

Chapter 151

1985 REPLACEMENT PART

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CROSS REFERENCES

Criminal offender information, access by public defenders as criminal justice agencies, 181.010, 181.555

151.250

Post-conviction relief, 138.510 to 138.680

COUNTY CONTRACT FOR COUNSEL TO INDIGENTS

151.010 Public defender services by county. (1) The governing body of a county, on behalf of the county, may contract with an attorney, group of attorneys or full-time not-for-profit public defender organization for the provision by the attorney, group of attorneys or organization of services as counsel for indigents in proceedings in which a court or magistrate has the power to appoint counsel to represent an indigent and the county is required to pay compensation for that representation. If a contract is with an attorney or group of attorneys, each attorney who will provide services under the contract shall satisfy the standards of eligibility established under ORS 151.430 (3)(a). If a contract is with a public defender organization, the organization shall satisfy the standards of eligibility established under ORS 151.430 (3)(b).

(2) A court or magistrate may appoint an attorney who is, or an attorney member of a public defender organization that is, under a contract with a county as provided in this section to represent an indigent in any proceeding in which the court or magistrate has the power to appoint counsel to represent an indigent and the county is required to pay compensation for that representation. [1971 c.432 §1; 1973 c.836 §311; 1985 c.502 §11]

Note: Section 12, chapter 502, Oregon Laws 1985, provides:

Sec. 12. (1) The amendment of ORS 151.010 by section 11 of this Act does not affect the obligation of any contract entered into under ORS 151.010 (1)(a) before January 1, 1986.

(2) The requirements of the amendment of ORS 151.010 by section 11 of this Act that an attorney or public defender organization shall satisfy standards of eligibility established under subsection (3) of section 5 of this Act are applicable only to contracts entered into on or after January 1, 1986, and are first applicable July 1, 1986.

151.020 [1971 c.432 §2; repealed by 1985 c.502 §13]

151.030 [1971 c.432 §3; repealed by 1985 c.502 §13]

151.040 [1971 c.432 §4; 1983 c.740 §22; repealed by 1985 c.502 §13]

151.050 [1971 c.432 §5; repealed by 1985 c.502 §13]

151.060 [1971 c.432 §6; repealed by 1985 c.502 §13]

151.070 [1971 c.432 §7; repealed by 1985 c.502 §13]

151.080 [1971 c.432 §8; repealed by 1985 c.502 §13]

151.090 [1971 c.432 §9; repealed by 1985 c.502 §13]

151.150 [1981 s.s. c.3 §117; 1985 c.502 §9; renumbered 151.460]

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 the defender 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 ORS 241.425 (1) to (3), 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 a signed oath of office to the effect that the individual will support the Constitution of the United States and the Constitution of Oregon, and that the individual will faithfully and honestly perform in office.

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

(6) The defender and the deputies of the defender 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.

(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 services, except for the allowance of expense as a state officer. [Formerly 138.750; 1983 c.740 §23]

151.240 Administrative powers of defender. (1) When it is necessary to enable the defender to perform the duties of the defender, 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 compensation 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 ORS 151.280 (2) or (7), 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 commit-

tee, an affidavit of the financial circumstances of the individual.

(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 the defender shall make a note of each proceeding in which the defender serves in an 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 a 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 the member 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 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 ORS 151.250 (3);

(6) Prescribe a formula of apportionment of expenses; and

(7) Where the defender is unable to perform fully authorized functions, determine the nature and extent of the services the defender shall render. [Formerly 138.730; 1983 c.740 §24]

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]

STATE INDIGENT DEFENSE PROGRAM

151.410 State Indigent Defense Board; State Indigent Defense Administrator; authority. The State Indigent Defense Board and the office of State Indigent Defense Administrator are established in the judicial branch of state government. The board, administrator and employes of the administrator are not subject to the exercise of administrative authority and supervision by the Chief Justice of the Supreme Court as the administrative head of the judicial department, by the courts in the judicial department or by the administrative heads of those courts. [1985 c.502 §2]

151.420 Board membership; qualifications; terms; quorum; officers; expenses.

(1) The State Indigent Defense Board consists of seven members appointed by the Chief Justice of the Supreme Court.

(2) At least one member of the board shall be a resident of each congressional district of the state. At least four members shall be active members of the Oregon State Bar. At least two members shall not be lawyers. A member shall not serve concurrently as a judge, a prosecuting attorney, a public defender, an employe of a law enforcement agency or an appointed counsel compensated by the state to represent an indigent in any court of this state or in a hearing conducted by the Psychiatric Security Review Board.

(3) The term of membership of a member of the board is four years, beginning on July 1. A member is eligible for reappointment if qualified for membership at the time of reappointment, but is not eligible for reappointment for a third consecutive four-year term. The position of a member shall become vacant if the member fails to attend two consecutive meetings of the board for any cause not approved by the chairperson of the board. If there is a vacancy for any cause in the position of member before the expiration of the term of membership, the Chief Justice shall make an appointment to become immediately effective for the unexpired term.

(4) The board shall select one of its members as chairperson and another as vice-chairperson,

for such terms and with such functions as the board may determine.

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

(6) A member of the board shall not receive compensation for services as a member, but is entitled to expenses as provided in ORS 292.495 (2). [1985 c.502 §3]

151.430 Duties of board; indigent defense committees; biennial reports; budget estimates. (1) The State Indigent Defense Board shall conduct a continuing study and evaluation of various methods for the provision of appointed counsel compensated at public expense to represent indigents in the courts of this state or municipal courts.

(2) The board shall develop, evaluate and modify as appropriate for each judicial district a plan for the provision of appointed counsel compensated by the state to represent indigents in proceedings in the circuit and district courts in the judicial district and in appeals therefrom. A plan may apply to one judicial district or two or more adjoining judicial districts.

(3) The board shall establish standards of eligibility for:

(a) Appointed counsel compensated at public expense to represent indigents in the courts of this state or municipal courts; and

(b) Full-time not-for-profit public defender organizations whose attorney members serve as appointed counsel compensated at public expense to represent indigents in the courts of this state or municipal courts.

(4) The board shall provide copies of standards of eligibility established under subsection (3) of this section to all judges who have the power to appoint counsel referred to in subsection (3) of this section and to the Psychiatric Security Review Board.

(5) The board shall establish a schedule of minimum fair compensation payable to appointed counsel compensated by the state to represent indigents in the courts of this state or in hearings conducted by the Psychiatric Security Review Board. No minimum compensation set forth in the schedule shall be less than \$30 per hour.

(6) Subsections (2), (3) and (5) of this section do not apply to the Public Defender established by ORS 151.280 or deputies of the defender.

(7) The board shall establish standards and procedures for contracting for services of counsel for indigents under ORS 151.150.

(8) The board may designate for any judicial district or two or more adjoining judicial districts an indigent defense committee. If a committee is designated, the board shall consult with and consider recommendations of the committee relating to the performance of duties of the board under subsections (2), (3), (5) and (7) of this section in respect to the district or districts for which the committee is designated.

(9) If an indigent defense committee is not designated for a judicial district under subsection (8) of this section, the board shall consult with and consider recommendations of judges and local bar associations in the district and committees of the Oregon State Bar relating to the performance of duties of the board under subsections (2), (3), (5) and (7) of this section in respect to the district.

(10) The board shall report biennially to the Chief Justice of the Supreme Court, the Governor and the presiding officers of the Legislative Assembly on the activities of the board and the office of State Indigent Defense Administrator.

(11) The board shall prepare, approve and submit budget estimates and requests for appropriations for the office of State Indigent Defense Administrator. Those budget estimates and requests are not subject to ORS 291.208 and shall be filed with the Executive Department only for the purpose of inclusion, without change or revision by the Executive Department or Governor, in the budget report of the Governor. Appropriations for the office of administrator are not subject to the allotment system referred to in ORS 291.234. [1985 c 502 §5]

151.440 State Indigent Defense Administrator; compensation; appointment; powers. (1) The State Indigent Defense Board shall appoint, may remove at pleasure and shall fix the compensation of the State Indigent Defense Administrator.

(2) The administrator shall perform the duties, powers and functions of the office under the supervision and subject to the direction of the board.

(3) The administrator may appoint and shall fix the compensation of employees to perform or assist in the performance of duties, powers and functions of the administrator.

(4) The administrator may enter into contracts, not subject to ORS 291.021, for personal services to assist in the performance of duties, powers and functions of the administrator. The administrator also may accept personal services provided without compensation to assist in the

performance of duties, powers and functions of the administrator, but may reimburse persons providing those services for actual and necessary expenses incurred in providing those services.

(5) The State Indigent Defense Administrator and State Court Administrator may enter into agreements whereby the court administrator provides services, facilities and materials to assist in the performance of the duties, powers and functions of the indigent defense administrator. The services, facilities and materials may include, but are not limited to, those relating to accounting, budgeting, purchasing and information systems. [1985 c.502 §6]

151.450 Duties and powers of administrator. (1) The State Indigent Defense Administrator shall:

(a) Provide services, facilities and materials necessary for the performance of duties, powers and functions by the State Indigent Defense Board.

(b) Pay the expenses of the board and the office of administrator.

(c) Pay the compensation for counsel, other than the Public Defender established by ORS 151.280, appointed to represent indigents in the courts of this state, and other costs and expenses of indigents in the courts of this state, that are required to be paid by the state under ORS 34.355, 135.055, 138.490, 138.500, 138.590, 161.327, 161.385, 419.498, 419.563, 426.100, 426.135, 427.265, 427.295, 436.265 and 436.315.

(d) Pay the fees and expenses of qualified interpreters for indigent handicapped persons required to be paid by the state under ORS 40.325 (4) and 133.515 (2).

(e) Develop a system for conducting financial and performance audits of indigent defense contracts.

(2) The administrator may:

(a) Collect, compile, publish and distribute statistical data, case studies and other information pertinent to the provision of appointed counsel compensated at public expense to represent indigents in the courts of this state or municipal courts and the costs and expenses of indigents in those courts.

(b) Conduct education programs for attorneys and other persons pertinent to representation by appointed counsel of indigents in the courts of this state or municipal courts, and charge and collect fees for participation in those programs. Fees so collected shall be deposited in the General Fund available for general governmental expenses.

(c) Accept and expend or use gifts or grants of money or property from any public or private source made available for the purpose of assisting in the performance of duties, powers and functions by the board or the office of administrator. Moneys so accepted shall be deposited in separate trust funds in the State Treasury and expended for the purposes for which given or granted. [1985 c.502 §7]

151.460 Authority of administrator to provide counsel to indigents. (1) The State Indigent Defense Administrator, on behalf of the state, may contract with an attorney, group of attorneys or full-time not-for-profit public defender organization for the provision by the attorney, group of attorneys or organization of services as counsel for indigents in proceedings in which a court or magistrate has the power to appoint counsel to represent an indigent and the state is required to pay compensation for that representation. If a contract is with an attorney or group of attorneys, each attorney who will provide services under the contract shall satisfy the standards of eligibility established under ORS 151.430 (3)(a). If a contract is with a public defender organization, the organization shall satisfy the standards of eligibility established under ORS 151.430 (3)(b).

(2) Each contract to be entered into under this section is subject to approval by the State Indigent Defense Board before the contract is entered into. The expense of services provided under a contract shall be paid by the State Indigent Defense Administrator from funds available for the purpose.

(3) A court or magistrate may appoint an attorney who is, or an attorney member of a public defender organization that is, under a contract with the state as provided in this section to represent an indigent in any proceeding in which the court or magistrate has the power to appoint counsel to represent an indigent and the state is required to pay compensation for that representation.

(4) This section does not apply to proceedings in which the Public Defender established by ORS 151.280 is authorized, able and appointed to provide services as counsel for indigents.

(5) ORS 279.051 and 291.021 do not apply to contracts entered into under this section or to persons who will provide services thereunder. [Formerly 151.150]

Note: Section 10, chapter 502, Oregon Laws 1985, provides:

Sec. 10. (1) The amendment of ORS 151.150 by section 9 of this Act does not affect the obligation of any contract

entered into under ORS 151.150 before January 1, 1986, but the State Indigent Defense Administrator is substituted for the State Court Administrator as a party on behalf of the state to any such contract in effect on January 1, 1986.

(2) The requirements of the amendment of ORS 151.150 by section 9 of this Act that an attorney or public defender organization shall satisfy standards of eligibility established under subsection (3) of section 5 of this Act are applicable only to contracts entered into on or after January 1, 1986, and are first applicable July 1, 1986.

151.470 Arbitration of disagreements over compensation of appointed counsel; procedure; review of arbitration decision.

(1) The State Indigent Defense Board shall establish a program for arbitration and decision in cases of disagreement between the Supreme Court, the Court of Appeals, a circuit, district, county or justice's court or the Psychiatric Security Review Board and an attorney appointed to serve as counsel compensated by the state or a county to represent an indigent in a proceeding in the court or hearing conducted by the Psychiatric Security Review Board in respect to the compensation of counsel or the costs and expenses of the indigent in the proceeding or hearing. The indigent defense board shall establish procedures, consistent with this section, for arbitration and decision proceedings under this section.

(2) A proceeding for arbitration and decision under this section shall be commenced upon receipt pursuant to the procedures established by the indigent defense board of a written request from the attorney, with proof of delivery of a copy of the request to the court or Psychiatric Security Review Board before that court or board enters an order directing payment of the compensation or costs and expenses in respect to which there is disagreement. Delivery of a copy of the request to the court shall stay entry of an order of the court directing payment pending a final arbitration decision.

(3) Upon receipt of a request as provided in subsection (2) of this section, a proceeding under this section shall be conducted. The proceeding shall be conducted by an arbitrator designated by the indigent defense board or otherwise as provided in subsection (5) of this section.

(4) Except as otherwise provided in this subsection, the decision of an arbitrator in a proceeding under this section is final. The indigent defense board may establish procedures whereby the decisions of arbitrators may be reviewed. A decision in respect to a review is final. The final decision of an arbitrator or in respect to a review thereof shall be submitted to the court or Psychiatric Security Review Board and the attorney.

The decision shall be the basis for the appropriate order directing payment.

(5) The indigent defense board may delegate responsibility for the conduct of a proceeding under this section or review of the decision of an arbitrator therein to an indigent defense committee designated under ORS 151.430 (8) in the judicial district or districts for which the committee is designated. The indigent defense board may use other means for that conduct or review in any judicial district.

(6) This section does not apply to the compensation of appointed counsel if counsel is the Public Defender established by ORS 151.280 or counsel who is under contract to provide services for the proceeding in the court pursuant to ORS 151.010 or 151.150. [1985 c.502 §15]

Note: Section 16, chapter 502, Oregon Laws 1985, provides:

Sec. 16. (1) Section 15 of this Act does not apply to the compensation of appointed counsel or the costs and expenses of an indigent in respect to which a court or the Psychiatric Security Review Board enters, before July 1, 1986, an order directing payment.

(2) A request for arbitration and decision under section 15 of this Act submitted before July 1, 1986, shall not be considered.

151.480 Appointment of counsel other than Public Defender. When a court or magistrate has the power to appoint counsel to represent an indigent in a proceeding in a circuit, district, county, justice's or municipal court or in an appeal therefrom and the state, a county or a city is required to pay compensation for that representation, and the court or magistrate does not appoint the Public Defender established by ORS 151.280 or counsel who is under contract to provide services for the proceeding or appeal pursuant to ORS 151.010 or 151.150, the court or magistrate shall appoint as counsel:

(1) An attorney who, in the opinion of the court or magistrate, satisfies the standards of eligibility established under ORS 151.430 (3)(a); or

(2) An attorney member of a full-time not-for-profit public defender organization that, in the opinion of the court or magistrate, satisfies the standards of eligibility established under ORS 151.430 (3)(b). [1985 c.502 §18]

CHAPTER 152

[Reserved for expansion]