

# Senate Bill 1010

Sponsored by COMMITTEE ON JUDICIARY (at the request of Benjamin Kerensa)

## 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**.

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

## A BILL FOR AN ACT

1  
2 Relating to payments for court-appointed counsel; amending ORS 135.050, 151.225, 151.487 and  
3 151.505.

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

5 **SECTION 1.** ORS 135.050 is amended to read:

6 135.050. (1) Suitable counsel for a defendant shall be appointed by a municipal, county or justice  
7 court if:

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

9 (b) The defendant requests aid of counsel;

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

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

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

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

16 (b) The defendant requests aid of counsel;

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

18 (d)(A) The defendant is determined to be financially eligible under ORS 151.485 and the stan-  
19 dards established by the Public Defense Services Commission under ORS 151.216; or

20 (B) The court finds, on the record, substantial and compelling reasons why the defendant is fi-  
21 nancially unable to retain adequate representation without substantial hardship in providing basic  
22 economic necessities to the defendant or the defendant's dependent family despite the fact that the  
23 defendant does not meet the financial eligibility standards established by the commission.

24 (3) Appointed counsel may not be denied to any defendant merely because the defendant's  
25 friends or relatives have resources adequate to retain counsel or because the defendant has depos-  
26 ited or is capable of depositing security for release. However, appointed counsel may be denied to  
27 a defendant if the defendant's spouse has adequate resources which the court determines should be  
28 made available to retain counsel.

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

31 (a) A list of bank accounts in the name of defendant or defendant's spouse, and the balance in

**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 each;

2 (b) A list of defendant’s interests in real property and those of defendant’s spouse;

3 (c) A list of automobiles and other personal property of significant value belonging to defendant  
4 or defendant’s spouse;

5 (d) A list of debts in the name of defendant or defendant’s spouse, and the total of each; and

6 (e) A record of earnings and other sources of income in the name of defendant or defendant’s  
7 spouse, and the total of each.

8 (5) Counsel must be appointed for a defendant who meets the requirements of subsection (1) or  
9 (2) of this section and who is before a court on any of the following matters:

10 (a) Charged with a crime.

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

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

14 (d) For any proceeding concerning an order of probation, including but not limited to the re-  
15 voking or amending thereof.

16 (6) Unless otherwise ordered by the court, the appointment of counsel under this section shall  
17 continue during all criminal proceedings resulting from the defendant’s arrest through acquittal or  
18 the imposition of punishment. The court having jurisdiction of the case may not substitute one ap-  
19 pointed counsel for another except pursuant to the policies, procedures, standards and guidelines  
20 of the Public Defense Services Commission under ORS 151.216.

21 (7) If, at any time after the appointment of counsel, the court having jurisdiction of the case  
22 finds that the defendant is financially able to obtain counsel, the court may terminate the appoint-  
23 ment of counsel. If, at any time during criminal proceedings, the court having jurisdiction of the  
24 case finds that the defendant is financially unable to pay counsel whom the defendant has retained,  
25 the court may appoint counsel as provided in this section.

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

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

34 *[(10)]* (9) The civil proceeding shall be subject to the exemptions from execution as provided for  
35 by law.

36 *[(11)]* (10) As used in this section unless the context requires otherwise, “counsel” includes a  
37 legal advisor appointed under ORS 135.045.

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

39 151.505. (1) At the conclusion of a case or matter in which the first accusatory instrument or  
40 petition in the trial court was filed after January 1, 1998, and in which the court appointed counsel  
41 to represent a person **and the person was convicted of at least one criminal offense**, a trial,  
42 appellate or post-conviction court may include in its judgment a money award requiring that the  
43 person repay in full or in part the administrative costs of determining the eligibility of the person  
44 for appointed counsel, and the costs of the legal and other services that are related to the provision  
45 of appointed counsel[, *that have not previously been required to be paid under a limited judgment en-*

1 *tered under ORS 151.487*. An award under this section is a monetary obligation payable to the state.

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

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

12 (4)(a) A person who has been required to pay costs under this section and who is not in  
13 contumacious default in the payment of the costs may at any time petition the court for remission  
14 of the payment of costs or any unpaid portion of the costs. If it appears to the satisfaction of the  
15 court that payment of the amount due will impose manifest hardship on the person ordered to repay  
16 or on the immediate family of the person, or will interfere with the ability of the person to complete  
17 an alcohol or drug treatment program, the court may enter a supplemental judgment that remits all  
18 or part of the amount due or modifies the method of payment.

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

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

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

26 151.225. (1) The Public Defense Services Account is established in the State Treasury, separate  
27 and distinct from the General Fund. The Public Defense Services Account is continuously appropri-  
28 ated to the Public Defense Services Commission to:

29 (a) Reimburse the actual costs and expenses, including personnel expenses, incurred in admin-  
30 istration and support of the public defense system;

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

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

35 (2) All moneys received by the Judicial Department under ORS [*135.050 (8), 151.487 (1),*]  
36 419A.211, 419B.198 (1), 419C.203 (1) or 419C.535 (2) shall be deposited in the Public Defense Services  
37 Account.

38 (3) All gifts, grants or contributions accepted by the commission under ORS 151.216 shall be  
39 deposited in a separate subaccount created in the Public Defense Services Account to be used by  
40 the commission for the purpose for which the gift, grant or contribution was given or granted.

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

42 151.487. (1) If in determining that a person is financially eligible for appointed counsel under  
43 ORS [*151.485*] **419A.211, 419B.198, 419C.203 or 419C.535**, the court finds that the person has finan-  
44 cial resources that enable the person to pay in full or in part the administrative costs of determining  
45 the eligibility of the person and the costs of the legal and other services to be provided at state

1 expense that are related to the provision of appointed counsel, the court shall enter a limited judg-  
2 ment requiring that the person pay to the Public Defense Services Account established by ORS  
3 151.225, through the clerk of the court, the amount that it finds the person is able to pay without  
4 creating substantial hardship in providing basic economic necessities to the person or the person's  
5 dependent family. The amount that a court may require the person to pay is subject to the guidelines  
6 and procedures issued by the Public Defense Services Commission as provided in subsection (4) of  
7 this section.

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

10 (3) Except as authorized in this section, a person, organization or governmental agency may not  
11 request or accept a payment or promise of payment for assisting in the representation of a person  
12 by appointment.

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

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

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

19 (5) The determination that a person is able to pay or partially able to pay, or that a person no  
20 longer has the ability to pay the amount ordered in subsection (1) of this section, is subject to re-  
21 view at any time by the court.

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