

Requested by Representative BYNUM

**PROPOSED AMENDMENTS TO
HOUSE BILL 2467**

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating
2 new provisions; amending ORS 151.216;”.

3 Delete lines 3 through 15 and insert:

4 “Whereas Oregon is obligated under the Sixth Amendment of the United
5 States Constitution, as incorporated to the state under the Fourteenth
6 Amendment, and under the decision of the Supreme Court of the United
7 States in Gideon v. Wainwright to provide effective legal counsel for indi-
8 gent defendants; and

9 “Whereas Oregon is in a public defender crisis; and

10 “Whereas in 2022 the American Bar Association estimated that Oregon
11 needed approximately an additional 1,300 public defense attorneys to meet
12 current workload demand, while the state then had only approximately 600
13 contracted public defense attorneys; and

14 “Whereas the public defense crisis is leading many prosecutors to delay
15 the administration of justice, leaving the accused in legal limbo and imped-
16 ing on their right to due process; and

17 “Whereas prosecutors are being forced to outright dismiss cases, depriv-
18 ing crime victims and their community the right to justice; and

19 “Whereas Oregon public defenders are a crucial part of the public safety
20 system and they have reported feeling disrespected, overworked and under-
21 valued; and

1 “Whereas the current pay scale for public defenders is grossly insufficient
2 to recruit and retain public defenders, and many attorneys are leaving or
3 forgoing entrance into the public defense practice due to low pay and per-
4 sonal outstanding student debt obligations; and

5 “Whereas there is a significant pay disparity between public defenders
6 and their prosecutorial counterparts; likewise, pay for public defense support
7 staff is often not commensurate with the pay of prosecutorial support staff;
8 and

9 “Whereas Oregon’s three accredited law schools do not have the capacity
10 to graduate enough law students to fill the shortage of public defenders; and

11 “Whereas the Oregon State Bar, being in comity with the other state bars,
12 allows attorneys from 54 United States jurisdictions to join the Oregon bar
13 on a temporary or permanent basis, thereby providing a source for recruiting
14 attorneys to Oregon to ameliorate the state’s public defense crisis; and

15 “Whereas financial and structural deficiencies in Oregon’s public defense
16 system leave public defense offices unable to provide adequate training for
17 new attorneys as they enter the public defense profession, also contributing
18 to the high attrition rate; and

19 “Whereas caseloads are too high for public defenders to provide effective
20 legal counsel and caseloads need to be reduced so attorneys can give each
21 client the amount of time to which they are constitutionally entitled; and

22 “Whereas the lack of experienced and diverse public defenders deprives
23 Oregon of a robust pool of attorneys to pick from to fill judicial vacancies,
24 narrowing the perspectives of the state bench; now, therefore,”.

25 Delete lines 17 through 27 and delete pages 2 and 3 and insert:

26 **“SECTION 1. The Public Defense Services Commission shall take
27 measures designed to increase the number of public defense providers
28 by 20 percent by December 31, 2030.**

29 **“SECTION 2. The Public Defense Services Commission shall report
30 to the committees of the Legislative Assembly related to the judiciary**

1 during each odd-numbered year regular session of the Legislative As-
2 sembly on:

3 “(1) The number of attorneys working in Oregon as public defense
4 providers, distinguishing those employed by the state or through con-
5 sortiums or nonprofit organizations, and tracking movement of pro-
6 viders between those two employment models.

7 “(2) The estimated number of public defense providers needed to
8 meet caseload demand.

9 “(3) The attrition rate of attorneys leaving the public defense prac-
10 tice.

11 “(4) The percentage of new public defense providers coming to
12 Oregon from outside the state.

13 “(5) Recommendations for legislation to assist the commission with
14 meeting goals for recruiting public defense providers and providing
15 constitutionally adequate services.

16 “(6) How the commission is working with law schools to develop
17 incentives for law students and recent alumni to become public de-
18 fense providers.

19 “SECTION 3. The Public Defense Services Commission shall provide
20 grants to law schools in Oregon for projects designed to increase the
21 number of graduates choosing employment as public defense providers,
22 including but not limited to:

23 “(1) Experiential clinics specialized in criminal defense, juvenile
24 defense and juvenile dependency defense.

25 “(2) Career fairs and networking events.

26 “(3) Scholarships and financial assistance for students working to
27 become public defense providers.

28 “(4) Loan forgiveness for graduates working as public defense pro-
29 viders.

30 “(5) Paid clerkships.

1 **“(6) Paid positions for students taking a nontraditional path to**
2 **taking the bar exam.**

3 **“SECTION 4. The Public Defense Services Commission shall con-**
4 **duct outreach at law schools outside of this state and at nonprofit**
5 **organizations to attract public defense providers to this state, with**
6 **special dedication to recruiting providers with the following lived ex-**
7 **periences or background:**

8 **“(1) Experience of discrimination because of race or ethnicity.**

9 **“(2) Bilingual skills or experience living in a home where English**
10 **is not the first language.**

11 **“(3) Non-American citizenship status.**

12 **“(4) Low socioeconomic status.**

13 **“(5) Residence in a rural or frontier community.**

14 **“(6) Experience working with people experiencing mental illness.**

15 **“(7) Experience in providing trauma-informed services.**

16 **“SECTION 5. The Public Defense Services Commission shall offer**
17 **a training program for public defense providers. The commission may**
18 **contract with an outside provider to offer the training program.**

19 **“SECTION 6. The Public Defense Services Commission shall issue**
20 **a one-time payment of \$_____ to each public defense provider em-**
21 **ployed by the office of public defense services.**

22 **“SECTION 7. ORS 151.216 is amended to read:**

23 **“151.216. (1) The Public Defense Services Commission shall:**

24 **“(a) Establish and maintain a public defense system that ensures the**
25 **provision of public defense services consistent with the Oregon Constitution,**
26 **the United States Constitution and Oregon and national standards of justice.**

27 **“(b) Establish an office of public defense services and appoint a public**
28 **defense services executive director who serves at the pleasure of the com-**
29 **mission.**

30 **“(c) Adopt policies for contracting for public defense providers not em-**

1 employed by the office of public defense services that:

2 “(A) Ensure compensation, resources and caseloads are in accordance
3 with national and regional best practices;

4 “(B) Promote policies for public defense provider compensation and re-
5 sources that are comparable to prosecution compensation and resources;

6 “(C) Ensure funding and resources to support required data collection and
7 training requirements; and

8 “(D) Recognize the need to consider overhead costs that account for the
9 cost of living and business cost differences in each county or jurisdiction,
10 including but not limited to rent, professional membership dues, malpractice
11 insurance and other insurance and other reasonable and usual operating
12 costs.

13 “(d) Establish operational and contracting systems that allow for over-
14 sight, ensure transparency and stakeholder engagement and promote equity,
15 inclusion and culturally specific representation.

16 “(e) Review the caseload policies described in paragraph (c)(A) of this
17 subsection annually, and revise the policies as necessary and at least every
18 four years.

19 “(f) Adopt a statewide workload plan, based on the caseload policies de-
20 scribed in paragraph (c)(A) of this subsection, that takes into account the
21 needs of each county or jurisdiction, practice structure and type of practice
22 overseen by the office of public defense services.

23 “(g) Submit the budget of the commission and the office of public defense
24 services to the Legislative Assembly after the budget is submitted to the
25 commission by the director and approved by the commission. The Chief Jus-
26 tice of the Supreme Court and the chairperson of the commission shall
27 present the budget to the Legislative Assembly.

28 “(h) Review and approve any public defense services contract negotiated
29 by the director before the contract can become effective.

30 “(i) Adopt a compensation plan, classification system and personnel plan

1 for the office of public defense services that are commensurate with other
2 state agencies **and that ensure that support staff employed by the office**
3 **are compensated at a rate that equals or exceeds the compensation**
4 **provided to support staff employed by the Judicial Department.**

5 “(j) Adopt policies, procedures, standards and guidelines [*regarding*] **for:**

6 “(A) The determination of financial eligibility of persons entitled to be
7 represented by appointed counsel at state expense;

8 “(B) The appointment of counsel, including the appointment of counsel
9 at state expense regardless of financial eligibility in juvenile delinquency
10 matters;

11 “[*(C) The fair compensation of counsel appointed to represent a person fi-*
12 *nancially eligible for appointed counsel at state expense;*]

13 “(C) **Compensation of counsel appointed to represent a person fi-**
14 **nancially eligible for appointed counsel at state expense that equals**
15 **or exceeds the compensation provided to appellate attorneys employed**
16 **by the office of public defense services;**

17 “(D) Appointed counsel compensation disputes;

18 “(E) Any other costs associated with the representation of a person by
19 appointed counsel in the state courts that are required to be paid by the
20 state under ORS 34.355, 135.055, 138.500, 138.590, 161.346, 161.348, 161.365,
21 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209, 419C.408,
22 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315
23 or any other provision of law that expressly provides for payment of such
24 compensation, costs or expenses by the commission;

25 “(F) Professional qualifications for counsel appointed to represent public
26 defense clients;

27 “(G) Performance for legal representation;

28 “(H) The contracting of public defense services;

29 “(I) Contracting with expert witnesses to allow contracting with out-of-
30 state expert witnesses only if in-state expert witnesses are not available or

1 are more expensive than out-of-state expert witnesses; and

2 “(J) Any other matters necessary to carry out the duties of the commis-
3 sion.

4 “(k) Establish a peer review system for the approval of nonroutine fees
5 and expenses incurred in cases involving aggravated murder and the crimes
6 listed in ORS 137.700 and 137.707. The review shall be conducted by a panel
7 of attorneys who practice in the area of criminal defense.

8 “(L) Establish a complaint process that allows district attorneys, criminal
9 defense counsel and the public to file complaints concerning the payment
10 from public funds of nonroutine fees and expenses incurred in cases.

11 “(m) Reimburse the State Court Administrator from funds deposited in the
12 Public Defense Services Account established by ORS 151.225 for the costs of
13 personnel and other costs associated with location of eligibility verification
14 and screening personnel pursuant to ORS 151.489 by the State Court Ad-
15 ministrator.

16 “(2) Policies, procedures, standards and guidelines adopted by the com-
17 mission supersede any conflicting rules, policies or procedures of the Public
18 Defender Committee, State Court Administrator, circuit courts, the Court of
19 Appeals, the Supreme Court and the Psychiatric Security Review Board re-
20 lated to the exercise of the commission’s administrative responsibilities un-
21 der this section and transferred duties, functions and powers as they occur.

22 “(3) The commission may accept gifts, grants or contributions from any
23 source, whether public or private. However, the commission may not accept
24 a gift, grant or contribution if acceptance would create a conflict of interest.
25 Moneys accepted under this subsection shall be deposited in the Public De-
26 fense Services Account established by ORS 151.225 and expended for the
27 purposes for which given or granted.

28 “(4) The commission may not:

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

30 “(b) Have access to any case file; or

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

4 “**SECTION 8. Section 1 of this 2023 Act is repealed on January 2,**
5 **2031.**

6 “**SECTION 9. Section 6 of this 2023 Act is repealed on January 2,**
7 **2025.**

8 “**SECTION 10. This 2023 Act takes effect on the 91st day after the**
9 **date on which the 2023 regular session of the Eighty-second Legislative**
10 **Assembly adjourns sine die.”**

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