House Bill 2841

Sponsored by Representative EVANS (Presession filed.)

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.

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 director of juvenile services. Modifies duties of executive director of public defense services. 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 executive director of office of public defense services to report annually to interim committees of the Legislative Assembly on progress with implementing Act. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

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

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

SECTION 1. ORS 151.211 is amended to read:

151.211. For purposes of ORS 151.211 to 151.221:

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

(2) “Chief Justice” means the Chief Justice of the Supreme Court.

(3) “Commission” means the Public Defense Services Commission.

(4) “Director” means the public defense services executive director appointed under ORS 151.216.

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

SECTION 2. ORS 151.213 is amended to read:

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

(a) The commission consists of nine members appointed by order of the Chief Justice. In addition to the nine appointed members, the Chief Justice serves as a nonvoting, ex officio member. The Chief Justice shall appoint at least three persons who are not bar members, at least one person who was formerly engaged in the provision of public defense services and at least one person who has been formerly represented by a public defense provider in this state. All members must have a demonstrated record of commitment to public defense. Except for the Chief Justice or a senior judge under ORS 1.300, a member may not serve concurrently as a judge, a prosecuting attorney or an employee of a law

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.

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enforcement agency. A person who is primarily engaged in providing public defense services may not
serve as a member of the commission.) as follows:

(A) The Governor shall appoint three members.

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

(C) The Governor shall appoint three members from among persons jointly recommended
by the President of the Senate and the Speaker of the House of Representatives.
(b) All members must have a demonstrated record of commitment to public defense.
(c) At least one member must be a person who has been formerly represented by a public
defense provider.
(d) At least one member must be a member of the public with no formal legal training.
(e) A member may not serve concurrently as a judge, a member of the Legislative As-
sembly, a prosecuting attorney or an employee of a law enforcement agency.
(f) A person who is primarily engaged in providing public defense services may not serve
as a member of the commission.
(3) The term of a member is four years beginning on the effective date of the [order of the Chief
Justice appointing the member] appointment. A member is eligible for reappointment if qualified for
membership at the time of reappointment. [A member may be removed from the commission by order
of the Chief Justice.] The Governor may remove a member of the commission at any time for
cause. If a vacancy occurs for any cause before the expiration of the term of a member, the [Chief
Justice] Governor shall make an appointment to become immediately effective for the unexpired
term.
(4) A chairperson and a vice chairperson shall be appointed by order of the [Chief Justice]
Governor every two years with such functions as the commission may determine. A member is eli-
gible for reappointment as chairperson or vice chairperson.
(5) The commission may hire staff and shall designate one or more staff members to
serve as the liaison between the commission and the office of public defense services estab-
lished under ORS 151.216. The liaison shall be tasked with other duties as determined by the
commission.
(6) A majority of the [voting] members constitutes a quorum for the transaction of business.
(7) A member of the commission is not entitled to compensation for services as a member,
but is entitled to expenses as provided in ORS 292.495 (2).
SECTION 3. ORS 151.216 is amended to read:
151.216. (1) The Public Defense Services Commission shall:
(a) Establish and maintain a public defense system that ensures the provision of public defense
services consistent with the Oregon Constitution, the United States Constitution and Oregon and
national standards of justice.
(b) Establish an office of public defense services and, by a two-thirds vote of the commission,
appoint a public defense services executive director and a juvenile services director who [serves]
serve at the pleasure of the commission.
(c) Adopt policies for contracting for public defense providers not employed by the office of
public defense services that:
(A) Ensure compensation, resources and caseloads are in accordance with national and regional
best practices;
(B) Promote policies for public defense provider compensation and resources that are compara-
(C) Ensure funding and resources to support required data collection and training requirements; and

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

(d) Establish operational and contracting systems that allow for oversight, ensure transparency and stakeholder engagement and promote equity, inclusion and culturally specific representation.

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

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

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

(h) Review and approve:

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

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

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

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

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

(B) The appointment of counsel, including the appointment of counsel at state expense regardless of financial eligibility in juvenile delinquency matters;

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

(D) Appointed counsel compensation disputes;

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

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

(G) Performance for legal representation;

(H) The contracting of public defense services;

(I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses only if in-state expert witnesses are not available or are more expensive than out-of-state expert witnesses; and
(J) Any other matters necessary to carry out the duties of the commission.

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

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

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

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

[2][3] Policies, procedures, standards and guidelines adopted by the commission supersede any conflicting rules, policies or procedures of the Public Defender Committee, State Court Administrator, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review Board related to the exercise of the commission’s administrative responsibilities under this section and transferred duties, functions and powers as they occur.

[3][4] The commission may accept gifts, grants or contributions from any source, whether public or private. However, the commission may not accept a gift, grant or contribution if acceptance would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the Public Defense Services Account established by ORS 151.225 and expended for the purposes for which given or granted.

[4][5] The commission may not:

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

(b) Have access to any case file; or

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

SECTION 4. ORS 151.219 is amended to read:

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

(a) Recommend to the Public Defense Services Commission how to establish and maintain, in a cost-effective manner, the delivery of legal services to persons entitled to, and, where applicable, financially eligible for, appointed counsel at state expense under Oregon statutes, the Oregon Constitution, the United States Constitution and consistent with Oregon and national standards of justice.

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

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

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

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

(f) Supervise the personnel, operation and activities of the office of public defense services.
(g) Provide services, facilities and materials necessary for the performance of the duties, functions and powers of the Public Defense Services Commission.

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

(i) Prepare and submit to the commission an annual report of the activities of the office of public defense services.

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

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

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

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

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

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

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

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

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

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

(F) An administrative services division that includes finance, human resources, information technology and administrative support positions.

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

(H) A standardization and evaluations division responsible for establishing, explaining, maintaining and sustaining standards for internal and external evaluation.

(I) A special programs division with duties as determined by the director.

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

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

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

(a) Recommend to the Public Defense Services Commission how to establish and maintain, in a cost-effective manner, the delivery of legal services to persons entitled to, and, where applicable, financially eligible for, appointed counsel at state expense under Oregon statutes, the Oregon Constitution, the United States Constitution and consistent with Oregon and national standards of jus-
(b) Implement and ensure compliance with contracts, policies, procedures, standards and guidelines adopted by the commission or required by statute.

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

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

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

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

(g) Provide services, facilities and materials necessary for the performance of the duties, functions and powers of the Public Defense Services Commission.

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

(i) Prepare and submit to the commission an annual report of the activities of the office of public defense services.

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

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

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

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

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

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

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

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

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

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

(F) An administrative services division that includes finance, human resources, information technology and administrative support positions.

(G) A contracting services division that includes a chief contracting officer, a chief review officer, case support and administrative support positions.
(H) A standardization and evaluations division responsible for establishing, explaining, maintaining and sustaining standards for internal and external evaluation.

(I) A special programs division with duties as determined by the director.

(2) The director may designate persons as representatives of the director for the purposes of determining and paying bills submitted to the office of public defense services and determining pre-authorization for incurring fees and expenses under ORS 135.055.

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

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

(a) Recommend to the Public Defense Services Commission how to establish and maintain, in a cost-effective manner, the delivery of legal services to persons entitled to, and, where applicable, financially eligible for, appointed counsel at state expense under Oregon statutes, the Oregon Constitution, the United States Constitution and consistent with Oregon and national standards of justice.

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

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

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

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

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

(g) Provide services, facilities and materials necessary for the performance of the duties, functions and powers of the Public Defense Services Commission.

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

(i) Prepare and submit to the commission an annual report of the activities of the office of public defense services.

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

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

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

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

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

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

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

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

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

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

(F) An administrative services division that includes finance, human resources, information technology and administrative support positions.

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

(H) A standardization and evaluations division responsible for establishing, explaining, maintaining and sustaining standards for internal and external evaluation.

(I) A special programs division with duties as determined by the director.

(2) The director may designate persons as representatives of the director for the purposes of determining and paying bills submitted to the office of public defense services and determining pre-authorization for incurring fees and expenses under ORS 135.055.

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

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

(2) Implementing all other provisions of this 2023 Act.

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

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

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

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

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

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

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

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

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

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

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