

House Bill 2668

Sponsored by COMMITTEE ON JUDICIARY (at the request of Office of Public Defense Services)

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**.

Requires preparation of transcript at state expense if appellate petitioner qualifies for court-appointed counsel.

A BILL FOR AN ACT

1
2 Relating to appeals; amending ORS 138.310 and 138.500.

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

4 **SECTION 1.** ORS 138.500 is amended to read:

5 138.500. (1) If a defendant in a criminal action or a petitioner in a proceeding pursuant to ORS
6 138.510 to 138.680 wishes to appeal from an appealable adverse final order or judgment of a circuit
7 court and if the person is without funds to employ suitable counsel possessing skills and experience
8 commensurate with the nature and complexity of the case for the appeal, the person may request
9 the circuit court from which the appeal is or would be taken to appoint counsel to represent the
10 person on appeal. The following apply to a request under this subsection:

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

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

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

26 (b) After the notice of appeal has been filed, the Court of Appeals has concurrent authority to
27 appoint or substitute counsel or appoint or substitute a legal advisor for the defendant under ORS
28 138.504.

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

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

4 (3) Whenever a defendant in a criminal action or a petitioner in a proceeding pursuant to ORS
 5 138.510 to 138.680 has filed a notice of appeal from an appealable adverse final order or judgment
 6 of a circuit court and the person is without funds to pay for a transcript, or portion thereof, nec-
 7 essary to present adequately the case upon appeal, the person may request the public defense ser-
 8 vices executive director to have the transcript, or portion thereof, *[furnished to the person]* **prepared**
 9 **for purposes of appeal.** The following apply to a request under this subsection:

10 [(a) *The request shall be in writing and, shall include a brief statement of the assets, liabilities and*
 11 *income in the previous year of the person.*]

12 [(b) *If, based upon a request under paragraph (a) of this subsection, the public defense services*
 13 *executive director finds that the person is unable to pay for the transcript, the public defense services*
 14 *executive director shall have furnished to the person that portion of the transcript as may be material*
 15 *to the decision on appeal, if the public defense services executive director finds that the transcript or*
 16 *portion thereof is necessary.*]

17 **(a) The public defense services executive director shall authorize the preparation of a**
 18 **transcript after a court has determined that the person is eligible for court-appointed coun-**
 19 **sel or, if the person has not applied for court-appointed counsel, the person submits a**
 20 **statement of the person’s assets, liabilities and income in the previous year and the director**
 21 **determines that the person is eligible for preparation of a transcript at state expense.**

22 [(c) **(b)** The cost of the transcript **preparation** under paragraph [(b)] **(a)** of this subsection shall
 23 be in the amount prescribed in ORS 21.470 and paid for as provided by the policies, procedures,
 24 standards and guidelines of the Public Defense Services Commission.

25 (4) After submission of the original brief by counsel, the public defense services executive di-
 26 rector shall determine the cost of briefs and any other expenses of appellant, except transcripts,
 27 necessary to appellate review and a reasonable amount of compensation for counsel appointed under
 28 this section. Compensation payable to appointed counsel shall be as established under ORS 151.216.
 29 On any review by the Supreme Court of the judgment of the Court of Appeals *[a person for whom*
 30 *counsel has been appointed shall by similar procedure recover the cost of briefs, any other expense of*
 31 *the review and compensation for counsel.]* **the public defense services executive director shall**
 32 **similarly determine the costs of briefs and any other expenses necessary for review and a**
 33 **reasonable amount of compensation for counsel appointed under this section.**

34 (5) Costs, expenses and compensation determined by the public defense services executive di-
 35 rector under subsection (4) of this section shall be paid by the public defense services executive di-
 36 rector from funds available for that purpose.

37 (6) If the public defense services executive director denies, in whole or in part, costs, expenses
 38 and compensation submitted for review and payment, the person who submitted the payment request
 39 may appeal the decision to the Chief Judge of the Court of Appeals, if the appeal is in the Court
 40 of Appeals, or to the Chief Justice of the Supreme Court, if the appeal is in the Supreme Court. The
 41 Chief Judge, Chief Justice or the designee of the Chief Judge or Chief Justice, as appropriate, shall
 42 review the public defense services executive director’s decision for abuse of discretion. The decision
 43 of the Chief Judge, the Chief Justice or the designee of the Chief Judge or Chief Justice is final.

44 (7) The provisions of this section shall apply in favor of the defendant in a criminal action or
 45 the petitioner in a proceeding pursuant to ORS 138.510 to 138.680 when the person is respondent in

1 an appeal taken by the state in a criminal action or by the defendant in a proceeding pursuant to
2 ORS 138.510 to 138.680.

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

5 (9) As used in subsection (4) of this section, "counsel" includes a legal advisor appointed under
6 ORS 138.504.

7 **SECTION 2.** ORS 138.310 is amended to read:

8 138.310. When the public defense services executive director pays costs, expenses or compen-
9 sation under ORS 138.500 [(4)] (5) on appeal in a criminal action, the public defense services exec-
10 utive director shall notify the court below of the costs, expenses and compensation paid in order
11 that the court below may exercise its discretion under ORS 151.505 or 161.665 (2).

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