.

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

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

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

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

35 (b) When the court orders an evaluation of a financially eligible person under this subsection,  
 36 the court shall order the [*public defense services executive director*] **county chief public defender**  
 37 to pay a reasonable fee for the evaluation from funds available for that purpose.

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

42 (6) Prior to accepting a plea of guilty except for insanity to a felony, the court shall inform the  
 43 defendant of the possibility that the court may order commitment or conditional discharge after  
 44 entry of judgment, and of the maximum total period of commitment or conditional discharge under  
 45 ORS 161.327 (7).



1 (7) As used in this section, “certified evaluator” means a psychiatrist or psychologist who holds  
 2 a valid certification under the provisions of ORS 161.392.

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

4 161.346. (1) When the Psychiatric Security Review Board conducts a hearing under ORS 161.315  
 5 to 161.351, the board shall enter an order and make findings in support of the order. If the board  
 6 finds that a person under the jurisdiction of the board:

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

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

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

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

22 (3) The board may make the determination regarding discharge or conditional release based  
 23 upon the written reports submitted pursuant to this section. If any member of the board desires  
 24 further information from the examining psychiatrist or licensed psychologist who submitted the re-  
 25 port, the board shall summon the person to give testimony. The board shall consider all evidence  
 26 available to it that is material, relevant and reliable regarding the issues before the board. The ev-  
 27 idence may include but is not limited to the record of trial, the information supplied by the attorney  
 28 representing the state or by any other interested party, including the person, and information con-  
 29 cerning the person’s mental condition and the entire psychiatric and criminal history of the person.  
 30 All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their  
 31 serious affairs shall be admissible at hearings. Testimony shall be taken upon oath or affirmation  
 32 of the witness from whom received. The officer presiding at the hearing shall administer oaths or  
 33 affirmations to witnesses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (11) If the board determines that the person about whom the hearing is being held is financially  
22 eligible, the board shall appoint suitable counsel to represent the person. Counsel so appointed shall  
23 be an attorney **employed by the county office of public defense** who satisfies the professional  
24 qualifications established by the Public Defense Services Commission under ORS 151.216. [*The public*  
25 *defense services executive director shall determine and allow fair compensation for counsel appointed*  
26 *under this subsection and the reasonable expenses of the person in respect to the hearing. Compensation*  
27 *payable to appointed counsel shall not be less than the applicable compensation level established under*  
28 *ORS 151.216. The compensation and expenses so allowed shall be paid by the public defense services*  
29 *executive director from funds available for the purpose.*]

30 (12) The Attorney General may represent the state at contested hearings under ORS 161.315 to  
31 161.351 unless the district attorney of the county from which the person was committed elects to  
32 represent the state. The district attorney of the county from which the person was committed shall  
33 cooperate with the Attorney General in securing the material necessary for presenting a contested  
34 hearing. If the district attorney elects to represent the state, the district attorney shall give timely  
35 written notice of such election to the Attorney General, the board and the attorney representing the  
36 person.

37 **SECTION 20.** ORS 161.365 is amended to read:

38 161.365. (1)(a) When the court has reason to doubt the defendant's fitness to proceed by reason  
39 of incapacity as described in ORS 161.360, the court may call any witness to assist it in reaching  
40 its decision and, except as provided in paragraph (b) of this subsection, shall order that a community  
41 mental health program director, or the director's designee, consult with the defendant and with any  
42 local entity that would be responsible for providing community restoration services to the defendant  
43 if the defendant were to be released in the community, to determine whether appropriate community  
44 restoration services are present and available in the community. After the consultation, the program  
45 director or the director's designee shall provide to the court a copy of the findings resulting from

1 the consultation.

2 (b) If the defendant is charged with one or more of the following offenses the court is not re-  
 3 quired to, but may in its discretion, order the consultation described in paragraph (a) of this sub-  
 4 section:

- 5 (A) Aggravated murder;
- 6 (B) Murder in any degree;
- 7 (C) Attempted aggravated murder;
- 8 (D) Attempted murder in any degree;
- 9 (E) Manslaughter in any degree;
- 10 (F) Aggravated vehicular homicide;
- 11 (G) Arson in the first degree when classified as crime category 10 of the sentencing guidelines  
 12 grid of the Oregon Criminal Justice Commission;
- 13 (H) Assault in the first degree;
- 14 (I) Assault in the second degree;
- 15 (J) Kidnapping in the first degree;
- 16 (K) Kidnapping in the second degree;
- 17 (L) Rape in the first degree;
- 18 (M) Sodomy in the first degree;
- 19 (N) Unlawful sexual penetration in the first degree;
- 20 (O) Robbery in the first degree; or
- 21 (P) Robbery in the second degree.

22 (c) If the court determines the assistance of a psychiatrist or psychologist would be helpful, the  
 23 court may:

24 (A) Order that a psychiatric or psychological examination of the defendant be conducted by a  
 25 certified evaluator and a report of the examination be prepared; or

26 (B) Order the defendant to be committed for the purpose of an examination to a state mental  
 27 hospital or other facility designated by the Oregon Health Authority if the defendant is at least 18  
 28 years of age, or to a secure intensive community inpatient facility designated by the authority if the  
 29 defendant is under 18 years of age. The state mental hospital or other facility may retain custody  
 30 of a defendant committed under this paragraph for the duration necessary to complete the exam-  
 31 ination of the defendant, not to exceed 30 days. The examination may include a period of observa-  
 32 tion.

33 (d) The court shall provide a copy of any order entered under this subsection to the community  
 34 mental health program director or designee and to the state mental hospital or other facility by the  
 35 end of the next judicial day.

36 (2)(a) A defendant committed under subsection (1)(c)(B) of this section shall be transported to  
 37 the state mental hospital or other facility for the examination.

38 (b) At the conclusion of the examination, the superintendent of the state mental hospital or the  
 39 superintendent's designee or the director of the facility may:

40 (A) Return the defendant to the facility from which the defendant was transported; or

41 (B) Inform the court and the parties that the defendant requires a hospital level of care due to  
 42 the acuity of symptoms of the defendant's qualifying mental disorder and request that the defendant  
 43 remain at the state mental hospital or other facility pending a hearing or order under ORS 161.370.

44 (3) The report of an examination described in this section must include, but is not necessarily  
 45 limited to, the following:

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

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

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

5 (d) If the defendant is incapacitated within the description set out in ORS 161.360, a recom-  
6 mendation of treatment and services necessary to allow the defendant to gain or regain capacity,  
7 including whether a hospital level of care is required due to the acuity of symptoms of the  
8 defendant's qualifying mental disorder.

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

13 (5) If the examination by the certified evaluator cannot be conducted by reason of the unwill-  
14 ingness of the defendant to participate in the examination, the report must so state and must in-  
15 clude, if possible, an opinion as to whether the unwillingness of the defendant was the result of a  
16 qualifying mental disorder affecting fitness to proceed.

17 (6) The report resulting from the examination of a defendant under this section may be filed  
18 electronically and must be filed with the clerk of the court, who shall cause copies to be delivered  
19 to the district attorney and to counsel for defendant.

20 (7)(a) When upon motion of the court or a financially eligible defendant, the court has ordered  
21 a psychiatric or psychological examination of the defendant, a county or justice court shall order  
22 the county to pay, a municipal court shall order the city to pay, and a circuit court shall order the  
23 *[public defense services executive director]* **county chief public defender** to pay from funds available  
24 for the purpose:

25 (A) A reasonable fee if the examination of the defendant is conducted by a certified evaluator  
26 in private practice; and

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

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

34 (8) The Oregon Health Authority shall establish by rule standards for the consultation described  
35 in subsection (1) of this section.

36 **SECTION 21.** ORS 181A.010 is amended to read:

37 181A.010. As used in ORS 181A.010 to 181A.350, unless the context requires otherwise:

38 (1) "Criminal justice agency" means:

39 (a) The Governor;

40 (b) Courts of criminal jurisdiction;

41 (c) The Attorney General;

42 (d) District attorneys, city attorneys with criminal prosecutorial functions, attorney employees  
43 of the office of public defense services and *[nonprofit public defender organizations established under*  
44 *contract with the Public Defense Services Commission]* **county offices of public defense;**

45 (e) Law enforcement agencies;

1 (f) The Department of Corrections;

2 (g) The Oregon Youth Authority;

3 (h) The State Board of Parole and Post-Prison Supervision;

4 (i) The Department of Public Safety Standards and Training;

5 (j) The enforcement division of the Oregon Liquor and Cannabis Commission in performing du-  
6 ties related to investigating and enforcing the criminal laws of this state that the commission is  
7 charged to enforce;

8 (k) Civilian or community oversight boards, agencies or review bodies designated by a munici-  
9 pality or a law enforcement agency in performing duties related to investigating allegations of offi-  
10 cer misconduct or reviewing police policies and practices;

11 (L) Regional information systems that share programs to track, identify and remove cross-  
12 jurisdictional criminal and terrorist conspiracies; and

13 (m) Any other state or local agency with law enforcement authority.

14 (2) "Criminal offender information" includes records and related data as to physical description  
15 and vital statistics, fingerprints received and compiled for purposes of identifying criminal offenders  
16 and alleged offenders, records of arrests and the nature and disposition of criminal charges, includ-  
17 ing sentencing, confinement, parole and release.

18 (3) "Department" means the Department of State Police established under ORS 181A.015.

19 (4) "Deputy superintendent" means the Deputy Superintendent of State Police appointed under  
20 ORS 181A.035.

21 (5) "Designated agency" means any state, county or municipal government agency where Oregon  
22 criminal offender information is required to implement a federal or state statute, executive order  
23 or administrative rule that expressly refers to criminal conduct and contains requirements or ex-  
24 clusions expressly based on such conduct or for agency employment purposes, licensing purposes or  
25 other demonstrated and legitimate needs when designated by order of the Governor.

26 (6) "Disposition report" means a form or process prescribed or furnished by the department,  
27 containing a description of the ultimate action taken subsequent to an arrest.

28 (7) "Law enforcement agency" means:

29 (a) County sheriffs, municipal police departments, police departments established by a university  
30 under ORS 352.121 or 353.125 and state police;

31 (b) Other police officers of this state or another state, including humane special agents as de-  
32 fined in ORS 181A.345;

33 (c) A tribal government as defined in ORS 181A.940 that employs authorized tribal police officers  
34 as defined in ORS 181A.940; and

35 (d) Law enforcement agencies of the federal government.

36 (8) "State police" means the sworn members of the state police force appointed under ORS  
37 181A.050.

38 (9) "Superintendent" means the Superintendent of State Police appointed under ORS 181A.030.

39 **SECTION 22.** ORS 419A.211 is amended to read:

40 419A.211. (1) If the child, ward, youth, adjudicated youth, parent or guardian is determined to  
41 be entitled to, and, except as provided in subsection (4) of this section, financially eligible for, ap-  
42 pointment of counsel at state expense in an appeal as provided in ORS 419A.200 and 419A.208, the  
43 court, upon request of the person or upon its own motion, shall appoint suitable counsel to represent  
44 the person. Counsel appointed by the court shall be paid compensation determined by the [*public*  
45 *defense services executive director*] **county chief public defender** as provided in ORS 135.055 if the

1 circuit court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or the  
 2 Supreme Court is the appellate court. The court may not substitute one appointed counsel for an-  
 3 other except pursuant to the policies, procedures, standards and guidelines of the Public Defense  
 4 Services Commission.

5 (2)(a) When the court appoints counsel to represent the child or ward, it may order the parent,  
 6 if able, or guardian of the estate, if the estate is able, to pay to the Public Defense Services Account  
 7 established by ORS 151.225, through the clerk of the court, in full or in part the administrative costs  
 8 of determining the ability of the parents or estate to pay for legal services and the costs of the legal  
 9 and other services that are related to the provision of appointed counsel.

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

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

17 (d) The court’s order of payment is enforceable in the same manner as an order of support under  
 18 ORS 419B.408.

19 (3) When the court appoints counsel under this section at state expense, the compensation for  
 20 counsel and costs and expenses necessary to the appeal shall be determined and paid as provided  
 21 in ORS 135.055 if the circuit court is the appellate court or as provided in ORS 138.500 if the Court  
 22 of Appeals or the Supreme Court is the appellate court.

23 (4) Notwithstanding subsection (1) of this section, a youth or adjudicated youth, or the parent  
 24 or guardian of the youth or adjudicated youth, is entitled to court-appointed counsel at state expense  
 25 under this section regardless of the financial circumstances of the youth or adjudicated youth or the  
 26 parent or guardian of the youth or adjudicated youth. In addition, the court may not order the  
 27 youth’s or adjudicated youth’s parent or guardian to pay any part of the administrative costs of  
 28 determining the entitlement of the youth, adjudicated youth, parent or guardian to court-appointed  
 29 counsel at state expense nor any of the costs of the legal and other services that are related to the  
 30 provision of appointed counsel.

31 **SECTION 23.** ORS 419A.252 is amended to read:

32 419A.252. As used in this section and ORS 419A.253, 419A.255 and 419A.256:

33 (1) “Person” means an individual, a public body as defined in ORS 174.109 or a tribe that is a  
 34 party to a juvenile court proceeding pursuant to ORS 419B.875.

35 (2) “Prospective appellate attorney” means an attorney designated by the office of public defense  
 36 services established under ORS 151.216 to potentially represent a child, ward, youth, adjudicated  
 37 youth or a parent or guardian of a child, ward, youth or adjudicated youth, in a juvenile case when  
 38 the case has been referred to the office of public defense services for appeal.

39 (3) “Public defense provider” means an attorney [*or a law firm*] designated by the [*office of public*  
 40 *defense services established under ORS 151.216*] **county chief public defender** to potentially repre-  
 41 sent a child, ward, youth, adjudicated youth or the parent or guardian of a child, ward, youth or  
 42 adjudicated youth in a juvenile court proceeding.

43 (4) “Record of the case” or “record of each case,” whether maintained in paper or electronic  
 44 form, includes but is not limited to the following and includes records filed in juvenile court pro-  
 45 ceedings commenced before January 1, 2014, when the records are substantially similar to the fol-

1 lowing:

2 (a) The summons and other process;

3 (b) Petitions;

4 (c) Papers in the nature of pleadings, answers, motions, affidavits and other papers that are filed  
5 with the court, including supporting documentation;

6 (d) Local citizen review board findings and recommendations submitted under ORS 419A.118 or  
7 419B.367;

8 (e) Guardianship report summaries filed with the court under ORS 419B.367;

9 (f) Orders and judgments of the court, including supporting documentation;

10 (g) Transcripts under ORS 419A.256;

11 (h) Exhibits and materials offered as exhibits whether or not received in evidence; and

12 (i) Other documents that become part of the record of the case by operation of law.

13 (5) "Supplemental confidential file," whether maintained in paper or electronic form, includes  
14 reports and other material relating to the child, ward, youth or adjudicated youth's history and  
15 prognosis, including but not limited to reports filed under ORS 419B.440, and includes similar reports  
16 and other materials filed in juvenile court proceedings commenced before January 1, 2014, that:

17 (a) Are not or do not become part of the record of the case; and

18 (b) Are not offered or received as evidence in the case.

19 **SECTION 24.** ORS 419C.380 is amended to read:

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

28 (2)(a) A county court or justice court shall order the county to pay the fees and costs described  
29 in subsection (3) of this section from funds available for that purpose.

30 (b) A circuit court shall order the [*public defense services executive director*] **county chief public**  
31 **defender** to pay the fees and costs described in subsection (3) of this section from funds available  
32 for that purpose.

33 (3) Pursuant to subsection (2) of this section, the county or the [*public defense services executive*  
34 *director*] **county chief public defender** shall pay:

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

37 (b) All costs, including transportation of the youth, if the evaluation is conducted by a psychia-  
38 trist, licensed psychologist or regulated social worker employed by the Department of Human Ser-  
39 vices or is conducted by a community mental health program or community developmental  
40 disabilities program established under ORS 430.610 to 430.695.

41 (4) If an evaluation is ordered under ORS 419C.378, the county shall pay for the expense of the  
42 evaluation.

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

45 (6) A youth may not be removed from the youth's current placement for the purpose of an

1 evaluation performed under this section unless the youth has been placed in a detention facility as  
 2 defined in ORS 419A.004 or a youth correction facility as defined in ORS 420.005.

3 **SECTION 25.** ORS 419C.535 is amended to read:

4 419C.535. (1) The juvenile panel of the Psychiatric Security Review Board shall appoint suitable  
 5 counsel to represent a young person about whom a hearing under ORS 419C.532 is being  
 6 held. Counsel appointed must be an attorney who satisfies the professional qualification standards  
 7 established by the Public Defense Services Commission under ORS 151.216. The *[public defense ser-*  
 8 *vices executive director shall determine and allow fair compensation for]* **county chief public**  
 9 **defender shall provide** counsel appointed under this subsection and **compensation for** the rea-  
 10 sonable expenses of the young person in respect to the hearing. *[Compensation payable to appointed*  
 11 *counsel may not be less than the applicable compensation level established under ORS 151.216. The*  
 12 *public defense services executive director shall pay compensation and expenses allowed from funds*  
 13 *available for that purpose.]*

14 (2) The juvenile panel may not order the young person, parent or guardian of the estate to pay  
 15 any part of the administrative costs of appointing counsel for the young person or to pay for the  
 16 costs of legal and other services that are related to the provision of appointed counsel.

17 (3) The Attorney General may represent the state at contested hearings before the juvenile  
 18 panel unless the district attorney of the county in which the young person was adjudicated elects  
 19 to represent the state. The district attorney of the county in which the young person was adjudi-  
 20 cated shall cooperate with the Attorney General in securing the material necessary for presenting  
 21 a contested hearing before the juvenile panel. If the district attorney elects to represent the state,  
 22 the district attorney shall give timely written notice to the Attorney General, the juvenile panel and  
 23 the attorney representing the young person.

24 **SECTION 26.** ORS 426.135 is amended to read:

25 426.135. If a person determined to be a person with mental illness as provided in ORS 426.130,  
 26 or determined to be an extremely dangerous person with mental illness under ORS 426.701 or  
 27 426.702, appeals the determination or the disposition, and is determined to be financially eligible for  
 28 appointed counsel at state expense, upon request of the person or upon its own motion, the court  
 29 shall appoint suitable legal counsel to represent the person. The compensation for legal counsel and  
 30 costs and expenses necessary to the appeal shall be determined and paid by the *[public defense ser-*  
 31 *vices executive director]* **county chief public defender** as provided in ORS 135.055 if the circuit  
 32 court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or Supreme Court  
 33 is the appellate court. The compensation, costs and expenses shall be paid as provided in ORS  
 34 138.500.

35 **SECTION 27.** ORS 426.250 is amended to read:

36 426.250. The following is a nonexclusive list of responsibilities for payment of various costs re-  
 37 lated to commitment proceedings under this chapter as described:

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

42 (2) Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal  
 43 cases, and are subject to compulsory attendance in the same manner as provided in ORS 136.567 to  
 44 136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in  
 45 ORS 136.623 to 136.637. The party who subpoenas the witness or requests the court to subpoena the



1 witness is responsible for payment of the cost of the subpoena and payment for the attendance of  
 2 the witness at a hearing. When the witness has been subpoenaed on behalf of a person alleged to  
 3 have a mental illness who is represented by appointed counsel, the fees and costs allowed for that  
 4 witness shall be paid pursuant to ORS 135.055. If the costs of witnesses subpoenaed by the person  
 5 are paid as provided under this subsection, the procedure for subpoenaing witnesses shall comply  
 6 with ORS 136.570.

7 (3) If a person with a right to a counsel under ORS 426.100, 426.701 or 426.702 is determined to  
 8 be financially eligible for appointed counsel at state expense, the [*public defense services executive*  
 9 *director*] **county chief public defender** shall determine and pay, as provided in ORS 135.055, the  
 10 reasonable expenses related to the representation of the person and compensation for legal counsel.  
 11 [*The expenses and compensation so allowed shall be paid by the public defense services executive di-*  
 12 *rector from funds available for the purpose.*]

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

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

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

26 **SECTION 28.** ORS 427.265 is amended to read:

27 427.265. (1) At the time that a person who is alleged to have an intellectual disability and to  
 28 be in need of commitment for residential care, treatment and training is brought before the court,  
 29 the court shall advise the person of the reason for being brought before the court, the nature of the  
 30 proceedings and the possible results of the proceedings. The court shall also advise the person of  
 31 the right to subpoena witnesses and to suitable legal counsel possessing skills and experience  
 32 commensurate with the nature of the allegations and complexity of the case during the proceedings,  
 33 and that if the person does not have funds with which to retain suitable legal counsel, the court  
 34 shall appoint such legal counsel to represent the person. If the person does not request legal coun-  
 35 sel, the legal guardian, relative or friend may request the assistance of legal counsel on behalf of  
 36 the person.

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

38 (3) If the person is unable to afford legal counsel, the court, if the matter is before a county or  
 39 justice court, or the [*public defense services executive director*] **county chief public defender**, if the  
 40 matter is before the circuit court, shall determine and allow, as provided in ORS 135.055, the rea-  
 41 sonable expenses of the person and compensation for legal counsel. The expenses and compensation  
 42 so allowed by a county court shall be paid by the county of residence of the person. [*The expenses*  
 43 *and compensation determined by the public defense services executive director shall be paid by the*  
 44 *public defense services executive director from funds available for the purpose.*] In all cases legal  
 45 counsel shall be present at the hearing and may examine all witnesses offering testimony, and oth-

erwise represent the person.

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

**SECTION 29.** ORS 427.295 is amended to read:

427.295. If a person appeals a commitment order issued under ORS 427.290, the court, upon request of the person or upon its own motion and upon finding that the person is financially eligible for appointed counsel at state expense, shall appoint suitable legal counsel to represent the person. The compensation for legal counsel and costs and expenses necessary to the appeal shall be determined and paid by the [*public defense services executive director*] **county chief public defender** as provided in ORS 135.055 if the circuit court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or Supreme Court is the appellate court. The compensation, costs and expenses so allowed shall be paid as provided in ORS 138.500.

**SECTION 30.** ORS 433.466 is amended to read:

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

(2) If a person is unable to afford legal counsel, the [*public defense services executive director*] **county chief public defender** shall determine and pay, as provided in ORS 135.055, the reasonable expenses of the person and compensation for legal counsel appointed to represent the person.

**CAPTIONS**

**SECTION 31.** The unit captions used in this 2023 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 2023 Act.

**OPERATIVE DATE**

**SECTION 32.** (1) Section 1 of this 2023 Act and the amendments to ORS 1.009, 34.355, 40.225, 125.080, 135.055, 136.603, 137.769, 138.590, 151.211, 151.216, 151.219, 151.225, 151.485, 151.493, 151.505, 161.309, 161.346, 161.365, 161.665, 181A.010, 419A.211, 419A.252, 419C.380, 419C.535, 426.135, 426.250, 427.265, 427.295 and 433.466 by sections 2 to 30 of this 2023 Act become operative January 1, 2024.

(2) The Public Defense Services Commission and any county may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the commission or county to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the commission or county by section 1 of this 2023 Act and the amendments to ORS 1.009, 34.355, 40.225, 125.080, 135.055,

1 136.603, 137.769, 138.590, 151.211, 151.216, 151.219, 151.225, 151.485, 151.493, 151.505, 161.309,  
2 161.346, 161.365, 161.665, 181A.010, 419A.211, 419A.252, 419C.380, 419C.535, 426.135, 426.250,  
3 427.265, 427.295 and 433.466 by sections 2 to 30 of this 2023 Act.

4

5

**EFFECTIVE DATE**

6

7 **SECTION 33.** This 2023 Act takes effect on the 91st day after the date on which the 2023  
8 regular session of the Eighty-second Legislative Assembly adjourns sine die.

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