

# Senate Bill 322

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## 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.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to public defense; creating new provisions; amending ORS 151.211, 151.213 and 151.216; and  
3 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 Oregon State Bar.

8 [(2) "*Chief Justice*" means the *Chief Justice of the Supreme Court*.]

9 [(3)] (2) "Commission" means the Public Defense Services Commission.

10 [(4)] (3) "Director" means the public defense services executive director appointed under ORS  
11 151.216.

12 [(5)] (4) "Office of public defense services" means the office established by the commission under  
13 the director to handle the cases assigned and to carry out the administrative policies and procedures  
14 for the public defense system.

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

16 151.213. (1) The Public Defense Services Commission is established in the [*judicial*] **executive**  
17 branch of state government. Except for the appointment or removal of commission members, the  
18 commission and employees of the commission are not subject to the exercise of administrative au-  
19 thority and supervision by the [*Chief Justice of the Supreme Court as the administrative head of the*  
20 *Judicial Department*] **Governor**.

21 (2)(a) The commission consists of nine **voting** members **and four nonvoting members** ap-  
22 pointed [*by order of the Chief Justice. In addition to the nine appointed members, the Chief Justice*  
23 *serves as a nonvoting, ex officio member. The Chief Justice shall appoint at least three persons who*  
24 *are not bar members, at least one person who was formerly engaged in the provision of public defense*  
25 *services and at least one person who has been formerly represented by a public defense provider in this*  
26 *state. All members must have a demonstrated record of commitment to public defense. Except for the*  
27 *Chief Justice or a senior judge under ORS 1.300, a member may not serve concurrently as a judge, a*  
28 *prosecuting attorney or an employee of a law enforcement agency. A person who is primarily engaged*  
29 *in providing public defense services may not serve as a member of the commission.*] **as follows:**

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

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

1 (i) One voting member with experience in finance and organizational administration.

2 (ii) One voting member who is a current or former dean or faculty member of a law  
3 school.

4 (iii) One nonvoting member.

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

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

8 (ii) One voting member who is a former judge with experience in child protective pro-  
9 ceedings.

10 (iii) One nonvoting member.

11 (C) The Governor shall appoint, from among persons recommended by the Senate Presi-  
12 dent:

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

14 (ii) Two voting members.

15 (D) The Governor shall appoint, from among persons recommended by the Speaker of the  
16 House of Representatives:

17 (i) One nonvoting member who is a member of the House of Representatives at the time  
18 of appointment.

19 (ii) Two voting members.

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

22 (b) When recommending and appointing members of the commission, the Governor, Chief  
23 Justice, Senate President and Speaker of the House of Representatives shall:

24 (A) Consider input from individuals and organizations with an interest in the delivery of  
25 public defense services.

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

27 (C) Ensure that members appointed to the commission have significant experience with  
28 issues related to public defense or in the case types subject to representation by public de-  
29 fense service providers, or have demonstrated a strong commitment to quality public defense  
30 representation.

31 (c) A member may not serve concurrently as a judge, a prosecuting attorney or an em-  
32 ployee of a law enforcement agency.

33 (d) A person who is primarily engaged in providing public defense services, or who has a  
34 financial interest in the delivery of public defense services, may not serve as a voting mem-  
35 ber of the commission.

36 (3) The term of a member is four years beginning on the effective date of the [*order of the Chief*  
37 *Justice appointing the member*] **appointment**. A member is eligible for reappointment if qualified for  
38 membership at the time of reappointment. [*A member may be removed from the commission by order*  
39 *of the Chief Justice.*] **The Governor may remove any member of the commission at any time**  
40 **for cause, after notice and public hearing, but not more than three members shall be re-**  
41 **moved within a period of four years, unless it is for corrupt conduct in office.** If a vacancy  
42 occurs for any cause before the expiration of the term of a member, the [*Chief Justice*] **appointing**  
43 **authority** shall make an appointment to become immediately effective for the unexpired term.

44 (4) A chairperson and a vice chairperson shall be appointed by [*order of the Chief Justice*] **the**  
45 **Governor** every two years with such functions as the commission may determine. A member is eli-

1 gible for reappointment as chairperson or vice chairperson.

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

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

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

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

7 (a) Establish and maintain a public defense system that ensures the provision of public defense  
8 services consistent with the Oregon Constitution, the United States Constitution and Oregon and  
9 national standards of justice.

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

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

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

16 (B) Promote policies for public defense provider compensation and resources that are compara-  
17 ble to prosecution compensation and resources;

18 (C) Ensure funding and resources to support required data collection and training requirements;  
19 and

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

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

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

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

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

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

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

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

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

42 (B) The appointment of counsel, including the appointment of counsel at state expense regard-  
43 less of financial eligibility in juvenile delinquency matters;

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

1 (D) Appointed counsel compensation disputes;

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

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

9 (G) Performance for legal representation;

10 (H) The contracting of public defense services;

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

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

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

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

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

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

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

35 (4) The commission may not:

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

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

38 (c) Interfere with the director or any member of the staff of the director in carrying out pro-  
 39 fessional duties involving the legal representation of public defense clients.

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

44 **SECTION 4. (1) Within 60 days after the operative date specified in section 6 (1) of this**  
 45 **2023 Act, the Governor shall appoint four nonvoting members to the Public Defense Services**

1 Commission as provided in ORS 151.213 (2).

2 (2) A person who is a member of the Public Defense Services Commission on the opera-  
3 tive date specified in section 6 (1) of this 2023 Act shall remain a member of the commission  
4 until the end of the person's term, subject to removal by the Governor for cause as described  
5 in ORS 151.213 (3).

6 (3) Upon the first instance of a commission member's term ending after the operative  
7 date specified in section 6 (1) of this 2023 Act, the remaining voting members of the com-  
8 mission shall appoint a successor member as provided in ORS 151.213 (2)(a)(E). For the re-  
9 maining members, at the conclusion of each person's term, the person may be reappointed  
10 to the commission by the Governor if the person meets the requirements described in ORS  
11 151.213 (2).

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

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

16 SECTION 6. (1) Section 4 of this 2023 Act and the amendments to ORS 151.211, 151.213  
17 and 151.216 by sections 1 to 3 of this 2023 Act become operative on a date that is 270 days  
18 after the effective date of this 2023 Act.

19 (2) The Public Defense Services Commission, the Judicial Department and the Governor  
20 may take any action before the operative date specified in subsection (1) of this section that  
21 is necessary to enable the commission, the department or the Governor to exercise, on and  
22 after the operative date specified in subsection (1) of this section, all of the duties, functions  
23 and powers conferred on the commission, the department or the Governor by section 4 of  
24 this 2023 Act and the 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 preservation of the public  
27 peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect  
28 on its passage.

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