

# Senate Bill 426

Sponsored by Senator KRUSE (Presession 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**.

Eliminates statutory right to appointed counsel for discretionary review appeals, post-conviction relief proceedings and post-conviction DNA testing.

## A BILL FOR AN ACT

1  
2 Relating to appointed counsel; amending ORS 137.463, 138.500, 138.504, 138.590, 138.692, 138.697,  
3 151.216 and 151.505; and repealing ORS 138.694.

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

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

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

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

20 (b) If, based upon a request under paragraph (a) of this subsection, the court finds that petitioner  
21 or defendant previously received the services of appointed counsel or currently is without funds to  
22 employ suitable counsel for an appeal, the court shall appoint counsel to represent petitioner or  
23 defendant on the appeal. **Appointed counsel may be provided under this subsection only for**  
24 **direct appellate review of the defendant's conviction or sentence and may not continue dur-**  
25 **ing any discretionary review of the judgment of the Court of Appeals by the Supreme Court.**

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

29 (b) After the notice of appeal has been filed, the Court of Appeals has concurrent authority to  
30 appoint or substitute counsel or **to** appoint or substitute a legal advisor for the defendant under ORS  
31 138.504. **Appointed counsel may be provided under this subsection only for direct appellate**

**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 **review of the defendant's conviction or sentence and may not continue during any discre-**  
2 **tionary review of the judgment of the Court of Appeals by the Supreme Court.**

3 *[(c) The Supreme Court has concurrent authority to appoint or substitute counsel or appoint or*  
4 *substitute a legal advisor for the defendant under ORS 138.504 in connection with review of a Court*  
5 *of Appeals decision under ORS 2.520.]*

6 *[(d)] (c) [Neither] The Court of Appeals [nor the Supreme Court] may not substitute one ap-*  
7 *pointed counsel for another under paragraph (b) [or (c)] of this subsection except pursuant to the*  
8 *policies, procedures, standards and guidelines of the Public Defense Services Commission.*

9 (3) Whenever a defendant in a criminal action or a petitioner in a proceeding pursuant to ORS  
10 138.510 to 138.680 has filed a notice of appeal from an appealable adverse final order or judgment  
11 of a circuit court and the person is without funds to pay for a transcript, or portion thereof, nec-  
12 essary to present adequately the case upon appeal, the person may request the public defense ser-  
13 vices executive director to have the transcript, or portion thereof, prepared for purposes of appeal.  
14 The following apply to a request under this subsection:

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

20 (b) The cost of the transcript preparation under paragraph (a) of this subsection shall be in the  
21 amount prescribed in ORS 21.345 and paid for as provided by the policies, procedures, standards and  
22 guidelines of the Public Defense Services Commission.

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

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

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

40 (7) The provisions of this section shall apply in favor of the defendant in a criminal action or  
41 the petitioner in a proceeding pursuant to ORS 138.510 to 138.680 when the person is respondent in  
42 an appeal taken by the state in a criminal action or by the defendant in a proceeding pursuant to  
43 ORS 138.510 to 138.680.

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

1 (9) As used in subsection (4) of this section, “counsel” includes a legal advisor appointed under  
2 ORS 138.504.

3 **SECTION 2.** ORS 138.504 is amended to read:

4 138.504. (1) If the defendant wishes to waive counsel in the appeal of a criminal action to the  
5 Court of Appeals [*or on review of a criminal action by the Supreme Court*], the court shall determine  
6 whether the defendant has made a knowing and voluntary waiver of counsel. The court shall accept  
7 the waiver of counsel if the defendant is not charged with a capital offense. The court may decline  
8 to accept the waiver of counsel if the defendant is charged with a capital offense.

9 (2) If the court accepts a defendant’s waiver of counsel, the court may allow an attorney to  
10 serve as the defendant’s legal advisor and, if the defendant is financially eligible for appointed  
11 counsel at state expense, may appoint an attorney as the defendant’s legal advisor.

12 (3) If the court declines to accept a defendant’s waiver of counsel under subsection (1) of this  
13 section, the court shall give the defendant a reasonable opportunity, as prescribed by order or rule  
14 of the court, to file a brief on the defendant’s own behalf.

15 **SECTION 3.** ORS 138.590 is amended to read:

16 138.590. (1) Any petitioner who is unable to pay the expenses of a proceeding pursuant to ORS  
17 138.510 to 138.680 [*or to employ suitable counsel possessing skills and experience commensurate with*  
18 *the nature of the conviction and complexity of the case for the proceeding*] may proceed as a financially  
19 eligible person pursuant to this section upon order of the circuit court in which the petition is filed.

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

32 [(3) *If a petitioner who has been sentenced to death qualifies for the appointment of counsel under*  
33 *this section but rejects the appointment, the court shall determine, after a hearing if necessary, whether*  
34 *the petitioner rejected the offer of counsel and made the decision with an understanding of its legal*  
35 *consequences. The court shall make appropriate findings on the record.*]

36 [(4) *In the order to proceed as a financially eligible person, the circuit court shall appoint suitable*  
37 *counsel to represent petitioner. Counsel so appointed shall represent petitioner throughout the pro-*  
38 *ceedings in the circuit court. The court may not substitute one appointed counsel for another except*  
39 *pursuant to the policies, procedures, standards and guidelines of the Public Defense Services Commis-*  
40 *sion.*]

41 [(5) *If counsel appointed by the circuit court determines that the petition as filed by petitioner is*  
42 *defective, either in form or in substance, or both, counsel may move to amend the petition within 15*  
43 *days following counsel’s appointment, or within a further period as the court may allow. The amend-*  
44 *ment shall be permitted as of right at any time during this period. If appointed counsel believes that*  
45 *the original petition cannot be construed to state a ground for relief under ORS 138.510 to 138.680, and*

1 *cannot be amended to state a ground for relief, counsel shall, in lieu of moving to amend the petition,*  
 2 *inform the petitioner and notify the circuit court of counsel's belief by filing an affidavit stating the*  
 3 *belief and the reasons therefor with the clerk of the circuit court. This affidavit does not constitute a*  
 4 *ground for denying the petition prior to a hearing upon its sufficiency, but the circuit court may con-*  
 5 *sider the affidavit in deciding upon the sufficiency of the petition at the hearing.]*

6 [(6)] (3) When a petitioner has been ordered to proceed as a financially eligible person, the ex-  
 7 penses *[which]* **that** are necessary for the proceedings upon the petition in the circuit court *[and the*  
 8 *compensation to appointed counsel for petitioner as provided in this subsection]* shall be paid by the  
 9 public defense services executive director from funds available for the purpose. At the conclusion  
 10 of proceedings on a petition pursuant to ORS 138.510 to 138.680, the public defense services execu-  
 11 tive director shall determine and pay, as provided by the policies, procedures, standards and guide-  
 12 lines of the Public Defense Services Commission, the amount of expenses of petitioner *[and*  
 13 *compensation for the services of appointed counsel]* in the proceedings in the circuit court.

14 [(7)] (4) If the public defense services executive director denies, in whole or in part, expenses  
 15 *[and compensation]* submitted for review and payment, the person who submitted the payment re-  
 16 quest may appeal the decision to the presiding judge of the circuit court. The presiding judge or the  
 17 designee of the presiding judge shall review the public defense services executive director's decision  
 18 for abuse of discretion. The decision of the presiding judge or the designee of the presiding judge  
 19 is final.

20 [(8)(a)] (5)(a) When a petitioner has been authorized to proceed as a financially eligible person,  
 21 all court fees in the circuit court, except for the filing fee required by ORS 138.560, are waived.

22 (b) When a petitioner is allowed to file a petition without payment of the fee required by ORS  
 23 138.560 due to inability to pay, the fee is not waived but may be drawn from, or charged against,  
 24 the petitioner's trust account if the petitioner is an inmate in a correctional facility.

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

29 **SECTION 4.** ORS 138.692 is amended to read:

30 138.692. (1)(a) When a person files a motion under ORS 138.690 requesting the performance of  
 31 DNA (deoxyribonucleic acid) testing on specified evidence, the motion must be supported by an af-  
 32 fidavit. The affidavit must:

33 (A)(i) For a person described in ORS 138.690 (1), contain a statement that the person is innocent  
 34 of the offense for which the person was convicted or of the conduct underlying any mandatory sen-  
 35 tence enhancement; or

36 (ii) For a person described in ORS 138.690 (2), contain a statement that the person is innocent  
 37 of the offense for which the person was convicted;

38 (B) Identify the specific evidence to be tested and a theory of defense that the DNA testing  
 39 would support. The specific evidence must have been secured in connection with the prosecution,  
 40 including the investigation, that resulted in the conviction of the person; and

41 (C) Include the results of any previous DNA test of the evidence if a previous DNA test was  
 42 conducted by either the prosecution or the defense.

43 (b) The person must present a prima facie showing that DNA testing of the specified evidence  
 44 would, assuming exculpatory results, establish the actual innocence of the person of:

45 (A) The offense for which the person was convicted; or

1 (B) Conduct, if the exoneration of the person of the conduct would result in a mandatory re-  
2 duction in the person's sentence.

3 (2) The court shall order the DNA testing requested in a motion under subsection (1) of this  
4 section if the court finds that:

5 (a) The requirements of subsection (1) of this section have been met;

6 (b) Unless the parties stipulate otherwise, the evidence to be tested is in the possession of a city,  
7 county, state or the court and has been subject to a chain of custody sufficient to establish that the  
8 evidence has not been altered in any material aspect;

9 (c) The motion is made in a timely manner and for the purpose of demonstrating the innocence  
10 of the person of the offense or of the conduct and not to delay the execution of the sentence or  
11 administration of justice; and

12 (d) There is a reasonable possibility that the testing will produce exculpatory evidence that  
13 would establish the innocence of the person of:

14 (A) The offense for which the person was convicted; or

15 (B) Conduct, if the exoneration of the person of the conduct would result in a mandatory re-  
16 duction in the person's sentence.

17 (3) In granting a motion under this section, the court may impose reasonable conditions designed  
18 to protect the interests of the state in the integrity of the evidence and the testing process.

19 (4) Unless both parties agree otherwise, the court shall order the Department of State Police to  
20 conduct the DNA testing. The court may order a second test upon a showing that the state police  
21 failed to follow appropriate DNA protocols and that failure reasonably affected the accuracy of the  
22 DNA test.

23 (5) The costs of DNA tests ordered under this section must be paid by:

24 (a) The person making the motion for DNA testing if the person is not incarcerated or, if the  
25 person is incarcerated, if the person is financially able to pay; or

26 (b) The state if [*counsel at state expense has been appointed under ORS 138.694*] **the person is**  
27 **financially unable to pay.**

28 (6) The results of a DNA test ordered under this section must be disclosed to the person filing  
29 the motion and to the state.

30 (7) Notwithstanding the fact that an appeal of the conviction or a petition for post-conviction  
31 relief in the underlying case is pending at the time a motion is filed under ORS 138.690, the circuit  
32 court shall consider the motion. If the court grants the motion, the court shall notify the court  
33 considering the appeal or post-conviction petition of that fact. When a court receives notice under  
34 this subsection, the court shall stay the appeal or post-conviction proceedings pending the outcome  
35 of the motion filed under ORS 138.690 and any further proceedings resulting from the motion.

36 **SECTION 5.** ORS 138.697 is amended to read:

37 138.697. (1) A person described in ORS 138.690 may appeal to the Court of Appeals from a circuit  
38 court's final order or judgment denying or limiting DNA (deoxyribonucleic acid) testing under ORS  
39 138.692[, *denying appointment of counsel under ORS 138.694*] or denying a motion for a new trial  
40 under ORS 138.696.

41 (2) The state may appeal to the Court of Appeals from a circuit court's final order or judgment  
42 granting a motion for DNA testing under ORS 138.692 or granting a motion for a new trial under  
43 ORS 138.696.

44 (3) The time limits described in ORS 138.071, the notice requirements described in ORS 138.081  
45 and 138.090 and the provisions of ORS 138.225, 138.227, 138.240, 138.250, 138.255 and 138.261 apply

1 to appeals under this section unless the context requires otherwise.

2 [(4) A circuit court shall appoint counsel to represent a person described in ORS 138.690 on appeal  
3 in the same manner as for criminal defendants under ORS 138.500.]

4 **SECTION 6.** ORS 151.505 is amended to read:

5 151.505. (1) At the conclusion of a case or matter in which the first accusatory instrument or  
6 petition in the trial court was filed after January 1, 1998, and in which the court appointed counsel  
7 to represent a person, a trial[,] or appellate [or *post-conviction*] court may include in its judgment  
8 a money award requiring that the person repay in full or in part the administrative costs of deter-  
9 mining the eligibility of the person for appointed counsel, and the costs of the legal and other ser-  
10 vices that are related to the provision of appointed counsel, that have not previously been required  
11 to be paid under a limited judgment entered under ORS 151.487. An award under this section is a  
12 monetary obligation payable to the state.

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

19 (3) The court may not require a person to pay costs under this section unless the person is or  
20 may be able to pay the costs. In determining the amount and method of payment of costs, the court  
21 shall take account of the financial resources of the person and the nature of the burden that pay-  
22 ment of costs will impose.

23 (4) A person who has been required to pay costs under this section and who is not in  
24 contumacious default in the payment of the costs may at any time petition the court for remission  
25 of the payment of costs or any unpaid portion of the costs. If it appears to the satisfaction of the  
26 court that payment of the amount due will impose manifest hardship on the person ordered to repay  
27 or on the immediate family of the person, the court may enter a supplemental judgment that remits  
28 all or part of the amount due or modifies the method of payment.

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

32 **SECTION 7.** ORS 137.463 is amended to read:

33 137.463. (1) When a sentence of death is pronounced, the clerk of the court shall deliver a copy  
34 of the judgment of conviction and sentence of death to the sheriff of the county. The sheriff shall  
35 deliver the defendant within 20 days from the date the judgment is entered to the correctional in-  
36 stitution designated by the Director of the Department of Corrections pending the determination of  
37 the automatic and direct review by the Supreme Court under ORS 138.012.

38 (2) If the Supreme Court affirms the sentence of death, a death warrant hearing shall take place  
39 in the court in which the judgment was rendered within 30 days after the effective date of the ap-  
40 pellate judgment or, upon motion of the state, on a later date. The following apply to a death war-  
41 rant hearing under this subsection:

42 (a) The defendant must be present; and

43 (b) The defendant may be represented by counsel. If the defendant was represented by appointed  
44 counsel on automatic and direct review, that counsel's appointment continues for purposes of the  
45 death warrant hearing and any related matters. If that counsel is unavailable, the court shall ap-

1 point counsel pursuant to the procedure in ORS 135.050 and 135.055.

2 (3)(a) If the defendant indicates the wish to waive the right to counsel for the purpose of the  
3 death warrant hearing, the court shall inquire of the defendant on the record to ensure that the  
4 waiver is competent, knowing and voluntary.

5 (b) If the court finds that the waiver is competent, knowing and voluntary, the court shall dis-  
6 charge counsel.

7 (c) If the court finds on the record that the waiver of the right to counsel granted by this sec-  
8 tion is not competent, knowing or voluntary, the court shall continue the appointment of counsel.

9 (d) Notwithstanding the fact that the court finds on the record that the defendant competently,  
10 knowingly and voluntarily waives the right to counsel, the court may continue the appointment of  
11 counsel as advisor only for the purposes of the death warrant hearing.

12 (4) At the death warrant hearing, the court:

13 (a) After appropriate inquiry, shall make findings on the record whether the defendant suffers  
14 from a mental condition that prevents the defendant from comprehending the reasons for the death  
15 sentence or its implication. The defendant has the burden of proving by a preponderance of the ev-  
16 idence that the defendant suffers from a mental condition that prevents the defendant from com-  
17 prehending the reasons for the death sentence or its implication.

18 *[(b) Shall advise the defendant that the defendant is entitled to counsel in any post-conviction pro-  
19 ceeding and that counsel will be appointed if the defendant is financially eligible for appointed counsel  
20 at state expense.]*

21 *[(c)]* (b) Shall determine whether the defendant intends to pursue any challenges to the sentence  
22 or conviction. If the defendant states on the record that the defendant does not intend to challenge  
23 the sentence or conviction, the court after advising the defendant of the consequences shall make  
24 a finding on the record whether the defendant competently, knowingly and voluntarily waives the  
25 right to pursue:

26 (A) A petition for certiorari to the United States Supreme Court;

27 (B) Post-conviction relief under ORS 138.510 to 138.680; and

28 (C) Federal habeas corpus review under 28 U.S.C. 2254.

29 (5) Following the death warrant hearing, a death warrant, signed by the trial judge of the court  
30 in which the judgment was rendered and attested by the clerk of that court, shall be drawn and  
31 delivered to the superintendent of the correctional institution designated by the Director of the  
32 Department of Corrections. The death warrant shall specify a day on which the sentence of death  
33 is to be executed and shall authorize and command the superintendent to execute the judgment of  
34 the court. The trial court shall specify the date of execution of the sentence, taking into consider-  
35 ation the needs of the Department of Corrections. The trial court shall specify a date not less than  
36 90 days nor more than 120 days following the effective date of the appellate judgment.

37 (6)(a) Notwithstanding any other provision in this section, if the court finds that the defendant  
38 suffers from a mental condition that prevents the defendant from comprehending the reasons for the  
39 sentence of death or its implications, the court may not issue a death warrant until such time as the  
40 court, after appropriate inquiries, finds that the defendant is able to comprehend the reasons for the  
41 sentence of death and its implications.

42 (b)(A) If the court does not issue a death warrant because it finds that the defendant suffers  
43 from a mental condition that prevents the defendant from comprehending the reasons for the sen-  
44 tence of death or its implications, the court shall conduct subsequent hearings on the issue on mo-  
45 tion of the district attorney or the defendant's counsel or on the court's own motion, upon a showing

1 that there is substantial reason to believe that the defendant's condition has changed.

2 (B) The court may hold a hearing under this paragraph no more frequently than once every six  
3 months.

4 (C) The state and the defendant may obtain an independent medical, psychiatric or psychological  
5 examination of the defendant in connection with a hearing under this paragraph.

6 (D) In a hearing under this paragraph, the defendant has the burden of proving by a prepon-  
7 derance of the evidence that the defendant continues to suffer from a mental condition that prevents  
8 the defendant from comprehending the reasons for the sentence of death or its implications.

9 (7) If for any reason a sentence of death is not executed on the date appointed in the death  
10 warrant, and the sentence of death remains in force and is not stayed under ORS 138.686 or other-  
11 wise by a court of competent jurisdiction, the court that issued the initial death warrant, on motion  
12 of the state and without further hearing, shall issue a new death warrant specifying a new date on  
13 which the sentence is to be executed. The court shall specify a date for execution of the sentence,  
14 taking into consideration the needs of the Department of Corrections. The court shall specify a date  
15 not more than 20 days after the date on which the state's motion was filed.

16 (8) No appeal may be taken from an order issued pursuant to this section.

17 **SECTION 8.** ORS 151.216 is amended to read:

18 151.216. (1) The Public Defense Services Commission shall:

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

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

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

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

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

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

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

35 (B) The appointment of counsel;

36 (C) The fair compensation of counsel appointed to represent a person financially eligible for  
37 appointed counsel at state expense;

38 (D) Appointed counsel compensation disputes;

39 (E) Any other costs associated with the representation of a person by appointed counsel in the  
40 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, [138.590,  
41 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,  
42 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any  
43 other provision of law that expressly provides for payment of such compensation, costs or expenses  
44 by the commission;

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



1 (G) Performance for legal representation;

2 (H) The contracting of public defense services;

3 (I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses  
4 only if in-state expert witnesses are not available or are more expensive than out-of-state expert  
5 witnesses; and

6 (J) Any other matters necessary to carry out the duties of the commission.

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

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

13 (i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services  
14 Account established by ORS 151.225 for the costs of personnel and other costs associated with lo-  
15 cation of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court  
16 Administrator.

17 (2) Policies, procedures, standards and guidelines adopted by the commission supersede any  
18 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-  
19 tor, circuit courts, the Court of Appeals, the Supreme Court, the Psychiatric Security Review Board  
20 and the Oregon Health Authority related to the exercise of the commission's administrative re-  
21 sponsibilities under this section and transferred duties, functions and powers as they occur.

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

27 (4) The commission may not:

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

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

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

32 **SECTION 9. ORS 138.694 is repealed.**

33