

D R A F T

SUMMARY

Prohibits court from requiring criminal defendant to pay costs associated with appointed counsel unless defendant is convicted of crime.

A BILL FOR AN ACT

Relating to payments for court-appointed counsel; amending ORS 135.050, 151.225, 151.487 and 151.505.

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

SECTION 1. ORS 135.050 is amended to read:

135.050. (1) Suitable counsel for a defendant shall be appointed by a municipal, county or justice court if:

(a) The defendant is before a court on a matter described in subsection (5) of this section;

(b) The defendant requests aid of counsel;

(c) The defendant provides to the court a written and verified financial statement; and

(d) It appears to the court that the defendant is financially unable to retain adequate representation without substantial hardship in providing basic economic necessities to the defendant or the defendant's dependent family.

(2) Suitable counsel for a defendant shall be appointed by a circuit court if:

(a) The defendant is before the court on a matter described in subsection (5) of this section;

(b) The defendant requests aid of counsel;

(c) The defendant provides to the court a written and verified financial

1 statement; and

2 (d)(A) The defendant is determined to be financially eligible under ORS
3 151.485 and the standards established by the Public Defense Services Com-
4 mission under ORS 151.216; or

5 (B) The court finds, on the record, substantial and compelling reasons
6 why the defendant is financially unable to retain adequate representation
7 without substantial hardship in providing basic economic necessities to the
8 defendant or the defendant's dependent family despite the fact that the de-
9 fendant does not meet the financial eligibility standards established by the
10 commission.

11 (3) Appointed counsel may not be denied to any defendant merely because
12 the defendant's friends or relatives have resources adequate to retain counsel
13 or because the defendant has deposited or is capable of depositing security
14 for release. However, appointed counsel may be denied to a defendant if the
15 defendant's spouse has adequate resources which the court determines should
16 be made available to retain counsel.

17 (4) The defendant's financial statement under subsection (1) or (2) of this
18 section shall include, but not be limited to:

19 (a) A list of bank accounts in the name of defendant or defendant's
20 spouse, and the balance in each;

21 (b) A list of defendant's interests in real property and those of defendant's
22 spouse;

23 (c) A list of automobiles and other personal property of significant value
24 belonging to defendant or defendant's spouse;

25 (d) A list of debts in the name of defendant or defendant's spouse, and the
26 total of each; and

27 (e) A record of earnings and other sources of income in the name of de-
28 fendant or defendant's spouse, and the total of each.

29 (5) Counsel must be appointed for a defendant who meets the require-
30 ments of subsection (1) or (2) of this section and who is before a court on
31 any of the following matters:

1 (a) Charged with a crime.

2 (b) For a hearing to determine whether an enhanced sentence should be
3 imposed when such proceedings may result in the imposition of a felony
4 sentence.

5 (c) For extradition proceedings under the provisions of the Uniform
6 Criminal Extradition Act.

7 (d) For any proceeding concerning an order of probation, including but
8 not limited to the revoking or amending thereof.

9 (6) Unless otherwise ordered by the court, the appointment of counsel
10 under this section shall continue during all criminal proceedings resulting
11 from the defendant's arrest through acquittal or the imposition of punish-
12 ment. The court having jurisdiction of the case may not substitute one ap-
13 pointed counsel for another except pursuant to the policies, procedures,
14 standards and guidelines of the Public Defense Services Commission under
15 ORS 151.216.

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

22 *[(8) The court may order the defendant in a circuit court to pay to the*
23 *Public Defense Services Account established by ORS 151.225, through the clerk*
24 *of the court, in full or in part the administrative costs of determining the el-*
25 *igibility of the defendant for appointed counsel and the costs of the legal and*
26 *other services that are related to the provision of appointed counsel under ORS*
27 *151.487.]*

28 [(9)] (8) In addition to any criminal prosecution, a civil proceeding may
29 be initiated by any public body which has expended moneys for the
30 defendant's legal assistance within two years of judgment if the defendant
31 was not qualified in accordance with subsection (1) or (2) of this section for

1 legal assistance.

2 [(10)] (9) The civil proceeding shall be subject to the exemptions from
3 execution as provided for by law.

4 [(11)] (10) As used in this section unless the context requires otherwise,
5 “counsel” includes a legal advisor appointed under ORS 135.045.

6 **SECTION 2.** ORS 151.505 is amended to read:

7 151.505. (1) At the conclusion of a case or matter in which the first
8 accusatory instrument or petition in the trial court was filed after January
9 1, 1998, and in which the court appointed counsel to represent a person **and**
10 **the person was convicted of at least one criminal offense**, a trial, ap-
11 pellate or post-conviction court may include in its judgment a money award
12 requiring that the person repay in full or in part the administrative costs
13 of determining the eligibility of the person for appointed counsel, and the
14 costs of the legal and other services that are related to the provision of ap-
15 pointed counsel[, *that have not previously been required to be paid under a*
16 *limited judgment entered under ORS 151.487*]. An award under this section
17 is a monetary obligation payable to the state.

18 (2) Costs that may be included in a money award under this section in-
19 clude a reasonable attorney fee for counsel appointed to represent the person
20 and a reasonable amount for expenses authorized under ORS 135.055. A rea-
21 sonable attorney fee is presumed to be a reasonable number of hours at the
22 hourly rate authorized by the Public Defense Services Commission under
23 ORS 151.216. For purposes of this subsection, compensation of counsel is
24 determined by reference to a schedule of compensation established by the
25 commission.

26 (3) The court may not require a person to pay costs under this section
27 unless the person is or may be able to pay the costs. In determining the
28 amount and method of payment of costs, the court shall take account of the
29 financial resources of the person and the nature of the burden that payment
30 of costs will impose.

31 (4)(a) A person who has been required to pay costs under this section and

1 who is not in contumacious default in the payment of the costs may at any
2 time petition the court for remission of the payment of costs or any unpaid
3 portion of the costs. If it appears to the satisfaction of the court that pay-
4 ment of the amount due will impose manifest hardship on the person ordered
5 to repay or on the immediate family of the person, or will interfere with the
6 ability of the person to complete an alcohol or drug treatment program, the
7 court may enter a supplemental judgment that remits all or part of the
8 amount due or modifies the method of payment.

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

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

16 **SECTION 3.** ORS 151.225 is amended to read:

17 151.225. (1) The Public Defense Services Account is established in the
18 State Treasury, separate and distinct from the General Fund. The Public
19 Defense Services Account is continuously appropriated to the Public Defense
20 Services Commission to:

21 (a) Reimburse the actual costs and expenses, including personnel ex-
22 penses, incurred in administration and support of the public defense system;

23 (b) Reimburse the State Court Administrator under ORS 151.216 (1)(i); and

24 (c) Pay other expenses in connection with the legal representation of
25 persons for which the commission is responsible by law, including expenses
26 incurred in the administration of the public defense system.

27 (2) All moneys received by the Judicial Department under ORS [135.050
28 (8), 151.487 (1),] 419A.211, 419B.198 (1), 419C.203 (1) or 419C.535 (2) shall be
29 deposited in the Public Defense Services Account.

30 (3) All gifts, grants or contributions accepted by the commission under
31 ORS 151.216 shall be deposited in a separate subaccount created in the Public

1 Defense Services Account to be used by the commission for the purpose for
2 which the gift, grant or contribution was given or granted.

3 **SECTION 4.** ORS 151.487 is amended to read:

4 151.487. (1) If in determining that a person is financially eligible for ap-
5 pointed counsel under ORS [~~151.485~~] **419A.211, 419B.198, 419C.203 or**
6 **419C.535**, the court finds that the person has financial resources that enable
7 the person to pay in full or in part the administrative costs of determining
8 the eligibility of the person and the costs of the legal and other services to
9 be provided at state expense that are related to the provision of appointed
10 counsel, the court shall enter a limited judgment requiring that the person
11 pay to the Public Defense Services Account established by ORS 151.225,
12 through the clerk of the court, the amount that it finds the person is able
13 to pay without creating substantial hardship in providing basic economic
14 necessities to the person or the person's dependent family. The amount that
15 a court may require the person to pay is subject to the guidelines and pro-
16 cedures issued by the Public Defense Services Commission as provided in
17 subsection (4) of this section.

18 (2) Failure to comply with the requirements of a limited judgment entered
19 under this section is not grounds for contempt or grounds for withdrawal by
20 the appointed attorney.

21 (3) Except as authorized in this section, a person, organization or gov-
22 ernmental agency may not request or accept a payment or promise of pay-
23 ment for assisting in the representation of a person by appointment.

24 (4) The commission shall promulgate and issue guidelines and procedures:

25 (a) For the determination of persons provided with appointed counsel who
26 have some financial resources to pay in full or in part the administrative,
27 legal and other costs under subsection (1) of this section; and

28 (b) Regarding the amounts persons may be required to pay by a court
29 under subsection (1) of this section.

30 (5) The determination that a person is able to pay or partially able to pay,
31 or that a person no longer has the ability to pay the amount ordered in

1 subsection (1) of this section, is subject to review at any time by the court.

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