

House Bill 2280

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for Judicial Department)

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 certain moneys paid by persons who apply for and are appointed counsel at state expense are to be deposited into Judicial Department Operating Account. Provides that Judicial Department may reimburse Public Defense Services Commission from moneys in account. Requires department and commission to enter into agreement to establish amount of reimbursement required. Transfers specified moneys from Public Defense Services Account to Judicial Department Operating Account.

A BILL FOR AN ACT

1
2 Relating to moneys collected by circuit courts for costs incurred in appointment of counsel; creating
3 new provisions; and amending ORS 1.009, 135.050, 151.216, 151.225, 151.487, 419A.211, 419B.198
4 and 419C.203.

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

6 **SECTION 1.** ORS 1.009 is amended to read:

7 1.009. (1) The Judicial Department Operating Account is established in the State Treasury, sep-
8 arate and distinct from the General Fund. Interest earned by the account shall be credited to the
9 account. All moneys in the account are continuously appropriated to the Judicial Department and
10 may be used only to pay the operating expenses of the department.

11 (2) All moneys [*received by the department pursuant to ORS 151.216 (1)(i) shall be deposited in the*
12 *Judicial Department Operating Account*] **deposited in the account under ORS 135.050, 151.487,**
13 **419A.211, 419B.198 and 419C.203 may be used to:**

14 (a) **Pay the expenses of determining the financial eligibility for appointed counsel of per-**
15 **sons with a constitutional or statutory right to counsel including, but not limited to, the**
16 **costs of personnel and other costs associated with location of eligibility verification and**
17 **screening personnel pursuant to ORS 151.489 by the State Court Administrator; and**

18 (b) **Reimburse the Public Defense Services Commission as required by the agreement**
19 **entered into under section 9 of this 2005 Act.**

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

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

23 151.216. (1) The Public Defense Services Commission shall:

24 (a) Establish and maintain a public defense system that ensures the provision of public defense
25 services in the most cost-efficient manner consistent with the Oregon Constitution, the United States
26 Constitution and Oregon and national standards of justice.

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

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 (c) Submit the budget of the commission and the office of public defense services to the Legis-
 2 lative Assembly after the budget is submitted to the commission by the director and approved by the
 3 commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall
 4 present the budget to the Legislative Assembly.

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

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

9 (f) Adopt policies, procedures, standards and guidelines regarding:

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

12 (B) The appointment of counsel;

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, 161.365, 161.385, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
 19 419C.408, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any other pro-
 20 vision of law that expressly provides for payment of such compensation, costs or expenses by the
 21 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 (g) 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 (h) 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 *[(i) Reimburse the State Court Administrator from funds deposited in the subaccount established*
 36 *under ORS 151.225 for the costs of personnel and other costs associated with location of eligibility*
 37 *verification and screening personnel pursuant to ORS 151.489 by the State Court Administrator.]*

38 **(i) Seek reimbursement from the Judicial Department as determined under the agree-**
 39 **ment entered into under section 9 of this 2005 Act.**

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

45 (3) The commission may accept gifts, grants or contributions from any source, whether public

1 or private. However, the commission may not accept a gift, grant or contribution if acceptance
 2 would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the
 3 Public Defense Services Account created in ORS 151.225 and expended for the purposes for which
 4 given or granted.

5 (4) The commission may not:

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

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

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

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

11 151.225. (1) There is created a Public Defense Services Account in the General Fund. The Public
 12 Defense Services Account is continuously appropriated to the Public Defense Services Commission
 13 to pay compensation of counsel and other expenses in connection with the legal representation of
 14 persons for which the commission is responsible by law.

15 (2) All moneys appropriated to the commission to pay compensation of counsel and other ex-
 16 penses in connection with the legal representation of persons for which the commission is respon-
 17 sible by law shall be deposited in the Public Defense Services Account.

18 (3) All moneys received by the [*Judicial Department under ORS 135.050 (8), 151.487 (1), 151.505*
 19 *(3), 419A.211, 419B.198 (1) or 419C.203 (1)*] **commission as reimbursement pursuant to ORS**
 20 **151.216 (1)(i)** shall be deposited in a separate subaccount created in the Public Defense Services
 21 Account to be used by the public defense services executive director to reimburse the actual costs
 22 and expenses, including personnel expenses, incurred in administration and support of the public
 23 defense system.

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

27 (5) As used in this section, “other expenses in connection with the legal representation of per-
 28 sons for which the commission is responsible by law” includes expenses incurred in the adminis-
 29 tration of the public defense system.

30 **SECTION 4.** ORS 135.050 is amended to read:

31 135.050. (1) Suitable counsel for a defendant shall be appointed by a municipal, county or justice
 32 court if:

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

34 (b) The defendant requests aid of counsel;

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

36 (d) It appears to the court that the defendant is financially unable to retain adequate represen-
 37 tation without substantial hardship in providing basic economic necessities to the defendant or the
 38 defendant’s dependent family.

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

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

41 (b) The defendant requests aid of counsel;

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

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

45 (B) The court finds, on the record, substantial and compelling reasons why the defendant is fi-

1 nancially unable to retain adequate representation without substantial hardship in providing basic
 2 economic necessities to the defendant or the defendant's dependent family despite the fact that the
 3 defendant does not meet the financial eligibility standards established by the commission.

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

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

11 (a) A list of bank accounts in the name of defendant or defendant's spouse, and the balance in
 12 each;

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

14 (c) A list of automobiles and other personal property of significant value belonging to defendant
 15 or defendant's spouse;

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

17 (e) A record of earnings and other sources of income in the name of defendant or defendant's
 18 spouse, and the total of each.

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

21 (a) Charged with a crime.

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

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

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

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

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

37 (8) The court may order the defendant in a circuit court to pay to the [*Public Defense Services*
 38 *Account in the General Fund*] **Judicial Department Operating Account**, through the clerk of the
 39 court, in full or in part the administrative costs of determining the eligibility of the defendant for
 40 appointed counsel and the costs of the legal and other services that are related to the provision of
 41 appointed counsel under ORS 151.487[, 151.505 or 161.665].

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

1 (10) The civil proceeding shall be subject to the exemptions from execution as provided for by
 2 law.

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

5 **SECTION 5.** ORS 151.487 is amended to read:

6 151.487. (1) If in determining that a person is financially eligible for appointed counsel under
 7 ORS 151.485, the court finds that the person has financial resources that enable the person to pay
 8 in full or in part the administrative costs of determining the eligibility of the person and the costs
 9 of the legal and other services to be provided at state expense that are related to the provision of
 10 appointed counsel, the court shall order the person to pay to the [*Public Defense Services Account*
 11 *in the General Fund*] **Judicial Department Operating Account**, through the clerk of the court, the
 12 amount that it finds the person is able to pay without creating substantial hardship in providing
 13 basic economic necessities to the person or the person’s dependent family. The amount that a court
 14 may order the person to pay is subject to the guidelines and procedures issued by the Public Defense
 15 Services Commission as provided in subsection (4) of this section.

16 (2) Failure to obey an order under this section is not grounds for contempt or grounds for
 17 withdrawal by the appointed attorney, but any part of the amount ordered under this section and
 18 not paid may be:

19 (a) Enforced against the person as if the order is a civil judgment; or

20 (b) Enforced as otherwise permitted by law.

21 (3) Except as authorized in this section, no person, organization or governmental agency may
 22 request or accept a payment or promise of payment for assisting in the representation of a person
 23 by appointment.

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

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

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

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

33 **SECTION 6.** ORS 419A.211 is amended to read:

34 419A.211. (1) If the child, ward, youth, youth offender, parent or guardian is determined to be
 35 entitled to, and financially eligible for, appointment of counsel at state expense in an appeal as
 36 provided in ORS 419A.200 and 419A.208, the court, upon request of the person or upon its own mo-
 37 tion, shall appoint suitable counsel to represent the person. Counsel appointed by the court shall
 38 be paid compensation determined by the public defense services executive director as provided in
 39 ORS 135.055 if the circuit court is the appellate court or as provided in ORS 138.500 if the Court
 40 of Appeals or the Supreme Court is the appellate court. The court may not substitute one appointed
 41 counsel for another except pursuant to the policies, procedures, standards and guidelines of the
 42 Public Defense Services Commission.

43 (2)(a) When the court appoints counsel to represent the child, ward, youth or youth offender, it
 44 may order the parent, if able, or guardian of the estate, if the estate is able, to pay to the [*Public*
 45 *Defense Services Account in the General Fund*] **Judicial Department Operating Account**, through

1 the clerk of the court, in full or in part the administrative costs of determining the ability of the
 2 parents or estate to pay for legal services and the costs of the legal and other services that are
 3 related to the provision of appointed counsel.

4 (b) The test of the parent’s or estate’s ability to pay costs under paragraph (a) of this subsection
 5 is the same test as applied to appointment of counsel for defendants under ORS 151.216. If counsel
 6 is provided at state expense, the court shall apply this test in accordance with the guidelines
 7 adopted by the Public Defense Services Commission under ORS 151.485.

8 (c) If counsel is provided at state expense, the court shall determine the amount the parents or
 9 estate is required to pay for the costs of administrative, legal and other services related to the
 10 provision of appointed counsel in the same manner as this amount is determined under ORS 151.487.

11 (d) The court’s order of payment is enforceable in the same manner as an order of support under
 12 ORS 419B.408 and 419C.600.

13 (3) When the court appoints counsel and the child, ward, youth, youth offender, parent or
 14 guardian has been determined to be entitled to, and financially eligible for, appointed counsel at
 15 state expense, the compensation for counsel and costs and expenses necessary to the appeal shall
 16 be determined and paid as provided in ORS 135.055 if the circuit court is the appellate court or as
 17 provided in ORS 138.500 if the Court of Appeals or the Supreme Court is the appellate court.

18 **SECTION 7.** ORS 419B.198 is amended to read:

19 419B.198. (1) When the court appoints counsel to represent a child or ward, it may order the
 20 parent, if able, or guardian of the estate, if the estate is able, to pay to the [*Public Defense Services*
 21 *Account in the General Fund*] **Judicial Department Operating Account**, through the clerk of the
 22 court, in full or in part the administrative costs of determining the ability of the parents or estate
 23 to pay for legal services and the costs of the legal and other services that are related to the pro-
 24 vision of appointed counsel.

25 (2) The test of the parent’s or estate’s ability to pay costs under subsection (1) of this section
 26 is the same test as applied to appointment of counsel for defendants under ORS 135.050 or under the
 27 policies, procedures, standards and guidelines adopted under ORS 151.216. If counsel is provided at
 28 state expense, the court shall apply this test in accordance with the guidelines adopted by the Public
 29 Defense Services Commission under ORS 151.485.

30 (3) If counsel is provided at state expense, the court shall determine the amount the parents or
 31 estate is required to pay for the costs of administrative, legal and other services related to the
 32 provision of appointed counsel in the same manner as this amount is determined under ORS 151.487.

33 (4) The court’s order of payment is enforceable in the same manner as an order of support under
 34 ORS 419B.408.

35 **SECTION 8.** ORS 419C.203 is amended to read:

36 419C.203. (1) When the court appoints counsel to represent a youth, it may order the youth, if
 37 able, parent, if able, or guardian of the estate, if the estate is able, to pay to the [*Public Defense*
 38 *Services Account in the General Fund*] **Judicial Department Operating Account**, through the clerk
 39 of the court, in full or in part the administrative costs of determining the ability of the youth, par-
 40 ents or estate to pay for legal services and the costs of the legal and other services that are related
 41 to the provision of appointed counsel.

42 (2) The test of the youth’s, parent’s or estate’s ability to pay costs under subsection (1) of this
 43 section is the same test as applied to appointment of counsel for defendants under ORS 135.050 or
 44 under the policies, procedures, standards and guidelines adopted under ORS 151.216. If counsel is
 45 provided at state expense, the court shall apply this test in accordance with the guidelines adopted

1 by the Public Defense Services Commission under ORS 151.485.

2 (3) If counsel is provided at state expense, the court shall determine the amount the youth,
3 parents or estate is required to pay for the costs of administrative, legal and other services related
4 to the provision of appointed counsel in the same manner as this amount is determined under ORS
5 151.487.

6 (4) In determining whether to order the youth to pay costs under subsection (1) of this section,
7 the court shall also consider the reformative effect of having the youth pay. The court may order
8 that a portion of any moneys earned by the youth in juvenile work projects be used to pay costs
9 ordered under subsection (1) of this section.

10 (5) The court's order of payment is enforceable in the same manner as an order of support under
11 ORS 419C.600.

12 **SECTION 9. The Judicial Department and the Public Defense Services Commission shall**
13 **enter into an agreement that establishes the amount of the moneys that are deposited into**
14 **the Judicial Department Operating Account under ORS 135.050, 151.487, 419A.211, 419B.198**
15 **and 419C.203 that the department is required to reimburse to the commission.**

16 **SECTION 10. Section 9 of this 2005 Act and the amendments to ORS 1.009, 135.050,**
17 **151.216, 151.225, 151.487, 419A.211, 419B.198 and 419C.203 by sections 1 to 8 of this 2005 Act**
18 **apply to moneys collected on or after the effective date of this 2005 Act.**

19 **SECTION 11. No later than five business days after the effective date of this 2005 Act,**
20 **the Public Defense Services Commission shall transfer all moneys that are in the subaccount**
21 **of the Public Defense Services Account referred to in ORS 151.225 (3) on the effective date**
22 **of this 2005 Act to the Judicial Department Operating Account.**

23