

House Bill 2561

Sponsored by Representative WILLIAMSON (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**.

Directs Public Defense Services Commission to adopt policies providing for compensation of appointed counsel at rate commensurate with compensation of equivalent position within office of district attorney.

Prohibits public defense services executive director from negotiating public defense services contract that includes compensation at rate less than that of equivalent position within office of district attorney.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public defense compensation; creating new provisions; amending ORS 151.216 and
3 151.219; and declaring an emergency.

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

5 **SECTION 1.** 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 in the most cost-efficient manner consistent with the Oregon Constitution, the United States
9 Constitution and Oregon and 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) Submit the budget of the commission and the office of public defense services to the Legis-
13 lative Assembly after the budget is submitted to the commission by the director and approved by the
14 commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall
15 present the budget to the Legislative Assembly.

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

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

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

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

23 (B) The appointment of counsel;

24 (C) The fair compensation of counsel appointed to represent a person financially eligible for
25 appointed counsel at state expense **at a rate commensurate with the compensation of an as-**
26 **stant or deputy district attorney of equivalent experience practicing within the same**
27 **county as the county of the appointed counsel's primary practice;**

28 (D) Appointed counsel compensation disputes;

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 (E) Any other costs associated with the representation of a person by appointed counsel in the
 2 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
 3 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
 4 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any
 5 other provision of law that expressly provides for payment of such compensation, costs or expenses
 6 by the commission;

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

8 (G) Performance for legal representation;

9 (H) The contracting of public defense services;

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

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

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

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

20 (i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services
 21 Account established by ORS 151.225 for the costs of personnel and other costs associated with lo-
 22 cation of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court
 23 Administrator.

24 (2) Policies, procedures, standards and guidelines adopted by the commission supersede any
 25 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-
 26 tor, circuit courts, the Court of Appeals, the Supreme Court, the Psychiatric Security Review Board
 27 and the Oregon Health Authority related to the exercise of the commission's administrative re-
 28 sponsibilities under this section and transferred duties, functions and powers as they occur.

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

34 (4) The commission may not:

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

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

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

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

40 151.219. (1) The public defense services executive director shall:

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

45 (b) Implement and ensure compliance with contracts, policies, procedures, standards and guide-

1 lines adopted by the commission or required by statute.

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

4 (d) Negotiate contracts, as appropriate, for providing legal services to persons financially eligi-
5 ble for appointed counsel at state expense, **subject to subsection (3) of this section**. No contract
6 so negotiated is binding or enforceable until the contract has been reviewed and approved by the
7 commission as provided in ORS 151.216.

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

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

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

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

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

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

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

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

27 **(3) The director may not negotiate a public defense services contract that:**

28 **(a) Compensates or allows for the compensation of appointed counsel at a wage less than**
29 **that of an assistant or deputy district attorney of equivalent experience practicing within the**
30 **same county as the county of the appointed counsel's primary practice; or**

31 **(b) Compensates or allows for the compensation of staff members working for appointed**
32 **counsel at a wage less than that of a staff member employed by the district attorney in an**
33 **equivalent position within the same county as the county of the appointed counsel's primary**
34 **practice.**

35 **SECTION 3. The amendments to ORS 151.216 and 151.219 by sections 1 and 2 of this 2017**
36 **Act apply to public defense service contracts negotiated or entered into on or after the ef-**
37 **fective date of this 2017 Act.**

38 **SECTION 4. This 2017 Act being necessary for the immediate preservation of the public**
39 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
40 **on its passage.**