

A-Engrossed House Bill 2467

Ordered by the House April 11
Including House Amendments dated April 11

Sponsored by Representative BYNUM; Representative EVANS (at the request of Nkenge Harmon Johnson) (Pre-session 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.

Establishes Public Defense Services Student Loan Repayment Assistance Program in Oregon State Bar to provide forgivable loans to eligible public defense attorneys **and staff members** for outstanding student loans.

Directs Oregon State Bar to report annually to committee or interim committee of Legislative Assembly related to judiciary on program.

[Creates subtraction from federal taxable income for loan repayment assistance received under program.]

[Appropriates moneys to Judicial Department for transfer to Oregon State Bar for purpose of program.]

Modifies provisions relating to compensation, resources and training provided to public defense providers.

Directs Public Defense Services Commission to report to committees of Legislative Assembly related to judiciary during each odd-numbered year regular session.

Authorizes commission to provide grants to certain entities and law schools.

Directs commission to conduct outreach at law schools.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to courts; creating new provisions; amending ORS 151.216 and 151.219; and prescribing an
3 effective date.

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

LOAN REPAYMENT ASSISTANCE

SECTION 1. (1) As used in this section:

9 (a) **"Public defense attorney" means an attorney:**

10 (A) **Who is appointed to represent eligible individuals as required by Oregon statutes, the**
11 **Oregon Constitution or the United States Constitution;**

12 (B) **Whose legal work is funded by the office of public defense services and who is em-**
13 **ployed by the state or a public defense services contractor; and**

14 (C) **Who meets any further definition of "public defense attorney" set forth by the**
15 **Oregon State Bar.**

16 (b) **"Public defense staff member" means an investigator, support staff member or case**
17 **manager who is employed by a public defense services contractor.**

18 (2) **The Public Defense Services Student Loan Repayment Assistance Program is estab-**
19 **lished in the Oregon State Bar.**

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 **(3)(a) The program shall provide forgivable loans to an eligible public defense attorney**
2 **or public defense staff member for up to \$20,000 in payments of principal and interest on**
3 **outstanding public or private student loans for each 12 months of service.**

4 **(b) The program may provide forgivable loans to a public defense attorney or public de-**
5 **fense staff member for 10 years or until the program has provided a total of \$200,000 in**
6 **forgivable loans, whichever occurs first.**

7 **(4)(a) A public defense attorney is eligible for the program if:**

8 **(A) The attorney resides in this state;**

9 **(B) The provision of public defense services constitutes at least 70 percent of the**
10 **attorney's working hours, as defined in the policies of the Public Defense Services Commis-**
11 **sion, while the attorney is participating in the program;**

12 **(C) The attorney commits to provide public defense services for a period of 10 years; and**

13 **(D) The attorney meets other requirements established by the Oregon State Bar under**
14 **subsection (5) of this section.**

15 **(b) A public defense staff member is eligible for the program if:**

16 **(A) The person resides in this state;**

17 **(B) The provision of public defense services constitutes at least 70 percent of the staff**
18 **member's working hours, as defined in the policies of the Public Defense Services Commis-**
19 **sion, while the staff member is participating in the program;**

20 **(C) The person commits to provide public defense services for a period of 10 years; and**

21 **(D) The person meets other requirements established by the Oregon State Bar under**
22 **subsection (5) of this section.**

23 **(5) The Oregon State Bar shall adopt policies for administration of the program, including**
24 **eligibility and application requirements. The policies shall include that amounts of forgivable**
25 **loans for student loan payments be based on the amount of the person's working hours spent**
26 **providing public defense services, provided that the provision of public defense services con-**
27 **stitutes at least 70 percent of the person's working hours.**

28 **SECTION 2. No later than August 31 of each year, the Oregon State Bar shall report on**
29 **the Public Defense Services Student Loan Repayment Assistance Program to a committee**
30 **or interim committee of the Legislative Assembly related to the judiciary. The report must**
31 **include:**

32 **(1) The number of attorneys and staff members who entered the program, and the month**
33 **and year of entry.**

34 **(2) The average amount of forgivable loans provided to a participant.**

35 **(3) The total amount of forgivable loans provided.**

36 **(4) The number of attorneys and staff members who participated in the program in each**
37 **county.**

38 **(5) The number of participants who are employed by a state agency or by a private entity**
39 **that contracts with the Public Defense Services Commission and, if the latter, the type of**
40 **entity.**

41 **(6) The number of attorneys and staff members who report that participation in the**
42 **program is a substantial factor in removing economic barriers to the ability to perform**
43 **public defense services.**

44 **(7) The average amount of outstanding student loan debt for each participant.**

45 **(8) Demographic information on the participants in the program, including race, ethnicity**

1 **and cultural and linguistic information, to ensure that workforce recruitment and retention**
2 **is meeting the needs of the public defense system to be culturally specific and responsive.**

3 **(9) Other information that is useful in evaluating the program.**
4

5 **PUBLIC DEFENSE SERVICES COMMISSION**
6

7 **SECTION 3.** ORS 151.216 is amended to read:

8 151.216. (1) The Public Defense Services Commission shall:

9 (a) Establish and maintain a public defense system that ensures the provision of public defense
10 services consistent with the Oregon Constitution, the United States Constitution and Oregon and
11 national standards of justice.

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

14 (c) Adopt policies for contracting for public defense providers not employed by the office of
15 public defense services that:

16 (A) Ensure compensation, resources and caseloads are in accordance with national and regional
17 best practices;

18 (B) Promote policies for public defense provider compensation and resources that are [*compara-*
19 *ble to prosecution*] **commensurate with the compensation and resources of state employees pro-**
20 **viding comparable services or in comparable job classifications;**

21 (C) Ensure funding and resources to support required data collection and training requirements;
22 and

23 (D) Recognize the need to consider overhead costs that account for the cost of living and busi-
24 ness cost differences in each county or jurisdiction, including but not limited to rent, professional
25 membership dues, malpractice insurance and other insurance and other reasonable and usual oper-
26 ating costs.

27 (d) Establish operational and contracting systems that allow for oversight, ensure transparency
28 and stakeholder engagement and promote equity, inclusion and culturally specific representation.

29 (e) Review the caseload policies described in paragraph (c)(A) of this subsection annually, and
30 revise the policies as necessary and at least every four years.

31 (f) Adopt a statewide workload plan, based on the caseload policies described in paragraph (c)(A)
32 of this subsection, that takes into account the needs of each county or jurisdiction, practice struc-
33 ture and type of practice overseen by the office of public defense services.

34 (g) Submit the budget of the commission and the office of public defense services to the Legis-
35 lative Assembly after the budget is submitted to the commission by the director and approved by the
36 commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall
37 present the budget to the Legislative Assembly.

38 (h) Review and approve any public defense services contract negotiated by the director before
39 the contract can become effective.

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

42 (j) Adopt policies, procedures, standards and guidelines regarding:

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

45 (B) The appointment of counsel, including the appointment of counsel at state expense regard-

1 less of financial eligibility in juvenile delinquency matters;

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

4 (D) Appointed counsel compensation disputes;

5 (E) Any other costs associated with the representation of a person by appointed counsel in the
6 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
7 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
8 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any
9 other provision of law that expressly provides for payment of such compensation, costs or expenses
10 by the commission;

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

12 (G) Performance for legal representation;

13 (H) The contracting of public defense services;

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

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

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

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

24 (m) Reimburse the State Court Administrator from funds deposited in the Public Defense Ser-
25 vices Account established by ORS 151.225 for the costs of personnel and other costs associated with
26 location of eligibility verification and screening personnel pursuant to ORS 151.489 by the State
27 Court Administrator.

28 (2) Policies, procedures, standards and guidelines adopted by the commission supersede any
29 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-
30 tor, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review
31 Board related to the exercise of the commission's administrative responsibilities under this section
32 and transferred duties, functions and powers as they occur.

33 **(3) The commission may provide grants to entities that contract with the commission to**
34 **provide public defense services to support the recruitment of attorneys and other staff, in-**
35 **crease and diversify attorneys and other staff and help meet the public defense needs within**
36 **this state.**

37 [(3)] (4) The commission may accept gifts, grants or contributions from any source, whether
38 public or private. However, the commission may not accept a gift, grant or contribution if accept-
39 ance would create a conflict of interest. Moneys accepted under this subsection shall be deposited
40 in the Public Defense Services Account established by ORS 151.225 and expended for the purposes
41 for which given or granted.

42 [(4)] (5) The commission may not:

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

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

45 (c) Interfere with the director or any member of the staff of the director in carrying out pro-

1 fessional duties involving the legal representation of public defense clients.

2 **SECTION 4.** ORS 151.219 is amended to read:

3 151.219. (1) The public defense services executive director shall:

4 (a) Recommend to the Public Defense Services Commission how to establish and maintain, in a
5 cost-effective manner, the delivery of legal services to persons entitled to, and, where applicable,
6 financially eligible for, appointed counsel at state expense under Oregon statutes, the Oregon Con-
7 stitution, the United States Constitution and consistent with Oregon and national standards of jus-
8 tice.

9 (b) Implement and ensure compliance with contracts, policies, procedures, standards and guide-
10 lines adopted by the commission or required by statute.

11 (c) Prepare and submit to the commission for its approval the biennial budget of the commission
12 and the office of public defense services.

13 (d) Negotiate contracts, as appropriate, for providing legal services to persons eligible for ap-
14 pointed counsel at state expense. No contract so negotiated is binding or enforceable until the
15 contract has been reviewed and approved by the commission as provided in ORS 151.216.

16 (e) Employ personnel or contract for services as necessary to carry out the responsibilities of
17 the director and the office of public defense services.

18 (f) Supervise the personnel, operation and activities of the office of public defense services.

19 (g) Provide services, facilities and materials necessary for the performance of the duties, func-
20 tions and powers of the Public Defense Services Commission.

21 (h) Pay the expenses of the commission and the office of public defense services.

22 (i) Prepare and submit to the commission an annual report of the activities of the office of public
23 defense services.

24 (j) Prepare and submit to the Legislative Assembly a biennial report on the activities of the of-
25 fice of public defense services.

26 (k) Provide for legal representation, advice and consultation for the commission, its members,
27 the director and staff of the office of public defense services who require such services or who are
28 named as defendants in lawsuits arising from their duties, functions and responsibilities. If requested
29 by the director, the Attorney General may also provide for legal representation, advice and consul-
30 tation for the commission, its members, the director and staff of the office of public defense services
31 in litigation.

32 **(L) Develop training programs for employees of the office of public defense services, set**
33 **training protocols and expectations for the trainings and coordinate with professional asso-**
34 **ciations to provide continuing legal education opportunities.**

35 **(m) Ensure that the contracts negotiated under paragraph (d) of this subsection:**

36 **(A) Provide for staff members within the offices of public defense providers who train**
37 **and supervise other attorneys, assist in the orientation of new employees and coordinate**
38 **continuing legal educational opportunities, while having the ability to have a lower caseload**
39 **than other attorneys within the office.**

40 **(B) Compensate contracted public defense providers at the same rate as employees of the**
41 **office of public defense services performing comparable work.**

42 (2) The director may designate persons as representatives of the director for the purposes of
43 determining and paying bills submitted to the office of public defense services and determining pre-
44 authorization for incurring fees and expenses under ORS 135.055.

45 **SECTION 5. The Public Defense Services Commission shall report to the committees of**

1 the Legislative Assembly related to the judiciary during each odd-numbered year regular
2 session of the Legislative Assembly on:

3 (1) The number of attorneys working in Oregon as public defense providers, distinguish-
4 ing those employed by the state or through consortiums or nonprofit organizations, and
5 tracking movement of providers between those two employment models.

6 (2) The estimated number of public defense providers needed to meet caseload demand.

7 (3) The attrition rate of attorneys leaving the public defense practice.

8 (4) The percentage of new public defense providers coming to Oregon from outside the
9 state.

10 (5) Recommendations for legislation to assist the commission with meeting goals for re-
11 cruiting public defense providers and providing constitutionally adequate services.

12 (6) How the commission is working with law schools to develop incentives for law stu-
13 dents and recent alumni to become public defense providers.

14 **SECTION 6.** The Public Defense Services Commission may provide grants to law schools
15 in Oregon for projects designed to increase the number of graduates choosing employment
16 as public defense providers, including but not limited to:

17 (1) Experiential clinics specialized in criminal defense, juvenile defense and juvenile de-
18 pendency defense.

19 (2) Career fairs and networking events.

20 (3) Scholarships and financial assistance for students working to become public defense
21 providers.

22 (4) Loan forgiveness for graduates working as public defense providers.

23 (5) Paid clerkships.

24 (6) Paid positions for students taking a nontraditional path to taking the bar examina-
25 tion.

26 **SECTION 7.** The Public Defense Services Commission shall conduct outreach at law
27 schools outside of this state and at nonprofit organizations to attract public defense provid-
28 ers to this state, with special dedication to recruiting providers with the following lived ex-
29periences or background:

30 (1) Experience of discrimination because of race or ethnicity.

31 (2) Bilingual skills or experience living in a home where English is not the first language.

32 (3) Citizenship status belonging to a country other than the United States.

33 (4) Low socioeconomic status.

34 (5) Residence in a rural or frontier community.

35 (6) Experience working with people experiencing mental illness.

36 (7) Experience in providing trauma-informed services.

37
38 **CAPTIONS**

39
40 **SECTION 8.** The unit captions used in this 2023 Act are provided only for the convenience
41 of the reader and do not become part of the statutory law of this state or express any leg-
42islative intent in the enactment of this 2023 Act.

43
44 **EFFECTIVE DATE**

1 **SECTION 9.** This 2023 Act takes effect on the 91st day after the date on which the 2023
2 regular session of the Eighty-second Legislative Assembly adjourns sine die.
3 _____