

Senate Bill 324

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SUMMARY

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

Modifies appointment and removal process for members of Public Defense Services Commission. Modifies powers and duties of commission. Directs commission to establish and implement specified minimum standards, policies, guidelines and procedures.

Directs justice and municipal courts to report every two years to commission and interim committees of Legislative Assembly related to judiciary concerning appointment of counsel in court.

Declares emergency effective on passage.

A BILL FOR AN ACT

1
2 Relating to public defense; creating new provisions; amending ORS 151.213 and 151.216; and declar-
3 ing an emergency.

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

5 **SECTION 1.** ORS 151.213 is amended to read:

6 151.213. (1) The Public Defense Services Commission is established in the judicial branch of state
7 government. Except for the appointment or removal of commission members, the commission, [*and*]
8 employees of the commission **and employees of the office of public defense services established**
9 **under ORS 151.216** are not subject to the exercise of administrative authority and supervision by
10 the Chief Justice of the Supreme Court as the administrative head of the Judicial Department.

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

20 **(A) The Chief Justice shall appoint:**

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

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

24 **(iii) One nonvoting member.**

25 **(B) The Chief Justice shall appoint, from among persons recommended by the Governor:**

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

27 **(ii) One voting member who is a current or former dean or faculty member of a law**
28 **school.**

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 (iii) One nonvoting member.

2 (C) The Chief Justice shall appoint, from among persons recommended by the Senate
3 President:

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

5 (ii) Two voting members.

6 (D) The Chief Justice shall appoint, from among persons recommended by the Speaker
7 of the House of Representatives:

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

10 (ii) Two voting members.

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

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

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

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

18 (C) Ensure that members appointed to the commission have significant experience with
19 issues related to public defense or in the case types subject to representation by public de-
20 fense providers, or have demonstrated a strong commitment to quality public defense rep-
21 resentation.

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

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

27 (3) The term of a member is four years beginning on the effective date of the order of the Chief
28 Justice appointing the member. A member is eligible for reappointment if qualified for membership
29 at the time of reappointment. *[A member may be removed from the commission by order of the Chief*
30 *Justice.]* **The Chief Justice may remove any member of the commission at any time for cause,**
31 **after notice and public hearing, but not more than three members shall be removed within**
32 **a period of four years, unless it is for corrupt conduct in office.** If a vacancy occurs for any
33 cause before the expiration of the term of a member, the *[Chief Justice]* **appointing authority** shall
34 make an appointment to become immediately effective for the unexpired term. **If the Chief Justice**
35 **has not filled a vacancy subject to appointment by the Chief Justice within 45 days after the**
36 **vacancy occurs, the remaining members of the commission shall appoint a member for the**
37 **unexpired term.**

38 (4) A chairperson and a vice chairperson shall be *[appointed by order of the Chief Justice]*
39 **elected by the voting members of the commission** every two years with such functions as the
40 commission may determine. A member is eligible for *[reappointment]* **reelection** as chairperson or
41 vice chairperson.

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

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

45 **SECTION 2.** ORS 151.216 is amended to read:

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

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

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

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

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

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

13 (C) Ensure funding and resources to support required data collection and training requirements;
 14 and

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

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

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

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

26 (g) Submit the budget of the commission and the office of public defense services to the Legis-
 27 lative Assembly after the budget is submitted to the commission by the director and approved by the
 28 commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall
 29 present the budget to the Legislative Assembly.

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

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

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

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

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

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

41 (D) Appointed counsel compensation disputes;

42 (E) Any other costs associated with the representation of a person by appointed counsel in the
 43 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
 44 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
 45 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any

1 other provision of law that expressly provides for payment of such compensation, costs or expenses
2 by the commission;

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

4 (G) Performance for legal representation;

5 (H) The contracting of public defense services;

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

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

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

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

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

20 **(2)(a) In addition to the duties described in subsection (1) of this section, the commission**
21 **shall:**

22 **(A) Propose minimum standards for the delivery of public defense services that provide**
23 **for the effective assistance of counsel to eligible persons throughout this state. The mini-**
24 **imum standards must be designed to ensure that public defense services meet all require-**
25 **ments for the effective assistance of counsel under statute and the Oregon and United States**
26 **Constitutions.**

27 **(B) Establish and implement policies, procedures, standards and guidelines necessary to**
28 **guarantee the right of eligible persons to the assistance of counsel as required by statute**
29 **and by the Oregon and United States Constitutions.**

30 **(C) Develop and oversee the implementation, enforcement and modification of minimum**
31 **policies, procedures, standards and guidelines to ensure that public defense providers are**
32 **providing effective assistance of counsel consistently to all eligible persons in this state as**
33 **required by statute and the Oregon and United States Constitutions. The policies, proce-**
34 **dures, standards and guidelines described in this subparagraph apply to employees of the**
35 **office of public defense services and to any entity that contracts with the commission to**
36 **provide public defense services in this state.**

37 **(D) Set minimum standards by which appointed counsel are trained and supervised.**

38 **(E) Establish procedures for the mandatory collection of data concerning the operation**
39 **of the commission and all public defense providers.**

40 **(F) Establish a program by which public defense providers may apply to the commission**
41 **for grants to bring the providers' delivery of public defense services into compliance with the**
42 **minimum policies, procedures, standards and guidelines described in this subsection.**

43 **(G) At least once every two years, report to the interim committees of the Legislative**
44 **Assembly related to the judiciary, in the manner provided in ORS 192.245, and to the Gover-**
45 **nor and Chief Justice, concerning compliance metrics for the minimum standards described**

1 in this subsection and recommendations for legislative changes.

2 (H) Establish any other policies, procedures, standards and guidelines for the conduct of
3 the commission's affairs and promulgate policies necessary to carry out all powers and du-
4 ties of the commission.

5 (b) When establishing the minimum policies, procedures, standards and guidelines de-
6 scribed in this subsection, the commission shall adhere to the following principles:

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

9 (B) The workload of appointed counsel must be controlled to permit effective represen-
10 tation. Economic disincentives or incentives that impair the ability of appointed counsel to
11 provide effective assistance of counsel must be avoided. The commission may develop work-
12 load controls to enhance appointed counsel's ability to provide effective representation.

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

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

18 (E) The commission shall employ or contract only with entities that employ attorneys
19 who have attended continuing legal education relevant to the attorney's public defense
20 practice.

21 (F) The commission and public defense providers shall systematically review appointed
22 counsel at the local level for efficiency and for effective representation according to com-
23 mission standards.

24 (c) The commission may hire attorneys to serve as appointed counsel at the trial level
25 in any county where additional public defense providers are needed.

26 (3) The policies, procedures, standards and guidelines adopted by the commission must
27 be collected in a manual and made available to the public on the commission's Internet
28 website.

29 [(2)] (4) Policies, procedures, standards and guidelines adopted by the commission supersede any
30 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-
31 tor, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review
32 Board related to the exercise of the commission's administrative responsibilities under this section
33 and transferred duties, functions and powers as they occur.

34 [(3)] (5) The commission may accept gifts, grants or contributions from any source, whether
35 public or private. However, the commission may not accept a gift, grant or contribution if accept-
36 ance would create a conflict of interest. Moneys accepted under this subsection shall be deposited
37 in the Public Defense Services Account established by ORS 151.225 and expended for the purposes
38 for which given or granted.

39 [(4)] (6) The commission may not:

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

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

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

44 **SECTION 3. No later than January 1, 2024, and every two years thereafter, a justice or**
45 **municipal court that hears cases involving charges that carry as a potential sentence a term**

1 of incarceration shall report to the interim committees of the Legislative Assembly related
2 to the judiciary, in the manner provided in ORS 192.245, the following:

3 (1) The number of cases handled involving charges that carry as a potential sentence a
4 term of incarceration, and the result of each case;

5 (2) A description of how the court administered the right to counsel for each case; and

6 (3) Any other information or data requested by the Public Defense Services Commission.

7 **SECTION 4.** (1) Within 60 days after the operative date specified in section 5 (1) of this
8 2023 Act, the Chief Justice shall appoint four nonvoting members to the Public Defense
9 Services Commission as provided in ORS 151.213 (2).

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

14 (3) Upon the first instance of a commission member's term ending after the operative
15 date specified in section 5 (1) of this 2023 Act, the remaining voting members of the com-
16 mission shall appoint a successor member as provided in ORS 151.213 (2)(a)(E). For the re-
17 maining members, at the conclusion of each person's term, the person may be reappointed
18 to the commission by the Chief Justice if the person meets the requirements described in
19 ORS 151.213 (2).

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

23 **SECTION 5.** (1) Section 4 of this 2023 Act and the amendments to ORS 151.213 and 151.216
24 by sections 1 and 2 of this 2023 Act become operative on a date that is 90 days after the ef-
25 fective date of this 2023 Act.

26 (2) Section 3 of this 2023 Act becomes operative on January 1, 2024.

27 **SECTION 6.** This 2023 Act being necessary for the immediate preservation of the public
28 peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect
29 on its passage.

30
