

A-Engrossed House Bill 2614

Ordered by the House April 15
Including House Amendments dated April 15

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Judiciary for Representative Jason Kropf)

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. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act makes various changes to the OPDC. The Act takes effect when the Governor signs it. (Flesch Readability Score: 92.9).

[Digest: The Act tells the OPDC to do a study. (Flesch Readability Score: 100.0).]

[Directs the Oregon Public Defense Commission to study ways to improve the provision of public defense services within this state, and to provide the results of the study to the appropriate interim committees of the Legislative Assembly no later than December 31, 2026.]

[Sunsets January 2, 2027.]

Directs the Oregon Public Defense Commission to submit an agency request budget to the Oregon Department of Administrative Services after approval by commission members. Modifies the requirements for policies concerning compensation and caseloads. Removes the authority of the commission to advocate for or against legislation.

Modifies the authority of the Governor, beginning July 1, 2027, over the appointment and removal of the executive director of the commission and the removal of commission members.

Extends the authority of the commission to contract with entities that subcontract with other entities or persons for the provision of public defense services until July 1, 2033. Specifies requirements for subcontracting entities.

Declares an emergency, effective on passage.

A BILL FOR AN ACT

Relating to the Oregon Public Defense Commission; creating new provisions; amending ORS 151.213 and 151.216 and section 102, chapter 281, Oregon Laws 2023; and declaring an emergency.

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

SECTION 1. Section 102, chapter 281, Oregon Laws 2023, is amended to read:

Sec. 102. (1)(a) The amendments to ORS 151.211, 151.216 and 151.219 by sections 93 to 95, *[of this 2023 Act]* **chapter 281, Oregon Laws 2023**, become operative on July 1, 2025.

(b) The amendments to ORS 151.213 *[and 151.216]* by *[sections 100 and 101 of this 2023 Act]* **section 100, chapter 281, Oregon Laws 2023**, become operative on July 1, 2027.

(c) The amendments to ORS 151.216 by section 101, chapter 281, Oregon Laws 2023, become operative on July 1, 2033.

(2)(a) A person who is a member of the Oregon Public Defense Commission on July 1, 2027, may finish the person's term as a commission member and is eligible for reappointment, but, beginning July 1, 2027, may be removed by the Governor only for *[inefficiency, neglect of duty or malfeasance in office]* **cause**.

(b) The person serving as executive director of the Oregon Public Defense Commission on July 1, 2027, may finish the person's term as executive director and is eligible for reappointment, but, beginning on July 1, 2027, *[serves at the pleasure of the voting members of the commission]* **may be**

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 **removed by the Governor only for cause.**

2 (3) The Oregon Public Defense Commission, the Oregon Department of Administrative Services
3 and the Governor may take any action before the operative dates specified in subsection (1) of this
4 section that is necessary to enable the commission to exercise, on and after the operative dates
5 specified in subsection (1) of this section, all of the duties, functions and powers conferred on those
6 entities by the amendments to ORS 151.211, 151.213, 151.216 and 151.219 by sections 93 to 95, 100
7 and 101, *[of this 2023 Act]* **chapter 281, Oregon Laws 2023.**

8 **SECTION 2.** ORS 151.213, as amended by section 77, chapter 281, Oregon Laws 2023, is
9 amended to read:

10 151.213. (1) The Oregon Public Defense Commission is established in the executive branch of
11 state government. *[Except for the appointment or removal of commission members, the commission and*
12 *employees of the commission are not subject to the exercise of administrative authority and supervision*
13 *by the Governor.]*

14 (2)(a) Nine voting members and four nonvoting members shall be appointed to the commission
15 by the Governor as follows:

16 (A) The Governor shall appoint:

17 (i) One voting member who has been represented by a public defense provider.

18 (ii) Two additional voting members, one of whom has experience as a public defense provider in
19 juvenile delinquency or dependency cases.

20 (iii) Two nonvoting members who are currently employed as public defense providers in this
21 state, one of whom is from an urban area and one of whom is from a rural area.

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

24 (i) One voting member who is a retired judge.

25 (ii) Two additional voting members, one of whom has experience as a public defense provider in
26 criminal cases.

27 (C) The Governor shall appoint, from among persons recommended by the President of the Sen-
28 ate:

29 (i) One voting member who is a current dean or faculty member of an Oregon law school.

30 (ii) One nonvoting member who is a member of the Senate at the time of appointment.

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

33 (i) One voting member who has expertise in juvenile law and criminal defense, or who is a ju-
34 venile justice or criminal justice reform advocate.

35 (ii) One nonvoting member who is a member of the House of Representatives at the time of ap-
36 pointment.

37 (E) The Governor shall appoint one voting member from among persons jointly recommended
38 by the President of the Senate and the Speaker of the House of Representatives.

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

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

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

44 (C) Ensure that members appointed to the commission have significant experience with issues
45 related to public defense or in the case types subject to representation by public defense providers.

(D) Ensure that members appointed to the commission have demonstrated a strong commitment to quality public defense representation.

(c) The following persons may not be appointed to and may not serve as members of the commission:

(A) A prosecuting attorney.

(B) A judge, magistrate or other person who performs judicial functions.

(C) An employee of a law enforcement agency or the Department of Human Services.

(d) A person who is primarily engaged in providing public defense services and who has a financial interest in the delivery of public defense services at the state level may not serve as a voting member of the commission.

(e) As used in this subsection, “law enforcement agency” means an entity that employs corrections officers, parole and probation officers, police officers, certified reserve officers or reserve officers, as those terms are defined in ORS 181A.355.

(3) The term of a member is four years beginning on the effective date of the Governor’s appointment, but members serve at the pleasure of the Governor. A member is eligible for reappointment if qualified for membership at the time of reappointment, but may serve no more than two consecutive four-year terms. The Governor may remove any member of the commission at any time. If a vacancy occurs for any cause before the expiration of the term of a member, the Governor shall make an appointment to fill the vacancy, in the same manner as an appointment to a full term, to become immediately effective for the unexpired term.

(4) A chairperson and a vice chairperson shall be elected by the voting members of the commission every two years with such functions as the commission may determine. A member is eligible for reelection as chairperson or vice chairperson.

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

(6)(a) All members of the commission shall:

(A) Review the policies, procedures, standards and guidelines required by ORS 151.216 and provide input before the approval vote described in paragraph (b) of this subsection.

(B) Review the **agency request** budget of the commission and provide input before the approval vote described in paragraph (b) of this subsection.

(C) Meet as needed to carry out the duties described in this subsection.

(b) The voting members of the commission shall:

(A) Approve by majority vote the policies, procedures, standards and guidelines required by ORS 151.216 before those policies, procedures, standards and guidelines may take effect.

(B) Approve by majority vote the **agency request** budget of the commission before submission to the [Legislative Assembly] **Oregon Department of Administrative Services**.

(7) The members of 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 executive director or any member of the staff of the executive director in carrying out professional duties involving the legal representation of public defense clients.

(8) A member of the commission is entitled to compensation for services as a member, and to expenses, as provided in ORS 292.495.

(9)(a) The Governor shall appoint an executive director of the commission, subject to confirmation by the Senate in the manner prescribed by ORS 171.562 and 171.565. The person appointed as executive director must be well qualified by training and experience to perform the functions of the

office.

(b) The term of office of the executive director is four years, but the executive director serves at the pleasure of the Governor.

(c) Before the expiration of the executive director's term, the Governor shall appoint a successor to take office upon the date of the expiration. The executive director is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

SECTION 3. ORS 151.213, as amended by sections 77 and 100, chapter 281, Oregon Laws 2023, is amended to read:

151.213. (1) The Oregon Public Defense 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 Governor.]*

(2)(a) Nine voting members and four nonvoting members shall be appointed to the commission by the Governor as follows:

(A) The Governor shall appoint:

(i) One voting member who has been represented by a public defense provider.

(ii) Two additional voting members, one of whom has experience as a public defense provider in juvenile delinquency or dependency cases.

(iii) Two nonvoting members who are currently employed as public defense providers in this state, one of whom is from an urban area and one of whom is from a rural area.

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

(i) One voting member who is a retired judge.

(ii) Two additional voting members, one of whom has experience as a public defense provider in criminal cases.

(C) The Governor shall appoint, from among persons recommended by the President of the Senate:

(i) One voting member who is a current dean or faculty member of an Oregon law school.

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

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

(i) One voting member who has expertise in juvenile law and criminal defense, or who is a juvenile justice or criminal justice reform advocate.

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

(E) The Governor shall appoint one voting member from among persons jointly recommended by the President of the Senate and the Speaker of the House of Representatives.

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

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

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

(C) Ensure that members appointed to the commission have significant experience with issues related to public defense or in the case types subject to representation by public defense providers.

(D) Ensure that members appointed to the commission have demonstrated a strong commitment to quality public defense representation.

(c) The following persons may not be appointed to and may not serve as members of the commission:

(A) A prosecuting attorney.

(B) A judge, magistrate or other person who performs judicial functions.

(C) An employee of a law enforcement agency or the Department of Human Services.

(d) A person who is primarily engaged in providing public defense services and who has a financial interest in the delivery of public defense services at the state level may not serve as a voting member of the commission.

(e) As used in this subsection, “law enforcement agency” means an entity that employs corrections officers, parole and probation officers, police officers, certified reserve officers or reserve officers, as those terms are defined in ORS 181A.355.

(3) The term of a member is four years beginning on the effective date of the Governor’s appointment. A member is eligible for reappointment if qualified for membership at the time of reappointment, but may serve no more than two consecutive four-year terms. The Governor may remove any member of the commission at any time *[for inefficiency, neglect of duty or malfeasance in office]* **for cause**. If a vacancy occurs for any cause before the expiration of the term of a member, the Governor shall make an appointment to fill the vacancy, in the same manner as an appointment to a full term, to become immediately effective for the unexpired term.

(4) A chairperson and a vice chairperson shall be elected by the voting members of the commission every two years with such functions as the commission may determine. A member is eligible for reelection as chairperson or vice chairperson.

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

(6)(a) All members of the commission shall:

(A) Review the policies, procedures, standards and guidelines required by ORS 151.216 and provide input before the approval vote described in paragraph (b) of this subsection.

(B) Review the **agency request** budget of the commission and provide input before the approval vote described in paragraph (b) of this subsection.

(C) Meet as needed to carry out the duties described in this subsection.

(b) The voting members of the commission shall:

[(A) Appoint an executive director of the commission. The term of office of the executive director is four years, but the executive director serves at the pleasure of the voting members of the commission.]

[(B)] (A) Approve by majority vote the policies, procedures, standards and guidelines required by ORS 151.216 before those policies, procedures, standards and guidelines may take effect.

[(C)] (B) Approve by majority vote the **agency request** budget of the commission before submission to the *[Legislative Assembly]* **Oregon Department of Administrative Services**.

(7) The members of 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 executive director or any member of the staff of the executive director in carrying out professional duties involving the legal representation of public defense clients.

(8) A member of the commission is entitled to compensation for services as a member, and to expenses, as provided in ORS 292.495.

(9)(a) The Governor shall appoint an executive director of the commission after consultation with the commission. The appointment is subject to confirmation by the Senate in the manner prescribed by ORS 171.562 and 171.565. The person appointed as executive director must be well qualified by training and experience to perform the functions of the office.

(b) As used in this subsection, “consultation with the commission” must include, but is not limited to, consulting with the chairperson of the commission prior to the recruitment of a new executive director, allowing the chairperson or another commission member designated by the chairperson to participate in the interview process, and allowing commission members to review and provide comment on the top three candidates prior to the final appointment.

(c) The term of office of the executive director is four years, but the Governor may remove the executive director at any time for cause.

(d) Before the expiration of the executive director’s term, the Governor shall appoint a successor to take office upon the date of the expiration. The executive director is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

SECTION 4. ORS 151.216, as amended by section 78, chapter 281, Oregon Laws 2023, is amended to read:

151.216. (1) The Oregon Public Defense 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) Adopt policies for public defense providers that:

(A) Ensure compensation, resources and caseloads are in accordance with *[national and regional best practices]* **the requirements of the Oregon and United States Constitutions;**

[(B) Ensure all public defense provider contracts provide for compensation that is commensurate with the character of service performed;]

[(C)] **(B)** Ensure funding and resources to support required data collection and training requirements; and

[(D)] **(C)** 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.

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

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

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

(f) Submit *[the budget of the commission to the Legislative Assembly after the budget is submitted to the commission by the executive director and approved by the voting members of the commission. The chairperson of the commission shall present the budget to the Legislative Assembly]* **an agency request budget to the Oregon Department of Administrative Services as described in ORS 291.208.**

1 (g) Adopt a compensation plan, classification system and affirmative action plan for the com-
2 mission that are commensurate with other state agencies.

3 (h) Adopt policies, procedures, standards and guidelines regarding:

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

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

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

10 (D) Appointed counsel compensation disputes;

11 (E) The costs associated with the representation of a person by appointed counsel in the state
12 courts that are required to be paid by the state; and

13 (F) The types of fees and expenses subject to a preauthorization requirement.

14 (i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services
15 Account established by ORS 151.225 for the costs of personnel and other costs associated with lo-
16 cation of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court
17 Administrator.

18 (j) Develop, adopt and oversee the implementation, enforcement and modification of policies,
19 procedures, minimum standards and guidelines to ensure that public defense providers are providing
20 effective assistance of counsel consistently to all eligible persons in this state as required by statute
21 and the Oregon and United States Constitutions. The policies, procedures, standards and guidelines
22 described in this paragraph apply to employees of the commission and to any person or entity that
23 contracts with the commission to provide public defense services in this state.

24 (k) Set minimum standards by which appointed counsel are trained and supervised.

25 (L) Establish a system, policies and procedures for the mandatory collection of data concerning
26 the operation of the commission and all public defense providers.

27 (m) Enter into contracts and hire attorneys to bring the delivery of public defense services into
28 and maintain compliance with the minimum policies, procedures, standards and guidelines described
29 in this subsection. All contracts for the provision of public defense services to which the commission
30 is a party must include a requirement for collection by the commission of data determined by the
31 commission to be qualitatively necessary for any report required to be submitted to the Legislative
32 Assembly.

33 (n) At least once every two years, report to the interim committees of the Legislative Assembly
34 related to the judiciary, in the manner provided in ORS 192.245, and to the Governor and Chief
35 Justice, concerning compliance metrics for the minimum standards described in this subsection and
36 recommendations for legislative changes.

37 (o) Develop standard operating expectations for persons and entities providing public defense
38 services.

39 (p) In consultation with the Judicial Department, ensure the existence of policies that create a
40 standardized process for determining and verifying financial eligibility for appointed counsel under
41 ORS 151.485.

42 (q) Ensure access to systematic and comprehensive training programs for attorneys for the
43 purpose of meeting statewide standards set by the commission.

44 (r) Enter into contracts or interagency agreements with the Oregon Department of Administra-
45 tive Services for the purpose of supporting state public defense population forecasts and other re-

lated forecasts.

(s) Establish any other policies, procedures, standards and guidelines for the conduct of the commission's affairs and promulgate policies necessary to carry out all powers and duties of the commission.

(2) When establishing the minimum policies, procedures, standards and guidelines described in this section, the commission shall adhere to the following principles:

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

(b) The workload of appointed counsel must be controlled to permit effective representation. Economic disincentives or incentives that impair the ability of appointed counsel to provide effective assistance of counsel must be avoided. The commission may develop workload controls to enhance appointed counsel's ability to provide effective representation.

(c) The ability, training and experience of appointed counsel must match the nature and complexity of the case to which the counsel is appointed.

(d) The same appointed counsel shall continuously represent a client throughout the pendency of the case and shall appear at every court appearance other than ministerial hearings.

(e) The commission shall establish continuing legal education requirements for public defense providers who are employed by or contract with the commission that are specific to the subject matter area and practice of each type of court-appointed counsel.

(f) The commission and public defense providers shall systematically review appointed counsel for efficiency and for effective representation according to commission standards.

(3) The commission shall be organized in a manner for the effective delivery of public defense services as prescribed by the policies and procedures created pursuant to statute to financially eligible persons and consistent with the budgetary structure established for the commission by the Legislative Assembly.

(4) The commission shall hire attorneys to serve as appointed counsel, including at the trial level in Oregon circuit courts, and may establish a trial division within the commission consisting of attorneys employed by the commission who are trial-level public defense providers.

(5) The policies, procedures, standards and guidelines adopted by the commission must be made available in an accessible manner to the public on the commission's website.

(6) 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.

(7) 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.

[(8) With the approval of a majority of the voting members of the commission, the commission may advocate for or against legislation before the Legislative Assembly or policies or budgets being considered by the Legislative Assembly.]

(8) The commission shall maintain an accurate and current list of all attorneys providing public defense services in this state and the qualifications for each attorney.

(9) The commission shall request that the Governor include in the Governor's requested budget, for each fiscal period, at a minimum, the amount of funds identified by the commission as being necessary to carry out the duties and activities of the commission.

(10) The commission may adopt rules pursuant to ORS chapter 183.

SECTION 5. ORS 151.216, as amended by sections 78 and 94, chapter 281, Oregon Laws 2023, is amended to read:

151.216. (1) The Oregon Public Defense 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) Adopt policies for public defense providers that:

(A) Ensure compensation, resources and caseloads are in accordance with *[national and regional best practices]* **the requirements of the Oregon and United States Constitutions;**

[(B) Ensure all public defense provider contracts provide for compensation that is commensurate with the character of service performed;]

[(C)] (B) Ensure funding and resources to support required data collection and training requirements; and

[(D)] (C) 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.

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

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

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

(f) Submit *[the budget of the commission to the Legislative Assembly after the budget is submitted to the commission by the executive director and approved by the voting members of the commission. The chairperson of the commission shall present the budget to the Legislative Assembly]* **an agency request budget to the Oregon Department of Administrative Services as described in ORS 291.208.**

(g) Adopt a compensation plan, classification system and affirmative action plan for the commission that are commensurate with other state agencies.

(h) 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) The costs associated with the representation of a person by appointed counsel in the state courts that are required to be paid by the state; and

1 (F) The types of fees and expenses subject to a preauthorization requirement.

2 (i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services
3 Account established by ORS 151.225 for the costs of personnel and other costs associated with lo-
4 cation of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court
5 Administrator.

6 (j) Develop, adopt and oversee the implementation, enforcement and modification of policies,
7 procedures, minimum standards and guidelines to ensure that public defense providers are providing
8 effective assistance of counsel consistently to all eligible persons in this state as required by statute
9 and the Oregon and United States Constitutions. The policies, procedures, standards and guidelines
10 described in this paragraph apply to employees of the commission and to any person or entity that
11 contracts with the commission to provide public defense services in this state.

12 (k) Set minimum standards by which appointed counsel are trained and supervised.

13 (L) Establish a system, policies and procedures for the mandatory collection of data concerning
14 the operation of the commission and all public defense providers.

15 (m) Enter into contracts and hire attorneys to bring the delivery of public defense services into
16 and maintain compliance with the minimum policies, procedures, standards and guidelines described
17 in this subsection. All contracts for the provision of public defense services to which the commission
18 is a party must include a requirement for collection by the commission of data determined by the
19 commission to be qualitatively necessary for any report required to be submitted to the Legislative
20 Assembly.

21 (n) At least once every two years, report to the interim committees of the Legislative Assembly
22 related to the judiciary, in the manner provided in ORS 192.245, and to the Governor and Chief
23 Justice, concerning compliance metrics for the minimum standards described in this subsection and
24 recommendations for legislative changes.

25 (o) Develop standard operating expectations for persons and entities providing public defense
26 services.

27 (p) In consultation with the Judicial Department, ensure the existence of policies that create a
28 standardized process for determining and verifying financial eligibility for appointed counsel under
29 ORS 151.485.

30 (q) Ensure access to systematic and comprehensive training programs for attorneys for the
31 purpose of meeting statewide standards set by the commission.

32 (r) Enter into contracts or interagency agreements with the Oregon Department of Administra-
33 tive Services for the purpose of supporting state public defense population forecasts and other re-
34 lated forecasts.

35 (s) Establish any other policies, procedures, standards and guidelines for the conduct of the
36 commission's affairs and promulgate policies necessary to carry out all powers and duties of the
37 commission.

38 (2) When establishing the minimum policies, procedures, standards and guidelines described in
39 this section, the commission shall adhere to the following principles:

40 (a) Appointed counsel shall be provided sufficient time and a space where attorney-client
41 confidentiality is safeguarded for meetings with clients.

42 (b) The workload of appointed counsel must be controlled to permit effective representation.
43 Economic disincentives or incentives that impair the ability of appointed counsel to provide effective
44 assistance of counsel must be avoided. The commission may develop workload controls to enhance
45 appointed counsel's ability to provide effective representation.

1 (c) The ability, training and experience of appointed counsel must match the nature and com-
2 plexity of the case to which the counsel is appointed.

3 (d) The same appointed counsel shall continuously represent a client throughout the pendency
4 of the case and shall appear at every court appearance other than ministerial hearings.

5 (e) The commission shall establish continuing legal education requirements for public defense
6 providers who are employed by or contract with the commission that are specific to the subject
7 matter area and practice of each type of court-appointed counsel.

8 (f) The commission and public defense providers shall systematically review appointed counsel
9 for efficiency and for effective representation according to commission standards.

10 (3) The commission shall be organized in a manner for the effective delivery of public defense
11 services as prescribed by the policies and procedures created pursuant to statute to financially eli-
12 gible persons and consistent with the budgetary structure established for the commission by the
13 Legislative Assembly.

14 (4) The commission shall hire attorneys to serve as appointed counsel, including at the trial
15 level in Oregon circuit courts, and shall establish a trial division within the commission consisting
16 of attorneys employed by the commission who are trial-level public defense providers.

17 (5)(a) The commission shall establish, supervise and maintain a panel of qualified counsel who
18 contract with the commission and are directly assigned to cases. The commission shall develop a
19 process for certification of attorneys to the panel with periodic eligibility and case review. Panel
20 attorneys are not employees of the commission.

21 (b) The payment of panel counsel:

22 (A) May not be lower than the hourly rate established by the commission.

23 (B) Shall be adjusted to reflect the same percentage amount of any positive cost of living ad-
24 justment granted to employees in the management service in other executive branch agencies.

25 (C) May not provide a financial conflict of interest or economic incentives or disincentives that
26 impair an attorney's ability to provide effective representation.

27 (6)(a) The commission may enter into contracts for the provision of public defense services with
28 nonprofit public defense organizations **and private law firms**.

29 (b) The commission may enter into contracts with entities that subcontract with other entities
30 or persons for the provision of public defense services.

31 (c) The commission may not enter into a contract or agreement that pays appointed counsel a
32 flat fee per case.

33 (7) The policies, procedures, standards and guidelines adopted by the commission must be made
34 available in an accessible manner to the public on the commission's website.

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

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

45 [(10) With the approval of a majority of the voting members of the commission, the commission may

1 *advocate for or against legislation before the Legislative Assembly or policies or budgets being con-*
2 *sidered by the Legislative Assembly.]*

3 **(10) The commission shall maintain an accurate and current list of all attorneys provid-**
4 **ing public defense services in this state and the qualifications for each attorney.**

5 (11) The commission shall request that the Governor include in the Governor's requested budget,
6 for each fiscal period, at a minimum, the amount of funds identified by the commission as being
7 necessary to carry out the duties and activities of the commission.

8 (12) The commission may adopt rules pursuant to ORS chapter 183.

9 **SECTION 6.** ORS 151.216, as amended by sections 78, 94 and 101, chapter 281, Oregon Laws
10 2023, is amended to read:

11 151.216. (1) The Oregon Public Defense Commission shall:

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

15 (b) Adopt policies for public defense providers that:

16 (A) Ensure compensation, resources and caseloads are in accordance with [*national and regional*
17 *best practices*] **the requirements of the Oregon and United States Constitutions;**

18 *[(B) Ensure all public defense provider contracts provide for compensation that is commensurate*
19 *with the character of service performed;]*

20 *[(C)]* **(B)** Ensure funding and resources to support required data collection and training re-
21 quirements; and

22 *[(D)]* **(C)** Recognize the need to consider overhead costs that account for the cost of living and
23 business cost differences in each county or jurisdiction, including but not limited to rent, profes-
24 sional membership dues, malpractice insurance and other insurance and other reasonable and usual
25 operating costs.

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

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

30 (e) Adopt a statewide workload plan, based on the caseload policies described in paragraph
31 (b)(A) of this subsection, that takes into account the needs of each county or jurisdiction, practice
32 structure and type of practice overseen by the commission.

33 (f) Submit [*the budget of the commission to the Legislative Assembly after the budget is submitted*
34 *to the commission by the executive director and approved by the voting members of the commission.*
35 *The chairperson of the commission shall present the budget to the Legislative Assembly]* **an agency**
36 **request budget to the Oregon Department of Administrative Services as described in ORS**
37 **291.208.**

38 (g) Adopt a compensation plan, classification system and affirmative action plan for the com-
39 mission that are commensurate with other state agencies.

40 (h) Adopt policies, procedures, standards and guidelines regarding:

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

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

45 (C) The fair compensation of counsel appointed to represent a person financially eligible for

1 appointed counsel at state expense;

2 (D) Appointed counsel compensation disputes;

3 (E) The costs associated with the representation of a person by appointed counsel in the state
4 courts that are required to be paid by the state; and

5 (F) The types of fees and expenses subject to a preauthorization requirement.

6 (i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services
7 Account established by ORS 151.225 for the costs of personnel and other costs associated with lo-
8 cation of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court
9 Administrator.

10 (j) Develop, adopt and oversee the implementation, enforcement and modification of policies,
11 procedures, minimum standards and guidelines to ensure that public defense providers are providing
12 effective assistance of counsel consistently to all eligible persons in this state as required by statute
13 and the Oregon and United States Constitutions. The policies, procedures, standards and guidelines
14 described in this paragraph apply to employees of the commission and to any person or entity that
15 contracts with the commission to provide public defense services in this state.

16 (k) Set minimum standards by which appointed counsel are trained and supervised.

17 (L) Establish a system, policies and procedures for the mandatory collection of data concerning
18 the operation of the commission and all public defense providers.

19 (m) Enter into contracts and hire attorneys to bring the delivery of public defense services into
20 and maintain compliance with the minimum policies, procedures, standards and guidelines described
21 in this subsection. All contracts for the provision of public defense services to which the commission
22 is a party must include a requirement for collection by the commission of data determined by the
23 commission to be qualitatively necessary for any report required to be submitted to the Legislative
24 Assembly.

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

29 (o) Develop standard operating expectations for persons and entities providing public defense
30 services.

31 (p) In consultation with the Judicial Department, ensure the existence of policies that create a
32 standardized process for determining and verifying financial eligibility for appointed counsel under
33 ORS 151.485.

34 (q) Ensure access to systematic and comprehensive training programs for attorneys for the
35 purpose of meeting statewide standards set by the commission.

36 (r) Enter into contracts or interagency agreements with the Oregon Department of Administra-
37 tive Services for the purpose of supporting state public defense population forecasts and other re-
38 lated forecasts.

39 (s) Establish any other policies, procedures, standards and guidelines for the conduct of the
40 commission's affairs and promulgate policies necessary to carry out all powers and duties of the
41 commission.

42 (2) When establishing the minimum policies, procedures, standards and guidelines described in
43 this section, the commission shall adhere to the following principles:

44 (a) Appointed counsel shall be provided sufficient time and a space where attorney-client
45 confidentiality is safeguarded for meetings with clients.

(b) The workload of appointed counsel must be controlled to permit effective representation. Economic disincentives or incentives that impair the ability of appointed counsel to provide effective assistance of counsel must be avoided. The commission may develop workload controls to enhance appointed counsel's ability to provide effective representation.

(c) The ability, training and experience of appointed counsel must match the nature and complexity of the case to which the counsel is appointed.

(d) The same appointed counsel shall continuously represent a client throughout the pendency of the case and shall appear at every court appearance other than ministerial hearings.

(e) The commission shall establish continuing legal education requirements for public defense providers who are employed by or contract with the commission that are specific to the subject matter area and practice of each type of court-appointed counsel.

(f) The commission and public defense providers shall systematically review appointed counsel for efficiency and for effective representation according to commission standards.

(3) The commission shall be organized in a manner for the effective delivery of public defense services as prescribed by the policies and procedures created pursuant to statute to financially eligible persons and consistent with the budgetary structure established for the commission by the Legislative Assembly.

(4) The commission shall hire attorneys to serve as appointed counsel, including at the trial level in Oregon circuit courts, and shall establish a trial division within the commission consisting of attorneys employed by the commission who are trial-level public defense providers.

(5)(a) The commission shall establish, supervise and maintain a panel of qualified counsel who contract with the commission and are directly assigned to cases. The commission shall develop a process for certification of attorneys to the panel with periodic eligibility and case review. Panel attorneys are not employees of the commission.

(b) The payment of panel counsel:

(A) May not be lower than the hourly rate established by the commission.

(B) Shall be adjusted to reflect the same percentage amount of any positive cost of living adjustment granted to employees in the management service in other executive branch agencies.

(C) May not provide a financial conflict of interest or economic incentives or disincentives that impair an attorney's ability to provide effective representation.

(6)(a) The commission may enter into contracts for the provision of public defense services with nonprofit public defense organizations **and private law firms**.

(b) The commission may not enter into a contract or agreement that pays appointed counsel a flat fee per case.

(7) The policies, procedures, standards and guidelines adopted by the commission must be made available in an accessible manner to the public on the commission's website.

(8) 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.

(9) 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.

[(10) With the approval of a majority of the voting members of the commission, the commission may advocate for or against legislation before the Legislative Assembly or policies or budgets being considered by the Legislative Assembly.]

(10) The commission shall maintain an accurate and current list of all attorneys providing public defense services in this state and the qualifications for each attorney.

(11) The commission shall request that the Governor include in the Governor's requested budget, for each fiscal period, at a minimum, the amount of funds identified by the commission as being necessary to carry out the duties and activities of the commission.

(12) The commission may adopt rules pursuant to ORS chapter 183.

SECTION 7. Section 8 of this 2025 Act is added to and made a part of ORS 151.211 to 151.221.

SECTION 8. (1) The Oregon Public Defense Commission may enter into a contract with an entity that subcontracts with other entities or persons for the provision of public defense services only if the entity operates in accordance with this section.

(2) An entity described in subsection (1) of this section shall:

(a) Designate an administrator who:

(A) Actively manages the distribution of cases within the entity;

(B) Has the authority and the responsibility to address concerns and complaints about representation by attorney members of the entity raised by the court, public defense clients and the commission; and

(C) Serves as the point contact for external and administrative matters.

(b) Have a defined policy concerning membership structure, including eligibility and admission criteria concerning attorneys who may join the entity and how entity members are admitted, and the voting rights, participation expectations and financial contributions required of members.

(c) Have a policy concerning conflict resolution that:

(A) Establishes professional and ethical expectations for attorney members in accordance with the requirements of the Oregon State Bar and the commission;

(B) Contains a dispute resolution mechanism that is a structured process for handling internal conflicts; and

(C) Sets clear criteria and conditions for voluntary withdrawal from the entity and grounds for removal of an attorney member due to misconduct or nonparticipation.

(d) Ensure compliance with commission oversight, data reporting requirements and all other policies and procedures of the commission.

(e) Hold regular meetings of the governing structure of the entity, if the entity has five or more attorney members, or with all attorney members of the entity, if the entity has fewer than five attorney members.

(3) An entity described in subsection (1) of this section with five or more attorney members shall additionally have a board of directors or a steering committee with responsibilities that include but are not limited to the following:

(a) The approval of entity policies, budgets and initiatives;

(b) Ensuring attorney performance and compliance with legal and financial obligations;

(c) Oversight of the administrator; and

(d) Resolving disputes among members of the entity.

1 **SECTION 9.** Section 8 of this 2025 Act becomes operative on January 1, 2026.

2 **SECTION 10.** Sections 7 and 8 of this 2025 Act are repealed on July 1, 2033.

3 **SECTION 11.** This 2025 Act being necessary for the immediate preservation of the public
4 peace, health and safety, an emergency is declared to exist, and this 2025 Act takes effect
5 on its passage.
6
