

D R A F T

SUMMARY

Modifies appointment and removal process for members of Public Defense Services Commission. Modifies powers and duties of commission. Directs commission to establish and implement specified minimum standards, policies, guidelines and procedures.

Directs justice and municipal courts to report every two years to commission and interim committees of Legislative Assembly related to judiciary concerning appointment of counsel in court.

Declares emergency effective on passage.

A BILL FOR AN ACT

1
2 Relating to public defense; creating new provisions; amending ORS 151.213
3 and 151.216; 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
7 judicial branch of state government. Except for the appointment or removal
8 of commission members, the commission, [*and*] employees of the commission
9 **and employees of the office of public defense services established under**
10 **ORS 151.216** are not subject to the exercise of administrative authority and
11 supervision by the Chief Justice of the Supreme Court as the administrative
12 head of the Judicial Department.

13 (2)(a) The commission consists of nine **voting members and four non-**
14 **voting members** appointed [*by order of the Chief Justice. In addition to the*
15 *nine appointed members, the Chief Justice serves as a nonvoting, ex officio*
16 *member. The Chief Justice shall appoint at least three persons who are not bar*
17 *members, at least one person who was formerly engaged in the provision of*

1 *public defense services and at least one person who has been formerly repres-*
2 *ented by a public defense provider in this state. All members must have a*
3 *demonstrated record of commitment to public defense. Except for the Chief*
4 *Justice or a senior judge under ORS 1.300, a member may not serve concur-*
5 *rently as a judge, a prosecuting attorney or an employee of a law enforcement*
6 *agency. A person who is primarily engaged in providing public defense services*
7 *may not serve as a member of the commission.] as follows:*

8 **(A) The Chief Justice shall appoint:**

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

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

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

14 **(B) The Chief Justice shall appoint, from among persons recom-**
15 **mended by the Governor:**

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

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

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

21 **(C) The Chief Justice shall appoint, from among persons recom-**
22 **mended by the Senate President:**

23 **(i) One nonvoting member who is a member of the Senate at the**
24 **time of appointment.**

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

26 **(D) The Chief Justice shall appoint, from among persons recom-**
27 **mended by the Speaker of the House of Representatives:**

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

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

31 **(E) The voting members of the commission shall appoint one voting**

1 member who is not an attorney and who was previously represented
2 by a public defense provider.

3 (b) When recommending and appointing members of the commis-
4 sion, the Chief Justice, Governor, Senate President and Speaker of the
5 House of Representatives shall:

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

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

9 (C) Ensure that members appointed to the commission have signif-
10 icant experience with issues related to public defense or in the case
11 types subject to representation by public defense providers, or have
12 demonstrated a strong commitment to quality public defense repre-
13 sentation.

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

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

19 (3) The term of a member is four years beginning on the effective date
20 of the order of the Chief Justice appointing the member. A member is eligible
21 for reappointment if qualified for membership at the time of reappointment.
22 [A member may be removed from the commission by order of the Chief
23 Justice.] **The Chief Justice may remove any member of the commission**
24 **at any time for cause, after notice and public hearing, but not more**
25 **than three members shall be removed within a period of four years,**
26 **unless it is for corrupt conduct in office.** If a vacancy occurs for any
27 cause before the expiration of the term of a member, the [*Chief Justice*] **ap-**
28 **pointing authority** shall make an appointment to become immediately ef-
29 fective for the unexpired term. **If the Chief Justice has not filled a**
30 **vacancy subject to appointment by the Chief Justice within 45 days**
31 **after the vacancy occurs, the remaining members of the commission**

1 **shall appoint a member for the unexpired term.**

2 (4) A chairperson and a vice chairperson shall be [*appointed by order of*
3 *the Chief Justice*] **elected by the voting members of the commission** ev-
4 ery two years with such functions as the commission may determine. A
5 member is eligible for [*reappointment*] **reelection** as chairperson or vice
6 chairperson.

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

9 (6) A member of the commission is [*not*] entitled to compensation for
10 services as a member[, *but is entitled*] **and** to expenses as provided in ORS
11 292.495 [(2)].

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

13 151.216. (1) The Public Defense Services Commission shall:

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

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

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

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

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

26 (C) Ensure funding and resources to support required data collection and
27 training requirements; and

28 (D) Recognize the need to consider overhead costs that account for the
29 cost of living and business cost differences in each county or jurisdiction,
30 including but not limited to rent, professional membership dues, malpractice
31 insurance and other insurance and other reasonable and usual operating

1 costs.

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

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

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

12 (g) Submit the budget of the commission and the office of public defense
13 services to the Legislative Assembly after the budget is submitted to the
14 commission by the director and approved by the commission. The Chief Jus-
15 tice of the Supreme Court and the chairperson of the commission shall
16 present the budget to the Legislative Assembly.

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

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

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

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

25 (B) The appointment of counsel, including the appointment of counsel at
26 state expense regardless of financial eligibility in juvenile delinquency mat-
27 ters;

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

30 (D) Appointed counsel compensation disputes;

31 (E) Any other costs associated with the representation of a person by

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

7 (F) Professional qualifications for counsel appointed to represent public
8 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-
12 state expert witnesses only if in-state expert witnesses are not available or
13 are more expensive than out-of-state expert witnesses; and

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

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

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

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

27 **(2)(a) In addition to the duties described in subsection (1) of this**
28 **section, the commission shall:**

29 **(A) Propose minimum standards for the delivery of public defense**
30 **services that provide for the effective assistance of counsel to eligible**
31 **persons throughout this state. The minimum standards must be de-**

1 **signed to ensure that public defense services meet all requirements for**
2 **the effective assistance of counsel under statute and the Oregon and**
3 **United States Constitutions.**

4 **(B) Establish and implement policies, procedures, standards and**
5 **guidelines necessary to guarantee the right of eligible persons to the**
6 **assistance of counsel as required by statute and by the Oregon and**
7 **United States Constitutions.**

8 **(C) Develop and oversee the implementation, enforcement and**
9 **modification of minimum policies, procedures, standards and guide-**
10 **lines to ensure that public defense providers are providing effective**
11 **assistance of counsel consistently to all eligible persons in this state**
12 **as required by statute and the Oregon and United States Constitutions.**
13 **The policies, procedures, standards and guidelines described in this**
14 **subparagraph apply to employees of the office of public defense ser-**
15 **vices and to any entity that contracts with the commission to provide**
16 **public defense services in this state.**

17 **(D) Set minimum standards by which appointed counsel are trained**
18 **and supervised.**

19 **(E) Establish procedures for the mandatory collection of data con-**
20 **cerning the operation of the commission and all public defense pro-**
21 **viders.**

22 **(F) Establish a program by which public defense providers may ap-**
23 **ply to the commission for grants to bring the providers' delivery of**
24 **public defense services into compliance with the minimum policies,**
25 **procedures, standards and guidelines described in this subsection.**

26 **(G) At least once every two years, report to the interim committees**
27 **of the Legislative Assembly related to the judiciary, in the manner**
28 **provided in ORS 192.245, and to the Governor and Chief Justice, con-**
29 **cerning compliance metrics for the minimum standards described in**
30 **this subsection and recommendations for legislative changes.**

31 **(H) Establish any other policies, procedures, standards and guide-**

1 **lines for the conduct of the commission's affairs and promulgate pol-**
2 **icies necessary to carry out all powers and duties of the commission.**

3 **(b) When establishing the minimum policies, procedures, standards**
4 **and guidelines described in this subsection, the commission shall ad-**
5 **here to the following principles:**

6 **(A) Appointed counsel shall be provided sufficient time and a space**
7 **where attorney-client confidentiality is safeguarded for meetings with**
8 **clients.**

9 **(B) The workload of appointed counsel must be controlled to permit**
10 **effective representation. Economic disincentives or incentives that**
11 **impair the ability of appointed counsel to provide effective assistance**
12 **of counsel must be avoided. The commission may develop workload**
13 **controls to enhance appointed counsel's ability to provide effective**
14 **representation.**

15 **(C) The ability, training and experience of appointed counsel must**
16 **match the nature and complexity of the case to which the counsel is**
17 **appointed.**

18 **(D) The same appointed counsel shall continuously represent a cli-**
19 **ent throughout the pendency of the case and shall appear at every**
20 **court appearance other than ministerial or nonsubstantive hearings.**

21 **(E) The commission shall employ or contract only with entities that**
22 **employ attorneys who have attended continuing legal education rele-**
23 **vant to the attorney's public defense practice.**

24 **(F) The commission and public defense providers shall systemat-**
25 **ically review appointed counsel at the local level for efficiency and for**
26 **effective representation according to commission standards.**

27 **(c) The commission may hire attorneys to serve as appointed**
28 **counsel at the trial level in any county where additional public defense**
29 **providers are needed.**

30 **(3) The policies, procedures, standards and guidelines adopted by**
31 **the commission must be collected in a manual and made available to**

1 **the public on the commission's Internet website.**

2 [(2)] (4) Policies, procedures, standards and guidelines adopted by the
3 commission supersede any conflicting rules, policies or procedures of the
4 Public Defender Committee, State Court Administrator, circuit courts, the
5 Court of Appeals, the Supreme Court and the Psychiatric Security Review
6 Board related to the exercise of the commission's administrative responsi-
7 bilities under this section and transferred duties, functions and powers as
8 they occur.

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

15 [(4)] (6) The commission may not:

- 16 (a) Make any decision regarding the handling of any individual case;
17 (b) Have access to any case file; or
18 (c) Interfere with the director or any member of the staff of the director
19 in carrying out professional duties involving the legal representation of
20 public defense clients.

21 **SECTION 3. No later than January 1, 2024, and every two years**
22 **thereafter, a justice or municipal court that hears cases involving**
23 **charges that carry as a potential sentence a term of incarceration**
24 **shall report to the interim committees of the Legislative Assembly**
25 **related to the judiciary, in the manner provided in ORS 192.245, the**
26 **following:**

27 (1) **The number of cases handled involving charges that carry as a**
28 **potential sentence a term of incarceration, and the result of each case;**

29 (2) **A description of how the court administered the right to counsel**
30 **for each case; and**

31 (3) **Any other information or data requested by the Public Defense**

1 **Services Commission.**

2 **SECTION 4. (1) Within 60 days after the operative date specified in**
3 **section 5 (1) of this 2023 Act, the Chief Justice shall appoint four**
4 **nonvoting members to the Public Defense Services Commission as**
5 **provided in ORS 151.213 (2).**

6 **(2) A person who is a member of the Public Defense Services Com-**
7 **mission on the operative date specified in section 5 (1) of this 2023 Act**
8 **shall remain a member of the commission until the end of the person's**
9 **term, subject to removal by the Chief Justice for cause as described**
10 **in ORS 151.213 (3).**

11 **(3) Upon the first instance of a commission member's term ending**
12 **after the operative date specified in section 5 (1) of this 2023 Act, the**
13 **remaining voting members of the commission shall appoint a succes-**
14 **sor member as provided in ORS 151.213 (2)(a)(E). For the remaining**
15 **members, at the conclusion of each person's term, the person may be**
16 **reappointed to the commission by the Chief Justice if the person meets**
17 **the requirements described in ORS 151.213 (2).**

18 **(4) Notwithstanding ORS 151.213 (3), the initial term of a person**
19 **appointed by the Chief Justice may be staggered by one, two, three and**
20 **four years as necessary so that no more than four terms end each**
21 **year.**

22 **SECTION 5. (1) Section 4 of this 2023 Act and the amendments to**
23 **ORS 151.213 and 151.216 by sections 1 and 2 of this 2023 Act become**
24 **operative on a date that is 90 days after the effective date of this 2023**
25 **Act.**

26 **(2) Section 3 of this 2023 Act becomes operative on January 1, 2024.**

27 **SECTION 6. This 2023 Act being necessary for the immediate pres-**
28 **ervation of the public peace, health and safety, an emergency is de-**
29 **clared to exist, and this 2023 Act takes effect on its passage.**

30