# Chapter 151

## 1973 REPLACEMENT PART
(1979 reprint)

# Public Defenders


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## CROSS REFERENCES

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## COUNTY PUBLIC DEFENDER

**151.010 Public defender services by county; termination.** (1) The board of county commissioners of any county may provide county public defender services by:

(a) Contract with an attorney or group of attorneys; or

(b) Creation of an office of county public defender and appointment of a county public defender as provided in ORS 151.010 to 151.090.

(2) The board of county commissioners may at any time terminate the office of the county public defender.

(3) As used in ORS 151.010 to 151.090, "board of county commissioners" includes county court. [1971 c.432 §1; 1973 c.836 §311]

**151.020 Status of county public defender and staff as county employes.** The county public defender, his deputies and investigators, and other employes of the county public defender shall not be subject to civil service laws or be classified as county employes for purposes of the county retirement plan, unless the board of county commissioners specifically determines by order that they shall participate in the retirement plan. [1971 c 432 §2]

**151.030 Private practice by defender or deputy prohibited in certain cases.** Any county public defender and any deputy county public defender receiving a salary in excess of $13,000 per year shall not engage in a private practice of law. [1971 c.432 §3]

**151.040 Term; qualification; employment by prosecution prohibited.** (1) The term of office of the county public defender is four years, subject to the provisions of subsection (3) of ORS 151.010, and subject to removal from office for cause by the board of county commissioners.

(2) The county public defender shall be an active member of the Oregon State Bar in good standing.

(3) The county public defender shall take an oath of office to support the Constitution of the United States and the Constitution of the State of Oregon.

(4) The county public defender and his deputies shall not be employed in any capacity by the district attorney or other public prosecutor. [1971 c.432 §4]

**151.050 Defender's staff; duties; office expenses paid by county.** (1) Subject to limitations otherwise prescribed by law, when it is necessary to enable the public defender to perform his duties, the county public defender may, with the approval of the board of county commissioners:

(a) Employ one or more attorneys as deputies to exercise such powers, authority and duties of the public defender as he may assign to them;

(b) Employ other individuals, including expert investigators, expert witnesses and interpreters;

(c) Hire professional staff, assistance and clerical staff; and

(d) Do all those acts necessary and proper for the faithful performance of his duties.

(2) The county shall pay all necessary and proper expenses of the office of county public defender, including wages and salaries, in accordance with the county budget laws. This in no way restricts the county from contracting with or entering into agreements with other counties or subdivisions of the state, or with the State of Oregon, or with the United States Government or its agencies for payment of these expenses by agreement or contract as provided in ORS 151.090. [1971 c.432 §5]

**151.060 Appointment to represent indigents by circuit and district courts; authority for appointment by federal and municipal courts.** (1) The circuit or district court of the county for which he is county public defender shall have the power to appoint the county public defender in any proceeding in which, under ORS 135.050 or otherwise, the court has the power to appoint counsel to represent an indigent. A federal or municipal court may appoint the county public defender for a proceeding before it pursuant to an agreement under ORS 151.090.

(2) The county public defender may act as an attorney for an indigent at any stage of any criminal or other proceeding before any state or federal court or magistrate before which the county public defender or his designated deputy is admitted to practice.

(3) The county public defender may act only in any county for which he is county public defender or in a county in which occurs any stage, including judicial review, of a proceeding begun in a county for which he is public defender.

(4) Nothing in ORS 151.010 to 151.090 shall limit the power of any court to appoint counsel to represent an indigent as otherwise provided by law. [1971 c 432 §6]

**151.070 Gifts and grants.** Any county having a public defender may accept gifts, grants, donations, requests or devises to aid and promote the work of the county public defender, and the county public defender may cooperate with nonprofit organizations and government agencies that render legal aid within the county to persons without means to retain an attorney. [1971 c.432 §7]

**151.080 Register of proceedings.** The office of public defender shall maintain a register in which shall be kept a memorandum of each proceeding in which the county public defender serves in his official capacity, and the right to custody of the register shall pass to the county public defender's successor. [1971 c.432 §8]

**151.090 Interagency agreements relating to services of defender.** The provisions of ORS 190.003 to 190.110 shall apply to the powers granted counties by ORS 151.010 to 151.090. The county commissioners of a county with a public defender may also enter into a contract or agreement with the United States Government or any agency of the United States Government for provision of services by the county public defender, and the county may accept payment from the United States Government or agency for such services pursuant to such an agreement or contract. [1971 c.432 §9]

## STATE PUBLIC DEFENDER

**151.210 Definitions for ORS 151.220 to 151.280.** As used in ORS 151.220 to 151.280, unless the context requires otherwise:

(1) "Committee" means the Public Defender Committee appointed under ORS 151.270.

(2) "Defender" means the Public Defender appointed under ORS 151.280. [Formerly 138.710]

**151.220 Public Defender; term; qualifications; deputies.** (1) The defender's term is four years, and he may be reappointed. The office of defender becomes vacant upon the conditions prescribed in ORS 236.010, upon the committee's finding of any of the causes enumerated in subsections (1) to (3) of ORS 241.425, or upon the defender's failure to comply with subsection (2) of this section.

(2) The defender shall be an active member of the Oregon State Bar.

(3) To qualify for office the individual appointed defender shall file with the Secretary of State his signed oath of office to the effect that he will support the Constitution of the United States and the Constitution of Oregon, and that he will faithfully and honestly demean himself in his office.

(4) The defender and his deputies shall be members of the exempt service established by ORS 240.200. One secretary for the defender shall be a member of the unclassified service.

(5) The defender, and any of his deputies who receive a salary of $10,000 per year or more, shall not engage in the private practice of law.

(6) The defender and his deputies shall not be employed in any capacity by a district attorney or other public prosecutor. [Formerly 138.740]

**151.230 Salary and expenses.** (1) The defender shall receive such annual salary as is provided by law. The defender shall receive the minimum salary unless such salary is or has been altered by the Public Defender Committee in the manner prescribed in ORS 292.855 (1975 Replacement Part).

(2) The defender shall be paid by the state in the same manner as other state officers are paid. Such salary shall be the full compensation to the defender for all his services, except for the allowance of his expense as a state officer. [Formerly 138.750]

**151.240 Administrative powers of defender.** (1) When it is necessary to enable the defender to perform his duties, the defender may:

(a) Employ deputies with the power and authority of the defender.

(b) Employ other individuals, including expert investigators, witnesses and interpreters.

(c) Contract for the purchase of materials or other services.

(d) Consult with and, in appropriate cases, join in the defense, any attorney who had previously represented the individual in a case which resulted in a conviction under consideration in the proceeding where the defender represents the individual. Any com-

pensation paid such attorney for services rendered under this paragraph shall be paid solely as provided by ORS 138.490.

(e) Make or assist in making any study, survey or report upon the need for, use of and availability of legal aid to indigent persons in the State of Oregon, and accept payment therefor.

(2) Subject to the express approval of the committee, the defender may accept gifts, grants or services from, or contract with nonprofit organizations, educational institutions and other state or federal agencies; in rendering legal aid to persons without means to retain an attorney and in studying, surveying and reporting on the need, use and availability of such aid in the State of Oregon.

(3) Payment for materials and services procured under this section shall be made in the same manner as other state expenses are paid. [Formerly 138.760]

**151.250 When defender may render services.** (1) In accordance with subsections (2) to (4) of this section and the determinations of the committee under subsection (2) or (7) of ORS 151.280, the defender may act as attorney at any stage of a proceeding before any court, including the Supreme Court, for an individual who is committed to the legal and physical custody of the Corrections Division pursuant to ORS 137.124, and the proceeding is other than:

(a) A habeas corpus proceeding;

(b) A proceeding for which counsel is appointed under ORS 135.045, 135.050, 419.498 or 426.100; or

(c) A proceeding of contempt of court, criminal or civil.

(2) The defender may act only at the request of the individual described in subsection (1) of this section, or, if no such request is made, at the request of the court or magistrate.

(3) The individual on whose behalf the defender is requested to act shall submit to the defender, in the form prescribed by the committee, an affidavit of his financial circumstances.

(4) At the request of the defender or an individual who seeks the defender's aid, the court or magistrate before whom a proceeding is pending or to whom an application for relief has been made, shall finally determine whether the individual is eligible under this section for the defender's aid. [Formerly 138.770; 1973 c.694 §19]

**151.260 Register of proceedings.** The defender shall keep a register in which he shall make a note of each proceeding in which he serves in his official capacity. The right to custody of the register passes to the defender's successor in office, and the defender shall deliver the register to his successor in office. [Formerly 138 780]

**151.270 Public Defender Committee; appointment; expenses; term.** (1) The Supreme Court shall appoint a Public Defender Committee of not fewer than five individuals, who, in the opinion of the court, are qualified by training or experience to perform the functions of the committee. A majority of the committee is a quorum for the transaction of business.

(2) Each member is entitled to compensation and expenses as provided in ORS 292.495.

(3) Each member's term is four years and he may be reappointed. [Formerly 138.720]

**151.280 Duties of committee.** The committee shall:

(1) Appoint a Public Defender;

(2) Determine policies and procedures for the performance of the defender's functions;

(3) Determine standards of eligibility for the defender and his deputies;

(4) Approve the original estimate sheet in connection with the budget for the defender's office and generally be responsible for supervision of the expenditures made for the defender's office;

(5) Prescribe a form of oath of financial circumstances for use under subsection (3) of ORS 151.250;

(6) Prescribe a formula of apportionment of expenses under ORS 137.205; and

(7) Where the defender is unable to perform fully his authorized functions, determine the nature and extent of the services he shall render. [Formerly 138.730]

**151.290 Public Defender's Account.** There hereby is established in the General Fund of the State Treasury an account to be known as the Public Defender's Account. All moneys received by the Public Defender shall be paid into the State Treasury and credited to the Public Defender's Account. All moneys in

the Public Defender's Account hereby are appropriated continuously for and, subject to approval by the Public Defender Committee, shall be used by the Public Defender in carrying out the purposes of ORS 138.480 to 138.500, 138.590 and 151.210 to 151.290.

[Formerly 138.790]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
November 1, 1973.

Thomas G. Clifford
Legislative Counsel

## CHAPTERS 152 TO 155
## [Reserved for expansion]