

D R A F T

SUMMARY

Transfers Public Defense Services Commission from judicial to executive branch. Modifies appointment and removal process for and qualifications of commission members.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public defense; creating new provisions; amending ORS 151.211,
3 151.213 and 151.216; and declaring an emergency.

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

5 **SECTION 1.** ORS 151.211 is amended to read:

6 151.211. For purposes of ORS 151.211 to 151.221:

7 (1) “Bar member” means an individual who is an active member of the
8 Oregon State Bar.

9 [(2) “*Chief Justice*” means the *Chief Justice of the Supreme Court.*]

10 [(3)] (2) “Commission” means the Public Defense Services Commission.

11 [(4)] (3) “Director” means the public defense services executive director
12 appointed under ORS 151.216.

13 [(5)] (4) “Office of public defense services” means the office established
14 by the commission under the director to handle the cases assigned and to
15 carry out the administrative policies and procedures for the public defense
16 system.

17 **SECTION 2.** ORS 151.213 is amended to read:

18 151.213. (1) The Public Defense Services Commission is established in the
19 [*judicial*] **executive** branch of state government. Except for the appointment
20 or removal of commission members, the commission and employees of the

1 commission are not subject to the exercise of administrative authority and
2 supervision by the [*Chief Justice of the Supreme Court as the administrative*
3 *head of the Judicial Department*] **Governor.**

4 (2)(a) The commission consists of nine **voting members and four non-**
5 **voting members** appointed [*by order of the Chief Justice. In addition to the*
6 *nine appointed members, the Chief Justice serves as a nonvoting, ex officio*
7 *member. The Chief Justice shall appoint at least three persons who are not bar*
8 *members, at least one person who was formerly engaged in the provision of*
9 *public defense services and at least one person who has been formerly repres-*
10 *ented by a public defense provider in this state. All members must have a*
11 *demonstrated record of commitment to public defense. Except for the Chief*
12 *Justice or a senior judge under ORS 1.300, a member may not serve concur-*
13 *rently as a judge, a prosecuting attorney or an employee of a law enforcement*
14 *agency. A person who is primarily engaged in providing public defense services*
15 *may not serve as a member of the commission.*] **as follows:**

16 (A) **The Governor shall appoint:**

17 (i) **One voting member with experience in finance and organiza-**
18 **tional administration.**

19 (ii) **One voting member who is a current or former dean or faculty**
20 **member of a law school.**

21 (iii) **One nonvoting member.**

22 (B) **The Governor shall appoint, from among persons recommended**
23 **by the Chief Justice of the Supreme Court:**

24 (i) **One voting member who is a former judge with criminal law**
25 **experience.**

26 (ii) **One voting member who is a former judge with experience in**
27 **child protective proceedings.**

28 (iii) **One nonvoting member.**

29 (C) **The Governor shall appoint, from among persons recommended**
30 **by the Senate President:**

31 (i) **One nonvoting member who is a member of the Senate at the**

1 **time of appointment.**

2 (ii) **Two voting members.**

3 (D) **The Governor shall appoint, from among persons recommended**
4 **by the Speaker of the House of Representatives:**

5 (i) **One nonvoting member who is a member of the House of Rep-**
6 **resentatives at the time of appointment.**

7 (ii) **Two voting members.**

8 (E) **The voting members of the commission shall appoint one voting**
9 **member who is not an attorney and who was previously represented**
10 **by a public defense service provider.**

11 (b) **When recommending and appointing members of the commis-**
12 **sion, the Governor, Chief Justice, Senate President and Speaker of the**
13 **House of Representatives shall:**

14 (A) **Consider input from individuals and organizations with an in-**
15 **terest in the delivery of public defense services.**

16 (B) **Consider geographic, racial, ethnic and gender diversity.**

17 (C) **Ensure that members appointed to the commission have signif-**
18 **icant experience with issues related to public defense or in the case**
19 **types subject to representation by public defense service providers, or**
20 **have demonstrated a strong commitment to quality public defense**
21 **representation.**

22 (c) **A member may not serve concurrently as a judge, a prosecuting**
23 **attorney or an employee of a law enforcement agency.**

24 (d) **A person who is primarily engaged in providing public defense**
25 **services, or who has a financial interest in the delivery of public de-**
26 **fense services, may not serve as a voting member of the commission.**

27 (3) **The term of a member is four years beginning on the effective date**
28 **of the [order of the Chief Justice appointing the member] appointment. A**
29 **member is eligible for reappointment if qualified for membership at the time**
30 **of reappointment. [A member may be removed from the commission by order**
31 **of the Chief Justice.] The Governor may remove any member of the**

1 **commission at any time for cause, after notice and public hearing, but**
2 **not more than three members shall be removed within a period of four**
3 **years, unless it is for corrupt conduct in office.** If a vacancy occurs for
4 any cause before the expiration of the term of a member, the [*Chief Justice*]
5 **appointing authority** shall make an appointment to become immediately
6 effective for the unexpired term.

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

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

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

15 **SECTION 3.** ORS 151.216 is amended to read:

16 151.216. (1) The Public Defense Services Commission shall:

17 (a) Establish and maintain a public defense system that ensures the pro-
18 vision of public defense services consistent with the Oregon Constitution, the
19 United States Constitution and Oregon and national standards of justice.

20 (b) Establish an office of public defense services and appoint a public
21 defense services executive director who serves at the pleasure of the com-
22 mission.

23 (c) Adopt policies for contracting for public defense providers not em-
24 ployed by the office of public defense services that:

25 (A) Ensure compensation, resources and caseloads are in accordance with
26 national and regional best practices;

27 (B) Promote policies for public defense provider compensation and re-
28 sources that are comparable to prosecution compensation and resources;

29 (C) Ensure funding and resources to support required data collection and
30 training requirements; and

31 (D) Recognize the need to consider overhead costs that account for the

1 cost of living and business cost differences in each county or jurisdiction,
2 including but not limited to rent, professional membership dues, malpractice
3 insurance and other insurance and other reasonable and usual operating
4 costs.

5 (d) Establish operational and contracting systems that allow for over-
6 sight, ensure transparency and stakeholder engagement and promote equity,
7 inclusion and culturally specific representation.

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

11 (f) Adopt a statewide workload plan, based on the caseload policies de-
12 scribed in paragraph (c)(A) of this subsection, that takes into account the
13 needs of each county or jurisdiction, practice structure and type of practice
14 overseen by the office of public defense services.

15 (g) Submit the budget of the commission and the office of public defense
16 services to the Legislative Assembly after the budget is submitted to the
17 commission by the director and approved by the commission. The [*Chief*
18 *Justice of the Supreme Court and the*] chairperson of the commission shall
19 present the budget to the Legislative Assembly.

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

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

25 (j) Adopt policies, procedures, standards and guidelines regarding:

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

28 (B) The appointment of counsel, including the appointment of counsel at
29 state expense regardless of financial eligibility in juvenile delinquency mat-
30 ters;

31 (C) The fair compensation of counsel appointed to represent a person fi-

1 nancially eligible for appointed counsel at state expense;

2 (D) Appointed counsel compensation disputes;

3 (E) Any other costs associated with the representation of a person by
4 appointed counsel in the state courts that are required to be paid by the
5 state under ORS 34.355, 135.055, 138.500, 138.590, 161.346, 161.348, 161.365,
6 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209, 419C.408,
7 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315
8 or any other provision of law that expressly provides for payment of such
9 compensation, costs or expenses by the commission;

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

12 (G) Performance for legal representation;

13 (H) The contracting of public defense services;

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

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

18 (k) Establish a peer review system for the approval of nonroutine fees and
19 expenses incurred in cases involving aggravated murder and the crimes listed
20 in ORS 137.700 and 137.707. The review shall be conducted by a panel of at-
21 torneys who practice in the area of criminal defense.

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

25 (m) Reimburse the State Court Administrator from funds deposited in the
26 Public Defense Services Account established by ORS 151.225 for the costs of
27 personnel and other costs associated with location of eligibility verification
28 and screening personnel pursuant to ORS 151.489 by the State Court Ad-
29 ministrator.

30 (2) Policies, procedures, standards and guidelines adopted by the commis-
31 sion supersede any conflicting rules, policies or procedures of the Public

1 Defender Committee, State Court Administrator, circuit courts, the Court of
2 Appeals, the Supreme Court and the Psychiatric Security Review Board re-
3 lated to the exercise of the commission's administrative responsibilities un-
4 der this section and transferred duties, functions and powers as they occur.

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

11 (4) The commission may not:

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

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

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

17 **(5) The commission shall include in the Governor's budget for each**
18 **fiscal period, at a minimum, the amount of funds identified by the**
19 **commission as being necessary to carry out the duties and activities**
20 **of the commission and the office of public defense services, and that**
21 **amount may not be reduced by the Governor or any other person when**
22 **preparing the budget.**

23 **SECTION 4. (1) Within 60 days after the operative date specified in**
24 **section 6 (1) of this 2023 Act, the Governor shall appoint four nonvot-**
25 **ing members to the Public Defense Services Commission as provided**
26 **in ORS 151.213 (2).**

27 **(2) A person who is a member of the Public Defense Services Com-**
28 **mission on the operative date specified in section 6 (1) of this 2023 Act**
29 **shall remain a member of the commission until the end of the person's**
30 **term, subject to removal by the Governor for cause as described in**
31 **ORS 151.213 (3).**

1 **(3) Upon the first instance of a commission member’s term ending**
2 **after the operative date specified in section 6 (1) of this 2023 Act, the**
3 **remaining voting members of the commission shall appoint a succes-**
4 **sor member as provided in ORS 151.213 (2)(a)(E). For the remaining**
5 **members, at the conclusion of each person’s term, the person may be**
6 **reappointed to the commission by the Governor if the person meets**
7 **the requirements described in ORS 151.213 (2).**

8 **(4) Notwithstanding ORS 151.213 (3), the initial term of a person**
9 **appointed by the Governor may be staggered by one, two, three and**
10 **four years as necessary so that no more than four terms end each**
11 **year.**

12 **SECTION 5.** **Section 4 of this 2023 Act is repealed on January 1, 2028.**

13 **SECTION 6.** **(1) Section 4 of this 2023 Act and the amendments to**
14 **ORS 151.211, 151.213 and 151.216 by sections 1 to 3 of this 2023 Act be-**
15 **come operative on a date that is 270 days after the effective date of**
16 **this 2023 Act.**

17 **(2) The Public Defense Services Commission, the Judicial Depart-**
18 **ment and the Governor may take any action before the operative date**
19 **specified in subsection (1) of this section that is necessary to enable**
20 **the commission, the department or the Governor to exercise, on and**
21 **after the operative date specified in subsection (1) of this section, all**
22 **of the duties, functions and powers conferred on the commission, the**
23 **department or the Governor by section 4 of this 2023 Act and the**
24 **amendments to ORS 151.211, 151.213 and 151.216 by sections 1 to 3 of**
25 **this 2023 Act.**

26 **SECTION 7.** **This 2023 Act being necessary for the immediate pres-**
27 **ervation of the public peace, health and safety, an emergency is de-**
28 **clared to exist, and this 2023 Act takes effect on its passage.**