

D R A F T

SUMMARY

Expands membership of Public Defense Services Commission from seven to nine members. Modifies qualifications of members.

Modifies duties of commission. Directs commission to adopt specified policies, including policies concerning compensation, caseloads and oversight. Directs commission to report on implementation of changes to committees of Legislative Assembly related to judiciary on or before March 1, 2021.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Public Defense Services Commission; creating new pro-
3 visions; amending ORS 1.009, 151.213, 151.216 and 151.225; and declaring
4 an emergency.

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

6 **SECTION 1.** ORS 151.213 is amended to read:

7 151.213. (1) The Public Defense Services Commission is established in the
8 judicial branch of state government. Except for the appointment or removal
9 of commission members, the commission and employees of the commission
10 are not subject to the exercise of administrative authority and supervision
11 by the Chief Justice of the Supreme Court as the administrative head of the
12 Judicial Department.

13 (2) The commission consists of [*seven*] **nine** members appointed by order
14 of the Chief Justice. In addition to the [*seven*] **nine** appointed members, the
15 Chief Justice serves as a nonvoting, ex officio member. The Chief Justice
16 shall appoint at least [*two*] **three** persons who are not bar members, at least
17 one person who [*is a bar member and who is engaged in criminal defense*]

1 *representation and at least one person who is a former Oregon state*
2 *prosecutor]* **was formerly engaged in the provision of public defense**
3 **services and at least one person who has been formerly represented**
4 **by a public defense provider in this state. All members must have a**
5 **demonstrated record of commitment to public defense.** Except for the
6 Chief Justice or a senior judge under ORS 1.300, a member may not serve
7 concurrently as a judge, a prosecuting attorney or an employee of a law
8 enforcement agency. A person who is primarily engaged in providing public
9 defense services may not serve as a member of the commission.

10 (3) The term of a member is four years beginning on the effective date
11 of the order of the Chief Justice appointing the member. A member is eligible
12 for reappointment if qualified for membership at the time of reappointment.
13 A member may be removed from the commission by order of the Chief Jus-
14 tice. If a vacancy occurs for any cause before the expiration of the term of
15 a member, the Chief Justice shall make an appointment to become imme-
16 diately effective for the unexpired term.

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

21 (5) A majority of the voting members constitutes a quorum for the trans-
22 action of business.

23 (6) A member of the commission is not entitled to compensation for ser-
24 vices as a member, but is entitled to expenses as provided in ORS 292.495 (2).

25 **SECTION 2.** ORS 151.216 is amended to read:

26 151.216. (1) The Public Defense Services Commission shall:

27 (a) Establish and maintain a public defense system that ensures the pro-
28 vision of public defense services [*in the most cost-efficient manner*] consistent
29 with the Oregon Constitution, the United States Constitution and Oregon
30 and national standards of justice.

31 (b) Establish an office of public defense services and appoint a public

1 defense services executive director who serves at the pleasure of the com-
2 mission.

3 **(c) Adopt policies for contracting for public defense providers not**
4 **employed by the office of public defense services that:**

5 **(A) Ensure compensation, resources and caseloads are in accord-**
6 **ance with national and regional best practices;**

7 **(B) Promote policies for public defense provider compensation and**
8 **resources that are comparable to prosecution compensation and re-**
9 **sources;**

10 **(C) Ensure funding and resources to support required data col-**
11 **lection and training requirements; and**

12 **(D) Recognize the need to consider overhead costs that account for**
13 **the cost of living and business cost differences in each county or ju-**
14 **risdiction, including but not limited to rent, professional membership**
15 **dues, malpractice insurance and other insurance and other reasonable**
16 **and usual operating costs.**

17 **(d) Establish operational and contracting systems that allow for**
18 **oversight, ensure transparency and stakeholder engagement and pro-**
19 **mote equity, inclusion and culturally specific representation.**

20 **(e) Review the caseload policies described in paragraph (c)(A) of this**
21 **subsection annually, and revise the policies as necessary and at least**
22 **every four years.**

23 **(f) Adopt a statewide workload plan, based on the caseload policies**
24 **described in paragraph (c)(A) of this subsection, that takes into ac-**
25 **count the needs of each county or jurisdiction, practice structure and**
26 **type of practice overseen by the office of public defense services.**

27 **[(c)] (g) Submit the budget of the commission and the office of public**
28 **defense services to the Legislative Assembly after the budget is submitted to**
29 **the commission by the director and approved by the commission. The Chief**
30 **Justice of the Supreme Court and the chairperson of the commission shall**
31 **present the budget to the Legislative Assembly.**

1 [(d)] **(h)** Review and approve any public defense services contract negoti-
2 ated by the director before the contract can become effective.

3 [(e)] **(i)** Adopt a compensation plan, classification system and personnel
4 plan for the office of public defense services that are commensurate with
5 other state agencies.

6 [(f)] **(j)** Adopt policies, procedures, standards and guidelines regarding:

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

9 (B) The appointment of counsel;

10 (C) The fair compensation of counsel appointed to represent a person fi-
11 nancially eligible for appointed counsel at state expense;

12 (D) Appointed counsel compensation disputes;

13 (E) Any other costs associated with the representation of a person by
14 appointed counsel in the state courts that are required to be paid by the
15 state under ORS 34.355, 135.055, 138.500, 138.590, 161.346, 161.348, 161.365,
16 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209, 419C.408,
17 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315
18 or any other provision of law that expressly provides for payment of such
19 compensation, costs or expenses by the commission;

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

22 (G) Performance for legal representation;

23 (H) The contracting of public defense services;

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

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

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

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

4 [(i)] (m) Reimburse the State Court Administrator from funds deposited
5 in the Public Defense Services Account established by ORS 151.225 for the
6 costs of personnel and other costs associated with location of eligibility
7 verification and screening personnel pursuant to ORS 151.489 by the State
8 Court Administrator.

9 (2) Policies, procedures, standards and guidelines adopted by the commis-
10 sion supersede any conflicting rules, policies or procedures of the Public
11 Defender Committee, State Court Administrator, circuit courts, the Court of
12 Appeals, the Supreme Court and the Psychiatric Security Review Board re-
13 lated to the exercise of the commission's administrative responsibilities un-
14 der this section and transferred duties, functions and powers as they occur.

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

21 (4) The commission may not:

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

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

24 (c) Interfere with the director or any member of the staff of the director
25 in carrying out professional duties involving the legal representation of
26 public defense clients.

27 **SECTION 3.** ORS 1.009 is amended to read:

28 1.009. (1) The Judicial Department Operating Account is established in
29 the State Treasury, separate and distinct from the General Fund. Interest
30 earned by the account shall be credited to the account. All moneys in the
31 account are continuously appropriated to the Judicial Department and may

1 be used only to pay the operating expenses of the department.

2 (2) All moneys received by the department pursuant to ORS 151.216
3 [(1)(i)] **(1)(m)** shall be deposited in the Judicial Department Operating Ac-
4 count.

5 (3) The department may accept gifts, grants or contributions from any
6 source, whether public or private, for deposit in the Judicial Department
7 Operating Account.

8 **SECTION 4.** ORS 151.225 is amended to read:

9 151.225. (1) The Public Defense Services Account is established in the
10 State Treasury, separate and distinct from the General Fund. The Public
11 Defense Services Account is continuously appropriated to the Public Defense
12 Services Commission to:

13 (a) Reimburse the actual costs and expenses, including personnel ex-
14 penses, incurred in administration and support of the public defense system;

15 (b) Reimburse the State Court Administrator under ORS 151.216 [(1)(i)]
16 **(1)(m)**; and

17 (c) Pay other expenses in connection with the legal representation of
18 persons for which the commission is responsible by law, including expenses
19 incurred in the administration of the public defense system.

20 (2) All moneys received by the Judicial Department under ORS 135.050 (8),
21 151.487 (1), 419A.211, 419B.198 (1), 419C.203 (1) or 419C.535 (2) shall be de-
22 posited in the Public Defense Services Account.

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

27 **SECTION 5.** **The Public Defense Services Commission shall report**
28 **on the implementation of the amendments to ORS 151.213 and 151.216**
29 **by sections 1 and 2 of this 2020 Act to the committees of the Legislative**
30 **Assembly related to the judiciary in the manner provided under ORS**
31 **192.245 on or before March 1, 2021.**

1 **SECTION 6. This 2020 Act being necessary for the immediate pres-**
2 **ervation of the public peace, health and safety, an emergency is de-**
3 **clared to exist, and this 2020 Act takes effect on its passage.**

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