

House Bill 4004

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Representative Tina Kotek)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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 provisions; amending ORS 1.009,
3 151.213, 151.216 and 151.225; and declaring an emergency.

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

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

6 151.213. (1) The Public Defense Services Commission is established in the judicial branch of state
7 government. Except for the appointment or removal of commission members, the commission and
8 employees of the commission are not subject to the exercise of administrative authority and super-
9 vision by the Chief Justice of the Supreme Court as the administrative head of the Judicial De-
10 partment.

11 (2) The commission consists of [*seven*] **nine** members appointed by order of the Chief Justice. In
12 addition to the [*seven*] **nine** appointed members, the Chief Justice serves as a nonvoting, ex officio
13 member. The Chief Justice shall appoint at least [*two*] **three** persons who are not bar members, at
14 least one person who [*is a bar member and who is engaged in criminal defense representation and at*
15 *least one person who is a former Oregon state prosecutor*] **was formerly engaged in the provision**
16 **of public defense services and at least one person who has been formerly represented by a**
17 **public defense provider in this state. All members must have a demonstrated record of**
18 **commitment to public defense.** Except for the Chief Justice or a senior judge under ORS 1.300,
19 a member may not serve concurrently as a judge, a prosecuting attorney or an employee of a law
20 enforcement agency. A person who is primarily engaged in providing public defense services may
21 not serve as a member of the commission.

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 pointment as chairperson or vice chairperson.

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

3 (6) A member of the commission is not entitled to compensation for services as a member, but
4 is entitled to expenses as provided in ORS 292.495 (2).

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

6 151.216. (1) The Public Defense Services Commission shall:

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

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

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

14 (A) **Ensure compensation, resources and caseloads are in accordance with national and
15 regional best practices;**

16 (B) **Promote policies for public defense provider compensation and resources that are
17 comparable to prosecution compensation and resources;**

18 (C) **Ensure funding and resources to support required data collection and training re-
19 quirements; and**

20 (D) **Recognize the need to consider overhead costs that account for the cost of living and
21 business cost differences in each county or jurisdiction, including but not limited to rent,
22 professional membership dues, malpractice insurance and other insurance and other rea-
23 sonable and usual operating costs.**

24 (d) **Establish operational and contracting systems that allow for oversight, ensure
25 transparency and stakeholder engagement and promote equity, inclusion and culturally spe-
26 cific representation.**

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

29 (f) **Adopt a statewide workload plan, based on the caseload policies described in paragraph
30 (c)(A) of this subsection, that takes into account the needs of each county or jurisdiction,
31 practice structure and type of practice overseen by the office of public defense services.**

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

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

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

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

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

43 (B) The appointment of counsel;

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

- 1 (D) Appointed counsel compensation disputes;
- 2 (E) Any other costs associated with the representation of a person by appointed counsel in the
- 3 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
- 4 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
- 5 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any
- 6 other provision of law that expressly provides for payment of such compensation, costs or expenses
- 7 by the commission;
- 8 (F) Professional qualifications for counsel appointed to represent public defense clients;
- 9 (G) Performance for legal representation;
- 10 (H) The contracting of public defense services;
- 11 (I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses
- 12 only if in-state expert witnesses are not available or are more expensive than out-of-state expert
- 13 witnesses; and
- 14 (J) Any other matters necessary to carry out the duties of the commission.
- 15 [(g)] (k) Establish a peer review system for the approval of nonroutine fees and expenses in-
- 16 curred in cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The
- 17 review shall be conducted by a panel of attorneys who practice in the area of criminal defense.
- 18 [(h)] (L) Establish a complaint process that allows district attorneys, criminal defense counsel
- 19 and the public to file complaints concerning the payment from public funds of nonroutine fees and
- 20 expenses incurred in cases.
- 21 [(i)] (m) Reimburse the State Court Administrator from funds deposited in the Public Defense
- 22 Services Account established by ORS 151.225 for the costs of personnel and other costs associated
- 23 with location of eligibility verification and screening personnel pursuant to ORS 151.489 by the State
- 24 Court Administrator.
- 25 (2) Policies, procedures, standards and guidelines adopted by the commission supersede any
- 26 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-
- 27 tor, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review
- 28 Board related to the exercise of the commission's administrative responsibilities under this section
- 29 and transferred duties, functions and powers as they occur.
- 30 (3) The commission may accept gifts, grants or contributions from any source, whether public
- 31 or private. However, the commission may not accept a gift, grant or contribution if acceptance
- 32 would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the
- 33 Public Defense Services Account established by ORS 151.225 and expended for the purposes for
- 34 which given or granted.
- 35 (4) The commission may not:
- 36 (a) Make any decision regarding the handling of any individual case;
- 37 (b) Have access to any case file; or
- 38 (c) Interfere with the director or any member of the staff of the director in carrying out pro-
- 39 fessional duties involving the legal representation of public defense clients.
- 40 **SECTION 3.** ORS 1.009 is amended to read:
- 41 1.009. (1) The Judicial Department Operating Account is established in the State Treasury, sep-
- 42 arate and distinct from the General Fund. Interest earned by the account shall be credited to the
- 43 account. All moneys in the account are continuously appropriated to the Judicial Department and
- 44 may be used only to pay the operating expenses of the department.
- 45 (2) All moneys received by the department pursuant to ORS 151.216 [(1)(i)] (1)(m) shall be de-

1 positioned in the Judicial Department Operating Account.

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

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

5 151.225. (1) The Public Defense Services Account is established in the State Treasury, separate
6 and distinct from the General Fund. The Public Defense Services Account is continuously appropri-
7 ated to the Public Defense Services Commission to:

8 (a) Reimburse the actual costs and expenses, including personnel expenses, incurred in admin-
9 istration and support of the public defense system;

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

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

14 (2) All moneys received by the Judicial Department under ORS 135.050 (8), 151.487 (1), 419A.211,
15 419B.198 (1), 419C.203 (1) or 419C.535 (2) shall be deposited in the Public Defense Services Account.

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

19 **SECTION 5. The Public Defense Services Commission shall report on the implementation**
20 **of the amendments to ORS 151.213 and 151.216 by sections 1 and 2 of this 2020 Act to the**
21 **committees of the Legislative Assembly related to the judiciary in the manner provided un-**
22 **der ORS 192.245 on or before March 1, 2021.**

23 **SECTION 6. This 2020 Act being necessary for the immediate preservation of the public**
24 **peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect**
25 **on its passage.**

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