

# Chapter 151

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**PROCEDURE IN CRIMINAL MATTERS GENERALLY**

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### 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]

151.020 [1971 c.432 §2; repealed by 1985 c.502 §13]

151.030 [1971 c.432 §3; repealed by 1985 c.502 §13]

151.040 [1971 c.432 §4; 1983 c.740 §22; repealed by 1985 c.502 §13]

151.050 [1971 c.432 §5; repealed by 1985 c.502 §13]

151.060 [1971 c.432 §6; repealed by 1985 c.502 §13]

151.070 [1971 c.432 §7; repealed by 1985 c.502 §13]

151.080 [1971 c.432 §8; repealed by 1985 c.502 §13]

151.090 [1971 c.432 §9; repealed by 1985 c.502 §13]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

sons 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 Department of Corrections 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 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; 1987 c.320 §84]

**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 [1985 c.502 §2; repealed by 1987 c.803 §27]

151.420 [1985 c.502 §3; repealed by 1987 c.803 §27]

**151.430 Duties of State Court Administrator.** (1) The State Court Administrator shall conduct a continuing study and evaluation of various methods for the provision of appointed counsel compensated at state ex-

pense to represent indigents in the state courts.

(2) The State Court Administrator 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 State Court Administrator shall establish standards of eligibility for:

(a) Appointed counsel compensated at public expense to represent indigents in the state 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 state courts.

(4) The State Court Administrator 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.

(5) The State Court Administrator shall establish a schedule of fair compensation payable to appointed counsel compensated by the state to represent indigents in the state courts. No compensation set forth in the schedule shall be less than \$30 per hour.

(6) The State Court Administrator may establish cost guidelines and standards for the approval and payment of compensation and expenses incurred in the defense of indigent persons whose legal counsel is required to be paid by the State Court Administrator pursuant to ORS 151.450.

(7) 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.

(8) The State Court Administrator shall establish standards and procedures for contracting for services of counsel for indigents under ORS 151.460. [1985 c.502 §5; 1987 c.803 §10]

151.440 [1985 c.502 §6; repealed by 1987 c.803 §27]

**151.450 Additional duties and powers of administrator.** The State Court Administrator shall:

(1) Pay the compensation for counsel, other than the Public Defender established by ORS 151.280, appointed to represent indigents in the state courts, and other costs and expenses of that representation that are required to be paid by the state under ORS 33.095, 34.355, 135.055, 138.490, 138.500, 138.590, 161.327, 161.365, 161.385, 419.498,

419.525, 419.563, 426.100, 426.135, 426.275, 426.307, 427.265, 427.295, 436.265, 436.315 or any other provisions of law that expressly provide for payment of such compensation costs or expenses by the State Court Administrator.

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

(3) Develop a system for conducting financial and performance audits of indigent defense contracts. [1985 c.502 §7; 1987 c.803 §11]

**151.460 Authority of administrator to provide counsel to indigents.** (1) The State Court 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). A contract entered into under this subsection may be for the provision of services to indigents in appellate proceedings.

(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 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.

(3) 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. [Formerly 151.150; 1987 c.803 §12; 1989 c.1053 §8]

**151.465 State Court Indigent Defense Account.** (1) There is created a State Court Indigent Defense Account in the General Fund which is continuously appropriated to the State Court Administrator to pay compensation of counsel and other expenses in connection with the legal representation of indigent persons, for which the State Court Administrator is responsible by law. Such expenses shall be paid only from funds specifically appropriated therefor, and no other

moneys appropriated to the Judicial Department or State Court Administrator shall be used for these purposes.

(2) All moneys appropriated to the Judicial Department or State Court Administrator to pay compensation of counsel and other expenses in connection with the legal representation of indigent persons for which the State Court Administrator is responsible by law shall be deposited in the State Court Indigent Defense Account. [1987 c.803 §9]

**Note:** 151.465 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 151 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

151.470 [1985 c.502 §15, repealed by 1987 c.803 §27]

**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 151.460, 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]

#### DETERMINATION OF INDIGENCY

**151.485 Indigency; determination; financial statement; termination of appointed counsel.** (1) For purposes of determining the financial eligibility for court-appointed counsel of persons with a constitutional or statutory right to counsel in matters before the state courts and whose counsel is authorized to be paid by the State Court Administrator under ORS 151.450, a person is indigent if the person is determined to be financially unable to retain adequate counsel without substantial hardship in providing basic economic necessities to the person or the person's dependent family.

(2) A determination of indigence shall be made upon the basis of information contained in a detailed financial statement submitted by the person for whom counsel is requested or appointed or, in an appropriate case, by the person's parent, guardian or custodian.

The financial statement shall be in the form prescribed by the State Court Administrator and approved by the Supreme Court. The form shall contain a full disclosure of all assets, liabilities, current income, dependents and other information required by ORS 135.050 (3) and, in addition, any information required by the State Court Administrator as necessary to determine eligibility. The State Court Administrator shall promulgate and issue uniform state-wide guidelines and procedures that have been approved by the Supreme Court and that prescribe how the form will be used in the state courts and how the eligibility for court-appointed counsel will be determined. If a person is granted legal assistance as an indigent, the financial statements shall be filed and retained in the person's court file.

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

(4) In addition to any criminal prosecution, a civil proceeding may be initiated by any public body that has expended moneys for the defendant's legal assistance within two years of judgment if the defendant was not qualified for legal assistance in accordance with subsections (1) and (2) of this section. As used in this subsection, "legal assistance" includes legal counsel, transcripts, witness fees and expenses and any other goods or services required by law to be provided to an indigent person at state expense under ORS 151.450.

(5) The civil proceeding shall be subject to the exemptions from execution as provided for by law. [1989 c.1053 §13]

**151.487 Partial ability to pay; effect.** (1) If in determining that a person is eligible for court-appointed counsel after applying the guidelines and standards issued by the State Court Administrator under ORS 151.485, the court finds that the person has financial resources that enable the person to offset in part the costs of the legal services to be provided, the court shall order the person to pay to the General Fund, through the clerk of the court, the amount that it finds the person is able to pay without creating substantial hardship in providing basic economic necessities to the person or the person's dependent family. The amount that a court may order the person to pay shall be subject to the guidelines and procedures is-

sued by the State Court Administrator as provided in subsection (4) of this section.

(2) Failure to obey an order under this section shall not be grounds for contempt or grounds for withdrawal by the appointed attorney, but any part of the amount ordered under this section and not paid may be included in any costs that may be legally assessed at the conclusion of a case or matter:

(a) As against a defendant under and in accordance with the procedures in ORS 161.665;

(b) As against a juvenile under ORS 419.582; or

(c) If not a criminal or juvenile matter, enforced against the person as a civil judgment as otherwise permitted by law.

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

(4) The State Court Administrator shall promulgate and issue guidelines and procedures that have been approved by the Supreme Court:

(a) For the determination of persons provided with court-appointed counsel who have some financial resources to offset in part the costs of the legal services to be provided; and

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

(5) The determination that a person is partially able to pay, or that a person no longer has the ability to pay the amount ordered in subsection (1) of this section, shall be subject to review at any time by any court

before which the matter is then pending. [1989 c.1053 §14]

**151.489 Personnel to verify indigency.** For the purpose of aiding courts in implementing indigency eligibility determinations under ORS 151.485 and 151.487, the State Court Administrator may locate indigency verification and screening positions in the state trial and appellate courts and may prescribe the policies and procedures for their use. [1989 c.1053 §15]

**151.491 Authority of person verifying indigency.** (1) The State Court Administrator or authorized designee who conducts the verification of the financial statement submitted by a person seeking or having appointed counsel payable at state expense under ORS 151.450 shall have the authority to require the person to execute and deliver any written requests or authorizations as may be necessary under applicable law to provide the State Court Administrator or authorized designee with access to records of public or private source, otherwise confidential, as may be needed to evaluate eligibility.

(2) In performing the verification duties under subsection (1) of this section, the State Court Administrator or authorized designee is authorized to obtain information from any public record office of the state or of any subdivision or agency of the state upon request and without payment of any fees ordinarily required by law. [1989 c.1053 §16]

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## CHAPTER 152

[Reserved for expansion]

**PROCEDURE IN CRIMINAL MATTERS GENERALLY**

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