

Members

Peter Buckley
Alton Harvey Jr.
Lisa Ludwig
Jennifer Nash
Jennifer Parrish Taylor
Per Ramfjord, Chair
Paul Solomon, Vice-Chair
Max Williams
Kristen Winemiller



Ex-Officio Member

Chief Justice Meagan Flynn

Executive Director

Jessica Kampfe

**PUBLIC DEFENSE SERVICES COMMISSION
*AMENDED AGENDA***

Meeting will occur in person and virtually.
Due to space limitations, in person attendance requires reservation.
Please contact opds.info@opds.state.or.us by 5 PM PT on Wednesday, January 18, 2023,
to make a reservation.

1175 Court Street NE
Salem, OR 97301
Thursday, January 19, 2023
2:00 PM – approx. 4:00 PM PST
Via Microsoft Teams Live Event*

This is a public meeting, subject to public meeting law and it will be digitally recorded. Remember to state your full name for the record, as it is required for making a record of the meeting. For action items requiring PDSC approval, a roll call vote will occur, unless the chair directs otherwise. The chair shall read any motion requiring PDSC approval into the record before a vote is taken. We are mindful of everyone’s busy schedule, particularly public defense providers, and we will adhere to the agenda of business unless the chair directs otherwise.

MEETING AGENDA

Approx. Time	Item	Lead(s)
5 min.	Welcome	Chair Ramfjord
5 min.	Action Items: <ul style="list-style-type: none"> • Approval of Meeting Minutes – PDSC Meeting 12/15/2022 • Approval of Meeting Minutes – PDSC Meeting 01/05/2023 • Approval of Meeting Minutes – PDSC Meeting 01/09/2023 • Approval of Meeting Minutes – PDSC Meeting 01/13/2023 (Attachments 1a, 1b, 1c, 1d) 	PDSC
10 min.	Budget Update (Attachment 2)	R. Amador
15 min.	Legislative & Tri-Branch Workgroup Update (Attachments 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i)	A. Shreve, L. Taylor & J. Williamson
20 min.	2023-'25 Policy Option Packages Update (Attachment 4)	J. Kampfe
10 min.	Watkins v. Ackley, Jury Unanimity, and Retroactivity Update	J. Crowther
15 min.	Unrepresented Persons Update (Attachment 5)	L. Bender & J. Kampfe
15 min.	Public Comment**	All

5 min.	Action Item: <ul style="list-style-type: none"> Approval of Proposals to Spend \$10 Million Emergency Funding to Address Unrepresented Persons Crisis <ul style="list-style-type: none"> Increased and Tiered Hourly Rate Structure for All Unrepresented Persons Supervised Civil Attorney Program Retention of Contractors (Attachment 6) 	J. Kampfe & PDSC
5 min.	Action Item: <ul style="list-style-type: none"> Approval of Submission of the Report on the Unrepresented Crisis (Attachment 6) 	J. Kampfe & PDSC
10 min.	Action Item: <ul style="list-style-type: none"> Approval of Contract with Reza Khanjan (Attachment 7) 	L. Bender & PDSC
5 min.	Future Business	Chair Ramfjord & J. Kampfe

*To join the Microsoft Teams Live Event meeting, click this link:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzdhNmEwZGltZTU1Yi00MDEzLTk2MzUtNzdhZTljZGVlMWE5%40thread.v2/0?context=%7B%22Tid%22%3A%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2C%22Oid%22%3A%22e2d550f7-f738-4d5a-9f2a-9f2a-9f2a-9f2a-9f2a-9f2a-9f2a-9f2a%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a](https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzdhNmEwZGltZTU1Yi00MDEzLTk2MzUtNzdhZTljZGVlMWE5%40thread.v2/0?context=%7B%22Tid%22%3A%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2C%22Oid%22%3A%22e2d550f7-f738-4d5a-9f2a-9f2a-9f2a-9f2a-9f2a-9f2a-9f2a-9f2a-9f2a%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a&e0c9857447%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a)

**If you are interested in providing public comment to the PDSC (either in person or virtual), please email interest to opds.info@opds.state.or.us. Deadline to submit interest is 5:00 PM PT Wednesday, January 18, 2023. Please include your full name, organization/entity name, email, phone number and whether you would like to present in person or orally via video conference. Each guest will be given up to 3-minutes to share comments.

Please make requests for an interpreter for the hearing impaired, or other accommodation to opds.info@opds.state.or.us.

Next meeting: **February 23, 2023, 9:00 AM – 11:00 AM PST**

Meeting dates, times, locations, and agenda items are subject to change by the Commission; future meetings dates are posted at: <https://www.oregon.gov/opds/commission/Pages/meetings.aspx>.

Attachment 1a

Meeting: Public Defense Services Commission (PDSC) Meeting

Date & Time: December 15, 2022: 10:00 AM – to approx. 1:15 PM PT

Address/Platform: Hybrid: Meeting occurred in person and virtually

Link to Recording: https://teams.microsoft.com/l/meetup-join/19%3ameeting_MmRmNjhjMjAtOWJiYS00NGJkLWFmMGUtZGE3YThkNzg5NDlw%40thead.v2/0?context=%7B%22Tid%22%3A%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2C%22Oid%22%3A%22e2d550f7-f738-4d5a-9f2a-ebe0c9857447%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a

Commissioners Present

Peter Buckley
Alton Harvey, Jr.
Lisa Ludwig
Jennifer Nash
Jennifer Parrish Taylor
Per Ramfjord, Chair
Paul Solomon, Vice-Chair
Chief Justice Walters, Ex Officio
Max Williams
Kristen Winemiller

Commissioners Absent

Paul Solomon, Vice-Chair

Presenting Staff

Ralph Amador, Budget Manager
K.O. Berger, Deputy Juvenile Trial Counsel
Shannon Flowers, Chief Juvenile Trial Counsel
Kevin Hupy, Deputy Juvenile Trial Counsel
Jessica Kampfe, Executive Director
Autumn Shreve, Government Relations Manager

Presenting Guests

Cheryl Albrecht, Multnomah County Judge
Tracy Prall, Marion County Presiding Judge
Kathleen Proctor, Washington County Presiding Judge
Martin Stone, Coos and Curry Counties Presiding Judge
Olcott Thompson, Executive Director of the Marion County Association of Defenders (MCAD)
Jennifer Williamson, Strategies 360

*Agenda item requires a vote by the commission

1. Welcome

Presented by Chair Per Ramfjord

Chair Per Ramfjord welcomed everyone to the December 15, 2022, Public Defense Services Commission meeting.

Chair Ramfjord opened the floor to talk about the incredible contribution that Chief Justice Martha Walters has made to public defense in Oregon since she was elected Chief Justice by her colleagues in 2018. Numerous commissioners expressed their gratitude and provided their personal experiences working with her and thanked her for her service. Chief Justice Walters expressed what an amazing opportunity it has been to learn from everyone and to take inspiration from everyone. She plans to continue advocating for this work and thanked everyone at the meeting and across the state for doing the important work. A commemorative plaque was bestowed to her by Commissioner Harvey Jr. on behalf of the commission and agency.

2. Approval of Meeting Minutes from PDSC Meetings 11/17/2022*

Commissioner Williams moved approval of the November 17, 2022, PDSC meeting minutes, as outlined. Commissioner Harvey Jr. seconded the motion. The motion passed unanimously.

3. Budget Update

Presented by Ralph Amador

Mr. Ralph Amador, budget manager, presented on budget appropriations for the month ending October 2022. The summary showed that the General Fund balance of about \$17 million, which didn't take into consideration the expenditures and court mandated expenses for those cases that are still in process. Chair Ramfjord inquired about the expense of the \$158 hourly program and Commissioner Williams inquired on the outcome of Emergency Board responses to the PDSC requests. More in-depth conversation with both topics happened later in the meeting.

4. December Emergency Board & Tri-Branch Workgroup Update

Presented by Jessica Kampfe, Autumn Shreve, and Jennifer Williamson

Ms. Jessica Kampfe, executive director, provided an overview on four separate events the agency appeared at during December Legislative Days, which included Emergency Board Subcommittee and the full E-Board, the Audit Committee, and an introductory meeting to the House Judiciary Committee. The Legislative Fiscal Office provided feedback on the agency's reorganization. That feedback elevated some critiques of the

*Agenda item requires a vote by the commission

agency's work so far and highlighted areas where we need continued improvement; however, it did say that we were moving in the right direction and the E-Board accepted the report.

The request for rebalance was approved. Ms. Kampfe provided an overview of the fund transfers and highlighted that a lot of the monies were transferred to the Court Mandated Expense Division in large part because some of the programs that we are running to address the crisis of unrepresented persons in Oregon are being funded out of that budget bucket, so that transfer allows us to continue to do those programs.

The requested \$10 million allocation of supplemental funds to address the unrepresented crisis was approved. Ms. Kampfe explained the limitations for the funds, which must be spent in a way that addresses the unrepresented persons crisis. The funds are awarded to the Trial Division's budget which is for contracted services. Accountability measures put in place by the legislature require the agency to come up with a plan for how to spend the money and to get legislative approval on that plan prior to promising the monies or spending the monies, and then to send a written report no later than January 31st. The agency recommended to schedule a one-hour virtual commission meeting in early January for the explicit purpose of getting direction from the commission to send a letter of intent to the legislature about how the agency would like to spend that, so that the Senate President and the Speaker of the House can give input about whether they would approve the plan.

Further discussion regarding the limitations of the funding and legislative expectation for those funds ensued. Commissioners and staff provided accolades for Director Kampfe's contributions during Legislative Days.

Chair Ramfjord recommended the agency arrange two, one-hour meetings prior to the January 19, 2023, PDSC meeting so that the agency may provide a plan to the commission and then they give feedback. He also recommended getting input from relevant stakeholders to make sure that it's the most functional and acceptable plan.

Commissioner Williams clarified that the budget numbers presented today don't have any of the rebalance or budget adjustments being discussed, which Mr. Amador confirmed. Commissioner Williams requested to look at the adjusted budget numbers made by the rebalance in advance of the January meeting, once November dates close. He also requested copy of the written materials from Legislative Fiscal Office on the submissions.

Ms. Autumn Shreve, government relations manager, provided an update on the Tri-

*Agenda item requires a vote by the commission

Branch Workgroup and the respective sub-workgroups progress. She also discussed the two legislative concepts that have been introduced to the Legislative Council through the Senate Judiciary Committee, which are regarding commissioner stipends and the subsection of removing the term “non-routine expenses” from the statute. We have been using “case support services” because it provides a more accurate representation of what those services are. The second concept is allowing the PDSC to issue grants out of their own budgetary authority because we’ve learned that really to do grants, we must make sure we’re explicitly allowed.

As it relates to the commission sub-workgroup, Chair Ramfjord expressed that the commission itself has an interest in any legislative proposals that are made with respect to where the commission sits, the commission's powers, how commission appointments are made, what impact that could have on how the executive director appointments are made or how the budgeting is done for the agency. In Vice-Chair Paul Solomon’s absence, Ms. Shreve confirmed that he is on the commission sub-workgroup and agreed that wider commission feedback would be important, offering to be a part of that. Ms. Jennifer Williamson confirmed that we could make that formal request to have a group of commissioners sit in a more structured conversation about what’s in the proposal. Chair Ramfjord expressed the importance of who participates from the commission in that they have the background they need to make a meaningful and informed contribution.

5. Unrepresented Persons Update

Presented by Shannon Flowers and Jessica Kampfe

Ms. Kampfe provided an overview of the computed data related to the crisis of unrepresented persons in Oregon including the New Attorney Incentive Program, the \$158 Hourly Program, Provider Proposals, and the importance of attorney retention.

The data shows that historically, Oregon needed more misdemeanor-qualified lawyers than felony-qualified lawyers and that that has been changing over time. There is a greater need for felony-qualified lawyers. While the agency can hire new lawyers that can be supervised to take on misdemeanor caseloads, for lawyers to represent people on felony cases they must have a level of qualification that takes time. To meet the need to represent persons charged with crimes in Oregon, we need to retain lawyers in the system long enough to have them be qualified to do that felony work.

What the agency is learning from the data is that what was forecasted for the \$158 hourly program is very different than what was initially anticipated. The agency recommended the commission limit the extension of the program through January

*Agenda item requires a vote by the commission

2023 so that there can be more data collected around the forecasted need and cost. Chair Ramfjord requested that the agency find out cost-per-case to-date to better estimate what the remaining cases are going to cost.

6. Unrepresented Persons Discussion with Guest Judges

Presented by Justice Cheryl Albrecht, Justice Tracy Prall, Justice Kathleen Proctor, and Justice Martin Stone, and Chief Justice Martha Walters

Chief Justice Martha Walters welcomed guest judges, recognizing their continued commitment to the unrepresented persons crisis and the degree of collaboration that everyone has been engaged in. Presiding Judge of Washington County court Kathleen Proctor, Presiding Judge of Marion County court Tracy Prall, Cheryl Albrecht a Judge with Multnomah County court, and Presiding Judge for Coos and Curry Counties Martin Stone shared their experience and responsiveness to the unrepresented persons crisis.

Due to another commitment, Chair Ramfjord excused himself from the meeting early and asked that commissioner Winemiller or Nash volunteer to Chair the remainder of the meeting, which commissioner Nash did.

Acting Chair Nash suggested the commission take a 20-minute break which it did.

7. Public Comment

Mr. Olcott Thompson, executive director of the Marion County Association of Defenders (MCAD), provided verbal comment on the proposed law student stipend program, attorney pay, and rural fellowship program.

8. Expansion of New Attorney Incentive Plan and New Contracts with Klamath, Lake and Washington Counties*

Presented by K.O. Berger, Shannon Flowers, Kevin Hupy, and Jessica Kampfe

Commissioner Buckley moved approval to adopt the proposed eligibility criteria of “unmet need” for the agency to employ in qualifying public defense contractors for the New Attorney Incentive Plan, as outlined. Commissioner Harvey Jr. seconded the motion. The motion passed unanimously.

Commissioner Williams moved approval of the contracts between PDSC and Evelyn Costello, Justin Wright, Thomas Henagar, and Kathleen M. Baker, as outlined. Commissioner Parrish Taylor seconded the motion. The motion passed unanimously.

*Agenda item requires a vote by the commission

9. Extension of the \$158 Hourly Program*

Presented by Shannon Flowers and Jessica Kampfe

Commissioner Williams moved approval to extend the \$158 Hourly Rate Program until January 31, 2023, as outlined. Commissioner Winemiller seconded the motion. The motion passed unanimously.

10. Columbia County PCRCP Case Manager*

Presented by Shannon Flowers

Commissioner Williams moved approval of PCRCP Case Manager Contract between the PDSC and Sean Syrek, as outlined. Commissioner Winemiller seconded the motion. The motion passed unanimously.

11. 2023 PDSC Meeting Schedule*

Presented by Jessica Kampfe

Ms. Kampfe expressed the agency is dedicated to efficient meetings moving forward and providing agenda materials with advanced notice, which is why the proposed meeting timeframe is two hours. Commissioner Winemiller expressed that a two-hour meeting seems ambitious, and it was discussed that meeting space could allow up to three-hour meetings. The timeframe of the February meeting, in part with the Provider Summit, was outlined for 9:00 AM – 11:00 AM.

Commissioner Williams moved approval of the proposed meeting dates and timeframes, as outlined. Commissioner Parrish Taylor seconded the motion. The motion passed unanimously.

Acting Chair Nash entertained a motion to adjourn the meeting.

Commissioner Buckley moved to adjourn the meeting. Commissioner Parrish Taylor seconded the motion. The motion passed unanimously.

*Agenda item requires a vote by the commission

Attachment 1b

Meeting: Public Defense Services Commission (PDSC) Meeting

Date & Time: January 5, 2023: 2:00 PM – to approx. 3:29 PM PST

Address/Platform: Meeting occurred virtually via Microsoft Teams Live Event

Link to Recording: https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZWZhyjRIYzctOTZiOS00ODUwLWFjMWItZThYjViN2JlZDU2%40thread.v2/0?context=%7B%22Tid%22%3A%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2C%22Oid%22%3A%22e2d550f7-f738-4d5a-9f2a-eba0c9857447%22%2C%22IsBroadcastMeeting%22%3Atrue%22%2C%22role%22%3A%22a%22%7D&btype=a&role=a

Commissioners Present

Peter Buckley
Alton Harvey, Jr.
Lisa Ludwig
Jennifer Nash
Jennifer Parrish Taylor
Per Ramfjord, Chair
Paul Solomon, Vice-Chair
Chief Justice Meagan Flynn, Ex Officio
Max Williams
Kristen Winemiller

Presenting Staff

Ralph Amador, Budget Manager
Jessica Kampfe, Executive Director

Presenting Guests

Justice Martha Walters

1. Welcome

Presented by Chair Per Ramfjord

Chair Ramfjord welcomed everyone to the January 5, 2023, Public Defense Services Commission meeting. The meeting is an informational meeting for the Public Defense Services Commission to discuss proposals on how the agency should spend the \$10 million Emergency Board funding that the Oregon legislature allocated to make a measurable impact on the crisis of unrepresented persons in Oregon over the next 6 months.

*Agenda item requires a vote by the commission

2. Evaluate proposals for \$10 Million Emergency Funding to address Unrepresented Persons Crisis

Chair Ramfjord requested that Executive Director Jessica Kampfe lead the discussion, which she did. Ms. Kampfe outline the five program proposals to increase attorney capacity. Those programs focus on current provider retention, transitioning to a workload model after exceeding case capacity, professional staff funding, supervised civil attorney, and state employee quick response unit.

Director Kampfe provided an overview of all the proposals and took questions from Commissioners along the way. Mr. Ralph Amador, Budget Manager, assisted in answering financial questions posed by commission members.

Commissioner Nash provided information on an informal workgroup with Commissioners Ludwig, Nash and Winemiller, and former Chief Justice Martha Walters. The workgroup met on December 22nd and December 29th. Current Chief Justice Meagan Flynn, Executive Director Kampfe and staff were present at the December 29th meeting. The workgroup discussed concerns with the draft proposal, the same concerns that were discussed in this meeting.

Director Kampfe provided an overview of the requisite timeline for the commission to direct the agency to send a letter of intent to the Senate President and the Speaker of the House about how we would like to spend these funds. This step is a prerequisite of the commission promising the funds. The timeline set-forth by the agency provides an opportunity for the legislature to respond, if they so choose, prior to the commission directing the agency about which program to spend the funding on. This direction from the commission is planned to happen during the January 19th PDSC meeting. We are required to report back to the legislature on the funding by January 31st and there are requests to get information to policymakers on January 22nd.

Chair Ramfjord entertained a motion to adjourn the meeting.

Commissioner Winemiller moved to adjourn the meeting. Commissioner Parrish Taylor seconded the motion. The motion passed unanimously.

*Agenda item requires a vote by the commission

Attachment 1c

Meeting: Public Defense Services Commission (PDSC) Meeting

Date & Time: January 9, 2023: 11:00 AM – to approx. 12:08 PM PST

Address/Platform: Meeting occurred virtually via Microsoft Teams Live Event

Link to Recording: https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzhkODE3NzMtNzAwYy00MDJkLWlxZjUtMGU3M2RlZjgwMDU2%40thead.v2/0?context=%7B%22Tid%22%3A%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2C%22Oid%22%3A%22e2d550f7-f738-4d5a-9f2a-ebe0c9857447%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a

Commissioners Present

Peter Buckley

Lisa Ludwig

Jennifer Nash

Per Ramfjord, Chair

Paul Solomon, Vice-Chair

Chief Justice Meagan Flynn, Ex Officio

Max Williams

Kristen Winemiller

Commissioners Absent

Alton Harvey, Jr.

Jennifer Parrish Taylor

Presenting Staff

Jessica Kampfe, Executive Director

Presenting Guests

Justice Martha Walters

1. Welcome

Presented by Chair Per Ramfjord

Chair Ramfjord welcomed everyone to the January 9, 2023, Public Defense Services Commission meeting. This meeting is a continued discussion of potential proposals on how the agency should spend the \$10 million in Emergency Board Funding to address the unrepresented persons crisis.

2. Direct Agency to Issue Letter of Intent to Legislative Leadership for Proposed Programs to Spend \$10 Million Emergency Funding to Address Unrepresented

*Agenda item requires a vote by the commission

Persons Crisis*

Executive Director Jessica Kampfe explained that the agency is working to answer questions that the commission raised during the January 5th meeting and provided an overview of the minor modifications to the proposals made since that meeting.

Director Kampfe recommended the commission authorize the agency to send a letter of intent to legislative leadership asking that the \$10 million Emergency Board funding be allocated in the following ways:

- Spend \$6,356,400 towards retention incentives for public defense providers under contract;
- Spend \$3,280,000 towards professional staff to providers under contract;
- Spend the remaining funding which is about \$360,000 towards the supervised civil attorney program.

Discussion ensued amongst commissioners and Director Kampfe regarding the particulars of the proposal as outlined in the meeting materials. Director Kampfe confirmed that the proposals have not been previewed with the Legislative Fiscal Office nor has the agency received feedback from LFO about the proposals. She read allowed the first few paragraphs of the report that LFO filed when they recommended that the agency receive the allocation of \$10 million. She outlined the requisite timeline for a response to their recommendation.

The consensus among the commission members was that the agency continues to refine the proposal and that another short one-hour PDSC meeting be arranged this week once the agency has had a chance to rework the letter of intent. Commissioner Williams recommended that the agency preview the letter with our LFO analyst, prior to the letter landing, so we may get some feedback and adjustment recommendations ahead of time.

Chair Ramfjord entertained a motion to adjourn the meeting.

Vice-Chair Solomon moved to adjourn the meeting. Commissioner Buckley seconded the motion. The motion passed unanimously.

*Agenda item requires a vote by the commission

Attachment 1d

Meeting: Public Defense Services Commission (PDSC) Meeting

Date & Time: January 13, 2023: 12:00 PM – to approx. 12:49 PM PST

Address/Platform: Meeting occurred virtually via Microsoft Teams Live Event

Link to Recording: https://teams.microsoft.com/l/meetup-join/19%3ameeting_YjdjMjJjYmEtNDM3Ni00Njc2LTk3MjQtMTgxMmlyM2VmMDgw%40thread.v2/0?context=%7B%22Tid%22%3A%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2C%22Oid%22%3A%22e2d550f7-f738-4d5a-9f2a-eba0c9857447%22%2C%22IsBroadcastMeeting%22%3Atrue%22%2C%22role%22%3A%22a%22%7D&btype=a&role=a

Commissioners Present

Peter Buckley
Lisa Ludwig
Jennifer Nash
Jennifer Parrish Taylor
Per Ramfjord, Chair
Paul Solomon, Vice-Chair
Chief Justice Meagan Flynn, Ex Officio
Max Williams
Kristen Winemiller

Commissioners Absent

Alton Harvey, Jr.

Presenting Staff

Jessica Kampfe, Executive Director

Presenting Guests

Justice Martha Walters

1. Welcome

Presented by Chair Per Ramfjord

Chair Ramfjord welcomed everyone to the January 13, 2023, Public Defense Services Commission meeting. Chief Justice Meagan Flynn provided a brief update regarding her request to have Justice Martha Walters stay involved as a subject matter expert with the \$10 million emergency funding over the past couple meetings due to the task being underway prior to her becoming Chief Justice.

2. Approval of Agency Letter to Presiding Officers Detailing Spending to Address Unrepresented Persons Crisis*

*Agenda item requires a vote by the commission

Executive Director Jessica Kampfe presented on copy of a letter written to the presiding officers of the legislature, along with the agency's proposal for how to spend the \$10 million allocated by the Emergency Board. Director Kampfe thanked the commission for helping the agency create the best package that we can with the funding so that we can be as effective as possible in mitigating the unrepresented persons crisis in a targeted way. She thanked staff for their incredible efforts to bring this together and for the generous partnership from the Legislative Fiscal Office throughout the week. We are appreciative for all the insight and support received.

Director Kampfe provided updated financial projections and provided a breakdown of the proposed use of the \$10 million through three programs:

- Increased and Tiered Hourly Rate Structure for All Unrepresented Persons;
- Supervised Civil Attorney Program; and
- Retention of Contractors.

She explained that the overall system needs to be stabilized, and a symptom of the destabilized system is that we've got a crisis of unrepresented persons in Oregon. The proposal put forth looks at stabilization and targeted spending for the unrepresented crisis. Discussion ensued amongst commissioners and Director Kampfe regarding the particulars of the proposal as outlined in the meeting materials.

The need to integrate formal feedback loops and the importance of data, provided by the provider community, so that the agency can have the best data available to make the case when it comes time to have the deeper, more expensive, more complicated conversation to the Legislature, was discussed. Commissioners encouraged the provider community to be transparent and let us know what is making a difference and for the agency to collect and amass data that shows the efficacy of these strategic interventions that we're employing.

Commissioner Williams moved approval of letter for the legislature as provided by the director and agency for how PDSC moves forwarding in spending the special appropriation and other adjustments to the budget to address unrepresented persons crisis, as outlined. Commissioner Parrish Taylor seconded the motion. The motion passed unanimously.

Chair Ramfjord entertained a motion to adjourn the meeting.

Commissioner Ludwig moved to adjourn the meeting. Commissioner Parrish Taylor seconded the motion. The motion passed unanimously.

*Agenda item requires a vote by the commission

Attachment 2

Public Defense Services Commission | Biennial Budget Forecast

As of fiscal month ended November 30, 2022

Public Defense Services Commission 2021 - 2023 Biennium			General Fund Authority	Other Funds Limitation	Executive Division	Compliance, Audit, and Performance	Appellate Division	Trial Criminal Division	Trial Criminal Division
					General	General	General	General	Other
Legislatively approved budget			447,996,815	18,449,667	3,743,464	4,904,659	22,818,312	263,915,757	4,000,000
Legislatively adopted budget			321,184,175	18,449,667	3,600,361	4,656,251	24,925,503	186,458,931	0
Special purpose appropriation (SPA)			100,000,000	0	0	0	0	70,250,989	0
Short session and other interim actions			26,762,641	0	143,103	248,409	(2,104,420)	7,205,837	4,000,000
Expenditures as of fiscal year ended June 30, 2022 (Fiscal Year 2022)			(204,430,643)	(3,723,273)	(1,702,998)	(1,494,333)	(10,825,077)	(113,462,758)	0
Budget authority or limitation remaining as of June 30, 2022			243,566,172	14,726,394	2,040,466	3,410,326	11,993,235	150,452,999	4,000,000
Expenditures for fiscal month period ended:*									
2022	July	Actuals	14,032,977	11	148,931	200,274	911,208	9,951,187	
	August	Actuals	19,060,056	11	151,667	142,424	903,899	10,368,933	
	September	Actuals	19,333,708	273,590	103,728	163,080	900,471	11,168,091	
	October	Actuals	18,082,179	143,635	131,501	128,052	903,844	11,269,625	
	November	Actuals	19,377,807	141,610	140,552	155,221	909,601	11,431,099	
	December	Projections	19,569,952	0	147,632	258,820	952,223	11,241,128	
2023	January	Projections	20,053,582	0	148,042	258,820	952,223	11,873,639	
	February	Projections	20,105,383	0	148,642	258,820	953,243	11,923,821	
	March	Projections	20,259,273	0	149,785	260,223	954,058	11,923,821	
	April	Projections	20,110,766	0	150,474	260,223	954,058	11,923,821	
	May	Projections	20,113,730	0	151,738	260,223	955,759	11,923,821	
	June	Projections	22,817,509	0	222,269	260,223	955,759	12,856,514	0
Forecast for fiscal year ended June 30, 2023 (Fiscal Year 2023)			(232,916,922)	(558,858)	(1,794,961)	(2,606,404)	(11,206,345)	(137,855,500)	0
Pending expenditure reclassifications and other adj. (rev. shortfall, etc.)			11,851,129	(14,167,536)	0	0	0	4,000,000	(4,000,000)
Projected authority or limitation ending balance (Appropriation Year 2023)			22,500,379	0	245,505	803,922	786,890	16,597,499	0

Public Defense Services Commission | Biennial Budget Forecast

As of fiscal month ended November 30, 2022

Public Defense Services Commission 2021 - 2023 Biennium			Court Mandated Expenses	Court Mandated Expenses	Case Support Services (NRE)	Juvenile Division	Juvenile Division	Administrative Services Division	Special Progs., Contracts, and Distr.
			General	Other	General	General	Other	General	General
Legislatively approved budget			51,567,492	4,449,667	45,511,590	40,965,293	10,000,000	14,189,812	380,436
Legislatively adopted budget			15,006,403	4,449,667	43,663,533	30,577,095	14,000,000	12,296,098	0
Special purpose appropriation (SPA)			5,002,135	0	14,554,511	10,192,365	0	0	0
Short session and other interim actions			31,558,954	0	(12,706,454)	195,833	(4,000,000)	1,840,943	380,436
Expenditures as of fiscal year ended June 30, 2022 (Fiscal Year 2022)			(14,085,867)	(1,574,402)	(32,688,219)	(23,835,434)	(2,148,871)	(6,335,271)	(686)
Budget authority or limitation remaining as of June 30, 2022			37,481,625	2,875,265	12,823,371	17,129,859	7,851,129	7,854,541	379,750
Expenditures for fiscal month period ended:*									
2022	July	Actuals	69,852	11	153,741	1,877,951		713,220	6,614
	August	Actuals	1,860,624	11	3,027,670	2,036,080		558,693	10,066
	September	Actuals	1,163,781	273,590	2,825,248	2,180,632		818,612	10,066
	October	Actuals	1,199,519	143,635	1,713,963	2,060,509		663,916	11,250
	November	Actuals	1,382,365	141,610	2,920,206	1,881,479	0	547,219	10,066
	December	Projections	2,315,397	0	1,942,843	2,060,321	0	640,588	11,000
2023	January	Projections	2,315,397	0	1,942,843	2,060,321	0	491,296	11,000
	February	Projections	2,315,397	0	1,942,843	2,060,321	0	491,296	11,000
	March	Projections	2,315,397	0	1,942,843	2,060,321	0	641,824	11,000
	April	Projections	2,315,397	0	1,942,843	2,060,321	0	492,628	11,000
	May	Projections	2,315,397	0	1,942,843	2,060,321	0	492,628	11,000
	June	Projections	2,315,397	0	3,498,246	2,060,321	0	637,780	11,000
Forecast for fiscal year ended June 30, 2023 (Fiscal Year 2023)			(21,883,919)	(558,858)	(25,796,132)	(24,458,898)	0	(7,189,701)	(125,061)
Pending expenditure reclassifications and other adj. (rev. shortfall, etc.)			(14,891,266)	(2,316,407)	14,891,266	7,851,129	(7,851,129)	0	0
Projected authority or limitation ending balance (Appropriation Year 2023)			706,440	0	1,918,504	522,090	(0)	664,839	254,689

Attachment 3a

Senate Bill 322

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary and Ballot Measure 110 Implementation)

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**.

Transfers Public Defense Services Commission from judicial to executive branch. Modifies appointment and removal process for and qualifications of commission members.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public defense; creating new provisions; amending ORS 151.211, 151.213 and 151.216; and
3 declaring an emergency.

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

5 **SECTION 1.** ORS 151.211 is amended to read:

6 151.211. For purposes of ORS 151.211 to 151.221:

7 (1) "Bar member" means an individual who is an active member of the Oregon State Bar.

8 [(2) "*Chief Justice*" means the *Chief Justice of the Supreme Court*.]

9 [(3)] (2) "Commission" means the Public Defense Services Commission.

10 [(4)] (3) "Director" means the public defense services executive director appointed under ORS
11 151.216.

12 [(5)] (4) "Office of public defense services" means the office established by the commission under
13 the director to handle the cases assigned and to carry out the administrative policies and procedures
14 for the public defense system.

15 **SECTION 2.** ORS 151.213 is amended to read:

16 151.213. (1) The Public Defense Services Commission is established in the [*judicial*] **executive**
17 branch of state government. Except for the appointment or removal of commission members, the
18 commission and employees of the commission are not subject to the exercise of administrative au-
19 thority and supervision by the [*Chief Justice of the Supreme Court as the administrative head of the*
20 *Judicial Department*] **Governor**.

21 (2)(a) The commission consists of nine **voting** members **and four nonvoting members** ap-
22 pointed [*by order of the Chief Justice. In addition to the nine appointed members, the Chief Justice*
23 *serves as a nonvoting, ex officio member. The Chief Justice shall appoint at least three persons who*
24 *are not bar members, at least one person who was formerly engaged in the provision of public defense*
25 *services and at least one person who has been formerly represented by a public defense provider in this*
26 *state. All members must have a demonstrated record of commitment to public defense. Except for the*
27 *Chief Justice or a senior judge under ORS 1.300, a member may not serve concurrently as a judge, a*
28 *prosecuting attorney or an employee of a law enforcement agency. A person who is primarily engaged*
29 *in providing public defense services may not serve as a member of the commission.*] **as follows:**

30 (A) **The Governor shall appoint:**

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 (i) One voting member with experience in finance and organizational administration.

2 (ii) One voting member who is a current or former dean or faculty member of a law
3 school.

4 (iii) One nonvoting member.

5 (B) The Governor shall appoint, from among persons recommended by the Chief Justice
6 of the Supreme Court:

7 (i) One voting member who is a former judge with criminal law experience.

8 (ii) One voting member who is a former judge with experience in child protective pro-
9 ceedings.

10 (iii) One nonvoting member.

11 (C) The Governor shall appoint, from among persons recommended by the Senate Presi-
12 dent:

13 (i) One nonvoting member who is a member of the Senate at the time of appointment.

14 (ii) Two voting members.

15 (D) The Governor shall appoint, from among persons recommended by the Speaker of the
16 House of Representatives:

17 (i) One nonvoting member who is a member of the House of Representatives at the time
18 of appointment.

19 (ii) Two voting members.

20 (E) The voting members of the commission shall appoint one voting member who is not
21 an attorney and who was previously represented by a public defense service provider.

22 (b) When recommending and appointing members of the commission, the Governor, Chief
23 Justice, Senate President and Speaker of the House of Representatives shall:

24 (A) Consider input from individuals and organizations with an interest in the delivery of
25 public defense services.

26 (B) Consider geographic, racial, ethnic and gender diversity.

27 (C) Ensure that members appointed to the commission have significant experience with
28 issues related to public defense or in the case types subject to representation by public de-
29 fense service providers, or have demonstrated a strong commitment to quality public defense
30 representation.

31 (c) A member may not serve concurrently as a judge, a prosecuting attorney or an em-
32 ployee of a law enforcement agency.

33 (d) A person who is primarily engaged in providing public defense services, or who has a
34 financial interest in the delivery of public defense services, may not serve as a voting mem-
35 ber of the commission.

36 (3) The term of a member is four years beginning on the effective date of the [*order of the Chief*
37 *Justice appointing the member*] **appointment**. A member is eligible for reappointment if qualified for
38 membership at the time of reappointment. [*A member may be removed from the commission by order*
39 *of the Chief Justice.*] **The Governor may remove any member of the commission at any time**
40 **for cause, after notice and public hearing, but not more than three members shall be re-**
41 **moved within a period of four years, unless it is for corrupt conduct in office.** If a vacancy
42 occurs for any cause before the expiration of the term of a member, the [*Chief Justice*] **appointing**
43 **authority** shall make an appointment to become immediately effective for the unexpired term.

44 (4) A chairperson and a vice chairperson shall be appointed by [*order of the Chief Justice*] **the**
45 **Governor** every two years with such functions as the commission may determine. A member is eli-

1 gible for reappointment as chairperson or vice chairperson.

2 (5) A majority of the voting members constitutes a quorum for the transaction of business.

3 (6) A member of the commission is not entitled to compensation for services as a member, but
4 is entitled to expenses as provided in ORS 292.495 (2).

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

6 151.216. (1) The Public Defense Services Commission shall:

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

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

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

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

16 (B) Promote policies for public defense provider compensation and resources that are compara-
17 ble to prosecution compensation and resources;

18 (C) Ensure funding and resources to support required data collection and training requirements;
19 and

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

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

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

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

31 (g) Submit the budget of the commission and the office of public defense services to the Legis-
32 lative Assembly after the budget is submitted to the commission by the director and approved by the
33 commission. The [*Chief Justice of the Supreme Court and the*] chairperson of the commission shall
34 present the budget to the Legislative Assembly.

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

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

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

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

42 (B) The appointment of counsel, including the appointment of counsel at state expense regard-
43 less of financial eligibility in juvenile delinquency matters;

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

- 1 (D) Appointed counsel compensation disputes;
- 2 (E) Any other costs associated with the representation of a person by appointed counsel in the
- 3 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
- 4 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
- 5 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any
- 6 other provision of law that expressly provides for payment of such compensation, costs or expenses
- 7 by the commission;
- 8 (F) Professional qualifications for counsel appointed to represent public defense clients;
- 9 (G) Performance for legal representation;
- 10 (H) The contracting of public defense services;
- 11 (I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses
- 12 only if in-state expert witnesses are not available or are more expensive than out-of-state expert
- 13 witnesses; and
- 14 (J) Any other matters necessary to carry out the duties of the commission.
- 15 (k) Establish a peer review system for the approval of nonroutine fees and expenses incurred in
- 16 cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The review
- 17 shall be conducted by a panel of attorneys who practice in the area of criminal defense.
- 18 (L) Establish a complaint process that allows district attorneys, criminal defense counsel and the
- 19 public to file complaints concerning the payment from public funds of nonroutine fees and expenses
- 20 incurred in cases.
- 21 (m) Reimburse the State Court Administrator from funds deposited in the Public Defense Ser-
- 22 vices Account established by ORS 151.225 for the costs of personnel and other costs associated with
- 23 location of eligibility verification and screening personnel pursuant to ORS 151.489 by the State
- 24 Court Administrator.
- 25 (2) Policies, procedures, standards and guidelines adopted by the commission supersede any
- 26 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-
- 27 tor, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review
- 28 Board related to the exercise of the commission's administrative responsibilities under this section
- 29 and transferred duties, functions and powers as they occur.
- 30 (3) The commission may accept gifts, grants or contributions from any source, whether public
- 31 or private. However, the commission may not accept a gift, grant or contribution if acceptance
- 32 would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the
- 33 Public Defense Services Account established by ORS 151.225 and expended for the purposes for
- 34 which given or granted.
- 35 (4) The commission may not:
- 36 (a) Make any decision regarding the handling of any individual case;
- 37 (b) Have access to any case file; or
- 38 (c) Interfere with the director or any member of the staff of the director in carrying out pro-
- 39 fessional duties involving the legal representation of public defense clients.
- 40 (5) **The commission shall include in the Governor's budget for each fiscal period, at a**
- 41 **minimum, the amount of funds identified by the commission as being necessary to carry out**
- 42 **the duties and activities of the commission and the office of public defense services, and that**
- 43 **amount may not be reduced by the Governor or any other person when preparing the budget.**
- 44 **SECTION 4. (1) Within 60 days after the operative date specified in section 6 (1) of this**
- 45 **2023 Act, the Governor shall appoint four nonvoting members to the Public Defense Services**

1 Commission as provided in ORS 151.213 (2).

2 (2) A person who is a member of the Public Defense Services Commission on the opera-
3 tive date specified in section 6 (1) of this 2023 Act shall remain a member of the commission
4 until the end of the person's term, subject to removal by the Governor for cause as described
5 in ORS 151.213 (3).

6 (3) Upon the first instance of a commission member's term ending after the operative
7 date specified in section 6 (1) of this 2023 Act, the remaining voting members of the com-
8 mission shall appoint a successor member as provided in ORS 151.213 (2)(a)(E). For the re-
9 maining members, at the conclusion of each person's term, the person may be reappointed
10 to the commission by the Governor if the person meets the requirements described in ORS
11 151.213 (2).

12 (4) Notwithstanding ORS 151.213 (3), the initial term of a person appointed by the Gov-
13 ernor may be staggered by one, two, three and four years as necessary so that no more than
14 four terms end each year.

15 SECTION 5. Section 4 of this 2023 Act is repealed on January 1, 2028.

16 SECTION 6. (1) Section 4 of this 2023 Act and the amendments to ORS 151.211, 151.213
17 and 151.216 by sections 1 to 3 of this 2023 Act become operative on a date that is 270 days
18 after the effective date of this 2023 Act.

19 (2) The Public Defense Services Commission, the Judicial Department and the Governor
20 may take any action before the operative date specified in subsection (1) of this section that
21 is necessary to enable the commission, the department or the Governor to exercise, on and
22 after the operative date specified in subsection (1) of this section, all of the duties, functions
23 and powers conferred on the commission, the department or the Governor by section 4 of
24 this 2023 Act and the amendments to ORS 151.211, 151.213 and 151.216 by sections 1 to 3 of
25 this 2023 Act.

26 SECTION 7. This 2023 Act being necessary for the immediate preservation of the public
27 peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect
28 on its passage.

Attachment 3b

Senate Bill 324

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary and Ballot Measure 110 Implementation)

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**.

Modifies appointment and removal process for members of Public Defense Services Commission. Modifies powers and duties of commission. Directs commission to establish and implement specified minimum standards, policies, guidelines and procedures.

Directs justice and municipal courts to report every two years to commission and interim committees of Legislative Assembly related to judiciary concerning appointment of counsel in court.

Declares emergency effective on passage.

A BILL FOR AN ACT

1
2 Relating to public defense; creating new provisions; amending ORS 151.213 and 151.216; and declar-
3 ing an emergency.

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

5 **SECTION 1.** ORS 151.213 is amended to read:

6 151.213. (1) The Public Defense Services Commission is established in the judicial branch of state
7 government. Except for the appointment or removal of commission members, the commission, [*and*]
8 employees of the commission **and employees of the office of public defense services established**
9 **under ORS 151.216** are not subject to the exercise of administrative authority and supervision by
10 the Chief Justice of the Supreme Court as the administrative head of the Judicial Department.

11 (2)(a) The commission consists of nine **voting** members **and four nonvoting members** ap-
12 pointed [*by order of the Chief Justice. In addition to the nine appointed members, the Chief Justice*
13 *serves as a nonvoting, ex officio member. The Chief Justice shall appoint at least three persons who*
14 *are not bar members, at least one person who was formerly engaged in the provision of public defense*
15 *services and at least one person who has been formerly represented by a public defense provider in this*
16 *state. All members must have a demonstrated record of commitment to public defense. Except for the*
17 *Chief Justice or a senior judge under ORS 1.300, a member may not serve concurrently as a judge, a*
18 *prosecuting attorney or an employee of a law enforcement agency. A person who is primarily engaged*
19 *in providing public defense services may not serve as a member of the commission.*] **as follows:**

20 **(A) The Chief Justice shall appoint:**

21 **(i) One voting member who is a former judge with criminal law experience.**

22 **(ii) One voting member who is a former judge with experience in child protective pro-**
23 **ceedings.**

24 **(iii) One nonvoting member.**

25 **(B) The Chief Justice shall appoint, from among persons recommended by the Governor:**

26 **(i) One voting member with experience in finance and organizational administration.**

27 **(ii) One voting member who is a current or former dean or faculty member of a law**
28 **school.**

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 (iii) One nonvoting member.

2 (C) The Chief Justice shall appoint, from among persons recommended by the Senate
3 President:

4 (i) One nonvoting member who is a member of the Senate at the time of appointment.

5 (ii) Two voting members.

6 (D) The Chief Justice shall appoint, from among persons recommended by the Speaker
7 of the House of Representatives:

8 (i) One nonvoting member who is a member of the House of Representatives at the time
9 of appointment.

10 (ii) Two voting members.

11 (E) The voting members of the commission shall appoint one voting member who is not
12 an attorney and who was previously represented by a public defense provider.

13 (b) When recommending and appointing members of the commission, the Chief Justice,
14 Governor, Senate President and Speaker of the House of Representatives shall:

15 (A) Consider input from individuals and organizations with an interest in the delivery of
16 public defense services.

17 (B) Consider geographic, racial, ethnic and gender diversity.

18 (C) Ensure that members appointed to the commission have significant experience with
19 issues related to public defense or in the case types subject to representation by public de-
20 fense providers, or have demonstrated a strong commitment to quality public defense rep-
21 resentation.

22 (c) A member may not serve concurrently as a judge, a prosecuting attorney or an em-
23 ployee of a law enforcement agency.

24 (d) A person who is primarily engaged in providing public defense services, or who has a
25 financial interest in the delivery of public defense services, may not serve as a voting mem-
26 ber of the commission.

27 (3) The term of a member is four years beginning on the effective date of the order of the Chief
28 Justice appointing the member. A member is eligible for reappointment if qualified for membership
29 at the time of reappointment. *[A member may be removed from the commission by order of the Chief*
30 *Justice.]* **The Chief Justice may remove any member of the commission at any time for cause,**
31 **after notice and public hearing, but not more than three members shall be removed within**
32 **a period of four years, unless it is for corrupt conduct in office.** If a vacancy occurs for any
33 cause before the expiration of the term of a member, the *[Chief Justice]* **appointing authority** shall
34 make an appointment to become immediately effective for the unexpired term. **If the Chief Justice**
35 **has not filled a vacancy subject to appointment by the Chief Justice within 45 days after the**
36 **vacancy occurs, the remaining members of the commission shall appoint a member for the**
37 **unexpired term.**

38 (4) A chairperson and a vice chairperson shall be *[appointed by order of the Chief Justice]*
39 **elected by the voting members of the commission** every two years with such functions as the
40 commission may determine. A member is eligible for *[reappointment]* **reelection** as chairperson or
41 vice chairperson.

42 (5) A majority of the voting members constitutes a quorum for the transaction of business.

43 (6) A member of the commission is *[not]* entitled to compensation for services as a member, *but*
44 *is entitled]* **and** to expenses as provided in ORS 292.495 *[(2)].*

45 **SECTION 2.** ORS 151.216 is amended to read:

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

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

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

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

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

11 (B) Promote policies for public defense provider compensation and resources that are compara-
12 ble to prosecution compensation and resources;

13 (C) Ensure funding and resources to support required data collection and training requirements;
14 and

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

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

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

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

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

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

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

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

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

37 (B) The appointment of counsel, including the appointment of counsel at state expense regard-
38 less of financial eligibility in juvenile delinquency matters;

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

41 (D) Appointed counsel compensation disputes;

42 (E) Any other costs associated with the representation of a person by appointed counsel in the
43 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
44 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
45 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any

1 other provision of law that expressly provides for payment of such compensation, costs or expenses
 2 by the commission;

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

4 (G) Performance for legal representation;

5 (H) The contracting of public defense services;

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

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

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

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

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

20 **(2)(a) In addition to the duties described in subsection (1) of this section, the commission**
 21 **shall:**

22 **(A) Propose minimum standards for the delivery of public defense services that provide**
 23 **for the effective assistance of counsel to eligible persons throughout this state. The mini-**
 24 **imum standards must be designed to ensure that public defense services meet all require-**
 25 **ments for the effective assistance of counsel under statute and the Oregon and United States**
 26 **Constitutions.**

27 **(B) Establish and implement policies, procedures, standards and guidelines necessary to**
 28 **guarantee the right of eligible persons to the assistance of counsel as required by statute**
 29 **and by the Oregon and United States Constitutions.**

30 **(C) Develop and oversee the implementation, enforcement and modification of minimum**
 31 **policies, procedures, standards and guidelines to ensure that public defense providers are**
 32 **providing effective assistance of counsel consistently to all eligible persons in this state as**
 33 **required by statute and the Oregon and United States Constitutions. The policies, proce-**
 34 **dures, standards and guidelines described in this subparagraph apply to employees of the**
 35 **office of public defense services and to any entity that contracts with the commission to**
 36 **provide public defense services in this state.**

37 **(D) Set minimum standards by which appointed counsel are trained and supervised.**

38 **(E) Establish procedures for the mandatory collection of data concerning the operation**
 39 **of the commission and all public defense providers.**

40 **(F) Establish a program by which public defense providers may apply to the commission**
 41 **for grants to bring the providers' delivery of public defense services into compliance with the**
 42 **minimum policies, procedures, standards and guidelines described in this subsection.**

43 **(G) At least once every two years, report to the interim committees of the Legislative**
 44 **Assembly related to the judiciary, in the manner provided in ORS 192.245, and to the Gover-**
 45 **nor and Chief Justice, concerning compliance metrics for the minimum standards described**

1 in this subsection and recommendations for legislative changes.

2 (H) Establish any other policies, procedures, standards and guidelines for the conduct of
3 the commission's affairs and promulgate policies necessary to carry out all powers and du-
4 ties of the commission.

5 (b) When establishing the minimum policies, procedures, standards and guidelines de-
6 scribed in this subsection, the commission shall adhere to the following principles:

7 (A) Appointed counsel shall be provided sufficient time and a space where attorney-client
8 confidentiality is safeguarded for meetings with clients.

9 (B) The workload of appointed counsel must be controlled to permit effective represen-
10 tation. Economic disincentives or incentives that impair the ability of appointed counsel to
11 provide effective assistance of counsel must be avoided. The commission may develop work-
12 load controls to enhance appointed counsel's ability to provide effective representation.

13 (C) The ability, training and experience of appointed counsel must match the nature and
14 complexity of the case to which the counsel is appointed.

15 (D) The same appointed counsel shall continuously represent a client throughout the
16 pendency of the case and shall appear at every court appearance other than ministerial or
17 hearings.

18 (E) The commission shall employ or contract only with entities that employ attorneys
19 who have attended continuing legal education relevant to the attorney's public defense
20 practice.

21 (F) The commission and public defense providers shall systematically review appointed
22 counsel at the local level for efficiency and for effective representation according to com-
23 mission standards.

24 (c) The commission may hire attorneys to serve as appointed counsel at the trial level
25 in any county where additional public defense providers are needed.

26 (3) The policies, procedures, standards and guidelines adopted by the commission must
27 be collected in a manual and made available to the public on the commission's Internet
28 website.

29 [(2)] (4) Policies, procedures, standards and guidelines adopted by the commission supersede any
30 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-
31 tor, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review
32 Board related to the exercise of the commission's administrative responsibilities under this section
33 and transferred duties, functions and powers as they occur.

34 [(3)] (5) The commission may accept gifts, grants or contributions from any source, whether
35 public or private. However, the commission may not accept a gift, grant or contribution if accept-
36 ance would create a conflict of interest. Moneys accepted under this subsection shall be deposited
37 in the Public Defense Services Account established by ORS 151.225 and expended for the purposes
38 for which given or granted.

39 [(4)] (6) The commission may not:

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

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

42 (c) Interfere with the director or any member of the staff of the director in carrying out pro-
43 fessional duties involving the legal representation of public defense clients.

44 **SECTION 3. No later than January 1, 2024, and every two years thereafter, a justice or**
45 **municipal court that hears cases involving charges that carry as a potential sentence a term**

1 of incarceration shall report to the interim committees of the Legislative Assembly related
2 to the judiciary, in the manner provided in ORS 192.245, the following:

3 (1) The number of cases handled involving charges that carry as a potential sentence a
4 term of incarceration, and the result of each case;

5 (2) A description of how the court administered the right to counsel for each case; and

6 (3) Any other information or data requested by the Public Defense Services Commission.

7 **SECTION 4.** (1) Within 60 days after the operative date specified in section 5 (1) of this
8 2023 Act, the Chief Justice shall appoint four nonvoting members to the Public Defense
9 Services Commission as provided in ORS 151.213 (2).

10 (2) A person who is a member of the Public Defense Services Commission on the opera-
11 tive date specified in section 5 (1) of this 2023 Act shall remain a member of the commission
12 until the end of the person's term, subject to removal by the Chief Justice for cause as de-
13 scribed in ORS 151.213 (3).

14 (3) Upon the first instance of a commission member's term ending after the operative
15 date specified in section 5 (1) of this 2023 Act, the remaining voting members of the com-
16 mission shall appoint a successor member as provided in ORS 151.213 (2)(a)(E). For the re-
17 maining members, at the conclusion of each person's term, the person may be reappointed
18 to the commission by the Chief Justice if the person meets the requirements described in
19 ORS 151.213 (2).

20 (4) Notwithstanding ORS 151.213 (3), the initial term of a person appointed by the Chief
21 Justice may be staggered by one, two, three and four years as necessary so that no more
22 than four terms end each year.

23 **SECTION 5.** (1) Section 4 of this 2023 Act and the amendments to ORS 151.213 and 151.216
24 by sections 1 and 2 of this 2023 Act become operative on a date that is 90 days after the ef-
25 fective date of this 2023 Act.

26 (2) Section 3 of this 2023 Act becomes operative on January 1, 2024.

27 **SECTION 6.** This 2023 Act being necessary for the immediate preservation of the public
28 peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect
29 on its passage.

30

Attachment 3c

Senate Bill 329

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary and Ballot Measure 110 Implementation for Public Defense Services Commission)

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**.

Authorizes Public Defense Services Commission to award grants for purpose of carrying out duties of commission.

A BILL FOR AN ACT

Relating to Public Defense Services Commission; amending ORS 151.216 and 151.225.

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

SECTION 1. ORS 151.216 is amended to read:

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

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

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

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

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

(B) Promote policies for public defense provider compensation and resources that are comparable to prosecution compensation and resources;

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

(D) Recognize the need to consider overhead costs that account for the cost of living and business cost differences in each county or jurisdiction, including but not limited to rent, professional membership dues, malpractice insurance and other insurance and other reasonable and usual operating costs.

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

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

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

(g) Submit the budget of the commission and the office of public defense services to the Legis-

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 lative Assembly after the budget is submitted to the commission by the director and approved by the
2 commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall
3 present the budget to the Legislative Assembly.

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

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

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

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

11 (B) The appointment of counsel, including the appointment of counsel at state expense regard-
12 less of financial eligibility in juvenile delinquency matters;

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

15 (D) Appointed counsel compensation disputes;

16 (E) Any other costs associated with the representation of a person by appointed counsel in the
17 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
18 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
19 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any
20 other provision of law that expressly provides for payment of such compensation, costs or expenses
21 by the commission;

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

23 (G) Performance for legal representation;

24 (H) The contracting of public defense services;

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

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

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

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

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

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

44 (3) The commission may accept gifts, grants or contributions from any source, whether public
45 or private. However, the commission may not accept a gift, grant or contribution if acceptance

1 would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the
 2 Public Defense Services Account established by ORS 151.225 and expended for the purposes for
 3 which given or granted.

4 **(4) The commission may:**

5 **(a) Award grants from funds appropriated by the Legislative Assembly to the commission**
 6 **or from funds otherwise available from any other source, for the purpose of carrying out the**
 7 **duties of the commission.**

8 **(b) Adopt rules to carry out the provisions of this subsection.**

9 [(4)] **(5)** The commission may not:

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

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

12 (c) Interfere with the director or any member of the staff of the director in carrying out pro-
 13 fessional duties involving the legal representation of public defense clients.

14 **SECTION 2.** ORS 151.225 is amended to read:

15 151.225. (1) The Public Defense Services Account is established in the State Treasury, separate
 16 and distinct from the General Fund. The Public Defense Services Account is continuously appropri-
 17 ated to the Public Defense Services Commission for:

18 (a) Administration and support of the public defense system;

19 (b) Reimbursement of the State Court Administrator under ORS 151.216 (1)(m); [and]

20 (c) Legal representation of parents and children involved in foster care for which matching
 21 funds under 45 C.F.R. 1356.60(c) may be used[.]; **and**

22 **(d) Awarding grants under ORS 151.216.**

23 (2) The following moneys shall be deposited in the Public Defense Services Account:

24 (a) Moneys received by the commission from the State Court Administrator under ORS 151.216
 25 (1)(m);

26 (b) Moneys received by the Judicial Department under ORS 135.050 (8), 151.487 (1), 419A.211 or
 27 419B.198 (1);

28 (c) Federal matching funds received under 45 C.F.R. 1356.60(c); [and]

29 (d) Miscellaneous revenues and receipts of the commission[.]; **and**

30 **(e) Moneys appropriated by the Legislative Assembly for deposit in the account.**

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

Attachment 3d

Senate Bill 397

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary and Ballot Measure 110 Implementation for Public Defense Services Commission)

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**.

Provides that members of Public Defense Services Commission are entitled to per diem compensation for service on commission.

Removes designation of fees and expenses of appointed counsel in criminal case that require preauthorization as "nonroutine" expenses. Provides that such fees and expenses are those that require preauthorization under policy of commission.

A BILL FOR AN ACT

1
2 Relating to public defense; amending ORS 40.225, 135.055, 151.213 and 151.216.

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

4 **SECTION 1.** ORS 151.213 is amended to read:

5 151.213. (1) The Public Defense Services Commission is established in the judicial branch of state
6 government. Except for the appointment or removal of commission members, the commission and
7 employees of the commission are not subject to the exercise of administrative authority and super-
8 vision by the Chief Justice of the Supreme Court as the administrative head of the Judicial De-
9 partment.

10 (2) The commission consists of nine members appointed by order of the Chief Justice. In addition
11 to the nine appointed members, the Chief Justice serves as a nonvoting, ex officio member. The Chief
12 Justice shall appoint at least three persons who are not bar members, at least one person who was
13 formerly engaged in the provision of public defense services and at least one person who has been
14 formerly represented by a public defense provider in this state. All members must have a demon-
15 strated record of commitment to public defense. Except for the Chief Justice or a senior judge under
16 ORS 1.300, a member may not serve concurrently as a judge, a prosecuting attorney or an employee
17 of a law enforcement agency. A person who is primarily engaged in providing public defense services
18 may not serve as a member of the commission.

19 (3) The term of a member is four years beginning on the effective date of the order of the Chief
20 Justice appointing the member. A member is eligible for reappointment if qualified for membership
21 at the time of reappointment. A member may be removed from the commission by order of the Chief
22 Justice. If a vacancy occurs for any cause before the expiration of the term of a member, the Chief
23 Justice shall make an appointment to become immediately effective for the unexpired term.

24 (4) A chairperson and a vice chairperson shall be appointed by order of the Chief Justice every
25 two years with such functions as the commission may determine. A member is eligible for reap-
26 pointment as chairperson or vice chairperson.

27 (5) A majority of the voting members constitutes a quorum for the transaction of business.

28 (6) A member of the commission is *[not]* entitled to compensation for services as a member, *[but*

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 *is entitled*] **and** to expenses, as provided in ORS 292.495 [(2)].

2 **SECTION 2.** ORS 40.225 is amended to read:

3 40.225. (1) As used in this section, unless the context requires otherwise:

4 (a) “Client” means:

5 (A) A person, public officer, corporation, association or other organization or entity, either
6 public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer
7 with a view to obtaining professional legal services from the lawyer.

8 (B) A person, public officer, corporation, association or other organization or entity, either
9 public or private, who consults a lawyer referral service with a view to obtaining professional legal
10 services from a lawyer.

11 (b) “Confidential communication” means a communication not intended to be disclosed to third
12 persons other than those to whom disclosure is in furtherance of the rendition of professional legal
13 services to the client or those reasonably necessary for the transmission of the communication.

14 (c) “Lawyer” means a person authorized, or reasonably believed by the client to be authorized,
15 to practice law in any state or nation.

16 (d) “Lawyer referral service” means an entity that, as a regular part of its business, refers po-
17 tential clients to lawyers, including but not limited to a public nonprofit entity sponsored or oper-
18 ated by the Oregon State Bar.

19 (e) “Representative of the client” means:

20 (A) A principal, an officer or a director of the client; or

21 (B) A person who has authority to obtain professional legal services, or to act on legal advice
22 rendered, on behalf of the client, or a person who, for the purpose of effectuating legal represen-
23 tation for the client, makes or receives a confidential communication while acting in the person’s
24 scope of employment for the client.

25 (f) “Representative of the lawyer” means one employed to assist the lawyer in the rendition of
26 professional legal services, but does not include a physician making a physical or mental examina-
27 tion under ORCP 44.

28 (2) A client has a privilege to refuse to disclose and to prevent any other person from disclosing
29 confidential communications made for the purpose of facilitating the rendition of professional legal
30 services to the client:

31 (a) Between the client or the client’s representative and the client’s lawyer or a representative
32 of the lawyer;

33 (b) Between the client’s lawyer and the lawyer’s representative or the client’s lawyer referral
34 service;

35 (c) By the client or the client’s lawyer to a lawyer representing another in a matter of common
36 interest;

37 (d) Between representatives of the client or between the client and a representative of the cli-
38 ent;

39 (e) Between lawyers representing the client; or

40 (f) Between the client or a representative of the client and a lawyer referral service.

41 (3) The privilege created by this section may be claimed by the client, a guardian or conservator
42 of the client, the personal representative of a deceased client, or the successor, trustee, or similar
43 representative of a corporation, association, or other organization, whether or not in existence. The
44 person who was the lawyer or lawyer referral service or the lawyer’s representative at the time of
45 the communication is presumed to have authority to claim the privilege but only on behalf of the

1 client.

2 (4) There is no privilege under this section:

3 (a) If the services of the lawyer or lawyer referral service were sought or obtained to enable
4 or aid anyone to commit or plan to commit what the client knew or reasonably should have known
5 to be a crime or fraud;

6 (b) As to a communication relevant to an issue between parties who claim through the same
7 deceased client, regardless of whether the claims are by testate or intestate succession or by inter
8 vivos transaction;

9 (c) As to a communication relevant to an issue of breach of duty by the lawyer or lawyer re-
10 ferral service to the client or by the client to the lawyer or lawyer referral service;

11 (d) As to a communication relevant to an issue concerning an attested document to which the
12 lawyer or lawyer referral service is an attesting witness; or

13 (e) As to a communication relevant to a matter of common interest between two or more clients
14 if the communication was made by any of them to a lawyer retained or consulted in common, when
15 offered in an action between any of the clients.

16 (5) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communi-
17 cation made to the office of public defense services established under ORS 151.216 for the purpose
18 of seeking preauthorization for or payment of [*nonroutine*] fees or expenses under ORS 135.055.

19 (6) Notwithstanding subsection (4)(c) of this section and ORS 40.280, a privilege is maintained
20 under this section for a communication that is made to the office of public defense services estab-
21 lished under ORS 151.216 for the purpose of making, or providing information regarding, a complaint
22 against a lawyer providing public defense services.

23 (7) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communi-
24 cation ordered to be disclosed under ORS 192.311 to 192.478.

25 **SECTION 3.** ORS 135.055 is amended to read:

26 135.055. (1) Counsel appointed pursuant to ORS 135.045 or 135.050 shall be paid fair compen-
27 sation for representation in the case:

28 (a) By the county, subject to the approval of the governing body of the county, in a proceeding
29 in a county or justice court.

30 (b) By the public defense services executive director from funds available for the purpose, in a
31 proceeding in a circuit court.

32 (2) Except for counsel appointed pursuant to contracts or counsel employed by the public de-
33 fense services executive director, compensation payable to appointed counsel under subsection (1)
34 of this section:

35 (a) In a proceeding in a county or justice court may not be less than \$30 per hour.

36 (b) In a proceeding in a circuit court is subject to the applicable compensation established under
37 ORS 151.216.

38 (3)(a) A person determined to be eligible for appointed counsel is entitled to necessary and
39 reasonable fees and expenses for investigation, preparation and presentation of the case for trial,
40 negotiation and sentencing. The person or the counsel for the person shall upon written request
41 secure preauthorization to incur fees and expenses that [*are not routine to representation but*] are
42 necessary and reasonable in the investigation, preparation and presentation of the case **and that**
43 **require preauthorization under a policy of the Public Defense Services Commission**, including
44 but not limited to [*nonroutine*] travel, photocopying or other reproduction of [*nonroutine*] documents,
45 necessary costs associated with obtaining the attendance of witnesses for the defense, investigator

1 fees and expenses, expert witness fees and expenses and fees for interpreters and assistive commu-
2 nication devices necessary for the purpose of communication between counsel and a client or wit-
3 ness in the case. Preauthorization to incur a fee or expense does not guarantee that a fee or
4 expense incurred pursuant to the preauthorization will be determined to be necessary or reasonable
5 when the fee or expense is submitted for payment.

6 (b) In a county or justice court, the request must be in the form of a motion to the court. The
7 motion must be accompanied by a supporting affidavit that sets out in detail the purpose of the re-
8 quested expenditure, the name of the service provider or other recipient of the funds, the dollar
9 amount of the requested expenditure that may not be exceeded without additional authorization and
10 the date or dates during which the service will be rendered or events will occur for which the ex-
11 penditure is requested.

12 (c) In a circuit court, the request must be in the form and contain the information that is re-
13 quired by the policies, procedures, standards and guidelines of the Public Defense Services Com-
14 mission. If the public defense services executive director denies a request for preauthorization to
15 incur [*nonroutine*] fees and expenses **subject to a preauthorization requirement**, the person mak-
16 ing the request may appeal the decision to the presiding judge of the circuit court. The presiding
17 judge has final authority to preauthorize incurring [*nonroutine*] fees and expenses under this para-
18 graph.

19 (d) Entitlement under subsection (7) of this section to payment for fees and expenses in circuit
20 court is subject to the policies, procedures, standards and guidelines adopted under ORS 151.216.
21 Entitlement to payment of [*nonroutine*] fees and expenses **subject to a preauthorization require-**
22 **ment** is dependent upon obtaining preauthorization from the court, if the case is in county or justice
23 court, or from the public defense services executive director, if the case is in circuit court, except
24 as otherwise provided in paragraph (c) of this subsection and in the policies, procedures, standards
25 and guidelines adopted under ORS 151.216. Fees and expenses shall be paid:

26 (A) By the county, in respect to a proceeding in a county or justice court.

27 (B) By the public defense services executive director from funds available for the purpose, in
28 respect to a proceeding in a circuit court.

29 (C) By the city, in respect to a proceeding in municipal court.

30 (4) Upon completion of all services by the counsel of a person determined to be eligible for ap-
31 pointed counsel, the counsel shall submit a statement of all necessary and reasonable fees and ex-
32 penses of investigation, preparation and presentation and, if counsel was appointed by the court, a
33 statement of all necessary and reasonable fees and expenses for legal representation, supported by
34 appropriate receipts or vouchers and certified by the counsel to be true and accurate.

35 (5) In a county or justice court, the total fees and expenses payable under this section must be
36 submitted to the court by counsel or other providers and are subject to the review of the court. The
37 court shall certify that such amount is fair reimbursement for fees and expenses for representation
38 in the case as provided in subsection (6) of this section. Upon certification and any verification as
39 provided under subsection (6) of this section, the amount of the fees and expenses approved by the
40 court and not already paid shall be paid by the county.

41 (6) In a county or justice court, the court shall certify to the administrative authority respon-
42 sible for paying fees and expenses under this section that the amount for payment is reasonable and
43 that the amount is properly payable out of public funds.

44 (7) In a circuit court, the total fees and expenses payable under this section must be submitted
45 to and are subject to review by the public defense services executive director. The public defense

1 services executive director shall determine whether the amount is necessary, reasonable and prop-
 2 erly payable from public funds for fees and expenses for representation in the case as provided by
 3 the policies, procedures, standards and guidelines of the Public Defense Services Commission. The
 4 public defense services executive director shall pay the amount of the fees and expenses determined
 5 necessary, reasonable and properly payable out of public funds. The court shall provide any infor-
 6 mation identified and requested by the public defense services executive director as needed for au-
 7 dit, statistical or any other purpose pertinent to ensure the proper disbursement of state funds or
 8 pertinent to the provision of appointed counsel compensated at state expense.

9 (8) If the public defense services executive director denies, in whole or in part, fees and ex-
 10 penses submitted for review and payment, the person who submitted the payment request may appeal
 11 the decision to the presiding judge of the circuit court. The presiding judge or the designee of the
 12 presiding judge shall review the public defense services executive director's decision for abuse of
 13 discretion. The decision of the presiding judge or the designee of the presiding judge is final.

14 (9) The following may not be disclosed to the district attorney prior to the conclusion of a case:

15 (a) Requests and administrative or court orders for preauthorization to incur [*nonroutine*] fees
 16 and expenses **subject to a preauthorization requirement** in the investigation, preparation and
 17 presentation of the case; and

18 (b) Billings for such fees and expenses submitted by counsel or other providers.

19 (10) Notwithstanding subsection (9) of this section, the total amount of moneys determined to
 20 be necessary and reasonable for [*nonroutine*] fees and expenses **subject to a preauthorization re-**
 21 **quirement** may be disclosed to the district attorney at the conclusion of the trial in the circuit
 22 court.

23 (11) As used in this section unless the context requires otherwise, "counsel" includes a legal
 24 advisor appointed under ORS 135.045.

25 **SECTION 4.** ORS 151.216 is amended to read:

26 151.216. (1) The Public Defense Services Commission shall:

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

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

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

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

36 (B) Promote policies for public defense provider compensation and resources that are compar-
 37 able to prosecution compensation and resources;

38 (C) Ensure funding and resources to support required data collection and training requirements;
 39 and

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

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

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

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

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

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

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

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

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

17 (B) The appointment of counsel, including the appointment of counsel at state expense regard-
18 less of financial eligibility in juvenile delinquency matters;

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

21 (D) Appointed counsel compensation disputes;

22 (E) Any other costs associated with the representation of a person by appointed counsel in the
23 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
24 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
25 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any
26 other provision of law that expressly provides for payment of such compensation, costs or expenses
27 by the commission;

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

29 (G) Performance for legal representation;

30 (H) The contracting of public defense services;

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

34 **(J) The types of fees and expenses subject to a preauthorization requirement; and**

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

36 (k) Establish a peer review system for the approval of *[nonroutine]* fees and expenses **subject**
37 **to a preauthorization requirement** incurred in cases involving aggravated murder and the crimes
38 listed in ORS 137.700 and 137.707. The review shall be conducted by a panel of attorneys who
39 practice in the area of criminal defense.

40 (L) Establish a complaint process that allows district attorneys, criminal defense counsel and the
41 public to file complaints concerning the payment from public funds of *[nonroutine]* fees and expenses
42 **subject to a preauthorization requirement** incurred in cases.

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

1 Court Administrator.

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

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

12 (4) The commission may not:

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

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

15 (c) Interfere with the director or any member of the staff of the director in carrying out pro-
16 fessional duties involving the legal representation of public defense clients.

17

Attachment 3e

House Bill 2841

Sponsored by Representative EVANS (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 **as introduced**.

Transfers Public Defense Services Commission from judicial to executive branch. Modifies appointment and removal process for and qualifications of commission members. Directs commission to designate liaison with office of public defense services and appoint director of juvenile services.

Modifies duties of executive director of public defense services. Requires director to establish specific divisions within office of public defense services. Requires that trial division provide 25 percent of trial-level public defense services by January 1, 2030, and 35 percent by January 1, 2035.

Directs commission and executive director of office of public defense services to report annually to interim committees of the Legislative Assembly on progress with implementing Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to public defense; creating new provisions; amending ORS 151.211, 151.213, 151.216 and
3 151.219; and prescribing an effective date.

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

5 **SECTION 1.** ORS 151.211 is amended to read:

6 151.211. For purposes of ORS 151.211 to 151.221:

7 (1) "Bar member" means an individual who is an active member of the Oregon State Bar.

8 [(2) "*Chief Justice*" means the *Chief Justice of the Supreme Court*.]

9 [(3)] (2) "Commission" means the Public Defense Services Commission.

10 [(4)] (3) "Director" means the public defense services executive director appointed under ORS
11 151.216.

12 [(5)] (4) "Office of public defense services" means the office established by the commission under
13 the director to handle the cases assigned and to carry out the administrative policies and procedures
14 for the public defense system.

15 **SECTION 2.** ORS 151.213 is amended to read:

16 151.213. (1) The Public Defense Services Commission is established in the [*judicial*] **executive**
17 branch of state government. Except for the appointment or removal of commission members, the
18 commission and employees of the commission are not subject to the exercise of administrative au-
19 thority and supervision by the [*Chief Justice of the Supreme Court as the administrative head of the*
20 *Judicial Department*] **Governor**.

21 (2)(a) The commission consists of nine members appointed [*by order of the Chief Justice. In ad-*
22 *dition to the nine appointed members, the Chief Justice serves as a nonvoting, ex officio member. The*
23 *Chief Justice shall appoint at least three persons who are not bar members, at least one person who*
24 *was formerly engaged in the provision of public defense services and at least one person who has been*
25 *formerly represented by a public defense provider in this state. All members must have a demonstrated*
26 *record of commitment to public defense. Except for the Chief Justice or a senior judge under ORS 1.300,*
27 *a member may not serve concurrently as a judge, a prosecuting attorney or an employee of a law*

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 *enforcement agency. A person who is primarily engaged in providing public defense services may not*
 2 *serve as a member of the commission.] as follows:*

3 **(A) The Governor shall appoint three members.**

4 **(B) The Governor shall appoint three members from among persons recommended by the**
 5 **Chief Justice of the Supreme Court.**

6 **(C) The Governor shall appoint three members from among persons jointly recommended**
 7 **by the President of the Senate and the Speaker of the House of Representatives.**

8 **(b) All members must have a demonstrated record of commitment to public defense.**

9 **(c) At least one member must be a person who has been formerly represented by a public**
 10 **defense provider.**

11 **(d) At least one member must be a member of the public with no formal legal training.**

12 **(e) A member may not serve concurrently as a judge, a member of the Legislative As-**
 13 **sembly, a prosecuting attorney or an employee of a law enforcement agency.**

14 **(f) A person who is primarily engaged in providing public defense services may not serve**
 15 **as a member of the commission.**

16 (3) The term of a member is four years beginning on the effective date of the [*order of the Chief*
 17 *Justice appointing the member*] **appointment.** A member is eligible for reappointment if qualified for
 18 membership at the time of reappointment. [*A member may be removed from the commission by order*
 19 *of the Chief Justice.*] **The Governor may remove a member of the commission at any time for**
 20 **cause.** If a vacancy occurs for any cause before the expiration of the term of a member, the [*Chief*
 21 *Justice*] **Governor** shall make an appointment to become immediately effective for the unexpired
 22 term.

23 (4) A chairperson and a vice chairperson shall be appointed by order of the [*Chief Justice*]
 24 **Governor** every two years with such functions as the commission may determine. A member is eli-
 25 gible for reappointment as chairperson or vice chairperson.

26 **(5) The commission may hire staff and shall designate one or more staff members to**
 27 **serve as the liaison between the commission and the office of public defense services estab-**
 28 **lished under ORS 151.216. The liaison shall be tasked with other duties as determined by the**
 29 **commission.**

30 [(5)] **(6)** A majority of the [*voting*] members constitutes a quorum for the transaction of business.

31 [(6)] **(7)** A member of the commission is not entitled to compensation for services as a member,
 32 but is entitled to expenses as provided in ORS 292.495 (2).

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

34 151.216. (1) The Public Defense Services Commission shall:

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

38 (b) Establish an office of public defense services and, **by a two-thirds vote of the commission,**
 39 **appoint a public defense services executive director and a juvenile services director** who [*serves*]
 40 **serve** at the pleasure of the commission.

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

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

45 (B) Promote policies for public defense provider compensation and resources that are compara-

1 ble to prosecution compensation and resources;

2 (C) Ensure funding and resources to support required data collection and training requirements;
3 and

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

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

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

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

15 (g) Submit the budget of the commission and the office of public defense services to the Legis-
16 lative Assembly after the budget is submitted to the commission by the director and approved by the
17 commission. The [*Chief Justice of the Supreme Court and the*] chairperson of the commission shall
18 present the budget to the Legislative Assembly.

19 (h) Review and approve:

20 (A) Any public defense services contract negotiated by the director before the contract can
21 become effective; and

22 (B) **Annually the standard operating expectations for contracted entities developed by the**
23 **director.**

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

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

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

29 (B) The appointment of counsel, including the appointment of counsel at state expense regard-
30 less of financial eligibility in juvenile delinquency matters;

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

33 (D) Appointed counsel compensation disputes;

34 (E) Any other costs associated with the representation of a person by appointed counsel in the
35 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
36 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
37 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any
38 other provision of law that expressly provides for payment of such compensation, costs or expenses
39 by the commission;

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

41 (G) Performance for legal representation;

42 (H) The contracting of public defense services;

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

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

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

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

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

12 **(2) The commission may advocate for or against legislation upon the agreement of a**
13 **majority of members of the commission.**

14 [(2)] (3) Policies, procedures, standards and guidelines adopted by the commission supersede any
15 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-
16 tor, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review
17 Board related to the exercise of the commission's administrative responsibilities under this section
18 and transferred duties, functions and powers as they occur.

19 [(3)] (4) The commission may accept gifts, grants or contributions from any source, whether
20 public or private. However, the commission may not accept a gift, grant or contribution if accept-
21 ance would create a conflict of interest. Moneys accepted under this subsection shall be deposited
22 in the Public Defense Services Account established by ORS 151.225 and expended for the purposes
23 for which given or granted.

24 [(4)] (5) The commission may not:

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

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

27 (c) Interfere with the director or any member of the staff of the director in carrying out pro-
28 fessional duties involving the legal representation of public defense clients.

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

30 151.219. (1) The public defense services executive director shall:

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

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

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

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

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

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

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

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

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

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

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

14 **(L) Develop standard operating expectations for entities that contract with the commis-**
 15 **sion to provide public defense services. The director may establish a standards advisory**
 16 **group to assist in developing the expectations.**

17 **(m) Adopt policies establishing qualifications for senior executive staff of the office of**
 18 **public defense services.**

19 **(n) Establish the following divisions within the office of public defense services:**

20 **(A) An executive support division that includes a deputy director and counsel and gov-**
 21 **ernment relations and administrative support positions.**

22 **(B) A compliance, audit and performance measurement division that includes a chief in-**
 23 **spector general and data and research and internal auditor positions.**

24 **(C) A trial division including a trial division leader, regional staff supervisors, trial at-**
 25 **torneys and administrative support positions.**

26 **(D) An appellate services division that includes an appellate division manager, appellate**
 27 **attorneys and administrative support positions.**

28 **(E) A juvenile services division that includes the juvenile services director, attorneys,**
 29 **paralegals and administrative support positions.**

30 **(F) An administrative services division that includes finance, human resources, infor-**
 31 **mation technology and administrative support positions.**

32 **(G) A contracting services division that includes a chief contracting officer, a chief re-**
 33 **view officer, case support and administrative support positions.**

34 **(H) A standardization and evaluations division responsible for establishing, explaining,**
 35 **maintaining and sustaining standards for internal and external evaluation.**

36 **(I) A special programs division with duties as determined by the director.**

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

40 **SECTION 5.** ORS 151.219, as amended by section 4 of this 2023 Act, is amended to read:

41 151.219. (1) The public defense services executive director shall:

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

- 1 tice.
- 2 (b) Implement and ensure compliance with contracts, policies, procedures, standards and guide-
3 lines adopted by the commission or required by statute.
- 4 (c) Prepare and submit to the commission for its approval the biennial budget of the commission
5 and the office of public defense services.
- 6 (d) Negotiate contracts, as appropriate, for providing legal services to persons eligible for ap-
7 pointed counsel at state expense. No contract so negotiated is binding or enforceable until the
8 contract has been reviewed and approved by the commission as provided in ORS 151.216.
- 9 (e) Employ personnel or contract for services as necessary to carry out the responsibilities of
10 the director and the office of public defense services.
- 11 (f) Supervise the personnel, operation and activities of the office of public defense services.
- 12 (g) Provide services, facilities and materials necessary for the performance of the duties, func-
13 tions and powers of the Public Defense Services Commission.
- 14 (h) Pay the expenses of the commission and the office of public defense services.
- 15 (i) Prepare and submit to the commission an annual report of the activities of the office of public
16 defense services.
- 17 (j) Prepare and submit to the Legislative Assembly a biennial report on the activities of the of-
18 fice of public defense services.
- 19 (k) Provide for legal representation, advice and consultation for the commission, its members,
20 the director and staff of the office of public defense services who require such services or who are
21 named as defendants in lawsuits arising from their duties, functions and responsibilities. If requested
22 by the director, the Attorney General may also provide for legal representation, advice and consul-
23 tation for the commission, its members, the director and staff of the office of public defense services
24 in litigation.
- 25 (L) Develop standard operating expectations for entities that contract with the commission to
26 provide public defense services. The director may establish a standards advisory group to assist in
27 developing the expectations.
- 28 (m) Adopt policies establishing qualifications for senior executive staff of the office of public
29 defense services.
- 30 (n) Establish the following divisions within the office of public defense services:
- 31 (A) An executive support division that includes a deputy director and counsel and government
32 relations and administrative support positions.
- 33 (B) A compliance, audit and performance measurement division that includes a chief inspector
34 general and data and research and internal auditor positions.
- 35 (C) A trial division, including a trial division leader, regional staff supervisors, trial attorneys
36 and administrative support positions, **that provides at least 25 percent of trial-level public de-**
37 **fense services within this state.**
- 38 (D) An appellate services division that includes an appellate division manager, appellate attor-
39 neys and administrative support positions.
- 40 (E) A juvenile services division that includes the juvenile services director, attorneys, paralegals
41 and administrative support positions.
- 42 (F) An administrative services division that includes finance, human resources, information
43 technology and administrative support positions.
- 44 (G) A contracting services division that includes a chief contracting officer, a chief review offi-
45 cer, case support and administrative support positions.

1 (H) A standardization and evaluations division responsible for establishing, explaining, main-
 2 taining and sustaining standards for internal and external evaluation.

3 (I) A special programs division with duties as determined by the director.

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

7 **SECTION 6.** ORS 151.219, as amended by sections 4 and 5 of this 2023 Act, is amended to read:
 8 151.219. (1) The public defense services executive director shall:

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

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

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

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

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

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

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

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

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

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

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

37 (L) Develop standard operating expectations for entities that contract with the commission to
 38 provide public defense services. The director may establish a standards advisory group to assist in
 39 developing the expectations.

40 (m) Adopt policies establishing qualifications for senior executive staff of the office of public
 41 defense services.

42 (n) Establish the following divisions within the office of public defense services:

43 (A) An executive support division that includes a deputy director and counsel and government
 44 relations and administrative support positions.

45 (B) A compliance, audit and performance measurement division that includes a chief inspector

1 general and data and research and internal auditor positions.

2 (C) A trial division, including a trial division leader, regional staff supervisors, trial attorneys
 3 and administrative support positions, that provides at least [25] **35** percent of trial-level public de-
 4 fense services within this state.

5 (D) An appellate services division that includes an appellate division manager, appellate attor-
 6 neys and administrative support positions.

7 (E) A juvenile services division that includes the juvenile services director, attorneys, paralegals
 8 and administrative support positions.

9 (F) An administrative services division that includes finance, human resources, information
 10 technology and administrative support positions.

11 (G) A contracting services division that includes a chief contracting officer, a chief review offi-
 12 cer, case support and administrative support positions.

13 (H) A standardization and evaluations division responsible for establishing, explaining, main-
 14 taining and sustaining standards for internal and external evaluation.

15 (I) A special programs division with duties as determined by the director.

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

19 **SECTION 7. Beginning no later than January 1, 2025, and annually thereafter, the**
 20 **chairperson of the Public Defense Services Commission and the executive director of the**
 21 **office of public defense services shall report to the interim committees of the Legislative**
 22 **Assembly related to the judiciary, in the manner provided in ORS 192.245, regarding the**
 23 **progress made with respect to:**

24 (1) **Transferring trial-level public defense services within this state from contracted en-**
 25 **tities to the trial division of the office; and**

26 (2) **Implementing all other provisions of this 2023 Act.**

27 **SECTION 8. (1) A person who is a member of the Public Defense Services Commission**
 28 **on the operative date specified in section 10 (1) of this 2023 Act shall remain a member of**
 29 **the commission until the end of the person’s term, subject to removal by the Governor for**
 30 **cause as described in ORS 151.213 (3).**

31 (2) **Upon the conclusion of the term of a person who is a commission member on the**
 32 **operative date specified in section 10 (1) of this 2023 Act, the person may be reappointed to**
 33 **the commission by the Governor if the person meets the requirements described in ORS**
 34 **151.213 (2).**

35 (3) **Notwithstanding ORS 151.213 (3), the initial term of a person appointed by the Gov-**
 36 **ernor may be staggered by one, two, three and four years as necessary so that no more than**
 37 **three terms end each year.**

38 **SECTION 9. (1) Section 7 of this 2023 Act is repealed on January 2, 2036.**

39 (2) **Section 8 of this 2023 Act is repealed on January 2, 2029.**

40 **SECTION 10. (1) Sections 7 and 8 of this 2023 Act and the amendments to ORS 151.211,**
 41 **151.213, 151.216 and 151.219 by sections 1 to 4 of this 2023 Act become operative on January**
 42 **1, 2024.**

43 (2) **The Public Defense Services Commission, the Judicial Department and the Office of**
 44 **the Governor may take any action before the operative date specified in subsection (1) of this**
 45 **section that is necessary to enable the commission, department or office to exercise, on and**

1 after the operative date specified in subsection (1) of this section, all of the duties, functions
2 and powers conferred on the commission, department or office by sections 7 and 8 of this
3 2023 Act and the amendments to ORS 151.211, 151.213, 151.216 and 151.219 by sections 1 to 4
4 of this 2023 Act.

5 (3)(a) The amendments to ORS 151.219 by section 5 of this 2023 Act become operative on
6 January 1, 2030.

7 (b) The amendments to ORS 151.219 by section 6 of this 2023 Act become operative on
8 January 1, 2035.

9 (4) The Public Defense Services Commission may take any action before the operative
10 dates specified in subsection (3) of this section that is necessary to enable the commission
11 to exercise, on and after the operative dates specified in subsection (3) of this section, all of
12 the duties, functions and powers conferred on the commission by the amendments to ORS
13 151.219 by sections 5 and 6 of this 2023 Act.

14 SECTION 11. This 2023 Act takes effect on the 91st day after the date on which the 2023
15 regular session of the Eighty-second Legislative Assembly adjourns sine die.

16

Attachment 3f

House Bill 2140

Sponsored by Representative MANNIX (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 **as introduced**.

Transfers provision of public defense services, other than in local courts or for appellate proceedings, from entities under contract with Public Defense Services Commission to county public defense offices. Directs governing bodies of counties to appoint chief public defender. Specifies powers and duties of chief public defender.

Modifies duties of commission. Directs commission to provide funds to counties on proportionate basis for provision of public defense services.

Directs court to take into account potential future ability of defendant to pay for costs of appointed counsel during time period before judgment remedies expire on judgment.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to public defense; creating new provisions; amending ORS 1.009, 34.355, 40.225, 125.080,
3 135.055, 136.603, 137.769, 138.590, 151.211, 151.216, 151.219, 151.225, 151.485, 151.493, 151.505,
4 161.309, 161.346, 161.365, 161.665, 181A.010, 419A.211, 419A.252, 419C.380, 419C.535, 426.135,
5 426.250, 427.265, 427.295 and 433.466; and prescribing an effective date.

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

ESTABLISHMENT OF COUNTY PUBLIC DEFENSE OFFICES

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9
10 **SECTION 1. (1) The governing body of each county shall establish a county office of**
11 **public defense to provide public defense services to eligible persons within the county.**

12 **(2) The governing body of the county shall appoint a chief public defender to act as the**
13 **executive director of the office.**

14 **(3) The chief public defender shall:**

15 **(a) Appoint a chief deputy public defender, subject to approval by the county governing**
16 **body.**

17 **(b) Hire sufficient attorneys, investigators and other support staff to handle public de-**
18 **fense matters within the county.**

19 **(c) Advise the governing body when contract attorneys are needed to handle matters for**
20 **which the county office of public defense has a conflict of interest.**

21 **(d) Establish policies and procedures for the office, including:**

22 **(A) The authorization and payment of fees and expenses associated with representation,**
23 **including fees and expenses for expert witnesses, travel, photocopying or other reproduction**
24 **of documents, necessary costs associated with obtaining the attendance of witnesses for the**
25 **defense, investigator fees and expenses, and fees for interpreters and assistive communi-**
26 **cation devices necessary for the purpose of communication between counsel and a client or**
27 **witness in the case.**

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 **(B) A compensation plan, classification system and personnel plan for the office that is**
2 **commensurate with other county agencies and, for attorneys, commensurate with**
3 **prosecutors within the county with comparable experience.**

4 **(e) Pay for fees and expenses reasonably associated with representation as provided in**
5 **ORS 135.055.**

6 **(f) Determine and pay the cost of appointed counsel under ORS 135.055 and 151.219.**

7 **(g) Send to the Public Defense Services Commission a monthly accounting of the ex-**
8 **penses of the office.**

9 **(4) Employees of the county office of public defense are county employees.**

10 **(5) A county may contract with attorneys who are not employees of the county office of**
11 **public defense in order to provide public defense services in a particular matter when em-**
12 **ployees of the office have a conflict of interest in the matter.**

13 **SECTION 2.** ORS 135.055 is amended to read:

14 135.055. *[(1) Counsel appointed pursuant to ORS 135.045 or 135.050 shall be paid fair compen-*
15 *sation for representation in the case:]*

16 *[(a) By the county, subject to the approval of the governing body of the county, in a proceeding in*
17 *a county or justice court.]*

18 *[(b) By the public defense services executive director from funds available for the purpose, in a*
19 *proceeding in a circuit court.]*

20 *[(2) Except for counsel appointed pursuant to contracts or counsel employed by the public defense*
21 *services executive director, compensation payable to appointed counsel under subsection (1) of this sec-*
22 *tion:]*

23 *[(a) In a proceeding in a county or justice court may not be less than \$30 per hour.]*

24 *[(b) In a proceeding in a circuit court is subject to the applicable compensation established under*
25 *ORS 151.216.]*

26 **(1)(a) In a proceeding in a county or justice court, counsel appointed pursuant to ORS**
27 **135.045 or 135.050 shall be paid fair compensation for representation in the case by the**
28 **county, subject to the approval of the governing body of the county.**

29 **(b) Compensation payable to appointed counsel under paragraph (a) of this subsection**
30 **may not be less than \$30 per hour.**

31 **(2)(a) In a proceeding in a circuit court, counsel appointed pursuant to ORS 135.045 or**
32 **135.050 shall be paid fair compensation:**

33 **(A) By the county chief public defender; or**

34 **(B) By the county, if the county has contracted with the appointed counsel due to the**
35 **county office of public defense having a conflict of interest on the case.**

36 **(b) Compensation payable to appointed counsel under paragraph (a) of this subsection**
37 **shall be made pursuant to:**

38 **(A) The compensation plan established by the county chief public defender; or**

39 **(B) The policies, procedures, standards and guidelines of the Public Defense Services**
40 **Commission, for counsel described in paragraph (a)(B) of this subsection.**

41 **(3)(a)** A person determined to be eligible for appointed counsel is entitled to necessary and
42 reasonable fees and expenses for investigation, preparation and presentation of the case for trial,
43 negotiation and sentencing.

44 **(b) In a county or justice court,** the person or the counsel for the person shall upon written
45 request secure preauthorization to incur fees and expenses that are not routine to representation

1 but are necessary and reasonable in the investigation, preparation and presentation of the case, in-
 2 cluding but not limited to nonroutine travel, photocopying or other reproduction of nonroutine doc-
 3 uments, necessary costs associated with obtaining the attendance of witnesses for the defense,
 4 investigator fees and expenses, expert witness fees and expenses and fees for interpreters and
 5 assistive communication devices necessary for the purpose of communication between counsel and
 6 a client or witness in the case. Preauthorization to incur a fee or expense does not guarantee that
 7 a fee or expense incurred pursuant to the preauthorization will be determined to be necessary or
 8 reasonable when the fee or expense is submitted for payment.

9 *[(b) In a county or justice court,]* The request must be in the form of a motion to the court. The
 10 motion must be accompanied by a supporting affidavit that sets out in detail the purpose of the re-
 11 quested expenditure, the name of the service provider or other recipient of the funds, the dollar
 12 amount of the requested expenditure that may not be exceeded without additional authorization and
 13 the date or dates during which the service will be rendered or events will occur for which the ex-
 14 penditure is requested.

15 *(c) In a circuit court, [the request must be in the form and contain the information that is required*
 16 *by the policies, procedures, standards and guidelines of the Public Defense Services Commission. If the*
 17 *public defense services executive director denies a request for preauthorization to incur nonroutine fees*
 18 *and expenses, the person making the request may appeal the decision to the presiding judge of the*
 19 *circuit court. The presiding judge has final authority to preauthorize incurring nonroutine fees and*
 20 *expenses under this paragraph.]* **the county chief public defender shall authorize and approve**
 21 **the payment of fees and expenses in accordance with this section and policies adopted under**
 22 **section 1 of this 2023 Act. If appointed counsel is a contract attorney, the county shall ap-**
 23 **prove the payment of fees and expenses in accordance with policies, procedures, standards**
 24 **and guidelines of the Public Defense Services Commission.**

25 *(d) [Entitlement under subsection (7) of this section to payment for fees and expenses in circuit*
 26 *court is subject to the policies, procedures, standards and guidelines adopted under ORS 151.216.]*
 27 Entitlement to payment of nonroutine fees and expenses is dependent upon obtaining preauthori-
 28 zation from the court, if the case is in county or justice court, or **authorization** from the *[public*
 29 *defense services executive director]* **county chief public defender**, if the case is in circuit court,
 30 *except as otherwise provided in paragraph (c) of this subsection and in the policies, procedures, stan-*
 31 *dards and guidelines adopted under ORS 151.216].* Fees and expenses shall be paid:

32 (A) By the county, in respect to a proceeding in a county or justice court.

33 (B) By the *[public defense services executive director]* **county chief public defender or the**
 34 **county** from funds available for the purpose, in respect to a proceeding in a circuit court.

35 (C) By the city, in respect to a proceeding in municipal court.

36 (4) Upon completion of all services by the counsel of a person determined to be eligible for ap-
 37 pointed counsel, the counsel shall submit a statement of all necessary and reasonable fees and ex-
 38 penses of investigation, preparation and presentation and, if counsel was appointed by the court, a
 39 statement of all necessary and reasonable fees and expenses for legal representation, supported by
 40 appropriate receipts or vouchers and certified by the counsel to be true and accurate.

41 (5) In a county or justice court, the total fees and expenses payable under this section must be
 42 submitted to the court by counsel or other providers and are subject to the review of the court. The
 43 court shall certify that such amount is fair reimbursement for fees and expenses for representation
 44 in the case as provided in subsection (6) of this section. Upon certification and any verification as
 45 provided under subsection (6) of this section, the amount of the fees and expenses approved by the

1 court and not already paid shall be paid by the county.

2 (6) In a county or justice court, the court shall certify to the administrative authority respon-
 3 sible for paying fees and expenses under this section that the amount for payment is reasonable and
 4 that the amount is properly payable out of public funds.

5 (7) In a circuit court, the total fees and expenses payable under this section must be submitted
 6 to and are subject to review by the [*public defense services executive director*] **county chief public**
 7 **defender**. The [*public defense services executive director*] **county chief public defender** shall deter-
 8 mine whether the amount is necessary, reasonable and properly payable from public funds for fees
 9 and expenses for representation in the case as provided by the policies, procedures, standards and
 10 guidelines of the Public Defense Services Commission **and the policies of the county chief public**
 11 **defender adopted under section 1 of this 2023 Act**. The [*public defense services executive*
 12 *director*] **county chief public defender** shall pay the amount of the fees and expenses determined
 13 necessary, reasonable and properly payable out of public funds. The court shall provide any infor-
 14 mation identified and requested by the public defense services executive director as needed for au-
 15 dit, statistical or any other purpose pertinent to ensure the proper disbursement of state funds or
 16 pertinent to the provision of appointed counsel compensated at state expense.

17 (8) If the [*public defense services executive director*] **county chief public defender** denies, in
 18 whole or in part, fees and expenses submitted for review and payment, the person who submitted the
 19 payment request may appeal the decision to the presiding judge of the circuit court. The presiding
 20 judge or the designee of the presiding judge shall review the [*public defense services executive*
 21 *director's*] **county chief public defender's** decision for abuse of discretion. The decision of the
 22 presiding judge or the designee of the presiding judge is final.

23 (9) The following may not be disclosed to the district attorney prior to the conclusion of a case:

24 (a) Requests and administrative or court orders for preauthorization to incur nonroutine fees
 25 and expenses in the investigation, preparation and presentation of the case; and

26 (b) Billings for such fees and expenses submitted by counsel or other providers.

27 (10) Notwithstanding subsection (9) of this section, the total amount of moneys determined to
 28 be necessary and reasonable for [*nonroutine*] fees and expenses may be disclosed to the district at-
 29 torney at the conclusion of the trial in the circuit court.

30 (11) As used in this section unless the context requires otherwise, “counsel” includes a legal
 31 advisor appointed under ORS 135.045.

32 **SECTION 3.** ORS 151.211 is amended to read:

33 151.211. For purposes of ORS 151.211 to 151.221:

34 (1) “Bar member” means an individual who is an active member of the Oregon State Bar.

35 (2) “Chief Justice” means the Chief Justice of the Supreme Court.

36 (3) “Commission” means the Public Defense Services Commission.

37 (4) “Director” means the public defense services executive director appointed under ORS
 38 151.216.

39 (5) “Office of public defense services” means the office established by the commission under the
 40 director to handle [*the cases assigned and to carry out the administrative policies and procedures for*
 41 *the public defense system*] **criminal appeals and other matters before the Court of Appeals and**
 42 **the Supreme Court for financially eligible persons**.

43 **SECTION 4.** ORS 151.216 is amended to read:

44 151.216. (1) The Public Defense Services Commission shall:

45 [*a*] *Establish and maintain a public defense system that ensures the provision of public defense*

1 *services consistent with the Oregon Constitution, the United States Constitution and Oregon and na-*
 2 *tional standards of justice.]*

3 **(a) Distribute funds appropriated to the commission by the Legislative Assembly for**
 4 **public defense services to each county, proportionate to the county’s population, to fund**
 5 **county public defender offices described in section 1 of this 2023 Act.**

6 (b) Establish an office of public defense services **to handle criminal appeals and other mat-**
 7 **ters before the Court of Appeals and the Supreme Court for financially eligible persons,** and
 8 appoint a public defense services executive director who serves at the pleasure of the commission.

9 *[(c) Adopt policies for contracting for public defense providers not employed by the office of public*
 10 *defense services that:]*

11 *[(A) Ensure compensation, resources and caseloads are in accordance with national and regional*
 12 *best practices;]*

13 *[(B) Promote policies for public defense provider compensation and resources that are comparable*
 14 *to prosecution compensation and resources;]*

15 *[(C) Ensure funding and resources to support required data collection and training requirements;*
 16 *and]*

17 *[(D) Recognize the need to consider overhead costs that account for the cost of living and business*
 18 *cost differences in each county or jurisdiction, including but not limited to rent, professional member-*
 19 *ship dues, malpractice insurance and other insurance and other reasonable and usual operating*
 20 *costs.]*

21 *[(d) Establish operational and contracting systems that allow for oversight, ensure transparency*
 22 *and stakeholder engagement and promote equity, inclusion and culturally specific representation.]*

23 *[(e) Review the caseload policies described in paragraph (c)(A) of this subsection annually, and*
 24 *revise the policies as necessary and at least every four years.]*

25 *[(f) Adopt a statewide workload plan, based on the caseload policies described in paragraph (c)(A)*
 26 *of this subsection, that takes into account the needs of each county or jurisdiction, practice structure*
 27 *and type of practice overseen by the office of public defense services.]*

28 **(c) Adopt policies concerning the fees and expenses related to representation that are to**
 29 **be paid by the county office of public defense.**

30 [(g)] (d) Submit the budget of the commission and the office of public defense services to the
 31 Legislative Assembly after the budget is submitted to the commission by the director and approved
 32 by the commission. The Chief Justice of the Supreme Court and the chairperson of the commission
 33 shall present the budget to the Legislative Assembly.

34 [(h) Review and approve any public defense services contract negotiated by the director before the
 35 contract can become effective.]

36 [(i)] (e) Adopt a compensation plan, classification system and personnel plan for the office of
 37 public defense services that are commensurate with other state agencies.

38 [(j)] (f) Adopt policies, procedures, standards and guidelines regarding:

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

41 (B) The appointment of counsel, including the appointment of counsel at state expense regard-
 42 less of financial eligibility in juvenile delinquency matters;

43 [(C) *The fair compensation of counsel appointed to represent a person financially eligible for ap-*
 44 *pointed counsel at state expense;]*

45 [(D) *Appointed counsel compensation disputes;]*

- 1 **(C) A minimum hourly rate for the compensation of public defense counsel for:**
 2 **(i) The calculation of reasonable attorney fees described in ORS 161.665; and**
 3 **(ii) Attorneys who contract with counties to provide public defense services when the**
 4 **county office of public defense has a conflict of interest;**
 5 **(D) When the court may substitute one appointed counsel for another;**
 6 (E) *[Any]* **The payment of other costs** associated with the representation of a person by ap-
 7 pointed counsel in the state courts that are required to be paid by the state under ORS 34.355,
 8 135.055, 138.500, 138.590, 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908,
 9 419C.206, 419C.209, 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or
 10 436.315 or any other provision of law that expressly provides for payment of such *[compensation,]*
 11 costs or expenses by the commission **or the county office of public defense;**
 12 (F) Professional qualifications for counsel appointed to represent public defense clients;
 13 *[(G) Performance for legal representation;]*
 14 *[(H) The contracting of public defense services;]*
 15 *[(I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses only*
 16 *if in-state expert witnesses are not available or are more expensive than out-of-state expert witnesses;*
 17 *and]*
 18 **(G) The compensation of appellate counsel employed by or paid for by the office of public**
 19 **defense services;**
 20 **(H) The payment of fees and expenses by counties for appointed counsel that are con-**
 21 **tracted to provide public defense services when the county office of public defense has a**
 22 **conflict of interest; and**
 23 *[(J)]* **(I)** Any other matters necessary to carry out the duties of the commission.
 24 *[(k) Establish a peer review system for the approval of nonroutine fees and expenses incurred in*
 25 *cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The review shall*
 26 *be conducted by a panel of attorneys who practice in the area of criminal defense.]*
 27 *[(L)]* **(g)** Establish a complaint process that allows district attorneys, criminal defense counsel
 28 and the public to file complaints concerning the payment from public funds of *[nonroutine]* fees and
 29 expenses incurred in cases **that are not reasonably related to the representation.**
 30 *[(m)]* **(h)** Reimburse the State Court Administrator from funds deposited in the Public Defense
 31 Services Account established by ORS 151.225 for the costs of personnel and other costs associated
 32 with location of eligibility verification and screening personnel pursuant to ORS 151.489 by the State
 33 Court Administrator.
 34 (2) Policies, procedures, standards and guidelines adopted by the commission supersede any
 35 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-
 36 tor, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review
 37 Board related to the exercise of the commission's administrative responsibilities under this section
 38 and transferred duties, functions and powers as they occur.
 39 (3) The commission may accept gifts, grants or contributions from any source, whether public
 40 or private. However, the commission may not accept a gift, grant or contribution if acceptance
 41 would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the
 42 Public Defense Services Account established by ORS 151.225 and expended for the purposes for
 43 which given or granted.
 44 (4) The commission may not:
 45 (a) Make any decision regarding the handling of any individual case;

(b) Have access to any case file; or

(c) Interfere with the director or any member of the staff of the director in carrying out professional duties involving the legal representation of public defense clients.

SECTION 5. ORS 151.219 is amended to read:

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

[(a) Recommend to the Public Defense Services Commission how to establish and maintain, in a cost-effective manner, the delivery of legal services to persons entitled to, and, where applicable, financially eligible for, appointed counsel at state expense under Oregon statutes, the Oregon Constitution, the United States Constitution and consistent with Oregon and national standards of justice.]

[(b)] (a) [Implement and] Ensure compliance with [contracts,] policies, procedures, standards and guidelines adopted by the commission or required by statute.

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

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

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

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

[(g)] (e) Provide services, facilities and materials necessary for the performance of the duties, functions and powers of the Public Defense Services Commission.

[(h)] (f) Pay the expenses of the commission and the office of public defense services.

[(i)] (g) Prepare and submit to the commission an annual report of the activities of the office of public defense services.

[(j)] (h) Prepare and submit to the Legislative Assembly a biennial report on the activities of the office of public defense services.

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

[(2) The director may designate persons as representatives of the director for the purposes of determining and paying bills submitted to the office of public defense services and determining preauthorization for incurring fees and expenses under ORS 135.055.]

(2) The chief public defender of each county shall ensure that when counsel is appointed under ORS 135.055 in a matter other than an appellate proceeding before an appellate court:

(a) The county office of public defense provides counsel; or

(b) If the county office of public defense has a conflict of interest in the case, the county is notified so that the county can contract with an attorney who is not employed by the office to provide public defense services.

REPAYMENT OF COSTS OF APPOINTED COUNSEL

SECTION 6. ORS 151.485 is amended to read:

1 151.485. (1) For purposes of determining the financial eligibility for appointed counsel of persons
 2 with a constitutional or statutory right to counsel in matters before the state courts [*and whose*
 3 *counsel is authorized to be paid by the public defense services executive director under ORS 151.219*],
 4 a person is financially eligible for appointed counsel if the person is determined to be financially
 5 unable to retain adequate counsel without substantial hardship in providing basic economic neces-
 6 sities to the person or the person's dependent family under standards established by the Public De-
 7 fense Services Commission under ORS 151.216.

8 (2) A determination of financial eligibility shall be made upon the basis of information contained
 9 in a detailed financial statement submitted by the person for whom counsel is requested or appointed
 10 or, in an appropriate case, by the person's parent, guardian or custodian. The financial statement
 11 shall be in the form prescribed by the Public Defense Services Commission. The form shall contain
 12 a full disclosure of all assets, liabilities, current income, dependents and other information required
 13 by ORS 135.050 (4) and, in addition, any information required by the commission and state courts
 14 as necessary to determine eligibility. The commission shall adopt uniform statewide guidelines and
 15 procedures that prescribe how to use the form and determine financial eligibility for appointed
 16 counsel.

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

22 (4) In addition to any criminal prosecution, a civil proceeding may be initiated by any public
 23 body that has expended moneys for the defendant's legal assistance within [*two*] **10** years of judg-
 24 ment if the defendant was not qualified for legal assistance in accordance with subsections (1) and
 25 (2) of this section. As used in this subsection, "legal assistance" includes legal counsel, transcripts,
 26 witness fees and expenses and any other goods or services required by law to be provided to a fi-
 27 nancially eligible person at state expense under ORS 151.216 and 151.219.

28 (5) The civil proceeding shall be subject to the exemptions from execution as provided for by
 29 law.

30 **SECTION 7.** ORS 151.505 is amended to read:

31 151.505. (1) At the conclusion of a case or matter in which the first accusatory instrument or
 32 petition in the trial court was filed after January 1, 1998, and in which the court appointed counsel
 33 to represent a person, a trial, appellate or post-conviction court may include in its judgment a
 34 money award requiring that the person repay in full or in part the administrative costs of deter-
 35 mining the eligibility of the person for appointed counsel, and the costs of the legal and other ser-
 36 vices that are related to the provision of appointed counsel, that have not previously been required
 37 to be paid under a limited judgment entered under ORS 151.487. An award under this section is a
 38 monetary obligation payable to the state.

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

45 (3) The court may not require a person to pay costs under this section unless the person is or

1 may be able to pay the costs. In determining the amount and method of payment of costs, the court
 2 shall take account of the **current** financial resources of the person, *[and]* the nature of the burden
 3 that payment of costs will impose **and the potential future ability of the person to pay costs**
 4 **during the time period before the judgment remedies for the judgment expire.**

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

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

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

18 **SECTION 8.** ORS 161.665 is amended to read:

19 161.665. (1) Except as provided in ORS 151.505, the court, only in the case of a defendant for
 20 whom it enters a judgment of conviction, may include in its sentence thereunder a money award for
 21 all costs specially incurred by the state in prosecuting the defendant. Costs include a reasonable
 22 attorney fee for counsel appointed pursuant to ORS 135.045 or 135.050 and a reasonable amount for
 23 fees and expenses *[incurred pursuant to preauthorization]* **authorized** under ORS 135.055. A reason-
 24 able attorney fee is presumed to be a reasonable number of hours at the hourly rate authorized by
 25 the Public Defense Services Commission under ORS 151.216. Costs do not include expenses inherent
 26 in providing a constitutionally guaranteed jury trial or expenditures in connection with the main-
 27 tenance and operation of government agencies that must be made by the public irrespective of spe-
 28 cific violations of law.

29 (2) Except as provided in ORS 151.505, the court, after the conclusion of an appeal of its initial
 30 judgment of conviction, may include in its general judgment, or enter a supplemental judgment that
 31 includes, a money award that requires a convicted defendant to pay a reasonable attorney fee for
 32 counsel appointed pursuant to ORS 138.500, *[including counsel who is appointed under ORS 151.216*
 33 *or counsel who is under contract to provide services for the proceeding under ORS 151.219,]* and other
 34 costs and expenses allowed by the public defense services executive director under ORS 138.500 (4).
 35 A reasonable attorney fee is presumed to be a reasonable number of hours at the hourly rate au-
 36 thorized by the commission under ORS 151.216.

37 (3) For purposes of subsections (1) and (2) of this section, compensation of counsel is determined
 38 by reference to a schedule of compensation established by the commission under ORS 151.216.

39 (4) The court may not sentence a defendant to pay costs under this section unless the defendant
 40 is or may be able to pay them. In determining the amount and method of payment of costs, the court
 41 shall take account of the **current** financial resources of the defendant, *[and]* the nature of the bur-
 42 den that payment of costs will impose **and the potential future ability of the person to pay costs**
 43 **during the time period before the judgment remedies for the judgment expire.**

44 (5) A defendant who has been sentenced to pay costs under this section and who is not in
 45 contumacious default in the payment of costs may at any time petition the court that sentenced the

1 defendant for remission of the payment of costs or of any unpaid portion of costs. If it appears to
 2 the satisfaction of the court that payment of the amount due will impose manifest hardship on the
 3 defendant or the immediate family of the defendant, the court may enter a supplemental judgment
 4 that remits all or part of the amount due in costs, or modifies the method of payment under ORS
 5 161.675.

6 (6) Except as provided in subsection (7) of this section, all moneys collected or paid under this
 7 section shall be paid into the Criminal Fine Account.

8 (7) The court may, in the judgment of conviction, include a money award requiring the defendant
 9 to pay the costs of extraditing the defendant to this state. Any amounts awarded to the state under
 10 this subsection must be listed separately in the money award portion of the judgment. All moneys
 11 collected or paid under this subsection shall be deposited into the Arrest and Return Account es-
 12 tablished by ORS 133.865.

13
 14 **CONFORMING AMENDMENTS**
 15

16 **SECTION 9.** ORS 1.009 is amended to read:

17 1.009. (1) The Judicial Department Operating Account is established in the State Treasury, sep-
 18 arate and distinct from the General Fund. Interest earned by the account shall be credited to the
 19 account. All moneys in the account are continuously appropriated to the Judicial Department and
 20 may be used only to pay the operating expenses of the department.

21 (2) All moneys received by the department pursuant to ORS 151.216 [(1)(m)] **(1)(h)** shall be de-
 22 posited in the Judicial Department Operating Account.

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

25 **SECTION 10.** ORS 34.355 is amended to read:

26 34.355. If counsel is appointed by a court to represent, in an initial proceeding by habeas corpus
 27 or on appeal as provided in ORS 34.710, a person who is imprisoned or otherwise restrained of lib-
 28 erty by virtue of a charge or conviction of crime and who is determined to be financially eligible
 29 for appointed counsel at state expense, **the county office of public defense shall provide counsel**
 30 **for the person in the proceeding and** the public defense services executive director shall deter-
 31 mine compensation for counsel and costs and expenses of the person [*in the proceeding or*] on appeal.
 32 Compensation for counsel and expenses of the person in an initial proceeding or in a circuit court
 33 on appeal shall be determined and paid as provided in ORS 135.055. Compensation for counsel and
 34 costs and expenses of the person on appeal to the Court of Appeals or on review by the Supreme
 35 Court shall be determined and paid as provided in ORS 138.500. The compensation and expenses so
 36 allowed in an initial proceeding in a county court shall be paid by the county in which the person
 37 was charged or convicted of crime.

38 **SECTION 11.** ORS 40.225 is amended to read:

39 40.225. (1) As used in this section, unless the context requires otherwise:

40 (a) "Client" means:

41 (A) A person, public officer, corporation, association or other organization or entity, either
 42 public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer
 43 with a view to obtaining professional legal services from the lawyer.

44 (B) A person, public officer, corporation, association or other organization or entity, either
 45 public or private, who consults a lawyer referral service with a view to obtaining professional legal

1 services from a lawyer.

2 (b) "Confidential communication" means a communication not intended to be disclosed to third
3 persons other than those to whom disclosure is in furtherance of the rendition of professional legal
4 services to the client or those reasonably necessary for the transmission of the communication.

5 (c) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized,
6 to practice law in any state or nation.

7 (d) "Lawyer referral service" means an entity that, as a regular part of its business, refers po-
8 tential clients to lawyers, including but not limited to a public nonprofit entity sponsored or oper-
9 ated by the Oregon State Bar.

10 (e) "Representative of the client" means:

11 (A) A principal, an officer or a director of the client; or

12 (B) A person who has authority to obtain professional legal services, or to act on legal advice
13 rendered, on behalf of the client, or a person who, for the purpose of effectuating legal represen-
14 tation for the client, makes or receives a confidential communication while acting in the person's
15 scope of employment for the client.

16 (f) "Representative of the lawyer" means one employed to assist the lawyer in the rendition of
17 professional legal services, but does not include a physician making a physical or mental examina-
18 tion under ORCP 44.

19 (2) A client has a privilege to refuse to disclose and to prevent any other person from disclosing
20 confidential communications made for the purpose of facilitating the rendition of professional legal
21 services to the client:

22 (a) Between the client or the client's representative and the client's lawyer or a representative
23 of the lawyer;

24 (b) Between the client's lawyer and the lawyer's representative or the client's lawyer referral
25 service;

26 (c) By the client or the client's lawyer to a lawyer representing another in a matter of common
27 interest;

28 (d) Between representatives of the client or between the client and a representative of the cli-
29 ent;

30 (e) Between lawyers representing the client; or

31 (f) Between the client or a representative of the client and a lawyer referral service.

32 (3) The privilege created by this section may be claimed by the client, a guardian or conservator
33 of the client, the personal representative of a deceased client, or the successor, trustee, or similar
34 representative of a corporation, association, or other organization, whether or not in existence. The
35 person who was the lawyer or lawyer referral service or the lawyer's representative at the time of
36 the communication is presumed to have authority to claim the privilege but only on behalf of the
37 client.

38 (4) There is no privilege under this section:

39 (a) If the services of the lawyer or lawyer referral service were sought or obtained to enable
40 or aid anyone to commit or plan to commit what the client knew or reasonably should have known
41 to be a crime or fraud;

42 (b) As to a communication relevant to an issue between parties who claim through the same
43 deceased client, regardless of whether the claims are by testate or intestate succession or by inter
44 vivos transaction;

45 (c) As to a communication relevant to an issue of breach of duty by the lawyer or lawyer re-

1 ferral service to the client or by the client to the lawyer or lawyer referral service;

2 (d) As to a communication relevant to an issue concerning an attested document to which the
3 lawyer or lawyer referral service is an attesting witness; or

4 (e) As to a communication relevant to a matter of common interest between two or more clients
5 if the communication was made by any of them to a lawyer retained or consulted in common, when
6 offered in an action between any of the clients.

7 *[(5) Notwithstanding ORS 40.280, a privilege is maintained under this section for a communication
8 made to the office of public defense services established under ORS 151.216 for the purpose of seeking
9 preauthorization for or payment of nonroutine fees or expenses under ORS 135.055.]*

10 [(6)] (5) Notwithstanding subsection (4)(c) of this section and ORS 40.280, a privilege is main-
11 tained under this section for a communication that is made to **a county office of public defense**
12 **or** the office of public defense services established under ORS 151.216 for the purpose of making,
13 or providing information regarding, a complaint against a lawyer providing public defense services.

14 [(7)] (6) Notwithstanding ORS 40.280, a privilege is maintained under this section for a commu-
15 nication ordered to be disclosed under ORS 192.311 to 192.478.

16 **SECTION 12.** ORS 125.080 is amended to read:

17 125.080. (1) The court may require that a hearing be held on any petition or motion in a pro-
18 tective proceeding.

19 (2) A hearing must be held on a petition or motion if the respondent or protected person makes
20 or files an objection to the petition or motion and the objection is not withdrawn before the time
21 scheduled for the hearing.

22 (3) A hearing must be held on a motion to modify a guardian’s powers under ORS 125.323.

23 (4) The respondent or protected person may appear at a hearing in person or by counsel.

24 (5) If the hearing is regarding a petition for appointment of a guardian for a vulnerable youth
25 or a petition involving a vulnerable youth guardianship, the court:

26 (a) May allow the respondent or protected person, proposed guardian, guardian or any other
27 witness to appear by telephone, video or other remote technology;

28 (b)(A) May take testimony from or confer with the respondent or protected person and may ex-
29 clude from the conference others if the court finds that doing so would be in the best interests of
30 the respondent or protected person; and

31 (B) Notwithstanding subparagraph (A) of this paragraph, shall permit any attorney for the re-
32 spondent or protected person to attend the conference and the conference must be reported;

33 (c) May not inquire into the nationality or current immigration status of the proposed guardian,
34 guardian or any other witness; and

35 (d) May not inquire about any prior immigration status of the respondent or protected person
36 or about the manner or place in which the respondent or protected person entered the United States
37 of America.

38 (6)(a) If the court requires that a hearing be held or a hearing is otherwise required under this
39 section, the court shall appoint counsel for the respondent or protected person when:

40 (A) The respondent or protected person requests that counsel be appointed;

41 (B) An objection is made or filed to the petition or motion by any person;

42 (C) The court has appointed a visitor under ORS 125.150, 125.160 or 125.605, and the visitor re-
43 commends appointment of counsel for the respondent or protected person; or

44 (D) The court determines that the respondent or protected person is in need of legal counsel.

45 (b) The court is not required to appoint counsel under this subsection if the respondent or pro-

1 tected person is already represented by counsel or otherwise objects to appointment of counsel.

2 (7) If the court appoints counsel under subsection (6) of this section:

3 (a) The court shall order payment of attorney fees and costs from the guardianship or conser-
 4 vatorship estate of the respondent or protected person if sufficient funds exist to pay all or a portion
 5 of the attorney fees and costs due; or

6 (b) The court may determine that a respondent or protected person is financially eligible for
 7 appointed counsel at state expense and, if so, the compensation for legal counsel and costs and ex-
 8 penses necessary for representation of the respondent or protected person shall be determined and
 9 paid by the [*public defense services executive director*] **county chief public defender** as provided
 10 under ORS 135.055.

11 **SECTION 13.** ORS 136.603 is amended to read:

12 136.603. (1)(a) Whenever any person attends any court, grand jury or committing magistrate as
 13 a witness on behalf of the prosecution or of any person accused of a crime upon request of the
 14 district attorney or city attorney or pursuant to subpoena, or by virtue of a recognizance for that
 15 purpose, and it appears that the witness has come from outside the state or that the witness is in-
 16 digent, the court may, by an order entered in its records, direct payment to the witness of such sum
 17 of money as the court considers reasonable for the expenses of the witness. The order of the court,
 18 so entered, is sufficient authority for the payment.

19 (b) Except as otherwise specifically provided by law, if a witness who is to be paid expenses
 20 pursuant to this subsection:

21 (A) Attends a grand jury, a circuit court or judge thereof, a judge of a county court or a justice
 22 of the peace, on behalf of the prosecution, payment shall be made by the county.

23 (B) Attends a municipal court or judge thereof on behalf of the prosecution, payment shall be
 24 made by the city.

25 (C) Attends a circuit court or judge thereof on behalf of a financially eligible defendant, payment
 26 shall be made by the [*public defense services executive director*] **county chief public defender**.

27 (D) Attends a judge of the county court or a justice of the peace on behalf of a financially eli-
 28 gible defendant, payment shall be made by the county.

29 (E) Attends a municipal court or judge thereof on behalf of a financially eligible defendant,
 30 payment shall be made by the city.

31 (F) Attends any court on behalf of a defendant who is not financially eligible, payment shall be
 32 made by the defendant, and the court shall so order.

33 (2) In the case of a prisoner of a jurisdiction outside of this state who is required to attend as
 34 a witness in this state, whether for the prosecution or the defense, the sheriff shall be responsible
 35 for transporting the witness to the proper court of this state, and the sheriff shall assume any costs
 36 incurred in connection with the witness while the witness is in the custody of the sheriff. However,
 37 the sheriff and not the witness shall be entitled to the witness fees, mileage and expenses to which
 38 the witness would otherwise be entitled under this section and ORS 136.627 or other applicable law.

39 **SECTION 14.** ORS 137.769 is amended to read:

40 137.769. (1) When a defendant is examined under ORS 137.767, the defendant may retain a psy-
 41 chiatrist, psychologist or other expert to perform an examination on the defendant's behalf. A psy-
 42 chiatrist, psychologist or other expert retained by the defendant must be provided reasonable access
 43 to:

44 (a) The defendant for the purpose of the examination; and

45 (b) All relevant medical and psychological records and reports.

1 (2) If the defendant is financially eligible for appointed counsel at state expense, the defendant
 2 may request [*preauthorization to incur*] **that the county chief public defender authorize and pay**
 3 **for** the fees and expenses of a psychiatrist, psychologist or other expert as provided in ORS 135.055
 4 [(3)].

5 **SECTION 15.** ORS 138.590 is amended to read:

6 138.590. (1) Any petitioner who is unable to pay the expenses of a proceeding pursuant to ORS
 7 138.510 to 138.680 or to employ suitable counsel possessing skills and experience commensurate with
 8 the nature of the conviction and complexity of the case for the proceeding may proceed as a finan-
 9 cially eligible person pursuant to this section upon order of the circuit court in which the petition
 10 is filed.

11 (2) If the petitioner wishes to proceed as a financially eligible person, the person shall file with
 12 the petition an affidavit stating inability to pay the expenses of a proceeding pursuant to ORS
 13 138.510 to 138.680, including, but not limited to, the filing fee required by ORS 138.560, or to employ
 14 suitable counsel for such a proceeding. The affidavit shall contain a brief statement of the
 15 petitioner’s assets and liabilities and income during the previous year. If the circuit court is satisfied
 16 that the petitioner is unable to pay such expenses or to employ suitable counsel, it shall order that
 17 the petitioner proceed as a financially eligible person. If the court finds that a petitioner who has
 18 been sentenced to death is not competent to decide whether to accept or reject the appointment of
 19 counsel, the court shall appoint counsel to represent the petitioner. However, when a circuit court
 20 orders petitioner’s case transferred to another circuit court as provided in ORS 138.560 (4), the
 21 matter of petitioner’s proceeding as a financially eligible person shall be determined by the latter
 22 court.

23 (3) If a petitioner who has been sentenced to death qualifies for the appointment of counsel un-
 24 der this section but rejects the appointment, the court shall determine, after a hearing if necessary,
 25 whether the petitioner rejected the offer of counsel and made the decision with an understanding
 26 of its legal consequences. The court shall make appropriate findings on the record.

27 (4) In the order to proceed as a financially eligible person, the circuit court shall appoint suit-
 28 able counsel to represent petitioner. Counsel so appointed shall represent petitioner throughout the
 29 proceedings in the circuit court. The court may not substitute one appointed counsel for another
 30 except pursuant to the policies, procedures, standards and guidelines of the Public Defense Services
 31 Commission.

32 (5) If counsel appointed by the circuit court determines that the petition as filed by petitioner
 33 is defective, either in form or in substance, or both, counsel may move to amend the petition within
 34 15 days following counsel’s appointment, or within a further period as the court may allow. The
 35 amendment shall be permitted as of right at any time during this period. If appointed counsel be-
 36 lieves that the original petition cannot be construed to state a ground for relief under ORS 138.510
 37 to 138.680, and cannot be amended to state a ground for relief, counsel shall, in lieu of moving to
 38 amend the petition, inform the petitioner and notify the circuit court of counsel’s belief by filing an
 39 affidavit stating the belief and the reasons therefor with the clerk of the circuit court. This affidavit
 40 does not constitute a ground for denying the petition prior to a hearing upon its sufficiency, but the
 41 circuit court may consider the affidavit in deciding upon the sufficiency of the petition at the
 42 hearing.

43 (6) When a petitioner has been ordered to proceed as a financially eligible person, the expenses
 44 which are necessary for the proceedings upon the petition in the circuit court and the compensation
 45 to appointed counsel for petitioner as provided in this subsection shall be [*paid by the public defense*

1 *services executive director from funds available for the purpose] provided by the county chief public*
 2 **defender.** *[At the conclusion of proceedings on a petition pursuant to ORS 138.510 to 138.680, the*
 3 *public defense services executive director shall determine and pay, as provided by the policies, proce-*
 4 *dures, standards and guidelines of the Public Defense Services Commission, the amount of expenses*
 5 *of petitioner and compensation for the services of appointed counsel in the proceedings in the circuit*
 6 *court.]*

7 *[(7) If the public defense services executive director denies, in whole or in part, expenses and*
 8 *compensation submitted for review and payment, the person who submitted the payment request may*
 9 *appeal the decision to the presiding judge of the circuit court. The presiding judge or the designee of*
 10 *the presiding judge shall review the public defense services executive director's decision for abuse of*
 11 *discretion. The decision of the presiding judge or the designee of the presiding judge is final.]*

12 *[(8)(a)] (7)(a)* When a petitioner has been authorized to proceed as a financially eligible person,
 13 all court fees in the circuit court, except for the filing fee required by ORS 138.560, are waived.

14 (b) When a petitioner is allowed to file a petition without payment of the fee required by ORS
 15 138.560 due to inability to pay, the fee is not waived but may be drawn from, or charged against,
 16 the petitioner's trust account if the petitioner is an adult in custody in a correctional facility.

17 *[(9)] (8)* Notwithstanding any other provision of this chapter, a court may not appoint as counsel
 18 for a petitioner who has been sentenced to death a counsel who previously represented the
 19 petitioner at trial or on automatic and direct review in the case resulting in the death sentence
 20 unless the petitioner and the counsel expressly request continued representation.

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

22 151.225. (1) The Public Defense Services Account is established in the State Treasury, separate
 23 and distinct from the General Fund. The Public Defense Services Account is continuously appropri-
 24 ated to the Public Defense Services Commission for:

25 (a) Administration and support of the public defense system;

26 (b) Reimbursement of the State Court Administrator under ORS 151.216 *[(1)(m)] (1)(h)*; and

27 (c) Legal representation of parents and children involved in foster care for which matching
 28 funds under 45 C.F.R. 1356.60(c) may be used.

29 (2) The following moneys shall be deposited in the Public Defense Services Account:

30 (a) Moneys received by the commission from the State Court Administrator under ORS 151.216
 31 *[(1)(m)] (1)(h)*;

32 (b) Moneys received by the Judicial Department under ORS 135.050 (8), 151.487 (1), 419A.211 or
 33 419B.198 (1);

34 (c) Federal matching funds received under 45 C.F.R. 1356.60(c); and

35 (d) Miscellaneous revenues and receipts of the commission.

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

39 **SECTION 17.** ORS 151.493 is amended to read:

40 151.493. (1) Notwithstanding any other provision of law, any state agency as defined in ORS
 41 192.311 that receives a request for release of information from the state courts for the purpose of
 42 verifying the financial eligibility of a person under ORS 151.485 to 151.497 shall release all requested
 43 information to the state court. The court shall forward to the state agency a certification signed by
 44 the person about whom the requested information is sought that authorizes the release of the in-
 45 formation.

1 (2) Upon its own motion or motion of the [*public defense services executive director*] **county chief**
 2 **public defender**, a court that has appointed counsel for a person by reason of financial eligibility
 3 may order the release of any information relating to the person's financial situation held by any
 4 other person.

5 **SECTION 18.** ORS 161.309 is amended to read:

6 161.309. (1) The defendant may not introduce evidence on the issue of insanity under ORS
 7 161.295, unless the defendant:

8 (a) Gives notice of intent to do so in the manner provided in subsection (3) of this section; and

9 (b) Files with the court a report of a psychiatric or psychological evaluation, conducted by a
 10 certified evaluator, in the manner provided in subsection (4) of this section.

11 (2) The defendant may not introduce in the case in chief expert testimony regarding partial re-
 12 sponsibility or diminished capacity under ORS 161.300 unless the defendant gives notice of intent to
 13 do so in the manner provided in subsection (3) of this section.

14 (3)(a) A defendant who is required under subsection (1) or (2) of this section to give notice shall
 15 file a written notice of purpose at least 45 days before trial.

16 (b) Notwithstanding paragraph (a) of this subsection, the court may, for good cause, permit the
 17 defendant to file the notice within 45 days before trial.

18 (c) If the defendant fails to file notice under this subsection, the defendant may not introduce
 19 evidence for the establishment of a defense under ORS 161.295 or 161.300 unless the court, in its
 20 discretion, permits the evidence to be introduced where just cause for failure to file the notice is
 21 shown.

22 (4) A defendant who is required under subsection (1) of this section to file a report of a psy-
 23 chiatric or psychological evaluation shall file the report before trial. The report must be based on
 24 an evaluation conducted after the date of the alleged offense and must address the issue of insanity
 25 under ORS 161.295 and the dispositional determination described in ORS 161.325. If the defendant
 26 fails to file a complete report before trial, the defendant may not introduce evidence for the estab-
 27 lishment of a defense under ORS 161.295 unless:

28 (a) The court, in its discretion, permits the evidence to be introduced when just cause for failure
 29 to file the report is shown; and

30 (b) If the defendant is charged with a felony, the defendant is tried by a jury.

31 (5)(a) A court may not accept a plea of guilty except for insanity to a felony unless a report
 32 described in subsection (4) of this section is filed with the court. If the report has not been filed, the
 33 court may order that a psychiatric or psychological evaluation of the defendant be conducted by a
 34 certified evaluator and a report of the evaluation be filed with the court.

35 (b) When the court orders an evaluation of a financially eligible person under this subsection,
 36 the court shall order the [*public defense services executive director*] **county chief public defender**
 37 to pay a reasonable fee for the evaluation from funds available for that purpose.

38 (c) A certified evaluator performing an evaluation of a defendant on the issue of insanity under
 39 this subsection is not obligated to evaluate the defendant for fitness to proceed unless, during the
 40 evaluation, the certified evaluator determines that the defendant's fitness to proceed is drawn in
 41 question.

42 (6) Prior to accepting a plea of guilty except for insanity to a felony, the court shall inform the
 43 defendant of the possibility that the court may order commitment or conditional discharge after
 44 entry of judgment, and of the maximum total period of commitment or conditional discharge under
 45 ORS 161.327 (7).

1 (7) As used in this section, “certified evaluator” means a psychiatrist or psychologist who holds
 2 a valid certification under the provisions of ORS 161.392.

3 **SECTION 19.** ORS 161.346 is amended to read:

4 161.346. (1) When the Psychiatric Security Review Board conducts a hearing under ORS 161.315
 5 to 161.351, the board shall enter an order and make findings in support of the order. If the board
 6 finds that a person under the jurisdiction of the board:

7 (a) Is no longer affected by a qualifying mental disorder, or, if so affected, no longer presents
 8 a substantial danger to others, the board shall order the person discharged from commitment and
 9 conditional release.

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

13 (c) Has not recovered from the qualifying mental disorder, is a substantial danger to others and
 14 cannot adequately be controlled if conditionally released on supervision, the board shall order the
 15 person committed to, or retained in, a state hospital, or if the person is under 18 years of age, a
 16 secure intensive community inpatient facility, for care, custody and treatment.

17 (2) To assist the board in making the determination described in subsection (1) of this section,
 18 the board may, at any time, appoint a psychiatrist or licensed psychologist to examine the person
 19 and to submit a report to the board. The report must include an opinion as to the mental condition
 20 of the person, whether the person presents a substantial danger to others and whether the person
 21 could be adequately controlled with treatment as a condition of release.

22 (3) The board may make the determination regarding discharge or conditional release based
 23 upon the written reports submitted pursuant to this section. If any member of the board desires
 24 further information from the examining psychiatrist or licensed psychologist who submitted the re-
 25 port, the board shall summon the person to give testimony. The board shall consider all evidence
 26 available to it that is material, relevant and reliable regarding the issues before the board. The ev-
 27 idence may include but is not limited to the record of trial, the information supplied by the attorney
 28 representing the state or by any other interested party, including the person, and information con-
 29 cerning the person’s mental condition and the entire psychiatric and criminal history of the person.
 30 All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their
 31 serious affairs shall be admissible at hearings. Testimony shall be taken upon oath or affirmation
 32 of the witness from whom received. The officer presiding at the hearing shall administer oaths or
 33 affirmations to witnesses.

34 (4) The board shall furnish to the person about whom the hearing is being conducted, the at-
 35 torney representing the person, the Attorney General and the district attorney of the county from
 36 which the person was committed written notice of any hearing pending under this section within a
 37 reasonable time prior to the hearing. The notice shall include:

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

39 (b) The nature of the hearing and the specific action for which a hearing has been requested,
 40 the issues to be considered at the hearing and a reference to the particular sections of the statutes
 41 and rules involved.

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

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

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

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

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

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

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

5 (d) To be represented by suitable legal counsel possessing skills and experience commensurate
6 with the nature and complexity of the case, to consult with counsel prior to the hearing and, if fi-
7 nancially eligible, to have suitable counsel appointed at state expense.

8 (e) To examine all information, documents and reports that the board considers. If then available
9 to the board, the information, documents and reports shall be disclosed to the person so as to allow
10 examination prior to the hearing.

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

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

16 (9) Within 30 days following the conclusion of the hearing, the board shall provide to the person,
17 the attorney representing the person, the Attorney General or other attorney representing the state,
18 if any, written notice of the order entered by the board.

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

21 (11) If the board determines that the person about whom the hearing is being held is financially
22 eligible, the board shall appoint suitable counsel to represent the person. Counsel so appointed shall
23 be an attorney **employed by the county office of public defense** who satisfies the professional
24 qualifications established by the Public Defense Services Commission under ORS 151.216. [*The public*
25 *defense services executive director shall determine and allow fair compensation for counsel appointed*
26 *under this subsection and the reasonable expenses of the person in respect to the hearing. Compensation*
27 *payable to appointed counsel shall not be less than the applicable compensation level established under*
28 *ORS 151.216. The compensation and expenses so allowed shall be paid by the public defense services*
29 *executive director from funds available for the purpose.*]

30 (12) The Attorney General may represent the state at contested hearings under ORS 161.315 to
31 161.351 unless the district attorney of the county from which the person was committed elects to
32 represent the state. The district attorney of the county from which the person was committed shall
33 cooperate with the Attorney General in securing the material necessary for presenting a contested
34 hearing. If the district attorney elects to represent the state, the district attorney shall give timely
35 written notice of such election to the Attorney General, the board and the attorney representing the
36 person.

37 **SECTION 20.** ORS 161.365 is amended to read:

38 161.365. (1)(a) When the court has reason to doubt the defendant's fitness to proceed by reason
39 of incapacity as described in ORS 161.360, the court may call any witness to assist it in reaching
40 its decision and, except as provided in paragraph (b) of this subsection, shall order that a community
41 mental health program director, or the director's designee, consult with the defendant and with any
42 local entity that would be responsible for providing community restoration services to the defendant
43 if the defendant were to be released in the community, to determine whether appropriate community
44 restoration services are present and available in the community. After the consultation, the program
45 director or the director's designee shall provide to the court a copy of the findings resulting from

1 the consultation.

2 (b) If the defendant is charged with one or more of the following offenses the court is not re-
 3 quired to, but may in its discretion, order the consultation described in paragraph (a) of this sub-
 4 section:

- 5 (A) Aggravated murder;
- 6 (B) Murder in any degree;
- 7 (C) Attempted aggravated murder;
- 8 (D) Attempted murder in any degree;
- 9 (E) Manslaughter in any degree;
- 10 (F) Aggravated vehicular homicide;
- 11 (G) Arson in the first degree when classified as crime category 10 of the sentencing guidelines
 12 grid of the Oregon Criminal Justice Commission;
- 13 (H) Assault in the first degree;
- 14 (I) Assault in the second degree;
- 15 (J) Kidnapping in the first degree;
- 16 (K) Kidnapping in the second degree;
- 17 (L) Rape in the first degree;
- 18 (M) Sodomy in the first degree;
- 19 (N) Unlawful sexual penetration in the first degree;
- 20 (O) Robbery in the first degree; or
- 21 (P) Robbery in the second degree.

22 (c) If the court determines the assistance of a psychiatrist or psychologist would be helpful, the
 23 court may:

24 (A) Order that a psychiatric or psychological examination of the defendant be conducted by a
 25 certified evaluator and a report of the examination be prepared; or

26 (B) Order the defendant to be committed for the purpose of an examination to a state mental
 27 hospital or other facility designated by the Oregon Health Authority if the defendant is at least 18
 28 years of age, or to a secure intensive community inpatient facility designated by the authority if the
 29 defendant is under 18 years of age. The state mental hospital or other facility may retain custody
 30 of a defendant committed under this paragraph for the duration necessary to complete the exam-
 31 ination of the defendant, not to exceed 30 days. The examination may include a period of observa-
 32 tion.

33 (d) The court shall provide a copy of any order entered under this subsection to the community
 34 mental health program director or designee and to the state mental hospital or other facility by the
 35 end of the next judicial day.

36 (2)(a) A defendant committed under subsection (1)(c)(B) of this section shall be transported to
 37 the state mental hospital or other facility for the examination.

38 (b) At the conclusion of the examination, the superintendent of the state mental hospital or the
 39 superintendent's designee or the director of the facility may:

40 (A) Return the defendant to the facility from which the defendant was transported; or

41 (B) Inform the court and the parties that the defendant requires a hospital level of care due to
 42 the acuity of symptoms of the defendant's qualifying mental disorder and request that the defendant
 43 remain at the state mental hospital or other facility pending a hearing or order under ORS 161.370.

44 (3) The report of an examination described in this section must include, but is not necessarily
 45 limited to, the following:

- 1 (a) A description of the nature of the examination;
- 2 (b) A statement of the mental condition of the defendant;
- 3 (c) If the defendant suffers from a qualifying mental disorder, an opinion as to whether the de-
- 4 fendant is incapacitated within the description set out in ORS 161.360; and
- 5 (d) If the defendant is incapacitated within the description set out in ORS 161.360, a recom-
- 6 mendation of treatment and services necessary to allow the defendant to gain or regain capacity,
- 7 including whether a hospital level of care is required due to the acuity of symptoms of the
- 8 defendant's qualifying mental disorder.
- 9 (4) Except when the defendant and the court both request to the contrary, the report may not
- 10 contain any findings or conclusions as to whether the defendant as a result of a qualifying mental
- 11 disorder was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal act
- 12 charged.
- 13 (5) If the examination by the certified evaluator cannot be conducted by reason of the unwill-
- 14 ingness of the defendant to participate in the examination, the report must so state and must in-
- 15 clude, if possible, an opinion as to whether the unwillingness of the defendant was the result of a
- 16 qualifying mental disorder affecting fitness to proceed.
- 17 (6) The report resulting from the examination of a defendant under this section may be filed
- 18 electronically and must be filed with the clerk of the court, who shall cause copies to be delivered
- 19 to the district attorney and to counsel for defendant.
- 20 (7)(a) When upon motion of the court or a financially eligible defendant, the court has ordered
- 21 a psychiatric or psychological examination of the defendant, a county or justice court shall order
- 22 the county to pay, a municipal court shall order the city to pay, and a circuit court shall order the
- 23 *[public defense services executive director]* **county chief public defender** to pay from funds available
- 24 for the purpose:
- 25 (A) A reasonable fee if the examination of the defendant is conducted by a certified evaluator
- 26 in private practice; and
- 27 (B) All costs including transportation of the defendant if the examination is conducted by a
- 28 certified evaluator in the employ of the Oregon Health Authority or a community mental health
- 29 program established under ORS 430.610 to 430.670.
- 30 (b) When an examination is ordered at the request or with the acquiescence of a defendant who
- 31 is determined not to be financially eligible, the examination shall be performed at the defendant's
- 32 expense. When an examination is ordered at the request of the prosecution, the county shall pay for
- 33 the expense of the examination.
- 34 (8) The Oregon Health Authority shall establish by rule standards for the consultation described
- 35 in subsection (1) of this section.
- 36 **SECTION 21.** ORS 181A.010 is amended to read:
- 37 181A.010. As used in ORS 181A.010 to 181A.350, unless the context requires otherwise:
- 38 (1) "Criminal justice agency" means:
- 39 (a) The Governor;
- 40 (b) Courts of criminal jurisdiction;
- 41 (c) The Attorney General;
- 42 (d) District attorneys, city attorneys with criminal prosecutorial functions, attorney employees
- 43 of the office of public defense services and *[nonprofit public defender organizations established under*
- 44 *contract with the Public Defense Services Commission]* **county offices of public defense;**
- 45 (e) Law enforcement agencies;

- 1 (f) The Department of Corrections;
- 2 (g) The Oregon Youth Authority;
- 3 (h) The State Board of Parole and Post-Prison Supervision;
- 4 (i) The Department of Public Safety Standards and Training;
- 5 (j) The enforcement division of the Oregon Liquor and Cannabis Commission in performing du-
- 6 ties related to investigating and enforcing the criminal laws of this state that the commission is
- 7 charged to enforce;
- 8 (k) Civilian or community oversight boards, agencies or review bodies designated by a munici-
- 9 pality or a law enforcement agency in performing duties related to investigating allegations of offi-
- 10 cer misconduct or reviewing police policies and practices;
- 11 (L) Regional information systems that share programs to track, identify and remove cross-
- 12 jurisdictional criminal and terrorist conspiracies; and
- 13 (m) Any other state or local agency with law enforcement authority.
- 14 (2) "Criminal offender information" includes records and related data as to physical description
- 15 and vital statistics, fingerprints received and compiled for purposes of identifying criminal offenders
- 16 and alleged offenders, records of arrests and the nature and disposition of criminal charges, includ-
- 17 ing sentencing, confinement, parole and release.
- 18 (3) "Department" means the Department of State Police established under ORS 181A.015.
- 19 (4) "Deputy superintendent" means the Deputy Superintendent of State Police appointed under
- 20 ORS 181A.035.
- 21 (5) "Designated agency" means any state, county or municipal government agency where Oregon
- 22 criminal offender information is required to implement a federal or state statute, executive order
- 23 or administrative rule that expressly refers to criminal conduct and contains requirements or ex-
- 24 clusions expressly based on such conduct or for agency employment purposes, licensing purposes or
- 25 other demonstrated and legitimate needs when designated by order of the Governor.
- 26 (6) "Disposition report" means a form or process prescribed or furnished by the department,
- 27 containing a description of the ultimate action taken subsequent to an arrest.
- 28 (7) "Law enforcement agency" means:
- 29 (a) County sheriffs, municipal police departments, police departments established by a university
- 30 under ORS 352.121 or 353.125 and state police;
- 31 (b) Other police officers of this state or another state, including humane special agents as de-
- 32 fined in ORS 181A.345;
- 33 (c) A tribal government as defined in ORS 181A.940 that employs authorized tribal police officers
- 34 as defined in ORS 181A.940; and
- 35 (d) Law enforcement agencies of the federal government.
- 36 (8) "State police" means the sworn members of the state police force appointed under ORS
- 37 181A.050.
- 38 (9) "Superintendent" means the Superintendent of State Police appointed under ORS 181A.030.
- 39 **SECTION 22.** ORS 419A.211 is amended to read:
- 40 419A.211. (1) If the child, ward, youth, adjudicated youth, parent or guardian is determined to
- 41 be entitled to, and, except as provided in subsection (4) of this section, financially eligible for, ap-
- 42 pointment of counsel at state expense in an appeal as provided in ORS 419A.200 and 419A.208, the
- 43 court, upon request of the person or upon its own motion, shall appoint suitable counsel to represent
- 44 the person. Counsel appointed by the court shall be paid compensation determined by the [*public*
- 45 *defense services executive director*] **county chief public defender** as provided in ORS 135.055 if the

1 circuit court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or the
 2 Supreme Court is the appellate court. The court may not substitute one appointed counsel for an-
 3 other except pursuant to the policies, procedures, standards and guidelines of the Public Defense
 4 Services Commission.

5 (2)(a) When the court appoints counsel to represent the child or ward, it may order the parent,
 6 if able, or guardian of the estate, if the estate is able, to pay to the Public Defense Services Account
 7 established by ORS 151.225, through the clerk of the court, in full or in part the administrative costs
 8 of determining the ability of the parents or estate to pay for legal services and the costs of the legal
 9 and other services that are related to the provision of appointed counsel.

10 (b) The test of the parent’s or estate’s ability to pay costs under paragraph (a) of this subsection
 11 is the same test as applied to appointment of counsel for defendants under ORS 151.216. If counsel
 12 is provided at state expense, the court shall apply this test in accordance with the guidelines
 13 adopted by the Public Defense Services Commission under ORS 151.485.

14 (c) If counsel is provided at state expense, the court shall determine the amount the parents or
 15 estate is required to pay for the costs of administrative, legal and other services related to the
 16 provision of appointed counsel in the same manner as this amount is determined under ORS 151.487.

17 (d) The court’s order of payment is enforceable in the same manner as an order of support under
 18 ORS 419B.408.

19 (3) When the court appoints counsel under this section at state expense, the compensation for
 20 counsel and costs and expenses necessary to the appeal shall be determined and paid as provided
 21 in ORS 135.055 if the circuit court is the appellate court or as provided in ORS 138.500 if the Court
 22 of Appeals or the Supreme Court is the appellate court.

23 (4) Notwithstanding subsection (1) of this section, a youth or adjudicated youth, or the parent
 24 or guardian of the youth or adjudicated youth, is entitled to court-appointed counsel at state expense
 25 under this section regardless of the financial circumstances of the youth or adjudicated youth or the
 26 parent or guardian of the youth or adjudicated youth. In addition, the court may not order the
 27 youth’s or adjudicated youth’s parent or guardian to pay any part of the administrative costs of
 28 determining the entitlement of the youth, adjudicated youth, parent or guardian to court-appointed
 29 counsel at state expense nor any of the costs of the legal and other services that are related to the
 30 provision of appointed counsel.

31 **SECTION 23.** ORS 419A.252 is amended to read:

32 419A.252. As used in this section and ORS 419A.253, 419A.255 and 419A.256:

33 (1) “Person” means an individual, a public body as defined in ORS 174.109 or a tribe that is a
 34 party to a juvenile court proceeding pursuant to ORS 419B.875.

35 (2) “Prospective appellate attorney” means an attorney designated by the office of public defense
 36 services established under ORS 151.216 to potentially represent a child, ward, youth, adjudicated
 37 youth or a parent or guardian of a child, ward, youth or adjudicated youth, in a juvenile case when
 38 the case has been referred to the office of public defense services for appeal.

39 (3) “Public defense provider” means an attorney [*or a law firm*] designated by the [*office of public*
 40 *defense services established under ORS 151.216*] **county chief public defender** to potentially repre-
 41 sent a child, ward, youth, adjudicated youth or the parent or guardian of a child, ward, youth or
 42 adjudicated youth in a juvenile court proceeding.

43 (4) “Record of the case” or “record of each case,” whether maintained in paper or electronic
 44 form, includes but is not limited to the following and includes records filed in juvenile court pro-
 45 ceedings commenced before January 1, 2014, when the records are substantially similar to the fol-

1 lowing:

2 (a) The summons and other process;

3 (b) Petitions;

4 (c) Papers in the nature of pleadings, answers, motions, affidavits and other papers that are filed
5 with the court, including supporting documentation;

6 (d) Local citizen review board findings and recommendations submitted under ORS 419A.118 or
7 419B.367;

8 (e) Guardianship report summaries filed with the court under ORS 419B.367;

9 (f) Orders and judgments of the court, including supporting documentation;

10 (g) Transcripts under ORS 419A.256;

11 (h) Exhibits and materials offered as exhibits whether or not received in evidence; and

12 (i) Other documents that become part of the record of the case by operation of law.

13 (5) "Supplemental confidential file," whether maintained in paper or electronic form, includes
14 reports and other material relating to the child, ward, youth or adjudicated youth's history and
15 prognosis, including but not limited to reports filed under ORS 419B.440, and includes similar reports
16 and other materials filed in juvenile court proceedings commenced before January 1, 2014, that:

17 (a) Are not or do not become part of the record of the case; and

18 (b) Are not offered or received as evidence in the case.

19 **SECTION 24.** ORS 419C.380 is amended to read:

20 419C.380. (1) An evaluation ordered under ORS 419C.378 must be conducted by a psychiatrist,
21 a licensed psychologist or a regulated social worker. If an evaluation is requested, the party at
22 whose request the evaluation was ordered shall notify the court and other parties of the date, time
23 and location of the evaluation and the name of the evaluator chosen by the party. A party or the
24 court may submit written information to the evaluator for consideration. When written information
25 that has not been provided to the court or an opposing party is submitted to the evaluator, the party
26 submitting the written information to the evaluator shall provide the written information to the
27 court and the opposing party.

28 (2)(a) A county court or justice court shall order the county to pay the fees and costs described
29 in subsection (3) of this section from funds available for that purpose.

30 (b) A circuit court shall order the [*public defense services executive director*] **county chief public**
31 **defender** to pay the fees and costs described in subsection (3) of this section from funds available
32 for that purpose.

33 (3) Pursuant to subsection (2) of this section, the county or the [*public defense services executive*
34 *director*] **county chief public defender** shall pay:

35 (a) A reasonable fee to a psychiatrist, licensed psychologist or regulated social worker in private
36 practice who conducts the evaluation; and

37 (b) All costs, including transportation of the youth, if the evaluation is conducted by a psychia-
38 trist, licensed psychologist or regulated social worker employed by the Department of Human Ser-
39 vices or is conducted by a community mental health program or community developmental
40 disabilities program established under ORS 430.610 to 430.695.

41 (4) If an evaluation is ordered under ORS 419C.378, the county shall pay for the expense of the
42 evaluation.

43 (5) After a motion is made by the court or the youth under ORS 419C.378 (3), the state shall
44 have the right to seek an independent evaluation at its own expense.

45 (6) A youth may not be removed from the youth's current placement for the purpose of an

1 evaluation performed under this section unless the youth has been placed in a detention facility as
 2 defined in ORS 419A.004 or a youth correction facility as defined in ORS 420.005.

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

4 419C.535. (1) The juvenile panel of the Psychiatric Security Review Board shall appoint suitable
 5 counsel to represent a young person about whom a hearing under ORS 419C.532 is being
 6 held. Counsel appointed must be an attorney who satisfies the professional qualification standards
 7 established by the Public Defense Services Commission under ORS 151.216. The *[public defense ser-*
 8 *VICES EXECUTIVE DIRECTOR SHALL DETERMINE AND ALLOW FAIR COMPENSATION FOR]* **county chief public**
 9 **defender shall provide** counsel appointed under this subsection and **compensation for** the rea-
 10 sonable expenses of the young person in respect to the hearing. *[Compensation payable to appointed*
 11 *counsel may not be less than the applicable compensation level established under ORS 151.216. The*
 12 *public defense services executive director shall pay compensation and expenses allowed from funds*
 13 *available for that purpose.]*

14 (2) The juvenile panel may not order the young person, parent or guardian of the estate to pay
 15 any part of the administrative costs of appointing counsel for the young person or to pay for the
 16 costs of legal and other services that are related to the provision of appointed counsel.

17 (3) The Attorney General may represent the state at contested hearings before the juvenile
 18 panel unless the district attorney of the county in which the young person was adjudicated elects
 19 to represent the state. The district attorney of the county in which the young person was adjudi-
 20 cated shall cooperate with the Attorney General in securing the material necessary for presenting
 21 a contested hearing before the juvenile panel. If the district attorney elects to represent the state,
 22 the district attorney shall give timely written notice to the Attorney General, the juvenile panel and
 23 the attorney representing the young person.

24 **SECTION 26.** ORS 426.135 is amended to read:

25 426.135. If a person determined to be a person with mental illness as provided in ORS 426.130,
 26 or determined to be an extremely dangerous person with mental illness under ORS 426.701 or
 27 426.702, appeals the determination or the disposition, and is determined to be financially eligible for
 28 appointed counsel at state expense, upon request of the person or upon its own motion, the court
 29 shall appoint suitable legal counsel to represent the person. The compensation for legal counsel and
 30 costs and expenses necessary to the appeal shall be determined and paid by the *[public defense ser-*
 31 *VICES EXECUTIVE DIRECTOR]* **county chief public defender** as provided in ORS 135.055 if the circuit
 32 court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or Supreme Court
 33 is the appellate court. The compensation, costs and expenses shall be paid as provided in ORS
 34 138.500.

35 **SECTION 27.** ORS 426.250 is amended to read:

36 426.250. The following is a nonexclusive list of responsibilities for payment of various costs re-
 37 lated to commitment proceedings under this chapter as described:

38 (1) Any physician or qualified professional recommended by the Oregon Health Authority who
 39 is employed under ORS 426.110 to make an examination as to the mental condition of a person al-
 40 leged to have a mental illness shall be allowed a fee as the court in its discretion determines rea-
 41 sonable for the examination.

42 (2) Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal
 43 cases, and are subject to compulsory attendance in the same manner as provided in ORS 136.567 to
 44 136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in
 45 ORS 136.623 to 136.637. The party who subpoenas the witness or requests the court to subpoena the

1 witness is responsible for payment of the cost of the subpoena and payment for the attendance of
 2 the witness at a hearing. When the witness has been subpoenaed on behalf of a person alleged to
 3 have a mental illness who is represented by appointed counsel, the fees and costs allowed for that
 4 witness shall be paid pursuant to ORS 135.055. If the costs of witnesses subpoenaed by the person
 5 are paid as provided under this subsection, the procedure for subpoenaing witnesses shall comply
 6 with ORS 136.570.

7 (3) If a person with a right to a counsel under ORS 426.100, 426.701 or 426.702 is determined to
 8 be financially eligible for appointed counsel at state expense, the *[public defense services executive*
 9 *director]* **county chief public defender** shall determine and pay, as provided in ORS 135.055, the
 10 reasonable expenses related to the representation of the person and compensation for legal counsel.
 11 *[The expenses and compensation so allowed shall be paid by the public defense services executive di-*
 12 *rector from funds available for the purpose.]*

13 (4) The authority shall pay the costs of expenses incurred under ORS 426.100 by the Attorney
 14 General's office. Any costs for district attorneys or other counsel appointed to assume responsibility
 15 for presenting the state's case shall be paid by the county where the commitment hearing is held,
 16 subject to reimbursement under ORS 426.310.

17 (5) All costs incurred in connection with a proceeding under ORS 426.180, 426.701 or 426.702,
 18 including the costs of transportation, commitment and delivery of the person, shall be paid by the
 19 community mental health program in the county of which the person is a resident. If the person is
 20 not a resident of this state, then the costs incurred in connection with the proceeding shall be paid
 21 by the community mental health program in the county from which the emergency admission was
 22 made.

23 (6) All costs incurred in connection with a proceeding under ORS 426.180 for the commitment
 24 of a person from a reservation, including the cost of transportation, commitment and delivery of the
 25 person, shall be paid by the governing body of the reservation of which the person is a resident.

26 **SECTION 28.** ORS 427.265 is amended to read:

27 427.265. (1) At the time that a person who is alleged to have an intellectual disability and to
 28 be in need of commitment for residential care, treatment and training is brought before the court,
 29 the court shall advise the person of the reason for being brought before the court, the nature of the
 30 proceedings and the possible results of the proceedings. The court shall also advise the person of
 31 the right to subpoena witnesses and to suitable legal counsel possessing skills and experience
 32 commensurate with the nature of the allegations and complexity of the case during the proceedings,
 33 and that if the person does not have funds with which to retain suitable legal counsel, the court
 34 shall appoint such legal counsel to represent the person. If the person does not request legal coun-
 35 sel, the legal guardian, relative or friend may request the assistance of legal counsel on behalf of
 36 the person.

37 (2) If no request for legal counsel is made, the court shall appoint suitable legal counsel.

38 (3) If the person is unable to afford legal counsel, the court, if the matter is before a county or
 39 justice court, or the *[public defense services executive director]* **county chief public defender**, if the
 40 matter is before the circuit court, shall determine and allow, as provided in ORS 135.055, the rea-
 41 sonable expenses of the person and compensation for legal counsel. The expenses and compensation
 42 so allowed by a county court shall be paid by the county of residence of the person. *[The expenses*
 43 *and compensation determined by the public defense services executive director shall be paid by the*
 44 *public defense services executive director from funds available for the purpose.]* In all cases legal
 45 counsel shall be present at the hearing and may examine all witnesses offering testimony, and oth-

erwise represent the person.

(4) The court may, for good cause, postpone the hearing for not more than 72 hours to allow preparation for the hearing and order the continuation of detention authorized under ORS 427.255 during a postponement, if requested by the person, the legal counsel, parent or guardian of the person, an examiner or on the court’s own motion.

SECTION 29. ORS 427.295 is amended to read:

427.295. If a person appeals a commitment order issued under ORS 427.290, the court, upon request of the person or upon its own motion and upon finding that the person is financially eligible for appointed counsel at state expense, shall appoint suitable legal counsel to represent the person. The compensation for legal counsel and costs and expenses necessary to the appeal shall be determined and paid by the *[public defense services executive director]* **county chief public defender** as provided in ORS 135.055 if the circuit court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or Supreme Court is the appellate court. The compensation, costs and expenses so allowed shall be paid as provided in ORS 138.500.

SECTION 30. ORS 433.466 is amended to read:

433.466. (1) A person or group of persons subject to isolation or quarantine or other public health measure pursuant to ORS 433.121 or 433.123 has the right to be represented by legal counsel if the person or group of persons so elects. If the person or group of persons requests legal counsel and cannot afford counsel, the court shall appoint legal counsel. If no request for legal counsel is made, the court must appoint legal counsel unless counsel is expressly, knowingly and intelligently refused by the person or the group of persons. The person or the group of persons may request legal counsel at any time during the period of imposition of the isolation, quarantine or other public health measure.

(2) If a person is unable to afford legal counsel, the *[public defense services executive director]* **county chief public defender** shall determine and pay, as provided in ORS 135.055, the reasonable expenses of the person and compensation for legal counsel appointed to represent the person.

CAPTIONS

SECTION 31. The unit captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.

OPERATIVE DATE

SECTION 32. (1) Section 1 of this 2023 Act and the amendments to ORS 1.009, 34.355, 40.225, 125.080, 135.055, 136.603, 137.769, 138.590, 151.211, 151.216, 151.219, 151.225, 151.485, 151.493, 151.505, 161.309, 161.346, 161.365, 161.665, 181A.010, 419A.211, 419A.252, 419C.380, 419C.535, 426.135, 426.250, 427.265, 427.295 and 433.466 by sections 2 to 30 of this 2023 Act become operative January 1, 2024.

(2) The Public Defense Services Commission and any county may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the commission or county to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the commission or county by section 1 of this 2023 Act and the amendments to ORS 1.009, 34.355, 40.225, 125.080, 135.055,

1 136.603, 137.769, 138.590, 151.211, 151.216, 151.219, 151.225, 151.485, 151.493, 151.505, 161.309,
2 161.346, 161.365, 161.665, 181A.010, 419A.211, 419A.252, 419C.380, 419C.535, 426.135, 426.250,
3 427.265, 427.295 and 433.466 by sections 2 to 30 of this 2023 Act.

4

5

EFFECTIVE DATE

6

7 **SECTION 33.** This 2023 Act takes effect on the 91st day after the date on which the 2023
8 regular session of the Eighty-second Legislative Assembly adjourns sine die.

9

Attachment 3g

House Bill 2474

Sponsored by Representative WALLAN (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 **as introduced**.

Appropriates moneys to Public Defense Services Commission for distribution to counties to reimburse district attorneys for indigent defendant discovery costs.

A BILL FOR AN ACT

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Relating to state financial administration.

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

SECTION 1. In addition to and not in lieu of any other appropriation, there is appropriated to the Public Defense Services Commission, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$6,000,000, for distribution to counties to reimburse district attorneys for discovery costs in cases involving indigent defendants.

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.

LC 970

Attachment 3h

House Bill 2672

Sponsored by Representative KROPF (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 **as introduced**.

Establishes Public Law School Tuition Forgiveness program. Requires Higher Education Coordinating Commission to forgive law school student loans of individuals who graduated from public law school in this state and subsequently worked for at least five years as public defense attorney, deputy district attorney or city prosecutor. First applies to students who graduate from public law school in Oregon on or after effective date of Act.

Establishes Public Law School Tuition Forgiveness Fund to fund program.

A BILL FOR AN ACT

1
2 Relating to law school student loans.

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

4 **SECTION 1. (1) The Public Law School Tuition Forgiveness program is established within**
5 **the Higher Education Coordinating Commission.**

6 **(2) The commission shall use moneys from the Public Law School Tuition Forgiveness**
7 **Fund established in section 2 of this 2023 Act to provide student loan forgiveness to each**
8 **qualified attorney. The student loan forgiveness provided under this section:**

9 **(a) Except as provided in paragraph (b) of this subsection, shall equal the total amount**
10 **of student loans currently held by the qualified attorney that originated when the attorney**
11 **was enrolled at a public law school in this state.**

12 **(b) May not exceed three years of the total amount of full-time tuition charged by the**
13 **public law school.**

14 **(3) The commission may adopt any rules necessary to implement the provisions of this**
15 **section, including but not limited to altering the amount of award calculations set forth in**
16 **subsection (2) of this section, if the commission determines that there are insufficient mon-**
17 **eys to make awards to all qualified attorneys under this section.**

18 **(4) As used in this section:**

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

20 **(A) Who is employed on a full-time basis; and**

21 **(B) Whose practice is focused exclusively on providing public defense services.**

22 **(b) "Qualified attorney" means an individual who:**

23 **(A) Graduated from a public law school based in this state;**

24 **(B) Spent five or more years as:**

25 **(i) A public defense attorney;**

26 **(ii) A deputy district attorney; or**

27 **(iii) A city prosecutor;**

28 **(C) Began working as a public defense attorney, deputy district attorney or city**
29 **prosecutor no more than six months after graduating from a public law school based in this**

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 state; and

2 (D) Is a member in good standing with the Oregon State Bar.

3 **SECTION 2.** (1) The Public Law School Tuition Forgiveness Fund is established in the
4 State Treasury, separate and distinct from the General Fund. Interest earned by the Public
5 Law School Tuition Forgiveness Fund shall be credited to the fund.

6 (2) Moneys in the Public Law School Tuition Forgiveness Fund shall consist of:

7 (a) Amounts donated to the fund from individuals, private organizations and organiza-
8 tions representing or affiliated with tribes as defined in ORS 182.162;

9 (b) Amounts appropriated or otherwise transferred to the fund by the Legislative As-
10 ssembly; and

11 (c) Interest earned by the fund.

12 (3) Moneys in the fund are continuously appropriated to the Higher Education Coordi-
13 nating Commission for the purpose of forgiving student loans in the manner established un-
14 der section 2 of this 2023 Act, and for related administrative expenses of the commission.

15 (4) The commission shall keep records of:

16 (a) All moneys credited to and deposited in the Public Law School Tuition Forgiveness
17 Fund; and

18 (b) The use of any moneys withdrawn from the Public Law School Tuition Forgiveness
19 Fund.

20 **SECTION 3.** Section 1 of this 2023 Act first applies to students who graduate from a
21 public law school in this state on or after the effective date of this 2023 Act.

22

Attachment 3i

Senate Bill 413

Sponsored by Senator GORSEK (Presession 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 **as introduced**.

Establishes Public Defense Services Student Loan Repayment Assistance Program in Oregon State Bar to provide forgivable loans to eligible public defense attorneys for outstanding student loans. Directs Oregon State Bar to report annually to committee or interim committee of Legislative Assembly 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.

Transfers Public Defense Services Commission from judicial to executive branch. Modifies appointment and removal process for commission members. Modifies duties of public defense services executive director to include development of training programs and establishment of trial division.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to public defense; creating new provisions; amending ORS 151.211, 151.213, 151.216 and 151.219; and prescribing an effective date.

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

LOAN REPAYMENT ASSISTANCE

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

(a) **“Public defense attorney” means an attorney:**

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

(B) **Whose legal work is funded by the office of public defense services and who is employed by the state or a public defense services contractor; and**

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

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

(2) **The Public Defense Services Student Loan Repayment Assistance Program is established in the Oregon State Bar.**

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

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

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

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

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 (B) The attorney practices public defense services in this state full time or part time, as
 2 defined by the Oregon State Bar, while participating in the program;

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

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

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

7 (A) The person resides in this state;

8 (B) The person is employed by a public defense services contractor in this state full time
 9 or part time, as defined by the Oregon State Bar, while participating in the program;

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

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

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

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

22 (1) The number of attorneys and staff members who entered the program, and the month
 23 and year of entry.

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

25 (3) The total amount of forgivable loans provided.

26 (4) The number of attorneys and staff members who participated in the program in each
 27 county.

28 (5) The number of clients and cases and the case types in which public defense services
 29 were provided, disaggregated by anonymous participation.

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

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

34 (8) Other information that is useful in evaluating the program.

35 **SECTION 3.** (1) The Oregon State Bar shall start accepting applications for the Public
 36 Defense Services Student Loan Repayment Assistance Program established in section 1 of
 37 this 2023 Act no later than December 1, 2023.

38 (2) The Oregon State Bar shall make the first report under section 2 of this 2023 Act no
 39 later than August 31, 2024.

40 **SECTION 4.** Section 5 of this 2023 Act is added to and made a part of ORS chapter 316.

41 **SECTION 5.** (1) In computing Oregon taxable income for purposes of this chapter, there
 42 shall be subtracted from federal taxable income an amount equal to loan repayment assist-
 43 ance paid to the taxpayer under section 1 of this 2023 Act if the individual to whom the as-
 44 sistance was paid is listed on the return.

45 (2) The amount of subtraction allowed under subsection (1) of this section shall be re-

1 **duced by any deduction allowed for the same amounts to the taxpayer or any other taxpayer**
 2 **listed on the return for the tax year under section 221 of the Internal Revenue Code.**

3 **SECTION 6.** In addition to and not in lieu of any other appropriation, there is appropri-
 4 ated to the Judicial Department, for the biennium beginning July 1, 2023, out of the General
 5 Fund, the amount of \$_____, which may be transferred to the Oregon State Bar for the
 6 purpose of providing forgivable loans under the Public Defense Services Student Loan Re-
 7 payment Assistance Program established in section 1 of this 2023 Act. The Oregon State Bar
 8 may use up to five percent of the moneys transferred to pay the administrative costs of the
 9 program.

10
 11 **PUBLIC DEFENSE SERVICES COMMISSION**
 12 **(Changes to its Branch of Government,**
 13 **Appointing Authority, Membership, Duties)**
 14

15 **SECTION 7.** ORS 151.211 is amended to read:

16 151.211. For purposes of ORS 151.211 to 151.221:

17 (1) “Bar member” means an individual who is an active member of the Oregon State Bar.

18 [(2) “Chief Justice” means the Chief Justice of the Supreme Court.]

19 [(3)] (2) “Commission” means the Public Defense Services Commission.

20 [(4)] (3) “Director” means the public defense services executive director appointed under ORS
 21 151.216.

22 [(5)] (4) “Office of public defense services” means the office established by the commission under
 23 the director to handle the cases assigned and to carry out the administrative policies and procedures
 24 for the public defense system.

25 **SECTION 8.** ORS 151.213 is amended to read:

26 151.213. (1) The Public Defense Services Commission is established in the [judicial] **executive**
 27 branch of state government. Except for the appointment or removal of commission members, the
 28 commission and employees of the commission are not subject to the exercise of administrative au-
 29 thority and supervision by the [Chief Justice of the Supreme Court as the administrative head of the
 30 Judicial Department] **Governor.**

31 (2)(a) The commission consists of nine members appointed [by order of the Chief Justice. In ad-
 32 dition to the nine appointed members, the Chief Justice serves as a nonvoting, ex officio member. The
 33 Chief Justice shall appoint at least three persons who are not bar members, at least one person who
 34 was formerly engaged in the provision of public defense services and at least one person who has been
 35 formerly represented by a public defense provider in this state. All members must have a demonstrated
 36 record of commitment to public defense. Except for the Chief Justice or a senior judge under ORS 1.300,
 37 a member may not serve concurrently as a judge, a prosecuting attorney or an employee of a law
 38 enforcement agency. A person who is primarily engaged in providing public defense services may not
 39 serve as a member of the commission.] **as follows:**

40 **(A) The Governor shall appoint three members.**

41 **(B) The Governor shall appoint three members from among persons recommended by the**
 42 **Chief Justice of the Supreme Court.**

43 **(C) The Governor shall appoint three members from among persons jointly recommended**
 44 **by the Senate President and the Speaker of the House of Representatives.**

45 **(b) All members must have a demonstrated record of commitment to public defense.**

1 (c) **At least three members must be persons who are not bar members.**

2 (d) **At least one member must be a person who has been formerly represented by a public**
 3 **defense provider.**

4 (e) **Except for a senior judge under ORS 1.003, a member may not serve concurrently as**
 5 **a judge, a member of the Legislative Assembly, a prosecuting attorney or an employee of a**
 6 **law enforcement agency.**

7 (f) **A person who is primarily engaged in providing public defense services may not serve**
 8 **as a member of the commission.**

9 (3) The term of a member is four years beginning on the effective date of the [*order of the Chief*
 10 *Justice appointing the member*] **appointment**. A member is eligible for reappointment if qualified for
 11 membership at the time of reappointment. A member may be removed from the commission by [*order*
 12 *of the Chief Justice*] **a two-thirds vote of the commission**. If a vacancy occurs for any cause before
 13 the expiration of the term of a member, the [*Chief Justice*] **Governor** shall make an appointment to
 14 become immediately effective for the unexpired term.

15 (4) A chairperson and a vice chairperson shall be [*appointed by order of the Chief Justice*]
 16 **elected by the members of the commission** every two years with such functions as the commis-
 17 sion may determine. A member is eligible for reappointment as chairperson or vice chairperson.

18 (5) A majority of the voting members constitutes a quorum for the transaction of business.

19 (6) A member of the commission is not entitled to compensation for services as a member, but
 20 is entitled to expenses as provided in ORS 292.495 (2).

21 **SECTION 9.** ORS 151.216 is amended to read:

22 151.216. (1) The Public Defense Services Commission shall:

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

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

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

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

32 (B) Promote policies for public defense provider compensation and resources that are compara-
 33 ble to prosecution compensation and resources;

34 (C) Ensure funding and resources to support required data collection and training requirements;
 35 and

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

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

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

44 (f) Adopt a statewide workload plan, based on the caseload policies described in paragraph (c)(A)
 45 of this subsection, that takes into account the needs of each county or jurisdiction, practice struc-

1 ture and type of practice overseen by the office of public defense services.

2 (g) Submit the budget of the commission and the office of public defense services to the Legis-
3 lative Assembly after the budget is submitted to the commission by the director and approved by the
4 commission. [*The Chief Justice of the Supreme Court and*] The chairperson of the commission shall
5 present the budget to the Legislative Assembly.

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

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

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

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

13 (B) The appointment of counsel, including the appointment of counsel at state expense regard-
14 less of financial eligibility in juvenile delinquency matters;

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

17 (D) Appointed counsel compensation disputes;

18 (E) Any other costs associated with the representation of a person by appointed counsel in the
19 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
20 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
21 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any
22 other provision of law that expressly provides for payment of such compensation, costs or expenses
23 by the commission;

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

25 (G) Performance for legal representation;

26 (H) The contracting of public defense services;

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

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

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

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

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

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

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

6 (4) The commission may not:

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

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

9 (c) Interfere with the director or any member of the staff of the director in carrying out pro-
 10 fessional duties involving the legal representation of public defense clients.

11 **SECTION 10.** ORS 151.219 is amended to read:

12 151.219. (1) The public defense services executive director shall:

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

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

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

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

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

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

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

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

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

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

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

41 **(L) Establish within the office of public defense services a trial division that includes**
 42 **three or four regional offices and supervisor, attorney, investigator and support staff posi-**
 43 **tions, in order to support areas within the state with the highest provider caseloads or most**
 44 **unrepresented defendants.**

45 **(m) Develop training programs for employees of the office of public defense services, set**

1 training protocols and expectations for the trainings and coordinate with professional asso-
2 ciations to provide continuing legal education opportunities.

3 (n) Ensure that the contracts negotiated under subsection (1)(d) of this section:

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

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

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

13 **SECTION 11.** (1) A person who is a member of the Public Defense Services Commission
14 on the operative date specified in section 12 (1) of this 2023 Act shall remain a member of
15 the commission until the end of the person’s term, subject to removal for cause as described
16 in ORS 151.213 (3).

17 (2) Upon the conclusion of the term of a person who is a commission member on the
18 operative date specified in section 12 (1) of this 2023 Act, the person may be reappointed to
19 the commission by the Governor if the person meets the requirements described in ORS
20 151.213 (2).

21 (3) Notwithstanding ORS 151.213 (3), the initial term of a person appointed by the Gov-
22 ernor may be staggered by one, two, three and four years as necessary so that no more than
23 three terms end each year.

24
25 (Operative Date)

26
27 **SECTION 12.** (1) The amendments to ORS 151.211, 151.213, 151.216 and 151.219 by sections
28 7 to 10 of this 2023 Act become operative on January 1, 2025.

29 (2) The Public Defense Services Commission, the Judicial Department and the Governor
30 may take any action before the operative date specified in subsection (1) of this section that
31 is necessary to enable the commission, the department or the Governor to exercise, on and
32 after the operative date specified in subsection (1) of this section, all of the duties, functions
33 and powers conferred on the commission, the department or the Governor by the amend-
34 ments to ORS 151.211, 151.213, 151.216 and 151.219 by sections 7 to 10 of this 2023 Act.

35
36 CAPTIONS

37
38 **SECTION 13.** The unit captions used in this 2023 Act are provided only for the conven-
39 ience of the reader and do not become part of the statutory law of this state or express any
40 legislative intent in the enactment of this 2023 Act.

41
42 EFFECTIVE DATE

43
44 **SECTION 14.** This 2023 Act takes effect on the 91st day after the date on which the 2023
45 regular session of the Eighty-second Legislative Assembly adjourns sine die.



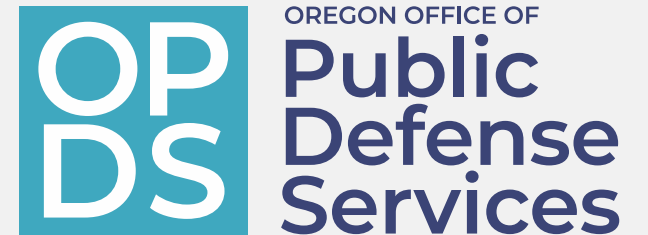
Attachment 4

Oregon Office of Public Defense Services

Recommended Policy Option Packages

Jessica Kampfe, Executive Director

January 19, 2023



Provider Compensation

Provider Stabilization, Recruitment & Retention

- \$88.9 million \$35.2 million
- 0 positions/0.00 FTE
- Increases provider payments intended to increase attorney compensation to a level equivalent to DOJ and appellate attorney classifications
- Includes payments intended to increase attorney and staff compensation
- Staff includes: Legal assistant & investigator only
- Full biennium estimate

Provider Staffing

Efficient Case Management

- \$159.2 million \$131.3 million
- 0 positions/0.00 FTE
- Increases provider payments intended to bring support staffing parity across the public defense delivery system
- Harmonizes staffing levels across delivery system
- Adds paralegal, supervisors, administrator, social worker and officer manager funding
- Full biennium estimate

Mandated Caseload – Juvenile

System Stabilization & Equity

- \$2.7 million
- 0 positions/0.00 FTE
- Requests Juvenile caseload to be considered “mandated” for budget building purposes
- Had been part of the CSL budget build in the early process. LFO & CFO advised to put forward as a policy package for discussion
- Unchanged

Financial/Case Mgmt. System

Fiscal Integrity & Essential Data Collection

- \$7.9 million
- 4 positions/4.00 FTE
- Internal data collection system
- Consistent definitions of common terminology as it relates to public defense
- Likely availability to local providers for indigent defense case management
- Adds a senior project manager

\$7.5 million

3 pos/3.00 FTE

OJD ETS Services

System Stability and Data Security

- \$0.9 million
- 0 positions/0.00 FTE
- Continuation of existing technology services provided by the Judicial Department
- Unchanged

Permanent Positions

Agency Stability

- \$2.5 million
- 9 positions/9.00 FTE
- Maintains positions supporting 2021-23 service levels for contract analysts, Case Support Services, accounts payable, policy writing, human resources, data collection and data management
- Increased emphasis on policy writing by repurposing OPA position previously proposed for Guardianship Program

Program Design & Research

Program Performance and Accountability

- \$4.2 million \$3.4 million
- 18 positions 14 positions
- Compliance, audit & performance
- Establishes performance, financial and caseloads standards throughout the delivery system based on national and regional best practices
- Additional emphasis on policy writing, key performance measures, communications and organizational/workforce development

PCRCP Expansion

Equity in Geographic Service Delivery

- \$10.2 million
- 2 positions/1.25 FTE
- Expand the high-quality legal representation for parents, children and you in juvenile court proceedings
- Ensures equitable delivery of legal services to indigent clients throughout the state involved in juvenile court proceedings

Quick Response Unit

Responsiveness & Crisis Management

- \$10.8 million
- 36 positions/36.00 FTE
- Internal team to OPDS
- Ability to be nimble and flexible depending on local caseloads
- Specialized to handle complex of defense cases such as Jessica's Law, Measure 11 and other major felonies
- Conceptually supportive of this and other ideas discussed within the Three Branch Workgroup and policy committees

Commissioner Stipend Equity

- \$0.1 million
- 0 positions/0.00 FTE
- Establishes a monthly stipend
- Basis is GSA and other state agency rates
- Unchanged

Expand Trial Capacity

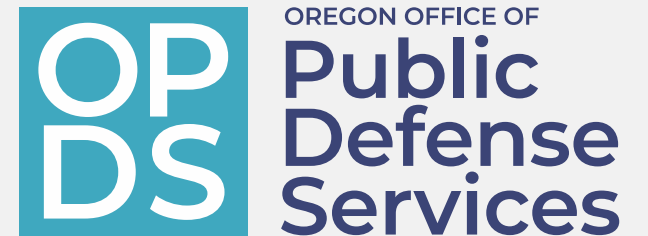
- \$118.4 million
- 0 positions/0.00 FTE
- Increases MAC capacity by approx. 10% of need identified by ABA Report
- Identified as an “unachievable” goal for the 2023-25 biennium; unable to attract, contract and/or retain sufficient qualified attorney’s within current models without first stabilizing the delivery system

Hourly Provider Rate

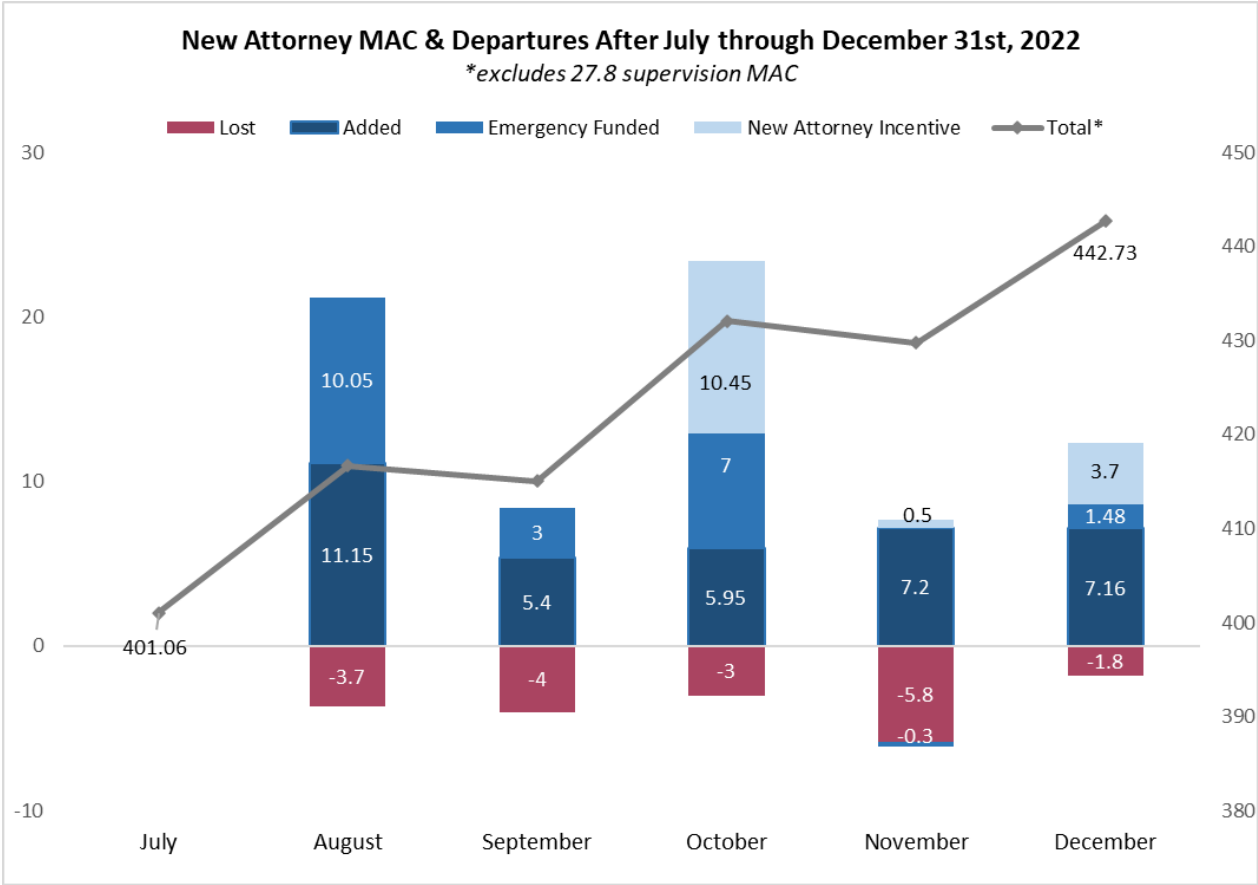
- 2021-23 budget: \$75/Hr
- 2023-25 CSL: \$81/Hr (8% inflation)
- “Unpublished” exception rate: \$105
- 2022 Federal rate: \$158
- 2023 Federal rate: \$164
- 2021-23 DOJ billing rate (AAG): \$242

Attachment 5

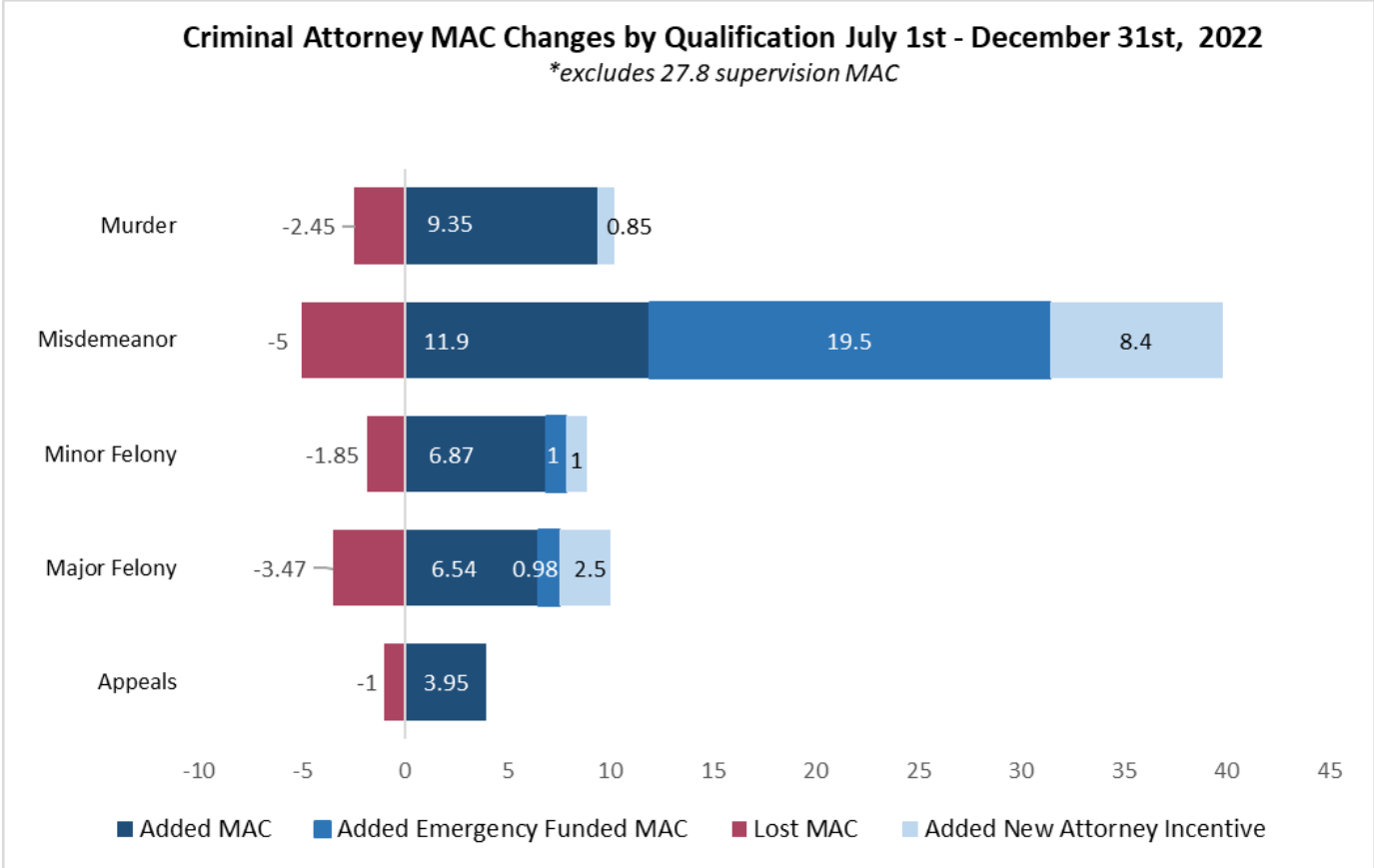
Oregon Office of Public Defense Services



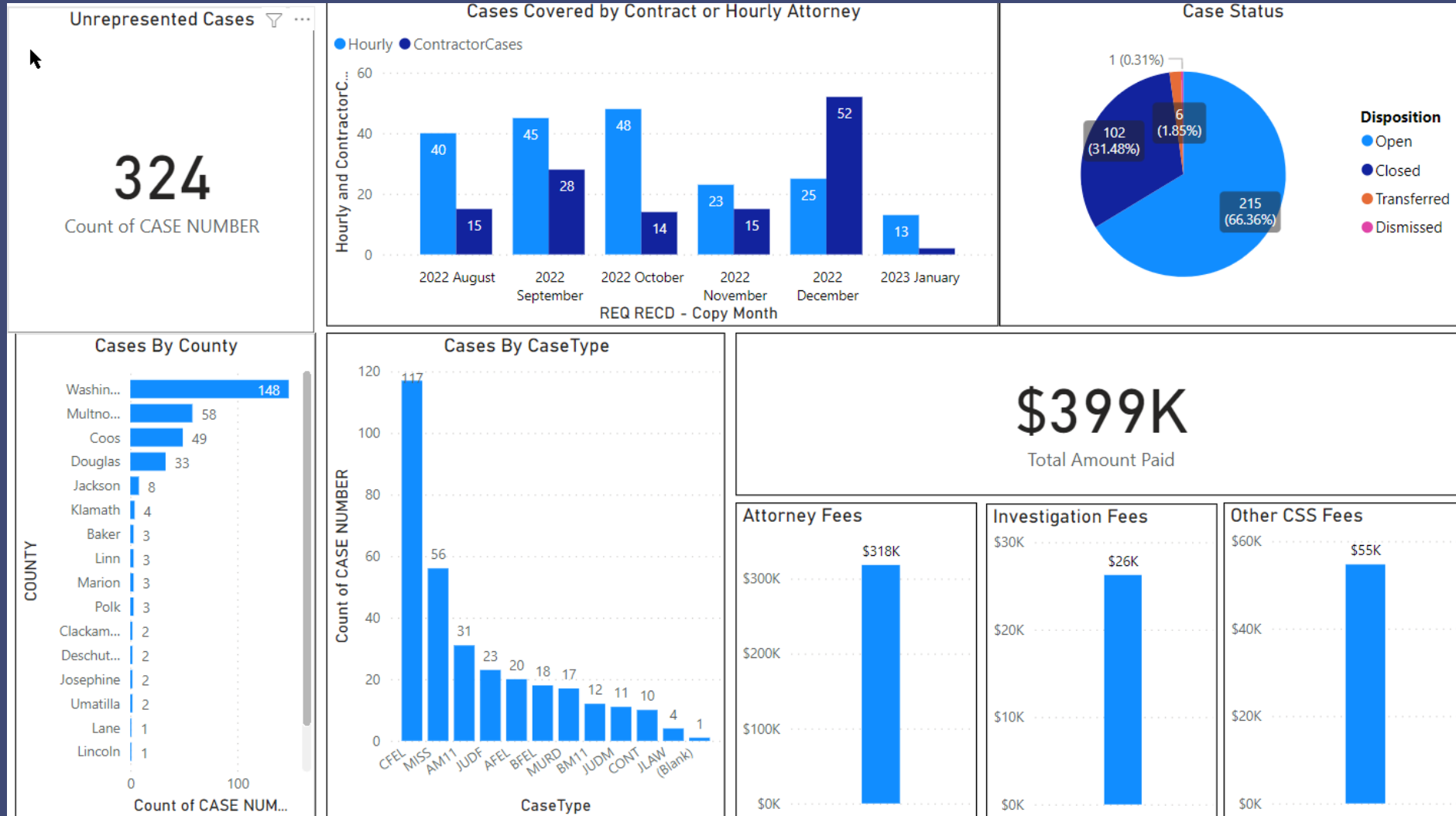
Newly Added Criminal Attorney MAC Since July 1st, 2022



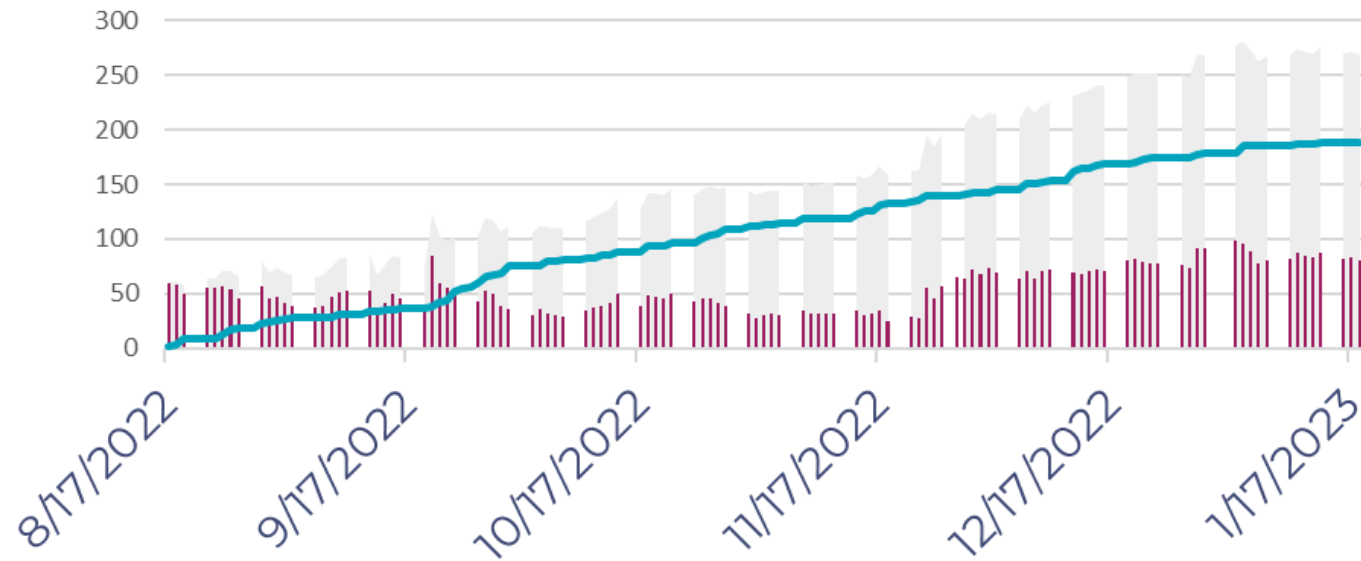
Criminal Attorney MAC Changes July 1st compared to December 31st



OPDS Internal \$158 Unrepresented Dashboard – All Case Statistics



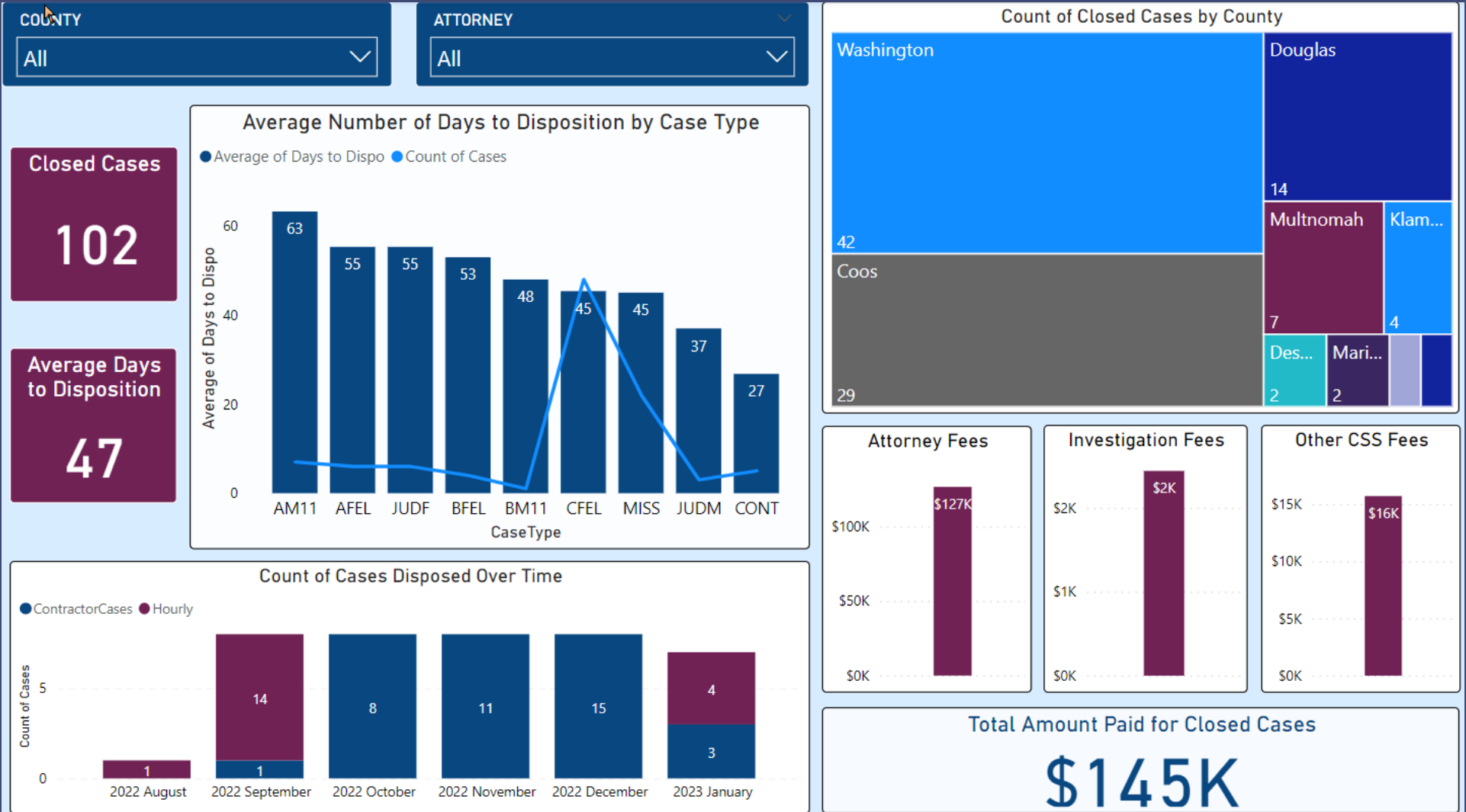
The Effect of \$158/hr Assignments (Since Aug. 17, 2022)



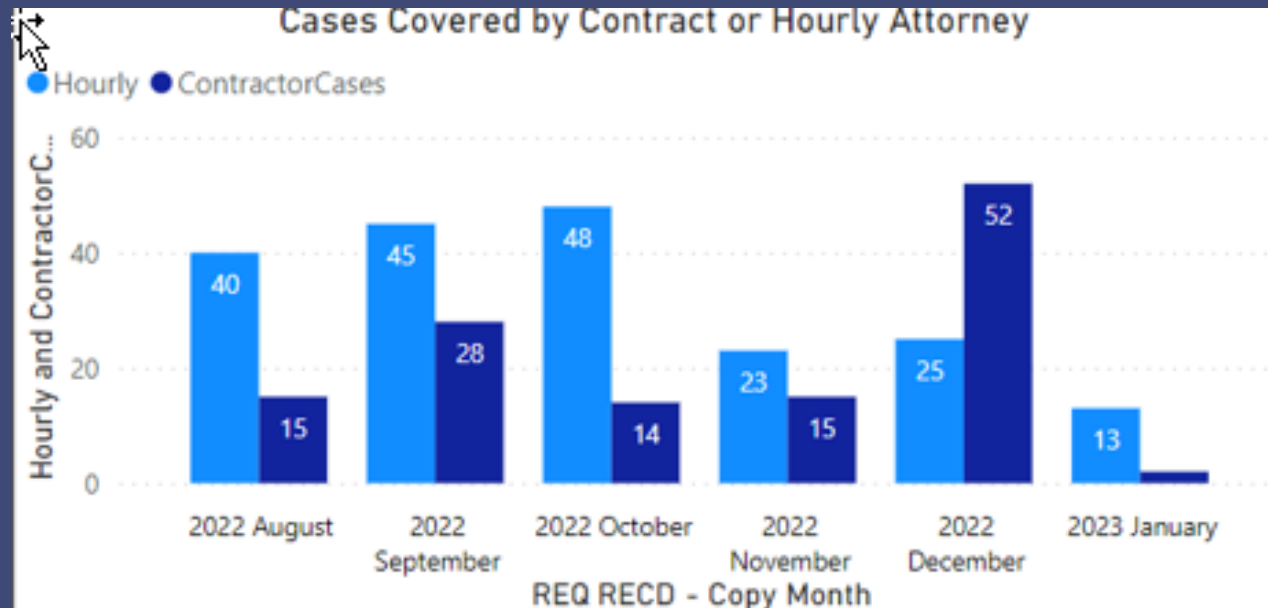
Where we would have been

Combination of OJD & OPDS Data

OPDS Internal \$158 Unrepresented Dashboard – Closed Cases

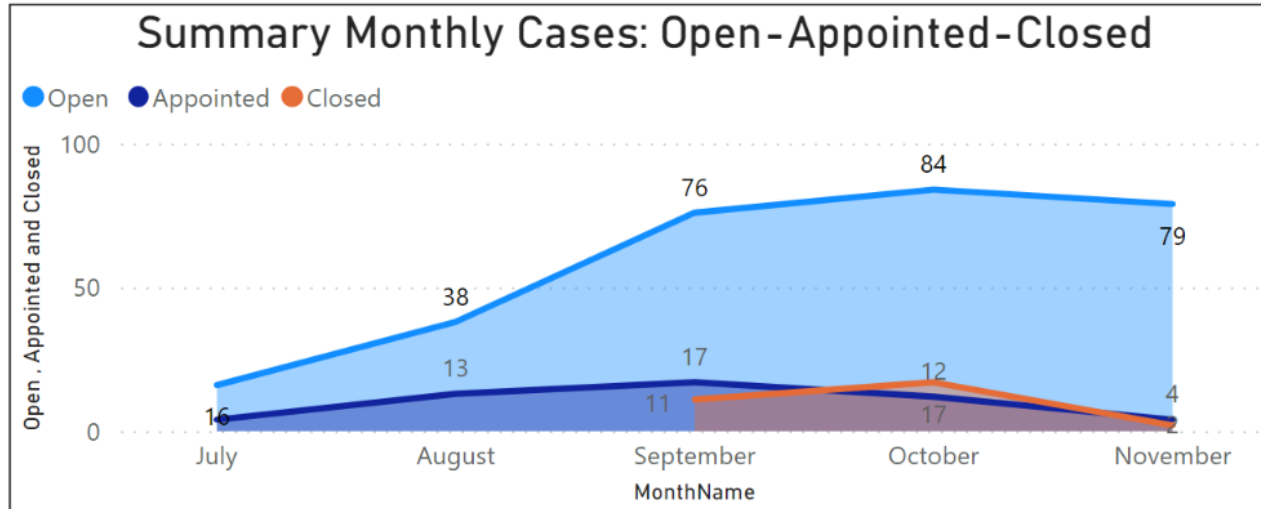


OPDS Internal \$158 Unrepresented Dashboard – All Case Statistics

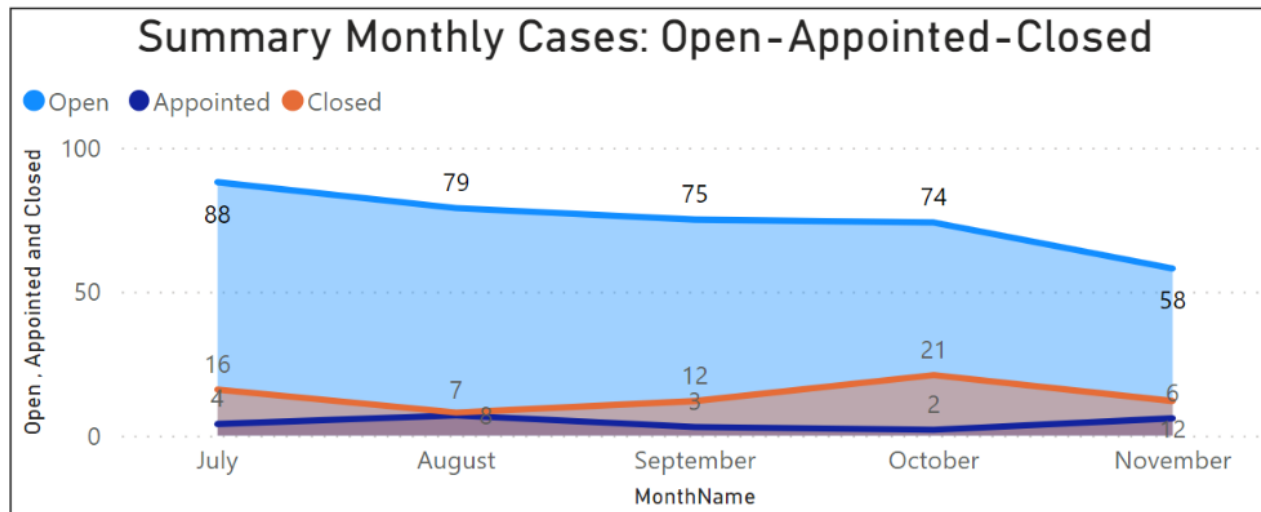


\$158 cases taken by hourly attorneys vs. contracted attorneys

Multnomah County Criminal Provider



Caseloads for an **attorney hired in July** (top) vs. an **attorney with provider prior to July** (bottom)



OPDS Internal Contracts Dashboard – Sample County

Use this page to view appointed case data by contractor and attorney. Note: only contractors who have submitted a report and only attorneys with appointed cases will appear.

ContractorCounty
 Sample County (mid Willamette Valley) ▼

Contract
 All ▼

Contract Monthly Appointments

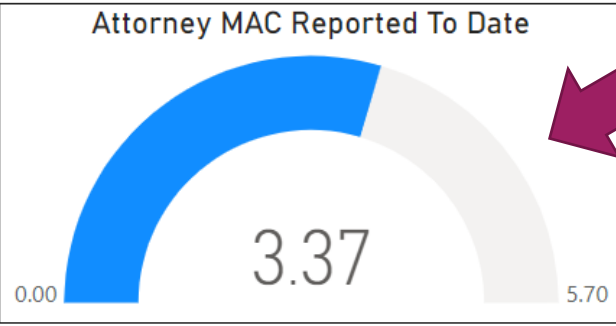
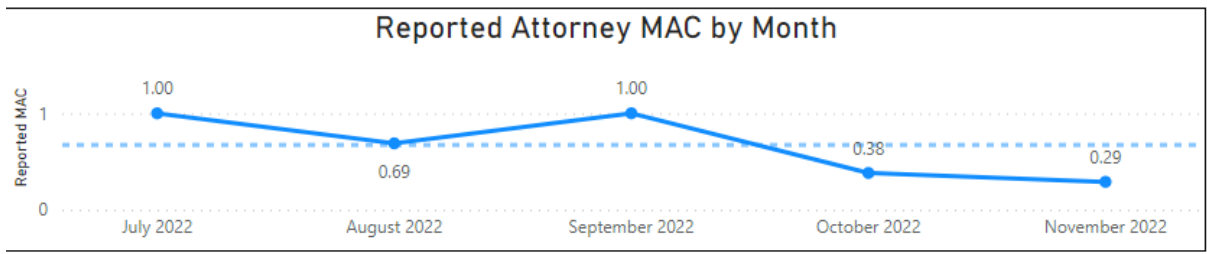
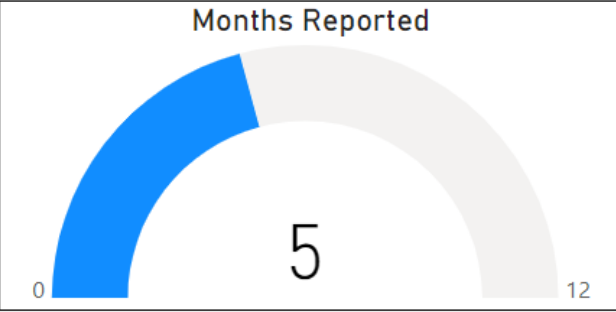
MonthInCalendar	Total Criminal Appointed	MURD	JLAW	M11	Major Felony	Minor Felony	Misdem	Civil Cor
July 2022	226			5	10	46	154	
August 2022	151			5	11	22	105	
September 2022	151	2		5	4	29	103	
October 2022	100				5	18	65	
November 2022	60			2	6	12	37	
Total	688	2		17	36	127	464	

Contract MAC as displayed in Attorney Database

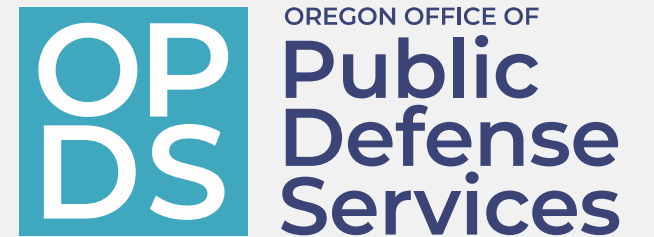
ContractorName	Attorney MAC	SupMAC
Entity Name	5.70	0.00
	0.95	0.00
Attorney Names	0.95	0.00
	0.95	0.00
	0.95	0.00
Total	5.70	0.00

Attorney Monthly Appointments

Attorney	MURD	JLAW	M11	Major Felony	Minor Felony	Misdem	Civil Commit	PVs	Total Criminal Appointed	MAC Reported	Attorney MAC	MAC Unused
Attorney Names	1		1	6	22	100	1	5	136	0.71	0.95	0.24
			3	7	24	78		6	118	0.53	0.95	0.42
			5	11	23	65	7	6	117	0.58	0.95	0.37
			4	8	24	79		2	117	0.56	0.95	0.39
	1		2	2	9	40		5	59	0.42	0.95	0.53
Total	2		17	36	127	464	9	33	688	3.37	5.70	2.33



Thank you



Attachment 6

Unrepresented Persons in Oregon

Public Defense Services

January 2023

Scope of the Problem

Oregon is experiencing a public safety crisis, one symptom of which is the unrepresented persons crisis. Over the last 18 months, Oregon has seen a rise in the number of people who are financially eligible for court-appointed counsel in criminal or juvenile cases but remain without an attorney due to a lack of available qualified attorneys willing to accept the appointment. As of this writing, 765 people are entitled to court-appointed counsel but do not have lawyers; 81 of them are in custody.

The systemic under resourcing of public defense has led to these numbers. Significant numbers of attorneys—many of whom are qualified to handle at least minor felony caseloads—are leaving Oregon public defense practice, particularly nonprofit public defender offices, due to low pay and high caseloads. At the same time, felony case filings have increased, particularly in high population jurisdictions such as Multnomah and Washington Counties. Compounding this capacity issue is Public Defense Services' implementation of the Sixth Amendment Center's recommendation to move away from an unconstitutional fixed fee model of contracting for public defense representation and to a maximum attorney caseload model where the agency contracts for attorney time.

High caseloads for public defense attorneys have caused them to be overworked and burnt-out, and ultimately to leave public defense. When an attorney leaves, it has a ripple effect throughout the public defense system, because that attorney's cases must be reassigned to other public defense attorneys, thereby reducing or eliminating those attorneys' capacity to accept new case appointments. This increases the capacity issue more, creating more strain on existing public defense attorneys, leading to faster burnout and quitting. It is a cycle that Public Defense Services is working to break.



Figure 1 - Public Defense "Churn"

Breaking this cycle means increasing capacity while decreasing workloads for public defense attorneys, which can be a difficult balance. Increasing capacity means bringing on additional attorneys and retaining and training the attorneys we have. More efficiently managing demanding public defense workloads means providing support to attorneys so they can focus on representing their clients and closing their cases, thereby allowing them to take on new cases.

Efforts to Address the Problem

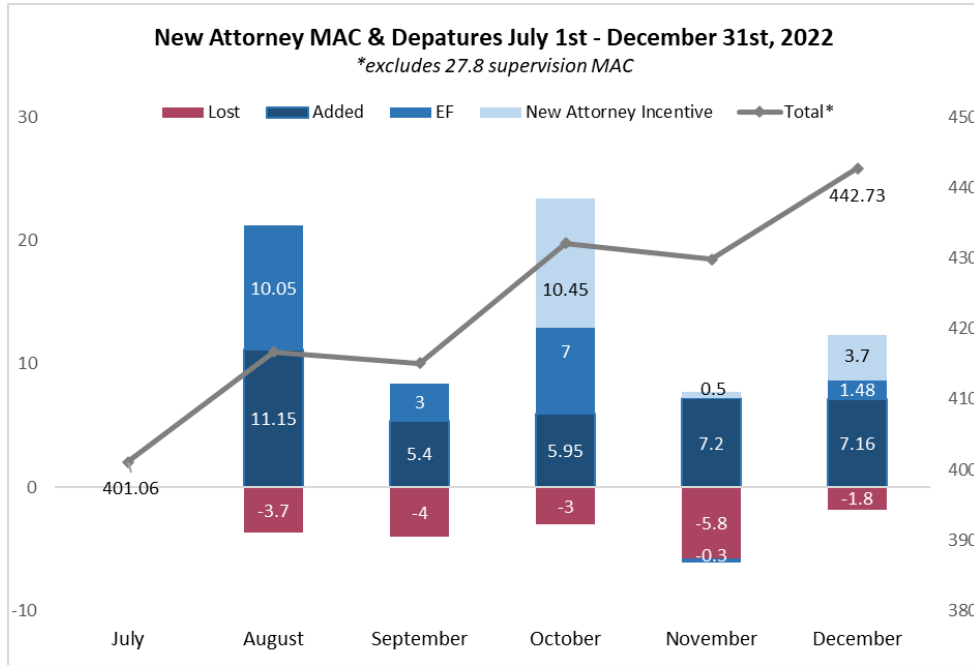
In its efforts to break the cycle of overwork, burnout, and attrition, Public Defense Services has implemented the following initiatives.

Actions to Increase Capacity

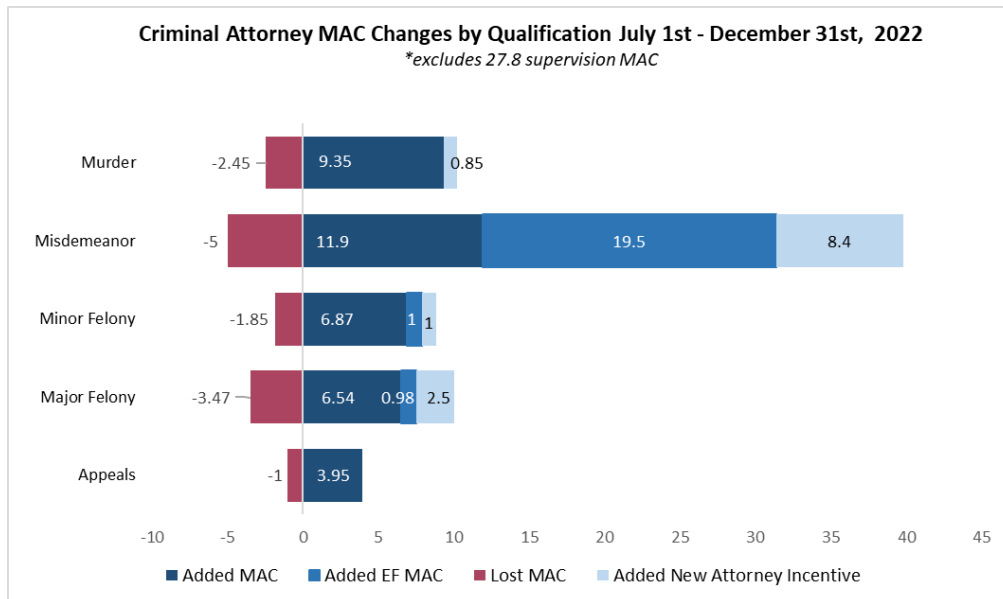
- Increased the pre-July 2022 contracted attorney workforce by entering into new contracts to add 32.63 Maximum Attorney Caseload (MAC), using emergency funding allocated during the 2022 legislative session;
- Implemented a tiered contracting model intended to incentivize attorneys to become qualified to represent persons charged with felonies by providing greater compensation for increasing their case seriousness qualification;
- Attracted new public defense attorneys to practice in Oregon through a new attorney incentive payment program in which contractors receive two lump sum

payments in March and June for the addition to their contracts of attorneys who are new to public defense; and

- Increased hourly compensation rates for attorneys accepting appointments to represent persons who are in custody and unrepresented, as well as for the investigators providing support in those cases.



Source: Public Defense Services Contracting Data



Source: Public Defense Services Contracting Data

Actions Taken to Mitigate the High Caseloads

- Invested in training and supervision for nonprofit public defender offices to adequately resource public defenders who are advocating for individuals on increasingly complex cases;
- Resourced resolution dockets to empower local jurisdictions to find creative solutions for communities with out-of-custody unrepresented persons.
- Met with system stakeholders including, public defense attorneys, district attorneys, judges, and court staff, in counties experiencing the prosecution of unrepresented persons to increase our understanding of that judicial district's needs and explore collaborative solutions; and
- Partnered with the Oregon Judicial Department to improve the quality of data to better quantify the unrepresented person's crisis and improve the agency's ability to respond to this problem that has varied over time and by county.

Proposed Use of \$10 Million Emergency Board Funds

While the programs implemented by Public Defense Services to date have mitigated the growth of the unrepresented persons crisis, many of the underlying factors listed above still exist. Public Defense Services intends to invest the \$10 million Emergency Fund allocation in the December Emergency Board, as well as existing agency funds, as follows to stabilize the public defense workforce, increase accountability, and add efficiencies.

Increased and Tiered Hourly Rate Structure for All Unrepresented Persons

Goal: Increase capacity by investing \$5,000,000 of the Emergency Fund allocation to increase the hourly rates for non-contract attorneys who accept assignment of cases from the Oregon Judicial Department's "OPDS Unrepresented" list and implementing a tiered rate structure to target the greatest needs.

Public Defense Services' hourly rates for attorneys are not competitive at the rate of \$105 per hour for murder cases and \$75 per hour for all other case types. In July 2022, Public Defense Services implemented a program to address the unrepresented persons crisis by authorizing \$158 per hour for case assignments for any in-custody unrepresented person. While this program has reduced the number of in-custody unrepresented persons, the number of in and out-of-custody unrepresented persons continues to grow. Public Defense Services will expand and extend this program by implementing the following tiered rate structure to address all unrepresented persons whether they are in or out of custody:

- \$125 per hour for misdemeanor, contempt, and probation violation cases

- \$158 per hour for Class C felony and felony drug possession cases
- \$164 per hour for Class A and B felony, juvenile dependency, termination-of-parental-rights, juvenile delinquency, habeas corpus, post-conviction relief, civil commitment, and Psychiatric Security Review Board cases
- \$175 per hour for Ballot Measure 11 and felony sex offense cases; and
- \$200 per hour for murder and Jessica's Law cases.

Public Defense Services will continue to fund the investigator rate under this program at the higher hourly rate of \$75.00.

Strategic Reserves

Goal: Set the Agency up to be as strategic and adaptable as possible for the remainder of the biennium by setting aside \$2,500,000 of the Emergency Fund allocation for investment in programs that are proven to reduce unrepresented people.

Over the past 6 months Public Defense Services has created and funded various programs to reduce the unrepresented population. Now that these programs have been running for anywhere between 3-6 months, the agency needs to reevaluate the data available to determine what programs have been successful. As the unrepresented crisis continues it is also likely that the Agency will need to make strategic investments between now and the end of the biennium, have funds in reserve should the situation deteriorate, or additional funds should a program- specifically the increased hourly structure for unrepresented persons- require additional investment.

Supervised Civil Attorney Program

Goal: Increase capacity by expanding the pool of attorneys available to represent out of custody persons charged with misdemeanors and minor felonies by investing \$394,200 of the Emergency Fund allocation in a Supervised Civil Attorney Program

Some civil attorneys have expressed a desire to help in reducing the number of unrepresented persons by expanding their law practice to include some public defense cases. The Supervised Civil Bar Attorney Program will fund civil or private bar attorneys to provide legal representation in misdemeanor cases. Attorneys shall be supervised by contracted Supervising Attorneys who provide oversight of attorneys appointed to represent financially eligible persons in misdemeanor cases. Attorneys who accept assignment of cases are required to comply with the policies and procedures for the representation of clients under supervision, including training and performance requirements, evaluation procedures, record-keeping, and data collection. Attorneys accepting court-appointed cases under supervision shall maintain time records and shall

report to Public Defense Services on their work, including client communications, hearing and trial preparation, and time in court.

Existing Attorney Retention Incentive Program

Goal: Stabilize existing contractors and increase accountability by investing \$6,000,000 of existing agency funds and \$2,105,800 of the Emergency Fund Allocation in a retention incentive program

High levels of attorney attrition in the provider community resulted in the agency retaining attrition saving in our budget designated to fund public defense contractors. Attorney attrition is a leading cause of the unrepresented person's crisis. The attrition savings will be deployed to retain existing contractors through a retention incentive payment program focused on contract public defense attorneys funded out of Public Defense Services' existing budget. Each package of retention incentive payments will total \$15,000 per full-time attorney, with 12.5% of the funds dispersed each month between February and May 2023 and 50% of the funds dispersed in June 2023. Receipt of retention incentive payments would be conditioned on contractors being current in their caseload reporting obligations and reporting back to Public Defense Services about how the funds were spent, whether on attorney compensation, staff compensation, additional staff hours, or other overhead and expenses.

Conclusion

Oregon must ensure that Public Defense Services meets its constitutional mandate to provide public defense services consistent with the Oregon Constitution, the United States Constitution, and Oregon and national standards of justice. Failure to provide legal representation to those charged with crimes violates the mission of Public Defense Services to ensure that eligible individuals have timely access to legal services, consistent with Oregon and national standards of justice. Moreover, that failure creates a bottleneck in the system which prevents cases from moving forward. Failure to provide constitutionally effective representation creates additional problems, including wrongful convictions, worse public safety outcomes, an increased number of cases returning to trial several years later after post-conviction relief is granted, lack of final resolutions, and a loss of trust in the justice system's ability to handle cases fairly.

While these actions will not solve the unrepresented persons crisis, it will mitigate the exodus of attorneys and bring on new capacity directly targeted at those on the unrepresented peoples list. Looking ahead to the 23-25 biennium, cases will continue to grow, and this crisis may get worse. Public Defense Services will continue to report back to Legislative leadership and Ways and Means throughout the 2023 session. We are dedicated to finding a solution and ensuring that all Oregonians have access to justice and representation.

Attachment 7



TO: Per Ramfjord, Chair, Public Defense Services Commission
Paul Solomon, Vice Chair, Public Defense Services Commission
Members, Public Defense Services Commission

FROM: OPDS Trial Division

DATE: January 18, 2023

RE: New Contract Approval - Washington County

Agency Recommendation: OPDS recommends the PDSC agree to contract with Reza Khanjan as follows:

Reza Khanjan for .95 MAC criminal misdemeanor in Washington County for the contract term from January 23, 2023, through June 30, 2023. PDSC will pay the Contractor a total of \$116,680 during the term of this contract, plus \$19,000 as an incentive payment.

All contractors shall maintain a support staff of 1:.50 ratio as adopted by the PDSC.

Proposed Motion: I move to approve the contract between PDSC and Reza Khanjan, as outlined above.