

House Bill 2841

Sponsored by Representative EVANS (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Transfers Public Defense Services Commission from judicial to executive branch. Modifies appointment and removal process for and qualifications of commission members. Directs commission to designate liaison with office of public defense services and appoint director of juvenile services.

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

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

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

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:**

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

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

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

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

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

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

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

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

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

12 **(e) A member may not serve concurrently as a judge, a member of the Legislative As-**
 13 **sembly, a prosecuting attorney or an employee of a law enforcement agency.**

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

16 (3) The term of a member is four years beginning on the effective date of the [*order of the Chief*
 17 *Justice appointing the member*] **appointment.** A member is eligible for reappointment if qualified for
 18 membership at the time of reappointment. [*A member may be removed from the commission by order*
 19 *of the Chief Justice.*] **The Governor may remove a member of the commission at any time for**
 20 **cause.** If a vacancy occurs for any cause before the expiration of the term of a member, the [*Chief*
 21 *Justice*] **Governor** shall make an appointment to become immediately effective for the unexpired
 22 term.

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

26 **(5) The commission may hire staff and shall designate one or more staff members to**
 27 **serve as the liaison between the commission and the office of public defense services estab-**
 28 **lished under ORS 151.216. The liaison shall be tasked with other duties as determined by the**
 29 **commission.**

30 [(5)] **(6)** A majority of the [*voting*] members constitutes a quorum for the transaction of business.

31 [(6)] **(7)** A member of the commission is not entitled to compensation for services as a member,
 32 but is entitled to expenses as provided in ORS 292.495 (2).

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

34 151.216. (1) The Public Defense Services Commission shall:

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

38 (b) Establish an office of public defense services and, **by a two-thirds vote of the commission,**
 39 **appoint a public defense services executive director and a juvenile services director** who [*serves*]
 40 **serve** at the pleasure of the commission.

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

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

45 (B) Promote policies for public defense provider compensation and resources that are compara-

1 ble to prosecution compensation and resources;

2 (C) Ensure funding and resources to support required data collection and training requirements;
3 and

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

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

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

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

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

19 (h) Review and approve:

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

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

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

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

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

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

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

33 (D) Appointed counsel compensation disputes;

34 (E) Any other costs associated with the representation of a person by appointed counsel in the
35 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
36 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
37 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any
38 other provision of law that expressly provides for payment of such compensation, costs or expenses
39 by the commission;

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

41 (G) Performance for legal representation;

42 (H) The contracting of public defense services;

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

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

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

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

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

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

14 [(2)] (3) Policies, procedures, standards and guidelines adopted by the commission supersede any
 15 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-
 16 tor, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review
 17 Board related to the exercise of the commission’s administrative responsibilities under this section
 18 and transferred duties, functions and powers as they occur.

19 [(3)] (4) The commission may accept gifts, grants or contributions from any source, whether
 20 public or private. However, the commission may not accept a gift, grant or contribution if accept-
 21 ance would create a conflict of interest. Moneys accepted under this subsection shall be deposited
 22 in the Public Defense Services Account established by ORS 151.225 and expended for the purposes
 23 for which given or granted.

24 [(4)] (5) The commission may not:

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

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

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

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

30 151.219. (1) The public defense services executive director shall:

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

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

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

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

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

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

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

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

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

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

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

14 **(L) Develop standard operating expectations for entities that contract with the commis-**
 15 **sion to provide public defense services. The director may establish a standards advisory**
 16 **group to assist in developing the expectations.**

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

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

20 **(A) An executive support division that includes a deputy director and counsel and gov-**
 21 **ernment relations and administrative support positions.**

22 **(B) A compliance, audit and performance measurement division that includes a chief in-**
 23 **spector general and data and research and internal auditor positions.**

24 **(C) A trial division including a trial division leader, regional staff supervisors, trial at-**
 25 **torneys and administrative support positions.**

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

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

30 **(F) An administrative services division that includes finance, human resources, infor-**
 31 **mation technology and administrative support positions.**

32 **(G) A contracting services division that includes a chief contracting officer, a chief re-**
 33 **view officer, case support and administrative support positions.**

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

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

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

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

41 151.219. (1) The public defense services executive director shall:

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

- 1 tice.
- 2 (b) Implement and ensure compliance with contracts, policies, procedures, standards and guide-
- 3 lines adopted by the commission or required by statute.
- 4 (c) Prepare and submit to the commission for its approval the biennial budget of the commission
- 5 and the office of public defense services.
- 6 (d) Negotiate contracts, as appropriate, for providing legal services to persons eligible for ap-
- 7 pointed counsel at state expense. No contract so negotiated is binding or enforceable until the
- 8 contract has been reviewed and approved by the commission as provided in ORS 151.216.
- 9 (e) Employ personnel or contract for services as necessary to carry out the responsibilities of
- 10 the director and the office of public defense services.
- 11 (f) Supervise the personnel, operation and activities of the office of public defense services.
- 12 (g) Provide services, facilities and materials necessary for the performance of the duties, func-
- 13 tions and powers of the Public Defense Services Commission.
- 14 (h) Pay the expenses of the commission and the office of public defense services.
- 15 (i) Prepare and submit to the commission an annual report of the activities of the office of public
- 16 defense services.
- 17 (j) Prepare and submit to the Legislative Assembly a biennial report on the activities of the of-
- 18 fice of public defense services.
- 19 (k) Provide for legal representation, advice and consultation for the commission, its members,
- 20 the director and staff of the office of public defense services who require such services or who are
- 21 named as defendants in lawsuits arising from their duties, functions and responsibilities. If requested
- 22 by the director, the Attorney General may also provide for legal representation, advice and consul-
- 23 tation for the commission, its members, the director and staff of the office of public defense services
- 24 in litigation.
- 25 (L) Develop standard operating expectations for entities that contract with the commission to
- 26 provide public defense services. The director may establish a standards advisory group to assist in
- 27 developing the expectations.
- 28 (m) Adopt policies establishing qualifications for senior executive staff of the office of public
- 29 defense services.
- 30 (n) Establish the following divisions within the office of public defense services:
- 31 (A) An executive support division that includes a deputy director and counsel and government
- 32 relations and administrative support positions.
- 33 (B) A compliance, audit and performance measurement division that includes a chief inspector
- 34 general and data and research and internal auditor positions.
- 35 (C) A trial division, including a trial division leader, regional staff supervisors, trial attorneys
- 36 and administrative support positions, **that provides at least 25 percent of trial-level public de-**
- 37 **fense services within this state.**
- 38 (D) An appellate services division that includes an appellate division manager, appellate attor-
- 39 neys and administrative support positions.
- 40 (E) A juvenile services division that includes the juvenile services director, attorneys, paralegals
- 41 and administrative support positions.
- 42 (F) An administrative services division that includes finance, human resources, information
- 43 technology and administrative support positions.
- 44 (G) A contracting services division that includes a chief contracting officer, a chief review offi-
- 45 cer, case support and administrative support positions.

1 (H) A standardization and evaluations division responsible for establishing, explaining, main-
2 taining and sustaining standards for internal and external evaluation.

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

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

7 **SECTION 6.** ORS 151.219, as amended by sections 4 and 5 of this 2023 Act, is amended to read:
8 151.219. (1) The public defense services executive director shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (B) A compliance, audit and performance measurement division that includes a chief inspector

1 general and data and research and internal auditor positions.

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

5 (D) An appellate services division that includes an appellate division manager, appellate attor-
 6 neys and administrative support positions.

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

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

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

13 (H) A standardization and evaluations division responsible for establishing, explaining, main-
 14 taining and sustaining standards for internal and external evaluation.

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

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

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

24 (1) **Transferring trial-level public defense services within this state from contracted en-**
 25 **tities to the trial division of the office; and**

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

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

31 (2) **Upon the conclusion of the term of a person who is a commission member on the**
 32 **operative date specified in section 10 (1) of this 2023 Act, the person may be reappointed to**
 33 **the commission by the Governor if the person meets the requirements described in ORS**
 34 **151.213 (2).**

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

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

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

40 **SECTION 10. (1) Sections 7 and 8 of this 2023 Act and the amendments to ORS 151.211,**
 41 **151.213, 151.216 and 151.219 by sections 1 to 4 of this 2023 Act become operative on January**
 42 **1, 2024.**

43 (2) **The Public Defense Services Commission, the Judicial Department and the Office of**
 44 **the Governor may take any action before the operative date specified in subsection (1) of this**
 45 **section that is necessary to enable the commission, department or office to exercise, on and**

1 after the operative date specified in subsection (1) of this section, all of the duties, functions
2 and powers conferred on the commission, department or office by sections 7 and 8 of this
3 2023 Act and the amendments to ORS 151.211, 151.213, 151.216 and 151.219 by sections 1 to 4
4 of this 2023 Act.

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

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

9 (4) The Public Defense Services Commission may take any action before the operative
10 dates specified in subsection (3) of this section that is necessary to enable the commission
11 to exercise, on and after the operative dates specified in subsection (3) of this section, all of
12 the duties, functions and powers conferred on the commission by the amendments to ORS
13 151.219 by sections 5 and 6 of this 2023 Act.

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

16