

# 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. Directs commission to designate liaison with office of public defense services and appoint juvenile services director.

Modifies duties of public defense services executive director. Requires director to establish specific divisions within office of public defense services. Requires that trial division provide 25 percent of trial-level public defense services by January 1, 2030, and 35 percent by January 1, 2035.

Directs commission and public defense services executive director to report annually to interim committees of Legislative Assembly on progress with implementing Act.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to public defense; creating new provisions; amending ORS 151.211,  
3 151.213, 151.216 and 151.219; and prescribing an effective date.

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

1 carry out the administrative policies and procedures for the public defense  
2 system.

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

4 151.213. (1) The Public Defense Services Commission is established in the  
5 [*judicial*] **executive** branch of state government. Except for the appointment  
6 or removal of commission members, the commission and employees of the  
7 commission are not subject to the exercise of administrative authority and  
8 supervision by the [*Chief Justice of the Supreme Court as the administrative*  
9 *head of the Judicial Department*] **Governor**.

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

22 (A) **The Governor shall appoint three members.**

23 (B) **The Governor shall appoint three members from among persons**  
24 **recommended by the Chief Justice of the Supreme Court.**

25 (C) **The Governor shall appoint three members from among persons**  
26 **jointly recommended by the President of the Senate and the Speaker**  
27 **of the House of Representatives.**

28 (b) **All members must have a demonstrated record of commitment**  
29 **to public defense.**

30 (c) **At least one member must be a person who has been formerly**  
31 **represented by a public defense provider.**

1 (d) At least one member must be a member of the public with no  
2 formal legal training.

3 (e) A member may not serve concurrently as a judge, a member of  
4 the Legislative Assembly, a prosecuting attorney or an employee of a  
5 law enforcement agency.

6 (f) A person who is primarily engaged in providing public defense  
7 services may not serve as a member of the commission.

8 (3) The term of a member is four years beginning on the [*effective date*  
9 *of the order of the Chief Justice appointing the member*] **date of the ap-**  
10 **pointment.** A member is eligible for reappointment if qualified for member-  
11 ship at the time of reappointment. [*A member may be removed from the*  
12 *commission by order of the Chief Justice.*] **The Governor may remove a**  
13 **member of the commission at any time for cause.** If a vacancy occurs  
14 for any cause before the expiration of the term of a member, the [*Chief*  
15 *Justice*] **Governor** shall make an appointment to become immediately effec-  
16 tive for the unexpired term.

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

21 (5) **The commission may hire staff and shall designate one or more**  
22 **staff members to serve as the liaison between the commission and the**  
23 **office of public defense services established under ORS 151.216. The li-**  
24 **aison shall be tasked with other duties as determined by the commis-**  
25 **sion.**

26 [(5)] (6) A majority of the [*voting*] members constitutes a quorum for the  
27 transaction of business.

28 [(6)] (7) A member of the commission is not entitled to compensation for  
29 services as a member, but is entitled to expenses as provided in ORS 292.495  
30 (2).

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

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

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

5 (b) Establish an office of public defense services and, **by a two-thirds**  
6 **vote of the commission**, appoint a public defense services executive direc-  
7 tor **and a juvenile services director** who [*serves*] **serve** at the pleasure of  
8 the commission.

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

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

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

15 (C) Ensure funding and resources to support required data collection and  
16 training requirements; and

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

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

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

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

1 (g) Submit the budget of the commission and the office of public defense  
2 services to the Legislative Assembly after the budget is submitted to the  
3 commission by the **public defense services executive** director and approved  
4 by the commission. The [*Chief Justice of the Supreme Court and the*] chair-  
5 person of the commission shall present the budget to the Legislative Assem-  
6 bly.

7 (h) Review and approve:

8 (A) Any public defense services contract negotiated by the director before  
9 the contract can become effective; **and**

10 (B) **Annually the standard operating expectations for contracted**  
11 **entities developed by the director.**

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

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

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

18 (B) The appointment of counsel, including the appointment of counsel at  
19 state expense regardless of financial eligibility in juvenile delinquency mat-  
20 ters;

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

23 (D) Appointed counsel compensation disputes;

24 (E) Any other costs associated with the representation of a person by  
25 appointed counsel in the state courts that are required to be paid by the  
26 state under ORS 34.355, 135.055, 138.500, 138.590, 161.346, 161.348, 161.365,  
27 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209, 419C.408,  
28 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315  
29 or any other provision of law that expressly provides for payment of such  
30 compensation, costs or expenses by the commission;

31 (F) Professional qualifications for counsel appointed to represent public

1 defense clients;

2 (G) Performance for legal representation;

3 (H) The contracting of public defense services;

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

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

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

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

15 (m) Reimburse the State Court Administrator from funds deposited in the  
16 Public Defense Services Account established by ORS 151.225 for the costs of  
17 personnel and other costs associated with location of eligibility verification  
18 and screening personnel pursuant to ORS 151.489 by the State Court Ad-  
19 ministrator.

20 **(2) The commission may advocate for or against legislation upon**  
21 **the agreement of a majority of the members of the commission.**

22 [(2)] (3) Policies, procedures, standards and guidelines adopted by the  
23 commission supersede any conflicting rules, policies or procedures of the  
24 Public Defender Committee, State Court Administrator, circuit courts, the  
25 Court of Appeals, the Supreme Court and the Psychiatric Security Review  
26 Board related to the exercise of the commission's administrative responsi-  
27 bilities under this section and transferred duties, functions and powers as  
28 they occur.

29 [(3)] (4) The commission may accept gifts, grants or contributions from  
30 any source, whether public or private. However, the commission may not  
31 accept a gift, grant or contribution if acceptance would create a conflict of

1 interest. Moneys accepted under this subsection shall be deposited in the  
2 Public Defense Services Account established by ORS 151.225 and expended  
3 for the purposes for which given or granted.

4 [(4)] (5) The commission may not:

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

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

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

10 **SECTION 4.** ORS 151.219 is amended to read:

11 151.219. (1) The public defense services executive director shall:

12 (a) Recommend to the Public Defense Services Commission how to estab-  
13 lish and maintain, in a cost-effective manner, the delivery of legal services  
14 to persons entitled to, and, where applicable, financially eligible for, ap-  
15 pointed counsel at state expense under Oregon statutes, the Oregon Consti-  
16 tution, the United States Constitution and consistent with Oregon and  
17 national standards of justice.

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

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

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

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

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

30 (g) Provide services, facilities and materials necessary for the perform-  
31 ance of the duties, functions and powers of the Public Defense Services

1 Commission.

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

4 (i) Prepare and submit to the commission an annual report of the activ-  
5 ities of the office of public defense services.

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

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

15 **(L) Develop standard operating expectations for entities that con-**  
16 **tract with the commission to provide public defense services. The di-**  
17 **rector may establish a standards advisory group to assist in developing**  
18 **the expectations.**

19 **(m) Adopt policies establishing qualifications for senior executive**  
20 **staff of the office of public defense services.**

21 **(n) Establish the following divisions within the office of public de-**  
22 **fense services:**

23 **(A) An executive support division that includes a deputy director**  
24 **and counsel and government relations and administrative support po-**  
25 **sitions.**

26 **(B) A compliance, audit and performance measurement division**  
27 **that includes a chief inspector general and data and research and**  
28 **internal auditor positions.**

29 **(C) A trial division, including a trial division leader, regional staff**  
30 **supervisors, trial attorneys and administrative support positions.**

31 **(D) An appellate services division that includes an appellate division**



1 **manager, appellate attorneys and administrative support positions.**

2 **(E) A juvenile services division that includes the juvenile services**  
3 **director, attorneys, paralegals and administrative support positions.**

4 **(F) An administrative services division that includes finance, hu-**  
5 **man resources, information technology and administrative support**  
6 **positions.**

7 **(G) A contracting services division that includes a chief contracting**  
8 **officer, a chief review officer, case support and administrative support**  
9 **positions.**

10 **(H) A standardization and evaluations division responsible for es-**  
11 **tablishing, explaining, maintaining and sustaining standards for**  
12 **internal and external evaluation.**

13 **(I) A special programs division with duties as determined by the**  
14 **public defense services executive director.**

15 (2) The director may designate persons as representatives of the director  
16 for the purposes of determining and paying bills submitted to the office of  
17 public defense services and determining preauthorization for incurring fees  
18 and expenses under ORS 135.055.

19 **SECTION 5.** ORS 151.219, as amended by section 4 of this 2023 Act, is  
20 amended to read:

21 151.219. (1) The public defense services executive director shall:

22 (a) Recommend to the Public Defense Services Commission how to estab-  
23 lish and maintain, in a cost-effective manner, the delivery of legal services  
24 to persons entitled to, and, where applicable, financially eligible for, ap-  
25 pointed counsel at state expense under Oregon statutes, the Oregon Consti-  
26 tution, the United States Constitution and consistent with Oregon and  
27 national standards of justice.

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

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

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

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

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

9 (g) Provide services, facilities and materials necessary for the perform-  
10 ance of the duties, functions and powers of the Public Defense Services  
11 Commission.

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

14 (i) Prepare and submit to the commission an annual report of the activ-  
15 ities of the office of public defense services.

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

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

25 (L) Develop standard operating expectations for entities that contract  
26 with the commission to provide public defense services. The director may  
27 establish a standards advisory group to assist in developing the expectations.

28 (m) Adopt policies establishing qualifications for senior executive staff  
29 of the office of public defense services.

30 (n) Establish the following divisions within the office of public defense  
31 services:

1 (A) An executive support division that includes a deputy director and  
2 counsel and government relations and administrative support positions.

3 (B) A compliance, audit and performance measurement division that in-  
4 cludes a chief inspector general and data and research and internal auditor  
5 positions.

6 (C) A trial division, including a trial division leader, regional staff  
7 supervisors, trial attorneys and administrative support positions, **that pro-**  
8 **vides at least 25 percent of trial-level public defense services within**  
9 **this state.**

10 (D) An appellate services division that includes an appellate division  
11 manager, appellate attorneys and administrative support positions.

12 (E) A juvenile services division that includes the juvenile services direc-  
13 tor, attorneys, paralegals and administrative support positions.

14 (F) An administrative services division that includes finance, human re-  
15 sources, information technology and administrative support positions.

16 (G) A contracting services division that includes a chief contracting offi-  
17 cer, a chief review officer, case support and administrative support positions.

18 (H) A standardization and evaluations division responsible for establish-  
19 ing, explaining, maintaining and sustaining standards for internal and ex-  
20 ternal evaluation.

21 (I) A special programs division with duties as determined by the public  
22 defense services executive director.

23 (2) The director may designate persons as representatives of the director  
24 for the purposes of determining and paying bills submitted to the office of  
25 public defense services and determining preauthorization for incurring fees  
26 and expenses under ORS 135.055.

27 **SECTION 6.** ORS 151.219, as amended by sections 4 and 5 of this 2023  
28 Act, is amended to read:

29 151.219. (1) The public defense services executive director shall:

30 (a) Recommend to the Public Defense Services Commission how to estab-  
31 lish and maintain, in a cost-effective manner, the delivery of legal services

1 to persons entitled to, and, where applicable, financially eligible for, ap-  
2 pointed counsel at state expense under Oregon statutes, the Oregon Consti-  
3 tution, the United States Constitution and consistent with Oregon and  
4 national standards of justice.

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

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

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

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

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

17 (g) Provide services, facilities and materials necessary for the perform-  
18 ance of the duties, functions and powers of the Public Defense Services  
19 Commission.

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

22 (i) Prepare and submit to the commission an annual report of the activ-  
23 ities of the office of public defense services.

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

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

1 and staff of the office of public defense services in litigation.

2 (L) Develop standard operating expectations for entities that contract  
3 with the commission to provide public defense services. The director may  
4 establish a standards advisory group to assist in developing the expectations.

5 (m) Adopt policies establishing qualifications for senior executive staff  
6 of the office of public defense services.

7 (n) Establish the following divisions within the office of public defense  
8 services:

9 (A) An executive support division that includes a deputy director and  
10 counsel and government relations and administrative support positions.

11 (B) A compliance, audit and performance measurement division that in-  
12 cludes a chief inspector general and data and research and internal auditor  
13 positions.

14 (C) A trial division, including a trial division leader, regional staff  
15 supervisors, trial attorneys and administrative support positions, that pro-  
16 vides at least [25] **35** percent of trial-level public defense services within this  
17 state.

18 (D) An appellate services division that includes an appellate division  
19 manager, appellate attorneys and administrative support positions.

20 (E) A juvenile services division that includes the juvenile services direc-  
21 tor, attorneys, paralegals and administrative support positions.

22 (F) An administrative services division that includes finance, human re-  
23 sources, information technology and administrative support positions.

24 (G) A contracting services division that includes a chief contracting offi-  
25 cer, a chief review officer, case support and administrative support positions.

26 (H) A standardization and evaluations division responsible for establish-  
27 ing, explaining, maintaining and sustaining standards for internal and ex-  
28 ternal evaluation.

29 (I) A special programs division with duties as determined by the public  
30 defense services executive director.

31 (2) The director may designate persons as representatives of the director

1 for the purposes of determining and paying bills submitted to the office of  
2 public defense services and determining preauthorization for incurring fees  
3 and expenses under ORS 135.055.

4 **SECTION 7. Beginning no later than January 1, 2025, and annually**  
5 **thereafter, the chairperson of the Public Defense Services Commission**  
6 **and the public defense services executive director shall report to the**  
7 **interim committees of the Legislative Assembly related to the judici-**  
8 **ary, in the manner provided in ORS 192.245, regarding the progress**  
9 **made with respect to:**

10 (1) **Transferring trial-level public defense services within this state**  
11 **from contracted entities to the trial division of the office of public**  
12 **defense services; and**

13 (2) **Implementing all other provisions of the amendments to ORS**  
14 **151.211, 151.213, 151.216 and 151.219 by sections 1 to 6 of this 2023 Act.**

15 **SECTION 8. (1) A person who is a member of the Public Defense**  
16 **Services Commission on the operative date specified in section 10 (1)**  
17 **of this 2023 Act shall remain a member of the commission until the**  
18 **end of the person's term, subject to removal by the Governor for cause**  
19 **as described in ORS 151.213 (3).**

20 (2) **Upon the conclusion of the term of a person who is a commis-**  
21 **sion member on the operative date specified in section 10 (1) of this**  
22 **2023 Act, the person may be reappointed to the commission by the**  
23 **Governor if the person meets the requirements described in ORS**  
24 **151.213 (2).**

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

29 **SECTION 9. (1) Section 7 of this 2023 Act is repealed on January 2,**  
30 **2036.**

31 (2) **Section 8 of this 2023 Act is repealed on January 2, 2029.**

1       **SECTION 10.** (1) Sections 7 and 8 of this 2023 Act and the amend-  
2 ments to ORS 151.211, 151.213, 151.216 and 151.219 by sections 1 to 4 of  
3 this 2023 Act become operative on January 1, 2024.

4       (2) The Public Defense Services Commission, the Judicial Depart-  
5 ment and the office of the Governor may take any action before the  
6 operative date specified in subsection (1) of this section that is neces-  
7 sary to enable the commission, department or office to exercise, on  
8 and after the operative date specified in subsection (1) of this section,  
9 all of the duties, functions and powers conferred on the commission,  
10 department or office by sections 7 and 8 of this 2023 Act and the  
11 amendments to ORS 151.211, 151.213, 151.216 and 151.219 by sections 1  
12 to 4 of this 2023 Act.

13       (3)(a) The amendments to ORS 151.219 by section 5 of this 2023 Act  
14 become operative on January 1, 2030.

15       (b) The amendments to ORS 151.219 by section 6 of this 2023 Act  
16 become operative on January 1, 2035.

17       (4) The Public Defense Services Commission may take any action  
18 before the operative dates specified in subsection (3) of this section  
19 that is necessary to enable the commission to exercise, on and after  
20 the operative dates specified in subsection (3) of this section, all of the  
21 duties, functions and powers conferred on the commission by the  
22 amendments to ORS 151.219 by sections 5 and 6 of this 2023 Act.

23       **SECTION 11.** This 2023 Act takes effect on the 91st day after the  
24 date on which the 2023 regular session of the Eighty-second Legislative  
25 Assembly adjourns sine die.

26