

Senate Bill 413

Sponsored by Senator GORSEK (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**.

Establishes Public Defense Services Student Loan Repayment Assistance Program in Oregon State Bar to provide forgivable loans to eligible public defense attorneys for outstanding student loans. Directs Oregon State Bar to report annually to committee or interim committee of Legislative Assembly on program. Creates subtraction from federal taxable income for loan repayment assistance received under program. Appropriates moneys to Judicial Department for transfer to Oregon State Bar for purpose of program.

Transfers Public Defense Services Commission from judicial to executive branch. Modifies appointment and removal process for commission members. Modifies duties of public defense services executive director to include development of training programs and establishment of trial division.

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, 151.213, 151.216 and
3 151.219; and prescribing an effective date.

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

LOAN REPAYMENT ASSISTANCE

SECTION 1. (1) **As used in this section:**

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8
9 (a) **“Public defense attorney” means an attorney:**

10 (A) **Who is appointed to represent eligible individuals as required by Oregon statutes, the**
11 **Oregon Constitution or the United States Constitution;**

12 (B) **Whose legal work is funded by the office of public defense services and who is em-**
13 **ployed by the state or a public defense services contractor; and**

14 (C) **Who meets any further definition of “public defense attorney” set forth by the**
15 **Oregon State Bar.**

16 (b) **“Public defense staff member” means an investigator, support staff member or case**
17 **manager who is employed by a public defense services contractor.**

18 (2) **The Public Defense Services Student Loan Repayment Assistance Program is estab-**
19 **lished in the Oregon State Bar.**

20 (3)(a) **The program shall provide forgivable loans to an eligible public defense attorney**
21 **or public defense staff member for up to \$20,000 in payments of principal and interest on**
22 **outstanding public or private student loans for each 12 months of service.**

23 (b) **The program may provide forgivable loans to a public defense attorney or public de-**
24 **fense staff member for 10 years or until the program has provided a total of \$200,000 in**
25 **forgivable loans, whichever occurs first.**

26 (4)(a) **A public defense attorney is eligible for the program if:**

27 (A) **The attorney resides in this state;**

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 (B) The attorney practices public defense services in this state full time or part time, as
 2 defined by the Oregon State Bar, while participating in the program;

3 (C) The attorney commits to provide public defense services for a period of 10 years; and

4 (D) The attorney meets other requirements established by the Oregon State Bar under
 5 subsection (5) of this section.

6 (b) A public defense staff member is eligible for the program if:

7 (A) The person resides in this state;

8 (B) The person is employed by a public defense services contractor in this state full time
 9 or part time, as defined by the Oregon State Bar, while participating in the program;

10 (C) The person commits to provide public defense services for a period of 10 years; and

11 (D) The person meets other requirements established by the Oregon State Bar under
 12 subsection (5) of this section.

13 (5) The Oregon State Bar shall adopt policies for administration of the program, including
 14 eligibility and application requirements. The policies shall include that amounts of forgivable
 15 loans for student loan payments be based on the amount of the person's working hours spent
 16 providing public defense services, provided that the provision of public defense services con-
 17 stitutes at least 70 percent of the person's working hours.

18 **SECTION 2.** No later than August 31 of each year, the Oregon State Bar shall report on
 19 the Public Defense Services Student Loan Repayment Assistance Program to a committee
 20 or interim committee of the Legislative Assembly related to the judiciary. The report must
 21 include:

22 (1) The number of attorneys and staff members who entered the program, and the month
 23 and year of entry.

24 (2) The average amount of forgivable loans provided to a participant.

25 (3) The total amount of forgivable loans provided.

26 (4) The number of attorneys and staff members who participated in the program in each
 27 county.

28 (5) The number of clients and cases and the case types in which public defense services
 29 were provided, disaggregated by anonymous participation.

30 (6) The number of attorneys and staff members who report that participation in the
 31 program is a substantial factor in removing economic barriers to the ability to perform
 32 public defense services.

33 (7) The average amount of outstanding student loan debt for each participant.

34 (8) Other information that is useful in evaluating the program.

35 **SECTION 3.** (1) The Oregon State Bar shall start accepting applications for the Public
 36 Defense Services Student Loan Repayment Assistance Program established in section 1 of
 37 this 2023 Act no later than December 1, 2023.

38 (2) The Oregon State Bar shall make the first report under section 2 of this 2023 Act no
 39 later than August 31, 2024.

40 **SECTION 4.** Section 5 of this 2023 Act is added to and made a part of ORS chapter 316.

41 **SECTION 5.** (1) In computing Oregon taxable income for purposes of this chapter, there
 42 shall be subtracted from federal taxable income an amount equal to loan repayment assist-
 43 ance paid to the taxpayer under section 1 of this 2023 Act if the individual to whom the as-
 44 sistance was paid is listed on the return.

45 (2) The amount of subtraction allowed under subsection (1) of this section shall be re-

1 **duced by any deduction allowed for the same amounts to the taxpayer or any other taxpayer**
 2 **listed on the return for the tax year under section 221 of the Internal Revenue Code.**

3 **SECTION 6.** In addition to and not in lieu of any other appropriation, there is appropri-
 4 ated to the Judicial Department, for the biennium beginning July 1, 2023, out of the General
 5 Fund, the amount of \$_____, which may be transferred to the Oregon State Bar for the
 6 purpose of providing forgivable loans under the Public Defense Services Student Loan Re-
 7 payment Assistance Program established in section 1 of this 2023 Act. The Oregon State Bar
 8 may use up to five percent of the moneys transferred to pay the administrative costs of the
 9 program.

10
 11 **PUBLIC DEFENSE SERVICES COMMISSION**
 12 **(Changes to its Branch of Government,**
 13 **Appointing Authority, Membership, Duties)**
 14

15 **SECTION 7.** ORS 151.211 is amended to read:

16 151.211. For purposes of ORS 151.211 to 151.221:

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

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

19 [(3)] (2) “Commission” means the Public Defense Services Commission.

20 [(4)] (3) “Director” means the public defense services executive director appointed under ORS
 21 151.216.

22 [(5)] (4) “Office of public defense services” means the office established by the commission under
 23 the director to handle the cases assigned and to carry out the administrative policies and procedures
 24 for the public defense system.

25 **SECTION 8.** ORS 151.213 is amended to read:

26 151.213. (1) The Public Defense Services Commission is established in the [judicial] **executive**
 27 branch of state government. Except for the appointment or removal of commission members, the
 28 commission and employees of the commission are not subject to the exercise of administrative au-
 29 thority and supervision by the [Chief Justice of the Supreme Court as the administrative head of the
 30 Judicial Department] **Governor.**

31 (2)(a) The commission consists of nine members appointed [by order of the Chief Justice. In ad-
 32 dition to the nine appointed members, the Chief Justice serves as a nonvoting, ex officio member. The
 33 Chief Justice shall appoint at least three persons who are not bar members, at least one person who
 34 was formerly engaged in the provision of public defense services and at least one person who has been
 35 formerly represented by a public defense provider in this state. All members must have a demonstrated
 36 record of commitment to public defense. Except for the Chief Justice or a senior judge under ORS 1.300,
 37 a member may not serve concurrently as a judge, a prosecuting attorney or an employee of a law
 38 enforcement agency. A person who is primarily engaged in providing public defense services may not
 39 serve as a member of the commission.] **as follows:**

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

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

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

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

1 (c) **At least three members must be persons who are not bar members.**

2 (d) **At least one member must be a person who has been formerly represented by a public**
 3 **defense provider.**

4 (e) **Except for a senior judge under ORS 1.003, a member may not serve concurrently as**
 5 **a judge, a member of the Legislative Assembly, a prosecuting attorney or an employee of a**
 6 **law enforcement agency.**

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

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

15 (4) A chairperson and a vice chairperson shall be [*appointed by order of the Chief Justice*]
 16 **elected by the members of the commission** every two years with such functions as the commis-
 17 sion may determine. A member is eligible for reappointment as chairperson or vice chairperson.

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

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

21 **SECTION 9.** ORS 151.216 is amended to read:

22 151.216. (1) The Public Defense Services Commission shall:

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

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

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

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

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

34 (C) Ensure funding and resources to support required data collection and training requirements;
 35 and

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

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

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

44 (f) Adopt a statewide workload plan, based on the caseload policies described in paragraph (c)(A)
 45 of this subsection, that takes into account the needs of each county or jurisdiction, practice struc-

1 ture and type of practice overseen by the office of public defense services.

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

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

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

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

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

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

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

17 (D) Appointed counsel compensation disputes;

18 (E) Any other costs associated with the representation of a person by appointed counsel in the
19 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
20 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
21 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any
22 other provision of law that expressly provides for payment of such compensation, costs or expenses
23 by the commission;

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

25 (G) Performance for legal representation;

26 (H) The contracting of public defense services;

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

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

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

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

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

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

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

6 (4) The commission may not:

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

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

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

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

12 151.219. (1) The public defense services executive director shall:

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

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

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

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

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

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

28 (g) Provide services, facilities and materials necessary for the performance of the duties, func-
 29 tions and powers of the Public Defense Services Commission.

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

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

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

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

41 **(L) Establish within the office of public defense services a trial division that includes**
 42 **three or four regional offices and supervisor, attorney, investigator and support staff posi-**
 43 **tions, in order to support areas within the state with the highest provider caseloads or most**
 44 **unrepresented defendants.**

45 **(m) Develop training programs for employees of the office of public defense services, set**

1 training protocols and expectations for the trainings and coordinate with professional asso-
2 ciations to provide continuing legal education opportunities.

3 (n) Ensure that the contracts negotiated under subsection (1)(d) of this section:

4 (A) Provide for staff members within the offices of public defense providers who train
5 and supervise other attorneys, assist in the orientation of new employees and coordinate
6 continuing legal educational opportunities, while having the ability to have a lower caseload
7 than other attorneys within the office.

8 (B) Compensate contracted public defense providers at the same rate as employees of the
9 office of public defense services performing comparable work.

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

13 **SECTION 11.** (1) A person who is a member of the Public Defense Services Commission
14 on the operative date specified in section 12 (1) of this 2023 Act shall remain a member of
15 the commission until the end of the person’s term, subject to removal for cause as described
16 in ORS 151.213 (3).

17 (2) Upon the conclusion of the term of a person who is a commission member on the
18 operative date specified in section 12 (1) of this 2023 Act, the person may be reappointed to
19 the commission by the Governor if the person meets the requirements described in ORS
20 151.213 (2).

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

24
25 (Operative Date)

26
27 **SECTION 12.** (1) The amendments to ORS 151.211, 151.213, 151.216 and 151.219 by sections
28 7 to 10 of this 2023 Act become operative on January 1, 2025.

29 (2) The Public Defense Services Commission, the Judicial Department and the Governor
30 may take any action before the operative date specified in subsection (1) of this section that
31 is necessary to enable the commission, the department or the Governor to exercise, on and
32 after the operative date specified in subsection (1) of this section, all of the duties, functions
33 and powers conferred on the commission, the department or the Governor by the amend-
34 ments to ORS 151.211, 151.213, 151.216 and 151.219 by sections 7 to 10 of this 2023 Act.

35
36 CAPTIONS

37
38 **SECTION 13.** The unit captions used in this 2023 Act are provided only for the conven-
39 ience of the reader and do not become part of the statutory law of this state or express any
40 legislative intent in the enactment of this 2023 Act.

41
42 EFFECTIVE DATE

43
44 **SECTION 14.** This 2023 Act takes effect on the 91st day after the date on which the 2023
45 regular session of the Eighty-second Legislative Assembly adjourns sine die.

