

HB 3145-1
(LC 908)
3/25/19 (JLM/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Representative Jennifer Williamson)

**PROPOSED AMENDMENTS TO
HOUSE BILL 3145**

1 In line 2 of the printed bill, after “Commission” insert “; creating new
2 provisions; amending ORS 1.009, 151.211, 151.213, 151.216, 151.219, 151.225,
3 151.485, 161.346 and 419C.535; and declaring an emergency”.

4 Delete lines 4 through 9 and insert:
5

6 **“CHANGES TO PUBLIC DEFENSE SERVICES**

7
8 **“SECTION 1.** ORS 151.211 is amended to read:

9 “151.211. For purposes of ORS 151.211 to 151.221:

10 “(1) ‘Bar member’ means an individual who is an active member of the
11 Oregon State Bar.

12 “[*(2) ‘Chief Justice’ means the Chief Justice of the Supreme Court.*]

13 **“(2) ‘Caseload standard’ means a limitation on the number of cases
14 for which an individual public defense attorney can provide legal rep-
15 resentation over a period of time based upon the amount of work that
16 is generally required to provide effective assistance on a particular
17 type of case.**

18 “(3) ‘Commission’ means the Public Defense Services Commission.

19 “(4) ‘Director’ means the [*public defense services*] executive director **of the
20 Office of Public Defense Services** appointed under ORS 151.216.

21 “(5) ‘Office [*of public defense services*]’ means the Office **of Public De-**

1 **fense Services** established by the commission under the **executive** director
2 to handle the cases assigned and to carry out the administrative policies and
3 procedures for the public defense system.

4 “(6) ‘Public defense attorney’ means counsel appointed to perform
5 legal services for financially eligible individuals as required by ORS
6 34.355, 135.055, 138.500, 138.590, 161.346, 161.348, 161.365, 419A.211,
7 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209, 419C.408,
8 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or
9 436.315, the Oregon Constitution or the United States Constitution.

10 “(7) ‘Public defense staff member’ means a worker who supports
11 and complements the work of a public defense attorney or who is
12 employed by or under contract with a public defense attorney to per-
13 form work, including but not limited to investigators, paralegals, legal
14 assistants and case managers.

15 “(8) ‘Workload plan’ means the office’s plan to provide legal repre-
16 sentation to qualifying individuals statewide based upon the office’s
17 caseload standards.

18 “**SECTION 2.** ORS 151.213 is amended to read:

19 “151.213. (1)(a) The Public Defense Services Commission is established in
20 the [*judicial*] **executive** branch of state government. Except for the ap-
21 pointment [*or removal*] of commission members, the commission and employ-
22 ees of the commission are not subject to the exercise of administrative
23 authority and supervision by the [*Chief Justice of the Supreme Court as the*
24 *administrative head of the Judicial Department*] **Governor.**

25 “(b) **Except as otherwise provided by law, the commission shall ex-**
26 **ercise as an independent entity all statutory authority, powers, duties**
27 **and functions, including control over records, personnel decisions and**
28 **property and the functions of budgeting, locating offices and other**
29 **management functions.**

30 “(2)(a) The commission consists of [*seven*] **11** members appointed [*by order*

1 of the Chief Justice. In addition to the seven appointed members, the Chief
2 Justice serves as a nonvoting, ex officio member. The Chief Justice shall ap-
3 point at least two persons who are not bar members, at least one person who
4 is a bar member and who is engaged in criminal defense representation and
5 at least one person who is a former Oregon state prosecutor. Except for the
6 Chief Justice or a senior judge under ORS 1.300, a member may not serve
7 concurrently as a judge, a prosecuting attorney or an employee of a law
8 enforcement agency. A person who is primarily engaged in providing public
9 defense services may not serve as a member of the commission.] **as follows:**

10 **“(A) The Governor shall appoint:**

11 **“(i) Two members of the public who are not attorneys and who have**
12 **demonstrated an interest in the criminal or juvenile justice systems**
13 **and a commitment to diversity and inclusion;**

14 **“(ii) A bar member with experience in practicing civil rights law;**
15 **and**

16 **“(iii) A bar member who teaches criminal law;**

17 **“(B) The Chief Justice of the Supreme Court shall appoint:**

18 **“(i) A bar member, from a list of three bar members submitted to**
19 **the Chief Justice by the chief executive officer of the Oregon State**
20 **Bar, with experience in representing historically or currently under-**
21 **served communities and who is not employed by or under contract**
22 **with the Office of Public Defense Services;**

23 **“(ii) A bar member, from a list of three bar members submitted to**
24 **the Chief Justice by the executive director of the Oregon Criminal**
25 **Defense Lawyers Association or a successor association, with experi-**
26 **ence representing criminal defendants or juveniles in delinquency**
27 **cases and who is not employed by or under contract with the Office**
28 **of Public Defense Services; and**

29 **“(iii) A former judge;**

30 **“(C) The President of the Senate shall appoint:**

1 “(i) A former member of the Legislative Assembly; and

2 “(ii) A bar member, from a list of three bar members submitted to
3 the President by the executive director of the Oregon Criminal Defense
4 Lawyers Association or a successor association, with experience re-
5 presenting criminal defendants or juveniles in delinquency cases and
6 who is not employed by or under contract with the Office of Public
7 Defense Services; and

8 “(D) The Speaker of the House of Representatives shall appoint:

9 “(i) A former member of the Legislative Assembly; and

10 “(ii) A bar member, from a list of three bar members submitted to
11 the Speaker by the executive director of the Oregon Criminal Defense
12 Lawyers Association or a successor association, with experience re-
13 presenting criminal defendants or juveniles in delinquency cases and
14 who is not employed by or under contract with the Office of Public
15 Defense Services.

16 “(b) The appointing authorities shall coordinate appointments to
17 ensure that at least one member of the commission has extensive ex-
18 perience in the practice of juvenile law.

19 “(3)(a) The term of a member is four years beginning on the effective date
20 of the [*order of the Chief Justice appointing the member*] **appointment**. A
21 member is eligible for reappointment if qualified for membership at the time
22 of reappointment, **but a member may not serve more than two consec-**
23 **utive terms.**

24 “(b) A term ends upon the expiration of the term, the resignation
25 of the member or removal of the member. A member may be removed
26 from the commission by [*order of the Chief Justice*] **a two-thirds vote of the**
27 **members of the commission.**

28 “(c) If a vacancy occurs for any cause before the expiration of the term
29 of a member, the [*Chief Justice*] **appointing authority** shall make an ap-
30 pointment to become immediately effective for the unexpired term.

1 “(4) **The commission shall elect** a chairperson **who is a bar member**
2 and a vice chairperson [*shall be appointed by order of the Chief Justice*] every
3 two years with such functions as the commission may determine. A member
4 is eligible for reappointment as chairperson or vice chairperson **but may**
5 **not serve more than two terms.**

6 “(5) A majority of the [*voting*] members constitutes a quorum for the
7 transaction of business.

8 “(6) A member of the commission is not entitled to compensation for ser-
9 vices as a member, but is entitled to expenses as provided in ORS 292.495 (2).

10 **“SECTION 3.** ORS 151.216 is amended to read:

11 “151.216. (1) The Public Defense Services Commission shall:

12 “(a) Establish and maintain a public defense system that ensures the
13 provision of public defense services in the most cost-efficient manner con-
14 sistent with the Oregon Constitution, the United States Constitution and
15 Oregon and national standards of justice.

16 “(b) Establish an Office of Public Defense Services **with a trial and an**
17 **appellate division** and appoint [*a public defense services*] **an** executive di-
18 rector **of the office** who serves at the pleasure of the commission.

19 “(c) **Adopt contracting policies that ensure public defense attorneys**
20 **and public defense staff members who are not employed by the office**
21 **receive reasonable attorney fees in line with what similarly situated**
22 **attorneys receive for services provided.**

23 “(d) **Establish within the office operational and contracting systems**
24 **that allow for oversight, promote transparency, equity and inclusion**
25 **and ensure that public defense services are provided in a manner**
26 **consistent with the Oregon Constitution, the United States Consti-**
27 **tutions and Oregon and national standards of justice.**

28 “(e) **Adopt reasonable and appropriate caseload standards for public**
29 **defense attorneys that provide for effective assistance of counsel under**
30 **the Oregon Constitution, the United States Constitution and Oregon**

1 **and national standards of justice.**

2 **“(f) Reexamine the appropriateness of the caseload standards de-**
3 **scribed in paragraph (e) of this subsection, and adopt new standards**
4 **if necessary, every four years.**

5 **“(g) Adopt a statewide workload plan based on the caseload stan-**
6 **dards described in paragraph (e) of this subsection.**

7 “[c] **(h)** Submit the budget of the commission and the office [*of public*
8 *defense services*] to the Legislative Assembly after the budget is submitted
9 to the commission by the director and approved by the commission. The
10 [*Chief Justice of the Supreme Court*] **director** and the chairperson of the
11 commission shall present the budget to the Legislative Assembly.

12 “[d] **(i)** Review and approve any public defense services contract nego-
13 tiated by the director before the contract can become effective.

14 “[e] **(j)** Adopt a compensation plan, classification system, **organiza-**
15 **tional structure** and personnel plan for the office [*of Public Defense Ser-*
16 *vices*] that are commensurate with other state agencies.

17 “[f] **(k)** Adopt policies, procedures, standards and guidelines regarding:

18 “(A) The determination of financial eligibility of persons entitled to be
19 represented by [*appointed counsel*] **public defense attorneys** at state ex-
20 pense;

21 “(B) The appointment of [*counsel*] **public defense attorneys**;

22 “(C) The fair compensation of [*counsel appointed to represent a person fi-*
23 *nancially eligible for appointed counsel at state expense*] **public defense at-**
24 **torneys**;

25 “(D) [*Appointed counsel*] **Public defense attorney** compensation disputes;

26 “(E) Any other costs associated with the representation of a person by
27 [*appointed counsel*] **public defense attorneys** in the state courts that are
28 required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
29 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908,
30 419C.206, 419C.209, 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307,

1 427.265, 427.295, 436.265 or 436.315 or any other provision of law that ex-
2 pressly provides for payment of such compensation, costs or expenses by the
3 commission;

4 “(F) Professional qualifications, **training and continuing legal educa-**
5 **tion requirements** for [*counsel appointed to represent public defense clients*]
6 **public defense attorneys and public defense staff members;**

7 “(G) Performance for legal representation;

8 “(H) The contracting of public defense services;

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

12 “(J) **Oversight of public defense attorneys employed by the office**
13 **or under contract with the office for the provision of public defense**
14 **services; and**

15 “[*J*] (K) Any other matters necessary to carry out the duties of the
16 commission.

17 “[*g*] (L) Establish a peer review system for the approval of nonroutine
18 fees and expenses incurred in cases involving aggravated murder and the
19 crimes listed in ORS 137.700 and 137.707. The review shall be conducted by
20 a panel of attorneys who practice in the area of criminal defense.

21 “[*h*] (m) Establish a complaint process that allows district attorneys,
22 criminal defense counsel and the public to file complaints concerning the
23 payment from public funds of nonroutine fees and expenses incurred in cases.

24 “[*i*] (n) Reimburse the State Court Administrator from funds deposited
25 in the Public Defense Services Account established by ORS 151.225 for the
26 costs of personnel and other costs associated with location of eligibility
27 verification and screening personnel pursuant to ORS 151.489 by the State
28 Court Administrator.

29 “[*2*] *Policies, procedures, standards and guidelines adopted by the com-*
30 *mission supersede any conflicting rules, policies or procedures of the Public*

1 *Defender Committee, State Court Administrator, circuit courts, the Court of*
2 *Appeals, the Supreme Court and the Psychiatric Security Review Board re-*
3 *lated to the exercise of the commission’s administrative responsibilities under*
4 *this section and transferred duties, functions and powers as they occur.]*

5 “[(3)] (2) The commission may accept gifts, grants or contributions from
6 any source, whether public or private. However, the commission may not
7 accept a gift, grant or contribution if acceptance would create a conflict of
8 interest. Moneys accepted under this subsection shall be deposited in the
9 Public Defense Services Account established by ORS 151.225 and expended
10 for the purposes for which given or granted.

11 “[4)] (3) The commission may not:

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

13 “(b) Have access to any case file; [or]

14 “(c) Interfere with the director or any member of the staff of the director
15 in carrying out professional duties involving the legal representation of
16 public defense clients; **or**

17 “(d) **Approve a contract authorizing the payment of a flat fee per**
18 **case.**

19 “**SECTION 4.** ORS 151.219 is amended to read:

20 “151.219. (1) The [*public defense services*] executive director **of the Office**
21 **of Public Defense Services** shall:

22 “(a) Recommend to the Public Defense Services Commission how to es-
23 tablish and maintain, in a cost-effective manner, the delivery of legal ser-
24 vices to persons entitled to, and financially eligible for, [*appointed counsel*]
25 **a public defense attorney appointed** at state expense under Oregon stat-
26 utes, the Oregon Constitution[,] **and** the United States Constitution and
27 consistent with Oregon and national standards of justice.

28 “(b) Implement and ensure compliance with contracts, policies, proce-
29 dures, standards and guidelines adopted by the commission or required by
30 statute.

1 “(c) Prepare and submit to the commission for its approval the biennial
2 budget of the commission and the Office of Public Defense Services.

3 “(d) **Subject to subsection (2) of this section**, negotiate contracts, as
4 appropriate, for providing legal services to persons financially eligible for
5 [*appointed counsel*] **a public defense attorney appointed** at state expense.
6 [*No contract so negotiated is binding or enforceable until the contract has been*
7 *reviewed and approved by the commission as provided in ORS 151.216.*]

8 “(e) Employ personnel or contract for services as necessary to carry out
9 the responsibilities of the director and the Office of Public Defense Services.

10 “(f) Supervise the personnel, operation and activities of the Office of
11 Public Defense Services.

12 “(g) Provide services, facilities and materials necessary for the perform-
13 ance of the duties, functions and powers of the Public Defense Services
14 Commission.

15 “(h) Pay the expenses of the commission and the Office of Public Defense
16 Services.

17 “(i) Prepare and submit to the commission an annual report of the activ-
18 ities of the Office of Public Defense Services **containing the information**
19 **described in subsection (3) of this section.**

20 “(j) Prepare and submit to the Legislative Assembly a biennial report on
21 the activities of the Office of Public Defense Services.

22 “(k) Provide for legal representation, advice and consultation for the
23 commission, its members, the director and staff of the Office of Public De-
24 fense Services who require such services or who are named as defendants in
25 lawsuits arising from their duties, functions and responsibilities. If requested
26 by the director, the Attorney General may also provide for legal represen-
27 tation, advice and consultation for the commission, its members, the director
28 and staff of the Office of Public Defense Services in litigation.

29 “(L) **Develop policies for the collection of data from public defense**
30 **attorneys and public defense staff members.**

1 **“(m) Develop performance metrics for public defense attorneys and**
2 **public defense staff members for the provision of public defense ser-**
3 **vices.**

4 **“(n) Establish policies and standards for quality assurance and**
5 **oversight in the provision of public defense services, including allow-**
6 **ing for the investigation, auditing and review of public defense attor-**
7 **neys and public defense staff members to determine compliance with**
8 **the office’s metrics, policies and standards.**

9 **“(o) Establish training requirements for public defense attorneys**
10 **and public defense staff members and, as appropriate, develop**
11 **trainings.**

12 **“(p) Implement a case management system that allows for trans-**
13 **parency and oversight.**

14 **“(q) Ensure that all office policies and procedures allow public de-**
15 **fense attorneys to provide zealous advocacy on behalf of their clients.**

16 **“(2)(a) A contract negotiated by the director under subsection (1)**
17 **of this section is not binding or enforceable until the contract has been**
18 **reviewed and approved by the commission as provided in ORS 151.216.**

19 **“(b) The director may not negotiate or enter into a contract au-**
20 **thorizing the payment of a flat fee per case.**

21 **“(c) Contracts negotiated and entered into by the director must in-**
22 **clude terms requiring:**

23 **“(A) Access to attorney case files by the director, excluding legally**
24 **protected material; and**

25 **“(B) The sharing of data and information between the public de-**
26 **fense service provider and the office sufficient for the office to:**

27 **“(i) Monitor the caseloads and compensation of each public defense**
28 **service provider; and**

29 **“(ii) Determine whether the terms of each contract are sufficient**
30 **for the service provider to meet office standards and provide repre-**

1 **sentation in a manner consistent with the Oregon Constitution, the**
2 **United States Constitution and Oregon and national standards of jus-**
3 **tice.**

4 **“(d) As used in this subsection, ‘legally protected material’ means:**

5 **“(i) Information and records of a criminal defendant that are pro-**
6 **ected by attorney-client privilege held by the defendant; and**

7 **“(ii) Attorney work product prepared in the course of providing le-**
8 **gal services to the defendant.**

9 **“(3) The annual report to the commission required by subsection (1)**
10 **of this section must include but is not limited to the following infor-**
11 **mation:**

12 **“(a) Public defense attorney caseloads and conformance with the**
13 **caseload standards and workload plan adopted by the commission;**

14 **“(b) Public defense attorney compensation;**

15 **“(c) Retention and turnover of public defense attorneys and public**
16 **defense staff members;**

17 **“(d) Training and continuing legal education provided to or com-**
18 **pleted by public defense attorneys;**

19 **“(e) The frequency of work performed on cases by public defense**
20 **staff members; and**

21 **“(f) Whether performance metrics and quality assurance standards**
22 **are being met by public defense attorneys and public defense staff**
23 **members.**

24 **“[(2)] (4) The director may designate persons as representatives of the**
25 **director for the purposes of determining and paying bills submitted to the**
26 **office of public defense services and determining preauthorization for incur-**
27 **ring fees and expenses under ORS 135.055.**

28 **“SECTION 5. Section 6 of this 2019 Act is added to and made a part**
29 **of ORS 151.211 to 151.221.**

30 **“SECTION 6. (1) Except as provided in subsection (2) of this section**

1 or as otherwise provided by law, the provisions of ORS 180.220, 276.004,
2 276.410, 276.426, 276.428, 276.440, 276A.206, 279.835 to 279.855, 283.085 to
3 283.092, 292.210 to 292.250, 293.075 and 293.205 to 293.225 and ORS chap-
4 ters 279A, 279B, 279C, 282 and 283 do not apply to the Public Defense
5 Services Commission or the Office of Public Defense Services.

6 “(2) ORS 279A.100 applies to the commission and the office.

7
8 **“TASK FORCE ON MUNICIPAL COURT PUBLIC DEFENSE**

9
10 **“SECTION 7. (1) The Task Force on Municipal Court Public Defense**
11 **is established. The purpose of the task force is to recommend to the**
12 **Legislative Assembly public defense models for municipal and justice**
13 **court proceedings that:**

14 **“(a) Protect the right of counsel under the Oregon and United**
15 **States Constitutions;**

16 **“(b) Take into consideration the complex needs of criminal defend-**
17 **ants;**

18 **“(c) Ensure that parties to a municipal or justice court proceeding**
19 **are prepared to proceed; and**

20 **“(d) Enable courts to resolve cases as quickly and efficiently as**
21 **possible.**

22 **“(2) The task force consists of 17 members appointed as follows:**

23 **“(a) The President of the Senate shall appoint two members from**
24 **among members of the Senate.**

25 **“(b) The Speaker of the House of Representatives shall appoint two**
26 **members from among members of the House of Representatives.**

27 **“(c) The Governor shall appoint eight members as follows:**

28 **“(A) Two members with experience providing public defense ser-**
29 **vices in municipal or justice courts.**

30 **“(B) Two members representing municipal prosecutors.**

1 “(C) One member representing the Public Defense Services Com-
2 mission.

3 “(D) One member representing the Association of Oregon Counties.

4 “(E) One member representing city managers.

5 “(F) One member representing chiefs of police.

6 “(d) The Chief Justice of the Supreme Court shall appoint four
7 members as follows:

8 “(A) Two members who are judges presiding over municipal or jus-
9 tice court proceedings.

10 “(B) One judge with experience on the circuit or appellate courts.

11 “(C) One member representing the Oregon Law Center.

12 “(e) The Attorney General shall appoint one member representing
13 the Department of Justice.

14 “(3) The task force shall:

15 “(a) Examine the role of municipal courts in the state justice sys-
16 tem, the unique needs and resources within each municipal court ju-
17 risdiction and statewide needs and resources;

18 “(b) Examine and make recommendations regarding:

19 “(A) The number of attorneys and staff members and the resources
20 necessary to provide sufficient public defense services in municipal
21 and justice court criminal proceedings;

22 “(B) Appropriate caseloads for attorneys providing public defense
23 services in municipal and justice court criminal proceedings;

24 “(C) The administration and oversight of attorneys providing public
25 defense services and municipal and justice court criminal proceedings;
26 and

27 “(D) Funding models for attorneys providing public defense services
28 in municipal and justice court criminal proceedings;

29 “(c) Examine the effects of municipal and justice court convictions
30 on future sentences of criminal defendants;

1 “(d) Examine whether models of holistic public defense would be
2 appropriate and promote better outcomes in municipal and justice
3 courts;

4 “(e) Examine ways to create and ensure statewide consistency in
5 the provision of public defense services in municipal and justice
6 courts;

7 “(f) Conduct surveys of:

8 “(A) Each county in the state to identify models of public defense
9 representations and effective practices in municipal and justice court
10 criminal proceedings; and

11 “(B) Other states to identify models of effective representation and
12 funding of public defense services in municipal and justice courts;

13 “(g) Review statutory and case law related to the provision of public
14 defense as required by the Oregon and United States Constitutions;
15 and

16 “(h) Identify obstacles in all counties to providing effective public
17 defense services in municipal and justice court criminal proceedings.

18 “(4) The recommendations and proposed legislative changes of the
19 task force must ensure that:

20 “(a) Public defense providers in municipal and justice court pro-
21 ceedings have workloads that allow the attorneys to provide client-
22 centered, competent and effective legal representation throughout the
23 entire proceeding;

24 “(b) Judicial and attorney resources are sufficient to protect the
25 legal rights of defendants in municipal and justice court criminal
26 proceedings; and

27 “(c) Oregon statutes are consistent with the models for legal rep-
28 resentation proposed by the task force.

29 “(5) A majority of the voting members of the task force constitutes
30 a quorum for the transaction of business.

1 **“(6) Official action by the task force requires the approval of a**
2 **majority of the voting members of the task force.**

3 **“(7) The task force shall elect one of its members to serve as**
4 **chairperson.**

5 **“(8) If there is a vacancy for any cause, the appointing authority**
6 **shall make an appointment to become immediately effective.**

7 **“(9) The task force shall meet at times and places specified by the**
8 **call of the chairperson or of a majority of the voting members of the**
9 **task force.**

10 **“(10) The task force may adopt rules necessary for the operation**
11 **of the task force.**

12 **“(11) The task force shall submit a report, with the recommen-**
13 **dations of the task force and proposed legislative changes, in the**
14 **manner provided by ORS 192.245 to the interim committees of the**
15 **Legislative Assembly related to the judiciary no later than September**
16 **15, 2021.**

17 **“(12) The Office of Public Defense Services shall provide staff sup-**
18 **port to the task force.**

19 **“(13) Members of the Legislative Assembly appointed to the task**
20 **force are nonvoting members of the task force and may act in an ad-**
21 **visory capacity only.**

22 **“(14) Members of the task force who are not members of the Leg-**
23 **islative Assembly are not entitled to compensation, but may be reim-**
24 **bursed for actual and necessary travel and other expenses incurred by**
25 **them in the performance of their actual duties and in the manner and**
26 **amounts provided for in ORS 292.495. Claims for expenses incurred in**
27 **performing functions of the task force shall be paid out of funds ap-**
28 **propriated to the Governor for purposes of the task force.**

29 **“(15) All agencies of state government, as defined in ORS 174.111,**
30 **are directed to assist the task force in the performance of the duties**

1 of the task force and, to the extent permitted by laws relating to
2 confidentiality, to furnish information and advice the members of the
3 task force consider necessary to perform their duties.

4
5 **“CONFORMING AMENDMENTS**

6
7 **“SECTION 8.** ORS 1.009 is amended to read:

8 “1.009. (1) The Judicial Department Operating Account is established in
9 the State Treasury, separate and distinct from the General Fund. Interest
10 earned by the account shall be credited to the account. All moneys in the
11 account are continuously appropriated to the Judicial Department and may
12 be used only to pay the operating expenses of the department.

13 “(2) All moneys received by the department pursuant to ORS 151.216
14 [(1)(i)] **(1)(n)** shall be deposited in the Judicial Department Operating Ac-
15 count.

16 “(3) The department may accept gifts, grants or contributions from any
17 source, whether public or private, for deposit in the Judicial Department
18 Operating Account.

19 **“SECTION 9.** ORS 151.225 is amended to read:

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

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

26 “(b) Reimburse the State Court Administrator under ORS 151.216 [(1)(i)]
27 **(1)(n)**; and

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

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

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

8 **“SECTION 10.** ORS 151.485 is amended to read:

9 “151.485. (1) For purposes of determining the financial eligibility for ap-
10 pointed counsel of persons with a constitutional or statutory right to counsel
11 in matters before the state courts and whose counsel is authorized to be paid
12 by the [*public defense services*] executive director **of the Office of Public**
13 **Defense Services** under ORS 151.219, a person is financially eligible for
14 appointed counsel if the person is determined to be financially unable to re-
15 tain adequate counsel without substantial hardship in providing basic eco-
16 nomic necessities to the person or the person’s dependent family under
17 standards established by the Public Defense Services Commission under ORS
18 151.216.

19 “(2) A determination of financial eligibility shall be made upon the basis
20 of information contained in a detailed financial statement submitted by the
21 person for whom counsel is requested or appointed or, in an appropriate case,
22 by the person’s parent, guardian or custodian. The financial statement shall
23 be in the form prescribed by the Public Defense Services Commission. The
24 form shall contain a full disclosure of all assets, liabilities, current income,
25 dependents and other information required by ORS 135.050 (4) and, in addi-
26 tion, any information required by the commission and state courts as neces-
27 sary to determine eligibility. The commission shall adopt uniform statewide
28 guidelines and procedures that prescribe how to use the form and determine
29 financial eligibility for appointed counsel.

30 “(3) If at any time after the appointment of counsel the court having ju-

1 jurisdiction of the case finds that the defendant is financially able to obtain
2 counsel, the court may terminate the appointment of counsel. If at any time
3 during criminal proceedings the court having jurisdiction of the case finds
4 that the defendant is financially unable to pay counsel whom the defendant
5 has retained, the court may appoint counsel as provided in this section.

6 “(4) In addition to any criminal prosecution, a civil proceeding may be
7 initiated by any public body that has expended moneys for the defendant’s
8 legal assistance within two years of judgment if the defendant was not
9 qualified for legal assistance in accordance with subsections (1) and (2) of
10 this section. As used in this subsection, ‘legal assistance’ includes legal
11 counsel, transcripts, witness fees and expenses and any other goods or ser-
12 vices required by law to be provided to a financially eligible person at state
13 expense under ORS 151.216 and 151.219.

14 “(5) The civil proceeding shall be subject to the exemptions from exe-
15 cution as provided for by law.

16 **“SECTION 11.** ORS 161.346 is amended to read:

17 “161.346. (1) When the Psychiatric Security Review Board conducts a
18 hearing under ORS 161.315 to 161.351, the board shall enter an order and
19 make findings in support of the order. If the board finds that a person under
20 the jurisdiction of the board:

21 “(a) Is no longer affected by a qualifying mental disorder, or, if so af-
22 fected, no longer presents a substantial danger to others, the board shall
23 order the person discharged from commitment and conditional release.

24 “(b) Is still affected by a qualifying mental disorder and is a substantial
25 danger to others, but can be controlled adequately if conditionally released
26 with treatment as a condition of release, the board shall order the person
27 conditionally released as provided in ORS 161.336.

28 “(c) Has not recovered from the qualifying mental disorder, is a substan-
29 tial danger to others and cannot adequately be controlled if conditionally
30 released on supervision, the board shall order the person committed to, or

1 retained in, a state hospital, or if the person is under 18 years of age, a se-
2 cure intensive community inpatient facility, for care, custody and treatment.

3 “(2) To assist the board in making the determination described in sub-
4 section (1) of this section, the board may, at any time, appoint a psychiatrist
5 or licensed psychologist to examine the person and to submit a report to the
6 board. The report must include an opinion as to the mental condition of the
7 person, whether the person presents a substantial danger to others and
8 whether the person could be adequately controlled with treatment as a con-
9 dition of release.

10 “(3) The board may make the determination regarding discharge or con-
11 ditional release based upon the written reports submitted pursuant to this
12 section. If any member of the board desires further information from the
13 examining psychiatrist or licensed psychologist who submitted the report, the
14 board shall summon the person to give testimony. The board shall consider
15 all evidence available to it that is material, relevant and reliable regarding
16 the issues before the board. The evidence may include but is not limited to
17 the record of trial, the information supplied by the attorney representing the
18 state or by any other interested party, including the person, and information
19 concerning the person’s mental condition and the entire psychiatric and
20 criminal history of the person. All evidence of a type commonly relied upon
21 by reasonably prudent persons in the conduct of their serious affairs shall
22 be admissible at hearings. Testimony shall be taken upon oath or affirmation
23 of the witness from whom received. The officer presiding at the hearing shall
24 administer oaths or affirmations to witnesses.

25 “(4) The board shall furnish to the person about whom the hearing is
26 being conducted, the attorney representing the person, the Attorney General
27 and the district attorney of the county from which the person was committed
28 written notice of any hearing pending under this section within a reasonable
29 time prior to the hearing. The notice shall include:

30 “(a) The time, place and location of the hearing.

1 “(b) The nature of the hearing and the specific action for which a hearing
2 has been requested, the issues to be considered at the hearing and a refer-
3 ence to the particular sections of the statutes and rules involved.

4 “(c) A statement of the legal authority and jurisdiction under which the
5 hearing is to be held.

6 “(d) A statement of all rights under subsection (6) of this section.

7 “(5) Prior to the commencement of the hearing, the board shall serve
8 personally or by mail a written notice to each party as provided in ORS
9 183.413 (2).

10 “(6) At the hearing, the person about whom the hearing is being held
11 shall have the right:

12 “(a) To appear at all proceedings held pursuant to this section, except for
13 deliberations.

14 “(b) To cross-examine all witnesses appearing to testify at the hearing.

15 “(c) To subpoena witnesses and documents as provided in ORS 161.395.

16 “(d) To be represented by suitable legal counsel possessing skills and ex-
17 perience commensurate with the nature and complexity of the case, to con-
18 sult with counsel prior to the hearing and, if financially eligible, to have
19 suitable counsel appointed at state expense.

20 “(e) To examine all information, documents and reports that the board
21 considers. If then available to the board, the information, documents and
22 reports shall be disclosed to the person so as to allow examination prior to
23 the hearing.

24 “(7) A record shall be kept of all hearings conducted under ORS 161.315
25 to 161.351, except for deliberations.

26 “(8) Upon request of any party, or on motion of the board, the hearing
27 may be continued for a reasonable period not to exceed 60 days to obtain
28 additional information or testimony or for other good cause shown.

29 “(9) Within 30 days following the conclusion of the hearing, the board
30 shall provide to the person, the attorney representing the person, the Attor-

1 ney General or other attorney representing the state, if any, written notice
2 of the order entered by the board.

3 “(10) The burden of proof on all issues at hearings under ORS 161.315 to
4 161.351 shall be by a preponderance of the evidence.

5 “(11) If the board determines that the person about whom the hearing is
6 being held is financially eligible, the board shall appoint suitable counsel to
7 represent the person. Counsel so appointed shall be an attorney who satisfies
8 the professional qualifications established by the Public Defense Services
9 Commission under ORS 151.216. The [*public defense services*] executive di-
10 rector **of the Office of Public Defense Services** shall determine and allow
11 fair compensation for counsel appointed under this subsection and the rea-
12 sonable expenses of the person in respect to the hearing. Compensation
13 payable to appointed counsel shall not be less than the applicable compen-
14 sation level established under ORS 151.216. The compensation and expenses
15 so allowed shall be paid by the public defense services executive director
16 from funds available for the purpose.

17 “(12) The Attorney General may represent the state at contested hearings
18 under ORS 161.315 to 161.351 unless the district attorney of the county from
19 which the person was committed elects to represent the state. The district
20 attorney of the county from which the person was committed shall cooperate
21 with the Attorney General in securing the material necessary for presenting
22 a contested hearing. If the district attorney elects to represent the state, the
23 district attorney shall give timely written notice of such election to the At-
24 torney General, the board and the attorney representing the person.

25 **“SECTION 12.** ORS 419C.535 is amended to read:

26 “419C.535. (1) If the juvenile panel of the Psychiatric Security Review
27 Board determines that a young person about whom a hearing under ORS
28 419C.532 is being held is financially eligible, the juvenile panel shall appoint
29 suitable counsel to represent the young person. Counsel appointed must be
30 an attorney who satisfies the professional qualification standards established

1 by the Public Defense Services Commission under ORS 151.216. The [*public*
2 *defense services*] executive director **of the Office of Public Defense Ser-**
3 **vices** shall determine and allow fair compensation for counsel appointed
4 under this subsection and the reasonable expenses of the young person in
5 respect to the hearing. Compensation payable to appointed counsel may not
6 be less than the applicable compensation level established under ORS
7 151.216. The [*public defense services*] executive director shall pay compen-
8 sation and expenses allowed from funds available for that purpose.

9 “(2) When the juvenile panel appoints counsel to represent the young
10 person, the juvenile panel may order the young person, if able, parent, if
11 able, or guardian of the estate, if the estate is able, to pay to the Public
12 Defense Services Account established by ORS 151.225, through the clerk of
13 the court, in full or in part, the administrative costs of determining the
14 ability of the young person, parent or estate to pay for legal services and the
15 costs of the legal and other services that are related to the provision of ap-
16 pointed counsel. The juvenile panel’s order of payment may be entered in the
17 County Clerk Lien Record and enforced as provided in ORS 205.126.

18 “(3) The test of the young person’s, parent’s or estate’s ability to pay costs
19 under subsection (2) of this section is the same test as applied to appoint-
20 ment of counsel for defendants under ORS 135.050 or under the rules adopted
21 under ORS 151.216. If counsel is provided at state expense, the juvenile panel
22 shall apply this test in accordance with the guidelines adopted by the Public
23 Defense Services Commission under ORS 151.485.

24 “(4) If counsel is provided at state expense, the juvenile panel shall de-
25 termine the amount the young person, parent or estate is required to pay for
26 the costs of administrative, legal and other services related to the provision
27 of appointed counsel in the same manner as this amount is determined under
28 ORS 151.487.

29 “(5) The Attorney General may represent the state at contested hearings
30 before the juvenile panel unless the district attorney of the county in which

1 the young person was adjudicated elects to represent the state. The district
2 attorney of the county in which the young person was adjudicated shall co-
3 operate with the Attorney General in securing the material necessary for
4 presenting a contested hearing before the juvenile panel. If the district at-
5 torney elects to represent the state, the district attorney shall give timely
6 written notice to the Attorney General, the juvenile panel and the attorney
7 representing the young person.

8

9

“MISCELLANEOUS

10

11 **“SECTION 13. Section 7 of this 2019 Act is repealed on December**
12 **31, 2021.**

13 **SECTION 14. The unit captions used in this 2019 Act are provided**
14 **only for the convenience of the reader and do not become part of the**
15 **statutory law of this state or express any legislative intent in the**
16 **enactment of this 2019 Act.**

17 **“SECTION 15. This 2019 Act being necessary for the immediate**
18 **preservation of the public peace, health and safety, an emergency is**
19 **declared to exist, and this 2019 Act takes effect on its passage.”.**

20
