Chapter 151

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COUNTY CONTRACT FOR COUNSEL TO FINANCIALLY ELIGIBLE PERSONS

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 financially eligible persons in proceedings in which a court or magistrate has the power to appoint counsel to represent a financially eligible person and the county is required to pay compensation for that representation.

(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 a financially eligible person in any proceeding in which the court or magistrate has the power to appoint counsel to represent a financially eligible person and the county is required to pay compensation for that representation. [1971 c.432 §1; 1973 c.836 §311; 1985 c.502 §11; 2001 c.962 §32]

151.020 [1971 c.432 §2; repealed by 1985 c.502 §13]

151.030 [1971 c.432 §3; repealed by 1985 c.502 §13]

151.040 [1971 c.432 §4; 1983 c.740 §22; repealed by 1985 c.502 §13]

151.050 [1971 c.432 §5; repealed by 1985 c.502 §13]

151.060 [1971 c.432 §6; repealed by 1985 c.502 §13]

151.070 [1971 c.432 §7; repealed by 1985 c.502 §13]

151.080 [1971 c.432 §8; repealed by 1985 c.502 §13]

151.090 [1971 c.432 §9; repealed by 1985 c.502 §13]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

151.210 [Formerly 138.710; repealed by 2001 c.962 §114]

PUBLIC DEFENSE SERVICES COMMISSION

151.211 Definitions. For purposes of ORS 151.211 to 151.221:

(1) "Bar member" means an individual who is an active member of the Oregon State Bar.

(2) "Chief Justice" means the Chief Justice of the Oregon Supreme Court.

(3) "Commission" means the Public Defense Services Commission.

(4) "Director" means the public defense services executive director appointed under ORS 151.216.

(5) "Office of public defense services" means the office established by the commission under the director to handle the cases assigned and to carry out the administrative policies and procedures for the public defense system. [2001 c.962 §1]

Note: 151.211 to 151.225 were enacted into law by the Legislative Assembly but were 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.

151.213 Public Defense Services Commission; membership; terms. (1) The Public Defense Services Commission is established in the judicial branch of state government. Except for the appointment or removal of commission members, the commission and employees of the commission 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.

(2) The commission consists of seven members appointed by order of the Chief Justice. In addition to the seven appointed members, the Chief Justice serves as a nonvoting, ex officio member. The Chief Justice shall appoint at least two persons who are not bar members, at least one person who is a bar member and who is engaged in criminal defense representation and at least one person who is a former Oregon state prosecutor. Except for the Chief Justice or a senior judge under ORS 1.300, a member may not serve concurrently as a judge, a prosecuting attorney or an employee of a law enforcement agency. A person who is primarily engaged in providing public defense services may not serve as a member of the commission.

(3) The term of a member is four years beginning on the effective date of the order of the Chief Justice appointing the member. A member is eligible for reappointment if qualified for membership at the time of reappointment. A member may be removed from the commission by order of the Chief Justice. If a vacancy occurs for any cause before the expiration of the term of a member, the Chief Justice shall make an appointment to become immediately effective for the unexpired term.

(4) A chairperson and a vice chairperson shall be appointed by order of the Chief Justice every two years with such functions as the commission may determine. A member is eligible for reappointment as chairperson or vice chairperson.

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

(6) A member of the commission is not entitled to compensation for services as a member, but is entitled to expenses as provided in ORS 292.495 (2). [2001 c.962 §2; 2003 c.449 §15]

Note: See note under 151.211.

151.216 Duties; rules. (1) The Public Defense Services Commission shall:

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

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

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

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

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

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

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

(B) The appointment of counsel;

(C) The fair compensation of counsel appointed to represent a person financially eligible for appointed counsel at state expense;

(D) Appointed counsel compensation disputes;

(E) Any other costs associated with the representation of a person by appointed counsel in the state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590, 161.346, 161.365, 161.385, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209, 419C.408, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any other provision of law that expressly provides for payment of such compensation, costs or expenses by the commission;

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

(G) Performance for legal representation;

(H) The contracting of public defense services;

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

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

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

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

(i) Reimburse the State Court Administrator from funds deposited in the subaccount established under ORS 151.225 for the costs of personnel and other costs associated with location of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court Administrator.

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

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

(4) The commission may not:

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

(b) Have access to any case file; or

(c) Interfere with the director or any member of the staff of the director in carrying out professional duties involving the legal representation of public defense clients. [2001 c.962 §§3,106; 2003 c.449 §§1,2,42]

Note: See note under 151.211.

151.219 Public defense services executive director; duties. (1) The public defense services executive director shall:

(a) Recommend to the Public Defense Services Commission how to establish and maintain, in a cost-effective manner, the delivery of legal services to persons entitled to, and financially eligible for, appointed counsel

at state expense under Oregon statutes, the Oregon Constitution, the United States Constitution and consistent with Oregon and national standards of justice.

(b) Implement and ensure compliance with contracts, policies, procedures, standards and guidelines adopted by the commission or required by statute.

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

(d) Negotiate contracts, as appropriate, for providing legal services to persons financially eligible for appointed counsel at state expense. No contract so negotiated is binding or enforceable until the contract has been reviewed and approved by the commission as provided in ORS 151.216.

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

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

(g) Provide services, facilities and materials necessary for the performance of the duties, functions and powers of the Public Defense Services Commission.

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

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

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

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

(2) The director may designate persons as representatives of the director for the purposes of determining and paying bills submitted to the office of public defense services and determining preauthorization for incurring fees and expenses under ORS 135.055. [2001 c.962 §§4,106a; 2003 c.449 §§3,4]

Note: See note under 151.211.

151.220 [Formerly 138.740; repealed by 2001 c.962 §114]

151.221 Status of officers and employees of office of public defense services. Officers and employees of the office of public defense services, who are appointed under a personnel plan adopted by the Public Defense Services Commission, are state officers or employees in the exempt service and are not subject to ORS chapter 240. [2003 c.449 §17]

Note: See note under 151.211.

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

(2) All moneys appropriated to the commission to pay compensation of counsel and other expenses in connection with the legal representation of persons for which the commission is responsible by law shall be deposited in the Public Defense Services Account.

(3) All moneys received by the Judicial Department under ORS 135.050 (8), 151.487 (1), 151.505 (3), 419A.211, 419B.198 (1) or 419C.203 (1) shall be deposited in a separate subaccount created in the Public Defense Services Account to be used by the public defense services executive director to reimburse the actual costs and expenses, including personnel expenses, incurred in administration and support of the public defense system.

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

(5) As used in this section, "other expenses in connection with the legal representation of persons for which the commission is responsible by law" includes expenses incurred in the administration of the public defense system. [2001 c.962 §§5,106b]

Note: See note under 151.211.

151.230 [Formerly 138.750; 1983 c.740 §23; repealed by 2001 c.962 §114]

151.240 [Formerly 138.760; repealed by 2001 c.962 §114]

151.250 [Formerly 138.770; 1973 c.694 §19; 1987 c.320 §84; 1991 c.724 §26; 1993 c.33 §303; 1995 c.117 §3; repealed by 2001 c.962 §114]

151.260 [Formerly 138.780; repealed by 2001 c.962 §114]

151.270 [Formerly 138.720; repealed by 2001 c.962 §114]

151.280 [Formerly 138.730; 1983 c.740 §24; repealed by 2001 c.962 §114]

151.290 [Formerly 138.790; repealed by 2001 c.962 §114]

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 [1985 c.502 §5; 1987 c.803 §10; 1995 c.677 §2; 2001 c.962 §109; repealed by 2001 c.962 §115]

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

151.450 [1985 c.502 §7; 1987 c.803 §11; 1991 c.724 §27; 1991 c.750 §9; 1993 c.33 §304; 2001 c.480 §13; 2001 c.962 §110; repealed by 2001 c.962 §115]

151.460 [Formerly 151.150; 1987 c.803 §12; 1989 c.1053 §8; 1995 c.677 §3; 2001 c.962 §111; repealed by 2001 c.962 §115]

151.465 [1987 c.803 §9; 1997 c.761 §13; 2001 c.480 §14; repealed by 2001 c.962 §115]

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

151.480 [1985 c.502 §18; 2001 c.962 §112; repealed by 2001 c.962 §115]

DETERMINATION OF FINANCIAL ELIGIBILITY

151.485 Financial eligibility; determination; financial statement; termination of appointed counsel. (1) For purposes of determining the financial eligibility for 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 public defense services executive director under ORS 151.219, a person is financially eligible for appointed counsel 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 under standards established by the Public Defense Services Commission under ORS 151.216.

(2) A determination of financial eligibility 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 Public Defense Services Commission. The form shall contain a full disclosure of all assets, liabilities, current income, dependents and other information required by ORS 135.050 (4) and, in addition, any information required by the commission and state courts as necessary to determine eligibility. The commission shall adopt uniform statewide guidelines and procedures that prescribe how to use the form and determine financial eligibility for appointed counsel.

(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 a financially eligible person at state expense under ORS 151.216 and 151.219.

(5) The civil proceeding shall be subject to the exemptions from execution as provided for by law. [1989 c.1053 §13; 1991 c.825 §6; 2001 c.962 §33]

151.487 Ability to pay; effect. (1) If in determining that a person is financially eligible for appointed counsel under ORS 151.485, the court finds that the person has financial resources that enable the person to pay in full or in part the administrative costs of determining the eligibility of the person and the costs of the legal and other services to be provided at state expense that are related to the provision of appointed counsel, the court shall order the person to pay to the Public Defense Services Account in 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 is subject to the guidelines and procedures issued by the Public Defense Services Commission as provided in subsection (4) of this section.

(2) Failure to obey an order under this section is not 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:

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

(b) Enforced as otherwise permitted by law.

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

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

(a) For the determination of persons provided with appointed counsel who have some

financial resources to pay in full or in part the administrative, legal and other costs under subsection (1) of this section; and

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

(5) The determination that a person is able to pay or partially able to pay, or that a person no longer has the ability to pay the amount ordered in subsection (1) of this section, is subject to review at any time by the court. [1989 c.1053 §14; 1993 c.33 §305; 1997 c.761 §3; 2001 c.962 §34]

151.489 Personnel to verify financial eligibility. For the purpose of aiding courts in making determinations of financial eligibility for appointed counsel at state expense under ORS 151.485 and 151.487, the State Court Administrator may locate eligibility verification and screening personnel or otherwise arrange for such services in the state trial and appellate courts or other locations and shall prescribe the policies and procedures for their use. [1989 c.1053 §15; 2001 c.962 §35]

151.491 Authority of person verifying financial eligibility. (1) State courts or authorized designees who conduct the verification of the financial statement submitted by a person seeking or having appointed counsel payable at state expense under ORS 151.216 and 151.219 may require the person to execute and deliver any written requests or authorizations as may be necessary under applicable law to provide the state court 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 courts are 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; 2001 c.962 §36]

151.493 Release of information by state agency to State Court Administrator. (1) Notwithstanding any other provision of law, any state agency as defined in ORS 192.410 that receives a request for release of information from the state courts for the purpose of verifying the financial eligibility of a person under ORS 151.485 to 151.497 shall release all requested information to the state court. The court shall forward to the state agency a certification signed by the person about whom the requested information is sought that authorizes the release of the information.

(2) Upon its own motion or motion of the public defense services executive director, a court that has appointed counsel for a person by reason of financial eligibility may order the release of any information relating to the person's financial situation held by any other person. [1991 c.825 §4; 2001 c.962 §37]

151.495 Confidentiality of information obtained by state courts; exceptions. (1) All information supplied by a person seeking appointed counsel and all information collected by the state courts for purposes of determining financial eligibility for appointed counsel under ORS 151.485 to 151.497 is confidential and shall not be used for any purpose other than determining financial eligibility.

(2) Notwithstanding subsection (1) of this section, information supplied by a person seeking appointed counsel and information collected by the state courts for purposes of determining financial eligibility may be:

(a) Introduced in a proceeding, criminal or civil, arising out of a determination that a person is not financially eligible for appointed counsel;

(b) Introduced in a proceeding, criminal or civil, arising as a result of an allegation that a person has supplied false information in seeking appointed counsel;

(c) Used by the court in a sentencing proceeding resulting from the defendant's conviction on the matter for which the information was provided or collected; and

(d) Used by the court, the Department of Revenue, or the assignees of the court or the Department of Revenue, for the purpose of collecting delinquent amounts owed to this state by the person. [1991 c.825 §5; 1997 c.761 §4; 2001 c.962 §38]

151.497 "Counsel" defined. As used in ORS 151.485 to 151.497 unless the context requires otherwise, "counsel" includes a legal advisor appointed under ORS 135.045. [2001 c.472 §10]

MISCELLANEOUS

151.505 Authority of court to order repayment of costs related to provision of appointed counsel. (1) At the conclusion of a case or matter in which the first accusatory instrument or petition in the trial court was filed after January 1, 1998, and in which the court appointed counsel to represent a person, a trial, appellate or post-conviction court may include in its judgment an order that the person repay in full or in part the administrative costs of determining the eligibility of the person for appointed counsel and the costs of the legal and other services that are related to the provision of appointed counsel.

(2) Costs repayable under this section include a reasonable attorney fee for counsel

appointed to represent the person and a reasonable amount for expenses authorized under ORS 135.055. A reasonable attorney fee is presumed to be a reasonable number of hours at the hourly rate authorized by the Public Defense Services Commission under ORS 151.216. For purposes of this subsection, compensation of counsel is determined by reference to a schedule of compensation established by the commission.

(3) Costs repayable under this section do not include costs imposed and paid under a previous order under ORS 151.487, but may include costs imposed under an order under ORS 151.487 that are unpaid at the time the judgment is filed.

(4) The court may not order a person to pay costs under this section unless the person is or may be able to pay the costs. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the person and the nature of the burden that payment of costs will impose.

(5) A person who has been ordered to pay costs under this section and who is not in contumacious default in the payment of the costs may at any time petition the court for remission of the payment of costs or any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the person ordered to repay or on the immediate family of the person, the court may remit all or part of the amount due or modify the method of payment.

(6) Except for moneys payable under subsection (1) of this section pursuant to an order under ORS 151.487, all moneys collected or paid under this section shall be paid into the General Fund and credited to the Criminal Fine and Assessment Account.

(7) Any part of the costs ordered to be paid under this section that is not paid may be enforced against the person as provided in ORS 137.450 if the judgment is a judgment in a criminal action or in the same manner as unpaid costs may be enforced under ORS 151.487. [1997 c.761 §2; 2001 c.962 §39; 2003 c.334 §§1,2; 2003 c.449 §§18,19]

Note: 151.505 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.

CHAPTER 152

[Reserved for expansion]