

Senate Bill 255

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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**.

Modifies standard by which Public Defense Services Commission compensates appointed counsel, investigators and other persons who provide services for persons eligible for appointed counsel.

A BILL FOR AN ACT

1
2 Relating to compensation for services provided to persons eligible for appointed counsel; creating
3 new provisions; and amending ORS 135.055 and 151.216.

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

5 **SECTION 1.** ORS 151.216 is amended to read:

6 151.216. (1) The Public Defense Services Commission shall:

7 (a) Establish and maintain a public defense system that ensures the provision of public defense
8 services in the most cost-efficient manner consistent with the Oregon Constitution, the United States
9 Constitution and Oregon and national standards of justice.

10 (b) Establish an office of public defense services and appoint a public defense services executive
11 director who serves at the pleasure of the commission.

12 (c) Submit the budget of the commission and the office of public defense services to the Legis-
13 lative Assembly after the budget is submitted to the commission by the director and approved by the
14 commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall
15 present the budget to the Legislative Assembly.

16 (d) Review and approve any public defense services contract negotiated by the director before
17 the contract can become effective.

18 (e) Adopt a compensation plan, classification system and personnel plan for the office of public
19 defense services that are commensurate with other state agencies.

20 (f) Adopt policies, procedures, standards and guidelines regarding:

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

23 (B) The appointment of counsel;

24 (C) The [*fair*] compensation of counsel appointed to represent a person financially eligible for
25 appointed counsel at state expense, **at a rate commensurate with the compensation paid to**
26 **counsel employed by the government;**

27 **(D) The compensation of investigators and other persons who provide services pursuant**
28 **to ORS 135.055 at a rate commensurate with the compensation paid to investigators and**
29 **other persons who provide similar services for the government;**

30 [(D)] **(E) Appointed counsel compensation disputes;**

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 [(E)] (F) Any other costs associated with the representation of a person by appointed counsel
 2 in the state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500,
 3 138.590, 161.346, 161.365, 161.385, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206,
 4 419C.209, 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315
 5 or any other provision of law that expressly provides for payment of such compensation, costs or
 6 expenses by the commission;

7 [(F)] (G) Professional qualifications for counsel appointed to represent public defense clients;

8 [(G)] (H) Performance for legal representation;

9 [(H)] (I) The contracting of public defense services;

10 [(I)] (J) Contracting with expert witnesses to allow contracting with out-of-state expert wit-
 11 nesses only if in-state expert witnesses are not available or are more expensive than out-of-state
 12 expert witnesses; and

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

14 (g) Establish a peer review system for the approval of nonroutine fees and expenses incurred in
 15 cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The review
 16 shall be conducted by a panel of attorneys who practice in the area of criminal defense.

17 (h) Establish a complaint process that allows district attorneys, criminal defense counsel and the
 18 public to file complaints concerning the payment from public funds of nonroutine fees and expenses
 19 incurred in cases.

20 (i) Reimburse the State Court Administrator from funds deposited in the subaccount established
 21 under ORS 151.225 for the costs of personnel and other costs associated with location of eligibility
 22 verification and screening personnel pursuant to ORS 151.489 by the State Court Administrator.

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

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

33 (4) The commission may not:

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

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

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

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

39 135.055. (1) Counsel appointed pursuant to ORS 135.045 or 135.050 shall be paid fair compen-
 40 sation for representation in the case:

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

43 (b) By the public defense services executive director from funds available for the purpose, in a
 44 proceeding in a circuit court.

45 (2) *[Except for counsel appointed pursuant to contracts or counsel employed by the public defense*

1 *services executive director,]* Compensation payable to appointed counsel under subsection (1) of this
2 section:

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

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

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

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

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

30 (d) Entitlement under subsection (7) of this section to payment for fees and expenses in circuit
31 court is subject to the policies, procedures, standards and guidelines adopted under ORS 151.216.
32 Entitlement to payment of nonroutine fees and expenses is dependent upon obtaining preauthori-
33 zation from the court, if the case is in county or justice court, or from the public defense services
34 executive director, if the case is in circuit court, except as otherwise provided in paragraph (c) of
35 this subsection and in the policies, procedures, standards and guidelines adopted under ORS 151.216.
36 Fees and expenses shall be paid:

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

38 (B) By the public defense services executive director from funds available for the purpose, in
39 respect to a proceeding in a circuit court.

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

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

1 (5) In a county or justice court, the total fees and expenses payable under this section must be
2 submitted to the court by counsel or other providers and are subject to the review of the court. The
3 court shall certify that such amount is fair reimbursement for fees and expenses for representation
4 in the case as provided in subsection (6) of this section. Upon certification and any verification as
5 provided under subsection (6) of this section, the amount of the fees and expenses approved by the
6 court and not already paid shall be paid by the county.

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

10 (7) In a circuit court, the total fees and expenses payable under this section must be submitted
11 to and are subject to review by the public defense services executive director. The public defense
12 services executive director shall determine whether the amount is necessary, reasonable and prop-
13 erly payable from public funds for fees and expenses for representation in the case as provided by
14 the policies, procedures, standards and guidelines of the Public Defense Services Commission. The
15 public defense services executive director shall pay the amount of the fees and expenses determined
16 necessary, reasonable and properly payable out of public funds. The court shall provide any infor-
17 mation identified and requested by the public defense services executive director as needed for au-
18 dit, statistical or any other purpose pertinent to ensure the proper disbursement of state funds or
19 pertinent to the provision of appointed counsel compensated at state expense.

20 (8) If the public defense services executive director denies, in whole or in part, fees and ex-
21 penses submitted for review and payment, the person who submitted the payment request may appeal
22 the decision to the presiding judge of the circuit court. The presiding judge or the designee of the
23 presiding judge shall review the public defense services executive director's decision for abuse of
24 discretion. The decision of the presiding judge or the designee of the presiding judge is final.

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

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

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

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

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

34 **SECTION 3. The amendments to ORS 135.055 and 151.216 by sections 1 and 2 of this 2009**
35 **Act apply to appointments made on or after the effective date of this 2009 Act.**

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