

HB 3145 -2 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 3/26, 4/8

WHAT THE MEASURE DOES:

Directs the Public Defense Services Commission (PDSC) to conduct a study on improving the provision of public defense services. Directs PDSC to present its findings to the Legislative Assembly on or before September 15, 2020.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-2 Replaces the measure. Defines key terms. Moves the PDSC into the executive branch as an independent entity.

Requires the Governor to appoint two members of the public with an interest in criminal or juvenile justice system, a bar member with experience in civil rights practice, and a bar member who teaches criminal law to the PDSC. Requires the Chief Justice of the Supreme Court to appoint a bar member with experience representing historically and currently undeserved communities who does not have a contract with PDSC, a bar members from a list of three recommended by the Oregon State bar in consultation with the Oregon State Bar after consultation with statewide organizations that support the criminal and juvenile delinquency defense legal community who does not have a current contract with PDSC and a former judge to the PDSC. Requires the President of the Senate and Speaker of the House to each appoint a former member of the Legislative Assembly and a bar members from a list of three recommended by the Oregon State bar in consultation with the Oregon State Bar after consultation with statewide organizations that support the criminal and juvenile delinquency defense legal community who does not have a current contract with PDSC. Requires appointing authorities to ensure that at least one member of the commission has extensive experience in juvenile law. Requires all members to have demonstrated a commitment to criminal defense, juvenile delinquency defense or representing parents and children in dependency proceedings. Allows for the PDSC to vote a member off the commission with a two-thirds vote. Allows the PDSC to elect its chairperson.

Requires the PDSC to establish a trial and appellate division; to adopt contracting policies that ensure that contract attorneys and staff receive reasonable fees in line with similarly situated attorneys; to establish operational and contacting systems that allow for oversight, promote transparency, consider equity and inclusion, and ensure that defense services are provided in a manner consistent with the U.S. Constitution and national standards of justice; and to adopt reasonable caseload standards that are to be reexamined and, if necessary, recalculated every four years. Permits the PDSC to adopt policies and procedures that establish training and continuing education requirements and that provide for oversight of both employee defense attorneys and contract counsel. Prohibits PDSC from approving any contract authorizing any flat fee compensation structure, including but not limited to a contract authorizing a flat fee to be paid over a set period of time on a per case basis. Clarifies that nothing in the measure prohibits the commission from approving a contract that provides compensation to public defense attorneys based on a full-time equivalent model or a workload model, or that pays public defense attorneys hourly at a reasonable market rate.

Authorizes the Office of Public Defense Services (OPDS) executive director to develop data collection policies; develop performance metrics for public defense attorneys and staff; establish standards for quality assurance and

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oversight; establish training requirements, and where appropriate training; implement a statewide case management system; and ensure zealous advocacy on behalf of indigent defendants. Prohibits contracts negotiated based on flat fee per case payment. Requires contracts to include access to attorney case files, excluding legally protected material as defined by the measure; to require sharing of data and information with OPDS; to allow OPDS to monitor caseloads and compensation; and to include terms that allow OPDS to ensure that the contract and a contractor is providing representation consistent with the Oregon Constitution, U.S. Constitution and Oregon and national standards of justice. Defines those measures that must be reported annually to the Legislative Assembly by PDSC.

Creates a Task Force on Municipal Court Public Defense.

Declares emergency; effective on passage.

BACKGROUND:

In 1963, the U.S. Supreme Court declared in *Gideon v. Wainwright*, 372 U.S. 335(1963) that anyone accused of a crime who cannot afford the cost of a lawyer “cannot be assured a fair trial unless counsel is provided for him.” Moreover, in *United States v. Cronin*, 466 U.S. 648 (1984) the U.S. Supreme Court clarified that the attorney must also be effective. Under *Gideon*, the Sixth Amendment right to effective counsel is an obligation of the states via the due process clause of the Fourteenth Amendment. In Oregon, the PDSC oversees the OPDS is the state agency responsible for establishing and maintaining a public defense system that provide effective defense counsel for indigent defendants in criminal proceedings, youth in delinquency proceedings and parents and children in dependency proceedings.

In 2018, the Sixth Amendment Center, a non-partisan non-profit organization that provides technical assistance and evaluation services to policymakers that focus on the constitutional requirement to provide effective assistance of counsel, assessed the PDSC, OPDS, and the systems they maintain to provides public defense for indigent defendants in Oregon's criminal Justice system. That assessment found:

The State of Oregon attempts to fulfill its obligation to provide effective right to counsel services in trial courts primarily through an array of contracts with the Public Defense Services Commission (PDSC), and administered by the Office of Public Defense Services (OPDS), with public defender offices, private law firms, consortia of individual attorneys and law firms, non-profit organizations, and occasionally individual lawyers. In doing so, the state has created a complex bureaucracy that collects a significant amount of indigent defense data, yet does not provide sufficient oversight or financial accountability. In some instances, the complex bureaucracy is itself a hindrance to effective assistance of counsel. Moreover, the report concludes that this complex bureaucracy obscures an attorney compensation plan that is at root a fixed fee contract system that pits appointed lawyers’ financial self-interest against the due process rights of their clients, and is prohibited by national public defense standards.

In light of those findings, the Sixth Amendment Center recommended the following changes to Oregon's defense system:

1. The State of Oregon should require that services be provided free of conflicts of interest, as is constitutionally required, by abolishing fixed fee contracting and other forms of compensation that produce financial disincentives for public defense lawyers to provide effective assistance of counsel.
2. With the abolition of fixed fee contracting, PDSC/OPDS should pay private lawyers at an hourly rate that accounts for both actual overhead and a reasonable fee, and/or hire government employed attorneys for trial level services. OPDS should have the appropriate resources to provide oversight of such a private attorney and state public defender employee system.
3. The composition of the Public Defense Services Commission does not adhere to national standards, in that all commissioners are appointed by the judiciary, while the legislative and executive branches of government

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have no equal voice in the commission's affairs.

4. The Public Defense Services Commission lacks the necessary statutory scope to ensure the state's Fourteenth Amendment obligation to provide effective Sixth Amendment assistance of counsel in every courthouse in Oregon.

HB 3145 directs the PDSC to conduct a study on improving provision of public defense services to indigent Oregonians with criminal justice system involvement.