

Requested by Senator LIEBER

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 337**

1 Delete pages 2 through 12 of the printed A-engrossed bill.

2 On page 13, delete lines 1 through 3 and insert:

3 **“SECTION 1.** ORS 151.211 is amended to read:

4 “151.211. For purposes of ORS 151.211 to 151.221:

5 “[*(1) ‘Bar member’ means an individual who is an active member of the*
6 *Oregon State Bar.*]

7 “[*(2)*] (1) ‘Chief Justice’ means the Chief Justice of the Supreme Court.

8 “[*(3)*] (2) ‘Commission’ means the [*Public Defense Services Commission*]
9 **Oregon Public Defense Commission.**

10 “[*(4) ‘Director’ means the public defense services executive director ap-*
11 *pointed under ORS 151.216.*]

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

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

16 “151.213. (1) The [*Public Defense Services Commission*] **Oregon Public**
17 **Defense Commission** is established in the judicial branch of state govern-
18 ment. Except for the appointment or removal of commission members, the
19 commission and employees of the commission are not subject to the exercise
20 of administrative authority and supervision by the Chief Justice of the Su-
21 preme Court as the administrative head of the Judicial Department.

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

14 “(A) **The Chief Justice shall appoint:**

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

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

18 “(B) **The Chief Justice shall appoint, from among persons recom-**
19 **mended by the Governor:**

20 “(i) **One voting member who has been represented by a public de-**
21 **fense provider.**

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

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

28 “(C) **The Chief Justice shall appoint, from among persons recom-**
29 **mended by the President of the Senate:**

30 “(i) **One voting member who is a current dean or faculty member**

1 of an Oregon law school.

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

4 “(D) The Chief Justice shall appoint, from among persons recom-
5 mended by the Speaker of the House of Representatives:

6 “(i) One voting member who has expertise in juvenile law and
7 criminal defense, or who is a juvenile justice or criminal justice re-
8 form advocate.

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

11 “(E) The Chief Justice shall appoint one voting member from
12 among persons jointly recommended by the President of the Senate
13 and the Speaker of the House of Representatives.

14 “(b) When recommending and appointing members of the commis-
15 sion, the Chief Justice, Governor, President of the Senate and Speaker
16 of the House of Representatives shall:

17 “(A) Consider input from individuals and organizations with an in-
18 terest in the delivery of public defense services.

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

20 “(C) Ensure that members appointed to the commission have sig-
21 nificant experience with issues related to public defense or in the case
22 types subject to representation by public defense providers.

23 “(D) Ensure that members appointed to the commission have dem-
24 onstrated a strong commitment to quality public defense represen-
25 tation.

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

28 “(A) A prosecuting attorney.

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

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

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

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

11 “(3) The term of a member is four years beginning on the effective date
12 of the order of the Chief Justice appointing the member. A member is eligible
13 for reappointment if qualified for membership at the time of reappointment,
14 **but may serve no more than two consecutive four-year terms.** [A
15 *member may be removed from the commission by order of the Chief Justice.*]
16 **The Chief Justice may remove any member of the commission at any**
17 **time for cause.** If a vacancy occurs for any cause before the expiration of
18 the term of a member, the Chief Justice shall make an appointment **to fill**
19 **the vacancy, in the same manner as an appointment to a full term,** to
20 become immediately effective for the unexpired term. **If the Chief Justice**
21 **has not filled a vacancy within 45 days after the vacancy occurs, the**
22 **remaining voting members of the commission shall, by a majority**
23 **vote, select a member to fill the vacancy for the remainder of the**
24 **term. The selected member must meet the requirements for member-**
25 **ship described in this section.**

26 “(4) A chairperson and a vice chairperson shall be [*appointed by order of*
27 *the Chief Justice*] **elected by the voting members of the commission** ev-
28 ery two years with such functions as the commission may determine. A
29 member is eligible for [*reappointment*] **reelection** as chairperson or vice
30 chairperson.

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

3 **“(6)(a) All members of the commission shall:**

4 **“(A) Review the policies, procedures, standards and guidelines re-**
5 **quired by ORS 151.216 and provide input before the approval vote de-**
6 **scribed in paragraph (b) of this subsection.**

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

9 **“(C) Meet as needed to carry out the duties described in this sub-**
10 **section.**

11 **“(b) The voting members of the commission shall:**

12 **“(A) Appoint, by a two-thirds vote, an executive director for a term**
13 **of office of four years. The term may be terminated for cause by a**
14 **majority vote of the voting members after notice and a hearing. When**
15 **the term of an executive director ends without termination, the voting**
16 **members of the commission may reappoint the person currently in the**
17 **position by a majority vote.**

18 **“(B) Upon the vacancy of the executive director position, imme-**
19 **diately designate an acting executive director by a majority vote.**

20 **“(C) Approve by majority vote the policies, procedures, standards**
21 **and guidelines required by ORS 151.216 before those policies, proce-**
22 **dures, standards and guidelines may take effect.**

23 **“(D) Approve by majority vote the budget of the commission before**
24 **submission to the Legislative Assembly.**

25 **“(7) The members of the commission may not:**

26 **“(a) Make any decision regarding the handling of any individual**
27 **case;**

28 **“(b) Have access to any case file; or**

29 **“(c) Interfere with the executive director or any member of the**
30 **staff of the executive director in carrying out professional duties in-**

1 **volving the legal representation of public defense clients.**

2 “[6] (8) A member of the commission is [not] entitled to compensation
3 for services as a member, [but is entitled] **and** to expenses, as provided in
4 ORS 292.495 [(2)].

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

6 “151.216. (1) The [*Public Defense Services Commission*] **Oregon Public**
7 **Defense Commission** shall:

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

11 “[*(b) Establish an office of public defense services and appoint a public*
12 *defense services executive director who serves at the pleasure of the commis-*
13 *sion.*]

14 “[*(c) (b) Adopt policies for [contracting for] public defense providers [not*
15 *employed by the office of public defense services]* that:

16 “(A) Ensure compensation, resources and caseloads are in accordance
17 with national and regional best practices;

18 “(B) [*Promote policies*] **Provide** for public defense provider compensation
19 and resources that are [*comparable to prosecution compensation and*
20 *resources*] **commensurate with state employees providing comparable**
21 **services or in comparable job classifications;**

22 “(C) Ensure funding and resources to support required data collection and
23 training requirements; and

24 “(D) Recognize the need to consider overhead costs that account for the
25 cost of living and business cost differences in each county or jurisdiction,
26 including but not limited to rent, professional membership dues, malpractice
27 insurance and other insurance and other reasonable and usual operating
28 costs.

29 “[*(d) (c) Establish operational and contracting systems that allow for*
30 *oversight, ensure transparency and stakeholder engagement and promote eq-*

1 uity, inclusion and culturally specific representation.

2 “[*(e)*] **(d)** Review the caseload policies described in paragraph [*(c)(A)*]
3 **(b)(A)** of this subsection annually, and revise the policies as necessary and
4 at least every four years.

5 “[*(f)*] **(e)** Adopt a statewide workload plan, based on the caseload policies
6 described in paragraph [*(c)(A)*] **(b)(A)** of this subsection, that takes into ac-
7 count the needs of each county or jurisdiction, practice structure and type
8 of practice overseen by the [*office of public defense services*] **commission**.

9 “[*(g)*] **(f)** Submit the budget of the commission [*and the office of public*
10 *defense services*] to the Legislative Assembly after the budget is submitted
11 to the commission by the **executive** director and approved by the **voting**
12 **members of the** commission. The Chief Justice of the Supreme Court and
13 the chairperson of the commission shall present the budget to the Legislative
14 Assembly.

15 “[*(h)* *Review and approve any public defense services contract negotiated*
16 *by the director before the contract can become effective.*]

17 “[*(i)*] **(g)** Adopt a compensation plan, classification system and
18 [*personnel*] **affirmative action** plan for the [*office of public defense*
19 *services*] **commission** that are commensurate with other state agencies.

20 “[*(j)*] **(h)** Adopt policies, procedures, standards and guidelines regarding:

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

23 “(B) The appointment of counsel, including the appointment of counsel
24 at state expense regardless of financial eligibility in juvenile delinquency
25 matters;

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

28 “(D) Appointed counsel compensation disputes;

29 “(E) [*Any other*] **The** costs associated with the representation of a person
30 by appointed counsel in the state courts that are required to be paid by the

1 state [*under ORS 34.355, 135.055, 138.500, 138.590, 161.346, 161.348, 161.365,*
2 *419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209, 419C.408,*
3 *419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315*
4 *or any other provision of law that expressly provides for payment of such*
5 *compensation, costs or expenses by the commission*]; **and**

6 “*[(F) Professional qualifications for counsel appointed to represent public*
7 *defense clients;*]

8 “*[(G) Performance for legal representation;*]

9 “*[(H) The contracting of public defense services;*]

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

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

15 “*[(J) Any other matters necessary to carry out the duties of the*
16 *commission.]*

17 “*[(k) Establish a peer review system for the approval of nonroutine fees and*
18 *expenses incurred in cases involving aggravated murder and the crimes listed*
19 *in ORS 137.700 and 137.707. The review shall be conducted by a panel of at-*
20 *torneys who practice in the area of criminal defense.]*

21 “*[(L) Establish a complaint process that allows district attorneys, criminal*
22 *defense counsel and the public to file complaints concerning the payment from*
23 *public funds of nonroutine fees and expenses incurred in cases.]*

24 “*[(m)] (i) Reimburse the State Court Administrator from funds deposited*
25 *in the Public Defense Services Account established by ORS 151.225 for the*
26 *costs of personnel and other costs associated with location of eligibility*
27 *verification and screening personnel pursuant to ORS 151.489 by the State*
28 *Court Administrator.*

29 “**(j) Develop, adopt and oversee the implementation, enforcement**
30 **and modification of policies, procedures, minimum standards and**

1 **guidelines to ensure that public defense providers are providing effective**
2 **assistance of counsel consistently to all eligible persons in this**
3 **state as required by statute and the Oregon and United States Con-**
4 **stitutions. The policies, procedures, standards and guidelines described**
5 **in this paragraph apply to employees of the commission and to any**
6 **person or entity that contracts with the commission to provide public**
7 **defense services in this state.**

8 **“(k) Set minimum standards by which appointed counsel are trained**
9 **and supervised.**

10 **“(L) Establish a system, policies and procedures for the mandatory**
11 **collection of data concerning the operation of the commission and all**
12 **public defense providers.**

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

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

26 **“(o) Develop standard operating expectations for persons and enti-**
27 **ties providing public defense services.**

28 **“(p) In consultation with the Judicial Department, ensure the ex-**
29 **istence of policies that create a standardized process for determining**
30 **and verifying financial eligibility for appointed counsel under ORS**

1 151.485.

2 “(q) Ensure access to systematic and comprehensive training pro-
3 grams for attorneys for the purpose of meeting statewide standards
4 set by the commission.

5 “(r) Enter into contracts or interagency agreements with the
6 Oregon Department of Administrative Services for the purpose of
7 supporting state public defense population forecasts and other related
8 forecasts.

9 “(s) Pay invoices submitted to the commission within 45 days of
10 receipt or in accordance with statewide accounting policies established
11 by the Oregon Department of Administrative Services.

12 “(t) Establish any other policies, procedures, standards and guide-
13 lines for the conduct of the commission’s affairs and promulgate pol-
14 icies necessary to carry out all powers and duties of the commission.

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

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

21 “(b) The workload of appointed counsel must be controlled to per-
22 mit effective representation. Economic disincentives or incentives that
23 impair the ability of appointed counsel to provide effective assistance
24 of counsel must be avoided. The commission may develop workload
25 controls to enhance appointed counsel’s ability to provide effective
26 representation.

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

30 “(d) The same appointed counsel shall continuously represent a

1 **client throughout the pendency of the case and shall appear at every**
2 **court appearance other than ministerial hearings.**

3 **“(e) The commission shall establish continuing legal education re-**
4 **quirements for public defense providers who are employed by or con-**
5 **tract with the commission that are specific to the subject matter area**
6 **and practice of each type of court-appointed counsel.**

7 **“(f) The commission and public defense providers shall systemat-**
8 **ically review appointed counsel for efficiency and for effective repre-**
9 **sentation according to commission standards.**

10 **“(3) The commission shall be organized in a manner for the effec-**
11 **tive delivery of public defense services as prescribed by the policies and**
12 **procedures created pursuant to statute to financially eligible persons**
13 **and consistent with the budgetary structure established for the com-**
14 **mission by the Legislative Assembly.**

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

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

23 **“[(2)] (6) Policies, procedures, standards and guidelines adopted by the**
24 **commission supersede any conflicting rules, policies or procedures of the**
25 **Public Defender Committee, State Court Administrator, circuit courts, the**
26 **Court of Appeals, the Supreme Court and the Psychiatric Security Review**
27 **Board related to the exercise of the commission’s administrative responsi-**
28 **bilities under this section and transferred duties, functions and powers as**
29 **they occur.**

30 **“[(3)] (7) The commission may accept gifts, grants or contributions from**

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

6 “[4] *The commission may not:*]

7 “[a] *Make any decision regarding the handling of any individual case;*]

8 “[b] *Have access to any case file; or*]

9 “[c] *Interfere with the director or any member of the staff of the director*
10 *in carrying out professional duties involving the legal representation of public*
11 *defense clients.*]

12 **“SECTION 4.** ORS 151.219 is amended to read:

13 “151.219. (1) The [*public defense services*] executive director **of the**
14 **Oregon Public Defense Commission** shall:

15 **“(a) Designate a deputy director of the commission who serves at**
16 **the pleasure of the executive director.**

17 **“(b) Hire necessary staff for the commission.**

18 “[a] (c) Recommend to the [*Public Defense Services*] commission how to
19 establish and maintain, in a cost-effective manner, the delivery of legal ser-
20 vices to persons entitled to, and, where applicable, financially eligible for,
21 appointed counsel at state expense under Oregon statutes, the Oregon Con-
22 stitution, the United States Constitution and consistent with Oregon and
23 national standards of justice.

24 “[b] (d) Implement and ensure compliance with contracts, policies, pro-
25 cedures, standards and guidelines adopted by the commission or required by
26 statute.

27 “[c] (e) Prepare and submit to the commission for its approval the
28 biennial budget of the commission [*and the office of public defense services*].

29 “[d] (f) Negotiate contracts, as appropriate, for providing legal services
30 to persons eligible for appointed counsel at state expense. [*No contract so*

1 *negotiated is binding or enforceable until the contract has been reviewed and*
2 *approved by the commission as provided in ORS 151.216.]*

3 “[~~(e)~~] **(g)** Employ personnel or contract for services as necessary to carry
4 out the responsibilities of the **executive** director and the [*office of public*
5 *defense services*] **commission**.

6 “[~~(f)~~] **(h)** Supervise the personnel, operation and activities of the [*office*
7 *of public defense services*] **commission**.

8 “[~~(g)~~] **(i)** Provide services, facilities and materials necessary for the per-
9 formance of the duties, functions and powers of the [*Public Defense*
10 *Services*] commission.

11 “[~~(h)~~] **(j)** Pay the expenses of the commission [*and the office of public de-*
12 *fense services*].

13 “[~~(i)~~] **(k)** Prepare and submit to the **members of the** commission an an-
14 nual report of the activities of the [*office of public defense services*] **com-**
15 **mission**.

16 “[~~(j)~~] *Prepare and submit to the Legislative Assembly a biennial report on*
17 *the activities of the office of public defense services.]*

18 “[~~(k)~~] **(L)** Provide for legal representation, advice and consultation for the
19 commission, its members, the **executive** director and staff of the [*office of*
20 *public defense services*] **commission** who require such services or who are
21 named as defendants in lawsuits arising from their duties, functions and re-
22 sponsibilities. If requested by the **executive** director, the Attorney General
23 may also provide for legal representation, advice and consultation for the
24 commission, its members, the **executive** director and staff of the [*office of*
25 *public defense services*] **commission** in litigation.

26 “(2) The **executive** director may:

27 “**(a)** Designate persons as representatives of the **executive** director for
28 the purposes of determining and paying bills submitted to the [*office of public*
29 *defense services*] **commission** and determining preauthorization for incurring
30 fees and expenses under ORS 135.055.

1 “(b) Establish an external advisory group to assist in developing the
2 standard operating expectations for persons and entities providing
3 public defense services.

4 “**SECTION 5.** ORS 151.221 is amended to read:

5 “151.221. Officers and employees of the [*office of public defense services,*
6 *who are appointed under a personnel plan adopted by the Public Defense*
7 *Services Commission,*] **Oregon Public Defense Commission** are state offi-
8 cers or employees in the exempt service and are not subject to ORS chapter
9 240.

10 “**SECTION 6.** ORS 151.225 is amended to read:

11 “151.225. (1) The Public Defense Services Account is established in the
12 State Treasury, separate and distinct from the General Fund. The Public
13 Defense Services Account is continuously appropriated to the [*Public Defense*
14 *Services Commission*] **Oregon Public Defense Commission** for:

15 “(a) Administration and support of the public defense system;

16 “(b) Reimbursement of the State Court Administrator under ORS 151.216
17 [(1)(m)] (1)(i); and

18 “(c) Legal representation of parents and children involved in foster care
19 for which matching funds under 45 C.F.R. 1356.60(c) may be used.

20 “(2) The following moneys shall be deposited in the Public Defense Ser-
21 vices Account:

22 “(a) Moneys received by the commission from the State Court Adminis-
23 trator under ORS 151.216 [(1)(m)] (1)(i);

24 “(b) Moneys received by the Judicial Department under ORS 135.050 (8),
25 151.487 (1), 419A.211 or 419B.198 (1);

26 “(c) Federal matching funds received under 45 C.F.R. 1356.60(c); and

27 “(d) Miscellaneous revenues and receipts of the commission.

28 “(3) All gifts, grants or contributions accepted by the commission under
29 ORS 151.216 shall be deposited in a separate subaccount created in the Public
30 Defense Services Account to be used by the commission for the purpose for

1 which the gift, grant or contribution was given or granted.

2 **“SECTION 7.** ORS 135.055 is amended to read:

3 “135.055. (1) Counsel appointed pursuant to ORS 135.045 or 135.050 shall
4 be paid fair compensation for representation in the case:

5 “(a) By the county, subject to the approval of the governing body of the
6 county, in a proceeding in a county or justice court.

7 “(b) By the [*public defense services*] executive director **of the Oregon**
8 **Public Defense Commission** from funds available for the purpose, in a
9 proceeding in a circuit court.

10 “(2) Except for counsel appointed pursuant to contracts or counsel em-
11 ployed by the [*public defense services executive director*] **Oregon Public De-**
12 **fense Commission**, compensation payable to appointed counsel under
13 subsection (1) of this section:

14 “(a) In a proceeding in a county or justice court may not be less than \$30
15 per hour.

16 “(b) In a proceeding in a circuit court is subject to the applicable com-
17 pensation established under ORS 151.216.

18 “(3)(a) A person determined to be eligible for appointed counsel is entitled
19 to necessary and reasonable fees and expenses for investigation, preparation
20 and presentation of the case for trial, negotiation and sentencing. The person
21 or the counsel for the person shall upon written request secure preauthori-
22 zation to incur fees and expenses that [*are not routine to representation but*]
23 are necessary and reasonable in the investigation, preparation and presen-
24 tation of the case **and that require preauthorization under a policy of**
25 **the Oregon Public Defense Commission**, including but not limited to
26 [*nonroutine*] travel, photocopying or other reproduction of [*nonroutine*] doc-
27 uments, necessary costs associated with obtaining the attendance of wit-
28 nesses for the defense, investigator fees and expenses, expert witness fees and
29 expenses and fees for interpreters and assistive communication devices nec-
30 essary for the purpose of communication between counsel and a client or

1 witness in the case. Preauthorization to incur a fee or expense does not
2 guarantee that a fee or expense incurred pursuant to the preauthorization
3 will be determined to be necessary or reasonable when the fee or expense is
4 submitted for payment.

5 “(b) In a county or justice court, the request must be in the form of a
6 motion to the court. The motion must be accompanied by a supporting affi-
7 davit that sets out in detail the purpose of the requested expenditure, the
8 name of the service provider or other recipient of the funds, the dollar
9 amount of the requested expenditure that may not be exceeded without ad-
10 ditional authorization and the date or dates during which the service will
11 be rendered or events will occur for which the expenditure is requested.

12 “(c) In a circuit court, the request must be in the form and contain the
13 information that is required by the policies, procedures, standards and
14 guidelines of the [*Public Defense Services Commission*] **Oregon Public De-**
15 **fense Commission**. If the [*public defense services*] executive director **of the**
16 **commission** denies a request for preauthorization to incur [*nonroutine*] fees
17 and expenses **subject to a preauthorization requirement**, the person
18 making the request may appeal the decision to the presiding judge of the
19 circuit court. The presiding judge has final authority to preauthorize incur-
20 ring [*nonroutine*] fees and expenses under this paragraph.

21 “(d) Entitlement under subsection (7) of this section to payment for fees
22 and expenses in circuit court is subject to the policies, procedures, standards
23 and guidelines adopted under ORS 151.216. Entitlement to payment of [*non-*
24 *routine*] fees and expenses **subject to a preauthorization requirement** is
25 dependent upon obtaining preauthorization from the court, if the case is in
26 county or justice court, or from the [*public defense services*] executive direc-
27 tor **of the Oregon Public Defense Commission**, if the case is in circuit
28 court, except as otherwise provided in paragraph (c) of this subsection and
29 in the policies, procedures, standards and guidelines adopted under ORS
30 151.216. Fees and expenses shall be paid:

1 “(A) By the county, in respect to a proceeding in a county or justice
2 court.

3 “(B) By the [*public defense services*] executive director **of the commis-**
4 **sion** from funds available for the purpose, in respect to a proceeding in a
5 circuit court.

6 “(C) By the city, in respect to a proceeding in municipal court.

7 “(4) Upon completion of all services by the counsel of a person determined
8 to be eligible for appointed counsel, the counsel shall submit a statement of
9 all necessary and reasonable fees and expenses of investigation, preparation
10 and presentation and, if counsel was appointed by the court, a statement of
11 all necessary and reasonable fees and expenses for legal representation,
12 supported by appropriate receipts or vouchers and certified by the counsel
13 to be true and accurate.

14 “(5) In a county or justice court, the total fees and expenses payable un-
15 der this section must be submitted to the court by counsel or other providers
16 and are subject to the review of the court. The court shall certify that such
17 amount is fair reimbursement for fees and expenses for representation in the
18 case as provided in subsection (6) of this section. Upon certification and any
19 verification as provided under subsection (6) of this section, the amount of
20 the fees and expenses approved by the court and not already paid shall be
21 paid by the county.

22 “(6) In a county or justice court, the court shall certify to the adminis-
23 trative authority responsible for paying fees and expenses under this section
24 that the amount for payment is reasonable and that the amount is properly
25 payable out of public funds.

26 “(7) In a circuit court, the total fees and expenses payable under this
27 section must be submitted to and are subject to review by the [*public defense*
28 *services*] executive director **of the Oregon Public Defense Commission**.
29 The [*public defense services*] executive director **of the commission** shall
30 determine whether the amount is necessary, reasonable and properly payable

1 from public funds for fees and expenses for representation in the case as
2 provided by the policies, procedures, standards and guidelines of the [*Public*
3 *Defense Services Commission*] **commission**. The [*public defense services*]
4 executive director **of the commission** shall pay the amount of the fees and
5 expenses determined necessary, reasonable and properly payable out of public
6 funds. The court shall provide any information identified and requested by
7 the [*public defense services*] executive director **of the commission** as needed
8 for audit, statistical or any other purpose pertinent to ensure the proper
9 disbursement of state funds or pertinent to the provision of appointed coun-
10 sel compensated at state expense.

11 “(8) If the [*public defense services*] executive director **of the Oregon**
12 **Public Defense Commission** denies, in whole or in part, fees and expenses
13 submitted for review and payment, the person who submitted the payment
14 request may appeal the decision to the presiding judge of the circuit court.
15 The presiding judge or the designee of the presiding judge shall review the
16 [*public defense services*] executive director’s decision for abuse of discretion.
17 The decision of the presiding judge or the designee of the presiding judge is
18 final.

19 “(9) The following may not be disclosed to the district attorney prior to
20 the conclusion of a case:

21 “(a) Requests and administrative or court orders for preauthorization to
22 incur [*nonroutine*] fees and expenses **subject to a preauthorization re-**
23 **quirement** in the investigation, preparation and presentation of the case;
24 and

25 “(b) Billings for such fees and expenses submitted by counsel or other
26 providers.

27 “(10) Notwithstanding subsection (9) of this section, the total amount of
28 moneys determined to be necessary and reasonable for [*nonroutine*] fees and
29 expenses **subject to a preauthorization requirement** may be disclosed to
30 the district attorney at the conclusion of the trial in the circuit court.

1 “(11) As used in this section unless the context requires otherwise,
2 ‘counsel’ includes a legal advisor appointed under ORS 135.045.

3 **“SECTION 7a. (1) The Oregon Department of Administrative Ser-**
4 **vices shall issue state public defense population forecasts including,**
5 **but not limited to, expected populations of adults and juveniles eligible**
6 **for appointed counsel, to be used by:**

7 **“(a) The Oregon Public Defense Commission, in preparing budget**
8 **requests or for any other purpose determined necessary by the com-**
9 **mission; or**

10 **“(b) Any other state agency concerned with the effect of public de-**
11 **fense populations or policy developments on budgeting.**

12 **“(2) The department shall issue state public defense population**
13 **forecasts on April 15 and October 15 of each year.**

14 **“(3) When the department issues a state public defense population**
15 **forecast, the forecast must:**

16 **“(a) Discretely identify adult and juvenile populations that are eli-**
17 **gible for appointed counsel categorized by either circuit or appellate**
18 **court;**

19 **“(b) Identify the forecast’s margin of error for adult and juvenile**
20 **populations; and**

21 **“(c) Attribute growth or decline in the forecast, relative to previ-**
22 **ously issued forecasts, to specific policies or to specific components**
23 **of the baseline underlying the forecast.**

24 **“(4) The Oregon Public Defense Commission, the Oregon Criminal**
25 **Justice Commission, the Judicial Department and, if requested by the**
26 **Oregon Department of Administrative Services, any other state**
27 **agency, shall provide the Oregon Department of Administrative Ser-**
28 **vices with any information necessary for the department to prepare**
29 **the forecasts described in this section.**

30 **“(5) As used in this section, ‘baseline underlying the forecast’ in-**

1 **cludes population demographics and crime trends.**

2
3 **“(Transfer of Duties)**

4
5 **“SECTION 8. (1) The Public Defense Services Commission is abol-**
6 **ished. On the operative date of this section, the tenure of office of the**
7 **members of the Public Defense Services Commission ceases.**

8 **“(2) All of the duties, functions and powers of the Public Defense**
9 **Services Commission, except as those duties, functions and powers are**
10 **modified by the amendments to ORS 151.213, 151.216 and 151.219 by**
11 **sections 2 to 4 of this 2023 Act, are imposed upon, transferred to and**
12 **vested in the Oregon Public Defense Commission.**

13 **“SECTION 9. (1) The chairperson of the Public Defense Services**
14 **Commission and the public defense services executive director shall:**

15 **“(a) Deliver to the Oregon Public Defense Commission all records**
16 **and property within the jurisdiction of the chairperson and executive**
17 **director that relate to the duties, functions and powers transferred by**
18 **section 8 of this 2023 Act; and**

19 **“(b) Transfer to the Oregon Public Defense Commission those em-**
20 **ployees engaged primarily in the exercise of the duties, functions and**
21 **powers transferred by section 8 of this 2023 Act.**

22 **“(2) The executive director of the Oregon Public Defense Commis-**
23 **sion shall take possession of the records and property, and shall take**
24 **charge of the employees and employ them in the exercise of the duties,**
25 **functions and powers transferred by section 8 of this 2023 Act, without**
26 **reduction of compensation but subject to change or termination of**
27 **employment or compensation as provided by law.**

28 **“SECTION 10. (1) The unexpended balances of amounts authorized**
29 **to be expended by the Public Defense Services Commission for the**
30 **biennium beginning July 1, 2023, from revenues dedicated, contin-**

1 uously appropriated, appropriated or otherwise made available for the
2 purpose of administering and enforcing the duties, functions and
3 powers transferred by section 8 of this 2023 Act are transferred to and
4 are available for expenditure by the Oregon Public Defense Commis-
5 sion for the biennium beginning July 1, 2023, for the purpose of ad-
6 ministering and enforcing the duties, functions and powers transferred
7 by section 8 of this 2023 Act.

8 “(2) The expenditure classifications, if any, established by Acts au-
9 thorizing or limiting expenditures by the Public Defense Services
10 Commission remain applicable to expenditures by the Oregon Public
11 Defense Commission under this section.

12 “SECTION 11. The transfer of duties, functions and powers to the
13 Oregon Public Defense Commission by section 8 of this 2023 Act does
14 not affect any action, proceeding or prosecution involving or with re-
15 spect to such duties, functions and powers begun before and pending
16 at the time of the transfer, except that the Oregon Public Defense
17 Commission is substituted for the Public Defense Services Commission
18 in the action, proceeding or prosecution.

19 “SECTION 12. (1) Nothing in this 2023 Act relieves a person of a li-
20 ability, duty or obligation accruing under or with respect to the duties,
21 functions and powers transferred by section 8 of this 2023 Act. The
22 Oregon Public Defense Commission may undertake the collection or
23 enforcement of any such liability, duty or obligation.

24 “(2) The rights and obligations of the Public Defense Services
25 Commission legally incurred under contracts, leases and business
26 transactions executed, entered into or begun before the operative date
27 of section 8 of this Act are transferred to the Oregon Public Defense
28 Commission. For the purpose of succession to these rights and obli-
29 gations, the Oregon Public Defense Commission is a continuation of
30 the Public Defense Services Commission and not a new authority.

1 **“SECTION 13. For the purpose of harmonizing and clarifying stat-**
2 **utory law, the Legislative Counsel may substitute for words designat-**
3 **ing the ‘Public Defense Services Commission’ or its officers, or the**
4 **office of public defense services, wherever they occur in statutory law,**
5 **words designating the ‘Oregon Public Defense Commission’ or its of-**
6 **ficers.**

7 **“SECTION 14. (1) Sections 7a to 13 of this 2023 Act and the amend-**
8 **ments to ORS 151.211, 151.213, 151.216, 151.219, 151.221, 151.225 and**
9 **135.055 by sections 1 to 7 of this 2023 Act become operative on January**
10 **1, 2024.**

11 **“(2) Notwithstanding subsection (1) of this section:**

12 **“(a) No later than November 1, 2023, the Chief Justice of the Su-**
13 **preme Court shall by order appoint four nonvoting members and nine**
14 **new voting members to the Oregon Public Defense Commission as**
15 **provided in ORS 151.213 (2). Except as provided in subsection (3) of this**
16 **section, the appointments described in this subsection take effect on**
17 **January 1, 2024.**

18 **“(b) The Chief Justice, Governor, President of the Senate and**
19 **Speaker of the House of Representatives may take any action before**
20 **the operative date specified in subsection (1) of this section that is**
21 **necessary to effectuate the appointment process described in this**
22 **subsection and ORS 151.213 (2).**

23 **“(3)(a) Notwithstanding ORS 151.213 (6)(a), on January 1, 2024, the**
24 **public defense services executive director shall begin a four-year term**
25 **as executive director of the Oregon Public Defense Commission, and**
26 **is subject to termination or reappointment as described in ORS 151.213**
27 **(6)(a).**

28 **“(b) The public defense services executive director and the members**
29 **of the commission may take any action before the operative date**
30 **specified in subsection (1) of this section that is necessary to enable**

1 the executive director and the members to exercise, on and after the
2 operative date specified in subsection (1) of this section, the duties,
3 functions and powers conferred on the executive director and the
4 members by sections 7a to 13 of this 2023 Act and the amendments to
5 ORS 151.211, 151.213, 151.216, 151.219, 151.221, 151.225 and 135.055 by
6 sections 1 to 7 of this 2023 Act.

7 “(4) Notwithstanding ORS 151.213 (3), the initial terms of persons
8 appointed as voting members to the Oregon Public Defense Commis-
9 sion under this section shall be staggered as follows:

10 “(a) The initial term of one of the voting members described in ORS
11 151.213 (2)(a)(A), one of the voting members described in ORS 151.213
12 (2)(a)(B) and the voting member described in ORS 151.213 (2)(a)(E) shall
13 be four years.

14 “(b) The initial term of one of the voting members described in ORS
15 151.213 (2)(a)(A) and the voting member described in ORS 151.213
16 (2)(a)(C) shall be three years.

17 “(c) The initial term of one of the voting members described in ORS
18 151.213 (2)(a)(B) and the voting member described in ORS 151.213
19 (2)(a)(D) shall be two years.

20 “(d) The initial term of one of the voting members described in ORS
21 151.213 (2)(a)(A) and one of the voting members described in ORS
22 151.213 (2)(a)(B) shall be one year.

23 “(5) A person who is a member of the Public Defense Services
24 Commission on November 1, 2023, is eligible for appointment to the
25 Oregon Public Defense Commission if the person meets the require-
26 ments described in ORS 151.213 (2).”.

27 In line 12, delete the boldfaced material and insert “(1)(i)”.

28 On page 66, delete lines 10 through 45 and delete pages 67 through 76 and
29 insert:

30

1 **“TRANSFER OF COMMISSION TO EXECUTIVE BRANCH**

2 **“(Appointment and Duties)**

3
4 **“SECTION 77.** ORS 151.213, as amended by section 2 of this 2023 Act, is
5 amended to read:

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

12 “(2)(a) Nine voting members and four nonvoting members shall be ap-
13 pointed to the commission by [*order of the Chief Justice*] **the Governor** as
14 follows:

15 **“(A) The Governor shall appoint:**

16 **“(i) One voting member who has been represented by a public de-**
17 **fense provider.**

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

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

24 “[(A)] **(B) The Governor shall appoint, from among persons recom-**
25 **mended by the Chief Justice [*shall appoint*] of the Supreme Court:**

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

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

29 “[(B) *The Chief Justice shall appoint, from among persons recommended*
30 *by the Governor:*]

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

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

5 “(iii) Two nonvoting members who are currently employed as public de-
6 fense providers in this state, one of whom is from an urban area and one of
7 whom is from a rural area.]

8 “(C) The [*Chief Justice*] **Governor** shall appoint, from among persons re-
9 commended by the President of the Senate:

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

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

14 “(D) The [*Chief Justice*] **Governor** shall appoint, from among persons re-
15 commended by the Speaker of the House of Representatives:

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

18 “(ii) One nonvoting member who is a member of the House of Represen-
19 tatives at the time of appointment.

20 “(E) The [*Chief Justice*] **Governor** shall appoint one voting member from
21 among persons jointly recommended by the President of the Senate and the
22 Speaker of the House of Representatives.

23 “(b) When recommending and appointing members of the commission, the
24 [*Chief Justice*,] Governor, **Chief Justice**, President of the Senate and
25 Speaker of the House of Representatives shall:

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

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

29 “(C) Ensure that members appointed to the commission have significant
30 experience with issues related to public defense or in the case types subject

1 to representation by public defense providers.

2 “(D) Ensure that members appointed to the commission have demon-
3 strated a strong commitment to quality public defense representation.

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

6 “(A) A prosecuting attorney.

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

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

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

13 “(e) As used in this subsection, ‘law enforcement agency’ means an entity
14 that employs corrections officers, parole and probation officers, police offi-
15 cers, certified reserve officers or reserve officers, as those terms are defined
16 in ORS 181A.355.

17 “(3) The term of a member is four years beginning on the effective date
18 of the [*order of the Chief Justice appointing the member*] **Governor’s ap-**
19 **pointment**. A member is eligible for reappointment if qualified for member-
20 ship at the time of reappointment, but may serve no more than two
21 consecutive four-year terms. The [*Chief Justice*] **Governor** may remove any
22 member of the commission at any time for cause. If a vacancy occurs for any
23 cause before the expiration of the term of a member, the [*Chief Justice*]
24 **Governor** shall make an appointment to fill the vacancy, in the same man-
25 ner as an appointment to a full term, to become immediately effective for the
26 unexpired term. If the [*Chief Justice*] **Governor** has not filled a vacancy
27 within 45 days after the vacancy occurs, the remaining voting members of
28 the commission shall, by a majority vote, select a member to fill the vacancy
29 for the remainder of the term. The selected member must meet the require-
30 ments for membership described in this section.

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

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

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

8 “(A) Review the policies, procedures, standards and guidelines required
9 by ORS 151.216 and provide input before the approval vote described in par-
10 agraph (b) of this subsection.

11 “(B) Review the budget of the commission and provide input before the
12 approval vote described in paragraph (b) of this subsection.

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

14 “(b) The voting members of the commission shall:

15 “(A) Appoint, by a two-thirds vote, an executive director for a term of
16 office of four years. The term may be terminated for cause by a majority vote
17 of the voting members after notice and a hearing. When the term of an
18 executive director ends without termination, the voting members of the
19 commission may reappoint the person currently in the position by a majority
20 vote.

21 “(B) Upon the vacancy of the executive director position, immediately
22 designate an acting executive director by a majority vote.

23 “(C) Approve by majority vote the policies, procedures, standards and
24 guidelines required by ORS 151.216 before those policies, procedures, stan-
25 dards and guidelines may take effect.

26 “(D) Approve by majority vote the budget of the commission before sub-
27 mission to the Legislative Assembly.

28 “(7) The members of the commission may not:

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

30 “(b) Have access to any case file; or

1 “(c) Interfere with the executive director or any member of the staff of
2 the executive director in carrying out professional duties involving the legal
3 representation of public defense clients.

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

6 **“SECTION 78.** ORS 151.216, as amended by section 3 of this 2023 Act, is
7 amended to read:

8 “151.216. (1) The Oregon Public Defense Commission shall:

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

12 “(b) Adopt policies for public defense providers that:

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

15 “(B) Provide for public defense provider compensation and resources that
16 are commensurate with state employees providing comparable services or in
17 comparable job classifications;

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

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

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

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

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

5 “(f) Submit the budget of the commission to the Legislative Assembly af-
6 ter the budget is submitted to the commission by the executive director and
7 approved by the voting members of the commission. The [*Chief Justice of the*
8 *Supreme Court and the*] chairperson of the commission shall present the
9 budget to the Legislative Assembly.

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

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

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

16 “(B) The appointment of counsel, including the appointment of counsel
17 at state expense regardless of financial eligibility in juvenile delinquency
18 matters;

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

21 “(D) Appointed counsel compensation disputes;

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

24 “(F) The types of fees and expenses subject to a preauthorization re-
25 quirement.

26 “(i) Reimburse the State Court Administrator from funds deposited in the
27 Public Defense Services Account established by ORS 151.225 for the costs of
28 personnel and other costs associated with location of eligibility verification
29 and screening personnel pursuant to ORS 151.489 by the State Court Ad-
30 ministrator.

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

9 “(k) Set minimum standards by which appointed counsel are trained and
10 supervised.

11 “(L) Establish a system, policies and procedures for the mandatory col-
12 lection of data concerning the operation of the commission and all public
13 defense providers.

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

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

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

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

1 “(q) Ensure access to systematic and comprehensive training programs for
2 attorneys for the purpose of meeting statewide standards set by the commis-
3 sion.

4 “(r) Enter into contracts or interagency agreements with the Oregon De-
5 partment of Administrative Services for the purpose of supporting state
6 public defense population forecasts and other related forecasts.

7 “[*s*] *Pay invoices submitted to the commission within 45 days of receipt or*
8 *in accordance with statewide accounting policies established by the Oregon*
9 *Department of Administrative Services.*]

10 “[*t*] (s) Establish any other policies, procedures, standards and guide-
11 lines for the conduct of the commission’s affairs and promulgate policies
12 necessary to carry out all powers and duties of the commission.

13 “(2) When establishing the minimum policies, procedures, standards and
14 guidelines described in this section, the commission shall adhere to the fol-
15 lowing principles:

16 “(a) Appointed counsel shall be provided sufficient time and a space
17 where attorney-client confidentiality is safeguarded for meetings with cli-
18 ents.

19 “(b) The workload of appointed counsel must be controlled to permit ef-
20 fective representation. Economic disincentives or incentives that impair the
21 ability of appointed counsel to provide effective assistance of counsel must
22 be avoided. The commission may develop workload controls to enhance ap-
23 pointed counsel’s ability to provide effective representation.

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

26 “(d) The same appointed counsel shall continuously represent a client
27 throughout the pendency of the case and shall appear at every court ap-
28 pearance other than ministerial hearings.

29 “(e) The commission shall establish continuing legal education require-
30 ments for public defense providers who are employed by or contract with the

1 commission that are specific to the subject matter area and practice of each
2 type of court-appointed counsel.

3 “(f) The commission and public defense providers shall systematically re-
4 view appointed counsel for efficiency and for effective representation ac-
5 cording to commission standards.

6 “(3) The commission shall be organized in a manner for the effective de-
7 livery of public defense services as prescribed by the policies and procedures
8 created pursuant to statute to financially eligible persons and consistent
9 with the budgetary structure established for the commission by the Legisla-
10 tive Assembly.

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

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

18 “(6) Policies, procedures, standards and guidelines adopted by the com-
19 mission supersede any conflicting rules, policies or procedures of the Public
20 Defender Committee, State Court Administrator, circuit courts, the Court of
21 Appeals, the Supreme Court and the Psychiatric Security Review Board re-
22 lated to the exercise of the commission’s administrative responsibilities un-
23 der this section and transferred duties, functions and powers as they occur.

24 “(7) The commission may accept gifts, grants or contributions from any
25 source, whether public or private. However, the commission may not accept
26 a gift, grant or contribution if acceptance would create a conflict of interest.
27 Moneys accepted under this subsection shall be deposited in the Public De-
28 fense Services Account established by ORS 151.225 and expended for the
29 purposes for which given or granted.

30 “(8) **With the approval of a majority of the voting members of the**

1 **commission, the commission may advocate for or against legislation**
2 **before the Legislative Assembly or policies or budgets being considered**
3 **by the Legislative Assembly.**

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

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

9

10 **“(Conforming Amendments)**

11

12 **“SECTION 79. ORS 8.105, as amended by section 16 of this 2023 Act, is**
13 **amended to read:**

14 “8.105. (1) Before making any change to a compensation plan, an admin-
15 istrative division of the judicial department must submit the proposed change
16 to the Joint Committee on Ways and Means during the period when the
17 Legislative Assembly is in session, or to the Emergency Board or the Joint
18 Interim Committee on Ways and Means during the interim period between
19 sessions.

20 “(2) This section applies to all boards, commissions, committees and de-
21 partments of the judicial department, as defined in ORS 174.113, including
22 but not limited to [*the Oregon Public Defense Commission and*] the Commis-
23 sion on Judicial Fitness and Disability.

24 **“SECTION 80. ORS 42.125, as amended by section 19 of this 2023 Act, is**
25 **amended to read:**

26 “42.125. (1) For the purposes of ORS 40.510 (1)(a) and (d), each state offi-
27 cer and state agency may have a seal which, unless specifically provided
28 otherwise by law, shall consist of an impression, imprint or likeness of the
29 state seal accompanied by the name of the state officer or state agency.

30 “(2) As used in this section:

1 “(a) ‘Seal’ has the meaning given that term in ORS 42.110.

2 “(b) ‘State agency’ means every state officer, board, commission, depart-
3 ment, institution, branch or agency of the state government, except[:]

4 “[*(A)*] the Legislative Assembly and the courts and their officers and
5 committees[; *and*]

6 “[*(B)* *The Oregon Public Defense Commission*].

7 “(c) ‘State officer’ includes any appointed state official who is authorized
8 by the Oregon Department of Administrative Services to have a seal and any
9 elected state official, except members of the Legislative Assembly.

10 **“SECTION 81.** ORS 84.064, as amended by section 22 of this 2023 Act, is
11 amended to read:

12 “84.064. (1) For purposes of ORS 84.049, 84.052 and 84.055, the State Chief
13 Information Officer shall make determinations and adopt standards for state
14 agencies.

15 “(2) The State Chief Information Officer shall adopt rules to govern state
16 agency use of electronic signatures. The rules must include control processes
17 and procedures to ensure adequate integrity, security and confidentiality for
18 business transactions that state agencies conduct using electronic commerce
19 and to ensure that the transactions can be audited as is necessary for the
20 normal conduct of business.

21 “(3) As used in this section, ‘state agency’ means every state officer and
22 board, commission, department, institution, branch and agency of the state
23 government, the costs of which are paid wholly or in part from funds held
24 in the State Treasury, except[:]

25 “[*(a)*] the Legislative Assembly, the courts, the district attorney for each
26 county and the officers and committees of the Legislative Assembly, the
27 courts and the district attorney[; *and*]

28 “[*(b)* *The Oregon Public Defense Commission*].

29 **“SECTION 82.** ORS 171.133, as amended by section 45 of this 2023 Act,
30 is amended to read:

1 “171.133. (1) A state agency shall not cause a bill or measure to be in-
2 troduced before the Legislative Assembly if the bill or measure has not been
3 approved by the Governor.

4 “(2) As used in ORS 171.130 and this section, ‘state agency’ means every
5 state agency whose costs are paid wholly or in part from funds held in the
6 State Treasury, except:

7 “(a) The Legislative Assembly, the courts and their officers and commit-
8 tees; **and**

9 “[*(b) The Oregon Public Defense Commission; and*]

10 “[*(c)*] **(b)** The Secretary of State, the State Treasurer, the Attorney Gen-
11 eral and the Commissioner of the Bureau of Labor and Industries.

12 “**SECTION 83.** ORS 190.490, as amended by section 47 of this 2023 Act,
13 is amended to read:

14 “190.490. (1) Every agreement entered into under ORS 190.485 shall be
15 submitted to the Attorney General before taking effect. The Attorney Gen-
16 eral shall determine whether the agreement is in proper form and compatible
17 with the laws of this state. If the Attorney General determines that the
18 agreement is improper in some respect, the Attorney General shall give
19 written notice to the state agency concerning the specific respects in which
20 the agreement fails to comply with law. Failure of the Attorney General to
21 give such notice to the state agency within 30 days of submission of the
22 agreement to the Attorney General’s office shall constitute approval of the
23 agreement. The Attorney General may exempt certain agreements, classes of
24 agreements or form agreements from the requirement that the agreement be
25 approved by the Attorney General before taking effect.

26 “(2) The state agency shall file any agreement made under ORS 190.485
27 with the Oregon Department of Administrative Services within 30 days of the
28 effective date of the agreement. The department may adopt rules necessary
29 for the administration of this subsection.

30 “(3) This section does not apply to the Legislative Assembly, the courts

1 and their officers and committees[,] **and** the Secretary of State and the State
2 Treasurer in the performance of the duties of their constitutional offices [*and*
3 *the Oregon Public Defense Commission*].

4 **“SECTION 84.** ORS 283.110, as amended by section 49 of this 2023 Act,
5 is amended to read:

6 “283.110. (1) Subject to rules prescribed by the Oregon Department of
7 Administrative Services, any state agency shall, as its own facilities permit,
8 furnish to any other state agency such services (including labor), facilities
9 and materials as are requisitioned by the head of another agency. The ex-
10 pense shall be charged to the agency served, which shall pay the expense to
11 the agency furnishing the services, facilities or materials in the manner
12 other claims are paid. Agencies shall, as far as practicable, cooperate with
13 one another in the use of services, quarters and equipment.

14 “(2) Except as provided in ORS 283.076 (3), all moneys received by an
15 agency in payment of services, facilities or materials furnished to another
16 state agency as provided in this section, or in payment of services, facilities
17 or materials furnished to other persons may be, or if required by the Oregon
18 Department of Administrative Services, shall be paid into the State Treasury
19 for deposit to the credit of the miscellaneous receipts account established
20 pursuant to ORS 279A.290 for the agency furnishing the services, facilities
21 or materials.

22 “(3) The constitutional state officers and the Legislative Assembly or any
23 of its statutory, standing, special or interim committees, unless prohibited
24 by law, may elect to furnish services, facilities and materials to one another
25 and to state agencies and officers as defined in ORS 291.002, and the courts,
26 constitutional state officers[,] **and** the Legislative Assembly or any of its
27 statutory, standing, special or interim committees [*and the Oregon Public*
28 *Defense Commission*] may elect to requisition services, facilities and materi-
29 als as provided in this section.

30 **“SECTION 85.** ORS 291.002, as amended by section 50 of this 2023 Act,

1 is amended to read:

2 “291.002. As used in ORS 291.001 to 291.034, 291.201 to 291.222, 291.232 to
3 291.260, 291.261, 291.307 and 291.990, unless the context requires otherwise:

4 “(1) ‘Classification of expenditures’ means the categories of expenses for
5 the purpose of budget-making and accounting that are provided in ORS
6 291.216 (6)(a).

7 “(2) ‘Dedicated fund’ means a fund in the State Treasury, or a separate
8 account or fund in the General Fund in the State Treasury, that by law is
9 dedicated, appropriated or set aside for a limited object or purpose, but
10 ‘dedicated fund’ does not include a revolving fund or a trust fund.

11 “(3) ‘Department’ means the Oregon Department of Administrative Ser-
12 vices.

13 “(4) ‘Director’ means the Director of the Oregon Department of Adminis-
14 trative Services.

15 “(5) ‘Legislatively adopted budget’ means the budget enacted by the Leg-
16 islative Assembly during an odd-numbered year regular session for the
17 biennium beginning July 1 of the year in which the regular session begins.

18 “(6) ‘Legislatively approved budget’ means the legislatively adopted
19 budget as modified by the Emergency Board meeting in an interim period or
20 by the Legislative Assembly meeting in special session or in an even-
21 numbered year regular session.

22 “(7) ‘Revolving fund’ means a fund in the State Treasury, established by
23 law, from which is paid the cost of goods or services furnished to or by a
24 state agency, and which is replenished through charges made for such goods
25 or services or through transfers from other accounts or funds.

26 “(8) ‘State agency’ or ‘agency’ means every state officer, board, commis-
27 sion, department, institution, branch or agency of the state government,
28 whose costs are paid wholly or in part from funds held in the State Treasury,
29 except:

30 “(a) The Legislative Assembly, the courts and their officers and commit-

1 tees; **and**

2 “[(b) *The Oregon Public Defense Commission*; and]

3 “[(c)] **(b)** The Secretary of State and the State Treasurer in the perform-
4 ance of the duties of their constitutional offices.

5 “(9) ‘State officer’ means any elected or appointed state officer, including
6 members of boards and commissions, except the members and officers of the
7 Legislative Assembly, the courts, the Secretary of State and the State
8 Treasurer in the performance of the duties of their constitutional offices [*and*
9 *the members of the Oregon Public Defense Commission*].

10 “(10) ‘Trust fund’ means a fund in the State Treasury in which designated
11 persons or classes of persons have a vested beneficial interest or equitable
12 ownership, or which was created or established by a gift, grant, contribution,
13 devise or bequest that limits the use of the fund to designated objects or
14 purposes.

15 “**SECTION 86.** ORS 291.030, as amended by section 52 of this 2023 Act,
16 is amended to read:

17 “291.030. As used in ORS 291.032 and 291.034, ‘state agency’ or ‘agency’
18 includes the Legislative Assembly, at its option, or any of its statutory,
19 standing, special or interim committees, at the option of such committee, **and**
20 the courts and their officers and committees and the constitutional state of-
21 ficers, at their option[, *and the Oregon Public Defense Commission, at the*
22 *option of the commission*].

23 “**SECTION 87.** ORS 291.045, as amended by section 53 of this 2023 Act,
24 is amended to read:

25 “291.045. As used in this section and ORS 291.047:

26 “(1) ‘Information technology’ includes, but is not limited to, all present
27 and future forms of hardware, software and services for data processing, of-
28 fice automation and telecommunications.

29 “(2) ‘State agency’ includes every state officer, board, commission, de-
30 partment, institution, branch or agency of the state government, whose costs

1 are paid wholly or in part from funds held in the State Treasury, except[:]
2 “[*a*] the Legislative Assembly, the courts and their officers and
3 committees[; *and*]

4 “[*b*] *The Oregon Public Defense Commission*].

5 “(3) ‘Public contract’ means any acquisition, disposition, purchase, lease,
6 sale or transfer of rights by a state agency of real or personal property,
7 public improvements or services.

8 “(4) ‘Public improvement’ means projects for construction, reconstruction
9 or renovation on real property by or for a state agency.

10 “**SECTION 88.** ORS 291.227, as amended by section 54 of this 2023 Act,
11 is amended to read:

12 “291.227. (1)(a) As part of the development of the legislatively adopted
13 budget, each state agency that employs more than 100 employees shall report
14 to the Joint Committee on Ways and Means the state agency’s maximum
15 supervisory ratio for the biennium.

16 “(b) Before submitting the report to the committee, a state agency shall
17 provide a copy of the report to all labor organizations that represent em-
18 ployees of the state agency.

19 “(2) A state agency must determine its maximum supervisory ratio by
20 starting from a baseline ratio of one to 11 and adjusting the ratio based on
21 some or all of the following factors:

22 “(a) Safety of the public or of state agency employees;

23 “(b) Geographic location of the agency’s employees;

24 “(c) Complexity of the agency’s duties;

25 “(d) Industry best practices and standards;

26 “(e) Size and hours of operation of the agency;

27 “(f) Unique personnel needs of the agency, including the agency’s use of
28 volunteers or seasonal or temporary employees, or the exercise of supervisory
29 authority by agency supervisory employees over personnel who are not
30 agency employees; and

1 “(g) Financial scope and responsibility of the agency.

2 “(3) The Joint Committee on Ways and Means shall review the maximum
3 supervisory ratios reported by state agencies.

4 “(4) Subject to subsection (5) of this section, a state agency whose actual
5 supervisory ratio is greater than its maximum supervisory ratio may not fill
6 a supervisory position.

7 “(5)(a) The Oregon Department of Administrative Services may exempt a
8 state agency from the limitations of subsection (4) of this section if the de-
9 partment determines that an additional supervisory position is reasonably
10 necessary to the state agency. The department must make the determination
11 with reference to some or all of the factors set forth in subsection (2) of this
12 section.

13 “(b) At least five business days before granting an exemption under this
14 subsection, the department shall notify all labor organizations that represent
15 employees of the state agency of its intent to grant the exemption.

16 “(6)(a) The department shall, once per quarter, produce reports on the
17 actual supervisory ratio of each state agency. The reports must include data
18 on job families within each state agency to the extent such data is reason-
19 ably available.

20 “(b) The department shall make the reports publicly available on the
21 Internet and shall notify all labor organizations that represent state em-
22 ployees when the reports are available.

23 “(7) The department may adopt rules for the administration of this sec-
24 tion, including rules governing how temporary, seasonal or part-time em-
25 ployees are accounted for in the calculation of a supervisory ratio.

26 “(8) As used in this section:

27 “(a) ‘Job families’ means groups of occupations based upon work per-
28 formed, skills, education, training and credentials.

29 “(b) ‘Legislatively adopted budget’ has the meaning given that term in
30 ORS 291.002.

1 “(c)(A) ‘State agency’ means all state officers, boards, commissions, de-
2 partments, institutions, branches, agencies, divisions and other entities,
3 without regard to the designation given to those entities, that are within the
4 executive branch of government as described in Article III, section 1, of the
5 Oregon Constitution.

6 “(B) ‘State agency’ does not include:

7 “(i) The legislative department as defined in ORS 174.114;

8 “(ii) The judicial department as defined in ORS 174.113;

9 “[*iii*] *The Oregon Public Defense Commission;*]

10 “[*iv*] **(iii)** The Secretary of State and the State Treasurer;

11 “[*v*] **(iv)** Semi-independent state agencies listed in ORS 182.454;

12 “[*vi*] **(v)** The Oregon Tourism Commission;

13 “[*vii*] **(vi)** The Oregon Film and Video Office;

14 “[*viii*] **(vii)** Public universities listed in ORS 352.002;

15 “[*ix*] **(viii)** The Oregon Health and Science University;

16 “[*x*] **(ix)** The Travel Information Council;

17 “[*xi*] **(x)** Oregon Corrections Enterprises;

18 “[*xii*] **(xi)** The Oregon State Lottery Commission;

19 “[*xiii*] **(xii)** The State Accident Insurance Fund Corporation;

20 “[*xiv*] **(xiii)** The Oregon Utility Notification Center;

21 “[*xv*] **(xiv)** Oregon Community Power;

22 “[*xvi*] **(xv)** The Citizens’ Utility Board;

23 “[*xvii*] **(xvi)** A special government body as defined in ORS 174.117;

24 “[*xviii*] **(xvii)** Any other public corporation created under a statute of
25 this state and specifically designated as a public corporation; and

26 “[*xix*] **(xviii)** Any other semi-independent state agency denominated by
27 statute as a semi-independent state agency.

28 “(d) ‘Supervisory employee’ has the meaning given that term in ORS
29 243.650.

30 “(e) ‘Supervisory ratio’ means the ratio of employees who are supervisory

1 employees to employees who are not supervisory employees.

2 **“SECTION 89.** ORS 293.300, as amended by section 55 of this 2023 Act,
3 is amended to read:

4 “293.300. Except for claims based on obligations incurred or expenditures
5 made by the Legislative Assembly and its officers and committees, the courts
6 and their officers and committees[,] **and** the Secretary of State and State
7 Treasurer in the performance of the functions of their constitutional offices
8 [*and the Oregon Public Defense Commission*], a claim for payment from any
9 moneys in the State Treasury may not be paid if the claim is disapproved
10 by the Oregon Department of Administrative Services. The department shall
11 disapprove a claim if provision for payment thereof is not made by law and
12 appropriation, the obligation or expenditure on which the claim is based is
13 not authorized as provided by law or the claim does not otherwise satisfy
14 requirements as provided by law.

15 **“SECTION 90.** ORS 293.590, as amended by section 56 of this 2023 Act,
16 is amended to read:

17 “293.590. (1) The Oregon Department of Administrative Services shall di-
18 rect and control the accounting for all the fiscal affairs of the state gov-
19 ernment and agencies thereof, and shall provide for the maintenance of
20 accounting records, including accounts stated in summary or in detail, for
21 those fiscal affairs. The department is responsible for establishing and
22 maintaining systems of accounting for state government and agencies
23 thereof. The principles, standards and related requirements of those systems
24 of accounting shall be as prescribed by the department and except as other-
25 wise provided in this section shall be used by the state agencies thereof,
26 unless otherwise directed by the department.

27 “(2) In performing its functions under subsection (1) of this section, the
28 department shall consult with the Secretary of State, State Treasurer and,
29 to the extent it considers necessary or desirable, any other state agency or
30 any federal agency.

1 “(3) The department may, as its own facilities permit, furnish to any other
2 state agency such accounting services (including labor), facilities and mate-
3 rials as are necessary, as determined by the department, for compliance by
4 the state agency with subsection (1) of this section. The cost to the depart-
5 ment of furnishing the services, facilities and materials, as determined by the
6 department, shall be charged to the state agency and paid to the department
7 in the same manner as other claims against the state agency are paid.

8 “(4) This section is applicable to the Legislative Assembly and its officers
9 and committees, the courts and their officers and committees[,] **and** the
10 Secretary of State and State Treasurer in the performance of the functions
11 of their constitutional offices [*and the Oregon Public Defense Commission*]
12 only at their option.

13 **“SECTION 91.** ORS 293.875, as amended by section 57 of this 2023 Act,
14 is amended to read:

15 “293.875. (1) The State Treasurer is designated the sole banking and cash
16 management officer for the state and may review, establish and modify pro-
17 cedures for the efficient handling of moneys under the control of the State
18 Treasury, the Secretary of State, the Judicial Department, the Legislative
19 Assembly[, *the Oregon Public Defense Commission*] and state agencies as de-
20 fined in ORS 291.002. The State Treasurer shall perform all activities neces-
21 sary or desirable to fulfill the duties of the treasurer as the banking and cash
22 management officer. The activities may include, but are not limited to, en-
23 tering into contracts for the provision of services related to the management,
24 deposit and transfer of, or payment from, moneys deposited with the State
25 Treasurer through banks and other financial institutions. The deposit,
26 transfer or payment may be through physical presentation or drafting of an
27 instrument or document by electronic or other means.

28 “(2) The State Treasurer shall continuously review the effectiveness of the
29 cash management of state agencies, the Secretary of State, the Judicial De-
30 partment and the Legislative Assembly, and when the State Treasurer con-

1 siders it appropriate shall report in writing to the subject agency the
2 findings of this review, along with any recommendations. A copy of the re-
3 port shall be provided to the Legislative Fiscal Officer and to the Secretary
4 of State.

5 “(3) This section controls over any other law that gives another state
6 agency general responsibility for, or control over, the accounting, fiscal or
7 electronic commerce affairs of the State Treasury, the Secretary of State, the
8 Judicial Department, the Legislative Assembly[, *the Oregon Public Defense*
9 *Commission*] and state agencies as defined in ORS 291.002. State agencies
10 shall employ the principles, standards and related requirements for cash
11 management prescribed by the State Treasurer, including:

12 “(a) Practices related to the use of credit, debit or similar cards or de-
13 vices;

14 “(b) The use of secure disbursing and receiving instruments, documents
15 and systems; and

16 “(c) The use of secure information resources, information technology and
17 networks that meet the requirements of the State Treasurer for the elec-
18 tronic management, deposit or transfer of, or payment from, moneys depos-
19 ited with the State Treasurer.

20 “(4) As used in this section, ‘information resources’ and ‘information
21 technology’ have the meanings given those terms in ORS 276A.206.

22

23

“(Operative Dates)”

24

25 **“SECTION 92. (1)(a) The Oregon Public Defense Commission is**
26 **transferred from the judicial branch to the executive branch on Jan-**
27 **uary 1, 2025.**

28 **“(b) The amendments to ORS 8.105, 42.125, 84.064, 151.213, 151.216,**
29 **171.133, 190.490, 283.110, 291.002, 291.030, 291.045, 291.227, 293.300, 293.590**
30 **and 293.875 by sections 77 to 91 of this 2023 Act become operative on**

1 **January 1, 2025.**

2 **“(2) The Oregon Public Defense Commission, the Judicial Depart-**
3 **ment, the Oregon Department of Administrative Services and the**
4 **Governor may take any action before the operative date specified in**
5 **subsection (1) of this section that is necessary to:**

6 **“(a) Facilitate the transfer of the commission to the executive**
7 **branch;**

8 **“(b) Enable those entities to exercise, on and after the operative**
9 **date specified in subsection (1) of this section, all of the duties, func-**
10 **tions and powers conferred on those entities by the amendments to**
11 **ORS 8.105, 42.125, 84.064, 151.213, 151.216, 171.133, 190.490, 283.110, 291.002,**
12 **291.030, 291.045, 291.227, 293.300, 293.590 and 293.875 by sections 77 to 91**
13 **of this 2023 Act.**

14 **“(3)(a) A person who is a member of the Oregon Public Defense**
15 **Commission on January 1, 2025, may finish the person’s term as a**
16 **commission member and is eligible for reappointment if the person**
17 **meets the requirements described in ORS 151.213 (2).**

18 **“(b) The person serving as executive director of the Oregon Public**
19 **Defense Commission on January 1, 2025, may finish the person’s term**
20 **as executive director and is eligible for reappointment.**

21

22 **“CHANGE IN SERVICE DELIVERY MODEL**

23 **“(Statutory Changes)**

24

25 **“SECTION 93.** ORS 151.211, as amended by section 1 of this 2023 Act, is
26 amended to read:

27 **“151.211. For purposes of ORS 151.211 to 151.221:**

28 **“(1) ‘Appointed counsel’ includes trial-level and appellate attorneys**
29 **who are employees of the Oregon Public Defense Commission, attor-**
30 **neys employed by a nonprofit public defense organization and attor-**

1 **neys on the panel of qualified counsel described in ORS 151.216 (5) who**
2 **contract with the commission to provide public defense services.**

3 “[1] (2) ‘Chief Justice’ means the Chief Justice of the Supreme Court.

4 “[2] (3) ‘Commission’ means the Oregon Public Defense Commission.

5 “(4) **‘Nonprofit public defense organization’ means a nonprofit or-**
6 **ganization that employs attorneys who provide public defense services.**

7 **“SECTION 94.** ORS 151.216, as amended by sections 3 and 78 of this 2023
8 Act, is amended to read:

9 “151.216. (1) The Oregon Public Defense Commission shall:

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

13 “(b) Adopt policies for public defense providers that:

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

16 “(B) Provide for public defense provider compensation and resources that
17 are commensurate with state employees providing comparable services or in
18 comparable job classifications;

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

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

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

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

1 four years.

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

6 “(f) Submit the budget of the commission to the Legislative Assembly af-
7 ter the budget is submitted to the commission by the executive director and
8 approved by the voting members of the commission. The chairperson of the
9 commission shall present the budget to the Legislative Assembly.

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

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

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

16 “(B) The appointment of counsel, including the appointment of counsel
17 at state expense regardless of financial eligibility in juvenile delinquency
18 matters;

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

21 “(D) Appointed counsel compensation disputes;

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

24 “(F) The types of fees and expenses subject to a preauthorization re-
25 quirement.

26 “(i) Reimburse the State Court Administrator from funds deposited in the
27 Public Defense Services Account established by ORS 151.225 for the costs of
28 personnel and other costs associated with location of eligibility verification
29 and screening personnel pursuant to ORS 151.489 by the State Court Ad-
30 ministrator.

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

9 “(k) Set minimum standards by which appointed counsel are trained and
10 supervised.

11 “(L) Establish a system, policies and procedures for the mandatory col-
12 lection of data concerning the operation of the commission and all public
13 defense providers.

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

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

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

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

1 “(q) Ensure access to systematic and comprehensive training programs for
2 attorneys for the purpose of meeting statewide standards set by the commis-
3 sion.

4 “(r) Enter into contracts or interagency agreements with the Oregon De-
5 partment of Administrative Services for the purpose of supporting state
6 public defense population forecasts and other related forecasts.

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

10 “(2) When establishing the minimum policies, procedures, standards and
11 guidelines described in this section, the commission shall adhere to the fol-
12 lowing principles:

13 “(a) Appointed counsel shall be provided sufficient time and a space
14 where attorney-client confidentiality is safeguarded for meetings with cli-
15 ents.

16 “(b) The workload of appointed counsel must be controlled to permit ef-
17 fective representation. Economic disincentives or incentives that impair the
18 ability of appointed counsel to provide effective assistance of counsel must
19 be avoided. The commission may develop workload controls to enhance ap-
20 pointed counsel’s ability to provide effective representation.

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

23 “(d) The same appointed counsel shall continuously represent a client
24 throughout the pendency of the case and shall appear at every court ap-
25 pearance other than ministerial hearings.

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

30 “(f) The commission and public defense providers shall systematically re-

1 view appointed counsel for efficiency and for effective representation ac-
2 cording to commission standards.

3 “(3) The commission shall be organized in a manner for the effective de-
4 livery of public defense services as prescribed by the policies and procedures
5 created pursuant to statute to financially eligible persons and consistent
6 with the budgetary structure established for the commission by the Legisla-
7 tive Assembly.

8 “(4) The commission shall hire attorneys to serve as appointed counsel,
9 including at the trial level in Oregon circuit courts, and [*may*] **shall** estab-
10 lish a trial division within the commission consisting of attorneys employed
11 by the commission who are trial-level public defense providers.

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

17 “(b) **The payment of panel counsel:**

18 “(A) **May not be lower than the hourly rate established by the**
19 **commission.**

20 “(B) **Shall be adjusted to reflect the same percentage amount of any**
21 **positive cost of living adjustment granted to employees in the man-**
22 **agement service in other executive branch agencies.**

23 “(C) **May not provide a financial conflict of interest or economic**
24 **incentives or disincentives that impair an attorney’s ability to provide**
25 **effective representation.**

26 “(6)(a) **The commission may enter into contracts for the provision**
27 **of public defense services with nonprofit public defense organizations.**

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

1 “(c) **The commission may not enter into a contract or agreement**
2 **that pays appointed counsel a flat fee per case.**

3 “[(5)] (7) The policies, procedures, standards and guidelines adopted by
4 the commission must be made available in an accessible manner to the public
5 on the commission’s website.

6 “[(6)] (8) Policies, procedures, standards and guidelines adopted by the
7 commission supersede any conflicting rules, policies or procedures of the
8 Public Defender Committee, State Court Administrator, circuit courts, the
9 Court of Appeals, the Supreme Court and the Psychiatric Security Review
10 Board related to the exercise of the commission’s administrative responsi-
11 bilities under this section and transferred duties, functions and powers as
12 they occur.

13 “[(7)] (9) The commission may accept gifts, grants or contributions from
14 any source, whether public or private. However, the commission may not
15 accept a gift, grant or contribution if acceptance would create a conflict of
16 interest. Moneys accepted under this subsection shall be deposited in the
17 Public Defense Services Account established by ORS 151.225 and expended
18 for the purposes for which given or granted.

19 “[(8)] (10) With the approval of a majority of the voting members of the
20 commission, the commission may advocate for or against legislation before
21 the Legislative Assembly or policies or budgets being considered by the
22 Legislative Assembly.

23 “[(9)] (11) The commission shall request that the Governor include in the
24 Governor’s requested budget, for each fiscal period, at a minimum, the
25 amount of funds identified by the commission as being necessary to carry out
26 the duties and activities of the commission.

27 “[(10)] (12) The commission may adopt rules pursuant to ORS chapter 183.

28 “**SECTION 95.** ORS 151.219, as amended by section 4 of this 2023 Act, is
29 amended to read:

30 “151.219. (1) The executive director of the Oregon Public Defense Com-

1 mission shall:

2 “(a) Designate a deputy director of the commission who serves at the
3 pleasure of the executive director.

4 “(b) Hire necessary staff for the commission.

5 “(c) Recommend to the commission how to establish and maintain, in a
6 cost-effective manner, the delivery of legal services to persons entitled to,
7 and, where applicable, financially eligible for, appointed counsel at state
8 expense under Oregon statutes, the Oregon Constitution, the United States
9 Constitution and consistent with Oregon and national standards of justice.

10 “(d) Implement and ensure compliance with contracts, policies, proce-
11 dures, standards and guidelines adopted by the commission or required by
12 statute.

13 “(e) Prepare and submit to the commission for its approval the biennial
14 budget of the commission.

15 “(f) Negotiate contracts, as appropriate, for providing legal services to
16 persons eligible for appointed counsel at state expense **in accordance with**
17 **ORS 151.216 (5) and (6).**

18 “(g) Employ personnel or contract for services as necessary to carry out
19 the responsibilities of the executive director and the commission.

20 “(h) Supervise the personnel, operation and activities of the commission.

21 “(i) Provide services, facilities and materials necessary for the perform-
22 ance of the duties, functions and powers of the commission.

23 “(j) Pay the expenses of the commission.

24 “(k) Prepare and submit to the members of the commission an annual re-
25 port of the activities of the commission.

26 “(L) Provide for legal representation, advice and consultation for the
27 commission, its members, the executive director and staff of the commission
28 who require such services or who are named as defendants in lawsuits aris-
29 ing from their duties, functions and responsibilities. If requested by the
30 executive director, the Attorney General may also provide for legal repre-

1 sentation, advice and consultation for the commission, its members, the
2 executive director and staff of the commission in litigation.

3 “(2) The executive director may:

4 “(a) Designate persons as representatives of the executive director for the
5 purposes of determining and paying bills submitted to the commission and
6 determining preauthorization for incurring fees and expenses under ORS
7 135.055.

8 “(b) Establish an external advisory group to assist in developing the
9 standard operating expectations for persons and entities providing public
10 defense services.

11

12 “(Temporary Provisions)

13

14 **“SECTION 96. (1)(a) The Oregon Public Defense Commission shall**
15 **conduct a survey and economic analysis to establish a formula for the**
16 **commission to use to calculate an hourly pay rate, taking into account**
17 **overhead expenses, market rates and regional differences in the cost**
18 **of living, for appointed counsel who are not employees of the com-**
19 **mission or a nonprofit public defense organization.**

20 **“(b) The commission may conduct the survey and economic analysis**
21 **internally or may contract with an outside entity. The survey and**
22 **economic analysis must be completed and the hourly pay rate calcu-**
23 **lated no later than April 1, 2024.**

24 **“(c) After the hourly pay rate described in paragraph (a) of this**
25 **subsection has been calculated, the hourly pay for appointed counsel**
26 **who are not employees of the commission or a nonprofit public defense**
27 **organization may not be lower than that amount.**

28 **“(d) The commission may conduct another survey and economic**
29 **analysis as described in this subsection to establish a new formula and**
30 **calculate a new hourly pay rate.**

1 interim committees of the Legislative Assembly related to the judici-
2 ary with an updated version of the report described in subsection (1)
3 of this section.

4 **“SECTION 99.** Section 98 of this 2023 Act is repealed on January 2,
5 2036.

6

7

“(Contracts Beginning July 1, 2027)

8

9 **“SECTION 100.** ORS 151.216, as amended by sections 3, 78 and 94 of this
10 2023 Act, 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
13 provision of public defense services consistent with the Oregon Constitution,
14 the United States Constitution and Oregon and national standards of justice.

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

16 “(A) Ensure compensation, resources and caseloads are in accordance
17 with national and regional best practices;

18 “(B) Provide for public defense provider compensation and resources that
19 are commensurate with state employees providing comparable services or in
20 comparable job classifications;

21 “(C) Ensure funding and resources to support required data collection and
22 training requirements; and

23 “(D) Recognize the need to consider overhead costs that account for the
24 cost of living and business cost differences in each county or jurisdiction,
25 including but not limited to rent, professional membership dues, malpractice
26 insurance and other insurance and other reasonable and usual operating
27 costs.

28 “(c) Establish operational and contracting systems that allow for over-
29 sight, ensure transparency and stakeholder engagement and promote equity,
30 inclusion and culturally specific representation.

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

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

8 “(f) Submit the budget of the commission to the Legislative Assembly af-
9 ter the budget is submitted to the commission by the executive director and
10 approved by the voting members of the commission. The chairperson of the
11 commission shall present the budget to the Legislative Assembly.

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

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

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

18 “(B) The appointment of counsel, including the appointment of counsel
19 at state expense regardless of financial eligibility in juvenile delinquency
20 matters;

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

23 “(D) Appointed counsel compensation disputes;

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

26 “(F) The types of fees and expenses subject to a preauthorization re-
27 quirement.

28 “(i) Reimburse the State Court Administrator from funds deposited in the
29 Public Defense Services Account established by ORS 151.225 for the costs of
30 personnel and other costs associated with location of eligibility verification

1 and screening personnel pursuant to ORS 151.489 by the State Court Ad-
2 ministrator.

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

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

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

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

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

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

30 “(p) In consultation with the Judicial Department, ensure the existence

1 of policies that create a standardized process for determining and verifying
2 financial eligibility for appointed counsel under ORS 151.485.

3 “(q) Ensure access to systematic and comprehensive training programs for
4 attorneys for the purpose of meeting statewide standards set by the commis-
5 sion.

6 “(r) Enter into contracts or interagency agreements with the Oregon De-
7 partment of Administrative Services for the purpose of supporting state
8 public defense population forecasts and other related forecasts.

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

12 “(2) When establishing the minimum policies, procedures, standards and
13 guidelines described in this section, the commission shall adhere to the fol-
14 lowing principles:

15 “(a) Appointed counsel shall be provided sufficient time and a space
16 where attorney-client confidentiality is safeguarded for meetings with cli-
17 ents.

18 “(b) The workload of appointed counsel must be controlled to permit ef-
19 fective representation. Economic disincentives or incentives that impair the
20 ability of appointed counsel to provide effective assistance of counsel must
21 be avoided. The commission may develop workload controls to enhance ap-
22 pointed counsel’s ability to provide effective representation.

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

25 “(d) The same appointed counsel shall continuously represent a client
26 throughout the pendency of the case and shall appear at every court ap-
27 pearance other than ministerial hearings.

28 “(e) The commission shall establish continuing legal education require-
29 ments for public defense providers who are employed by or contract with the
30 commission that are specific to the subject matter area and practice of each

1 type of court-appointed counsel.

2 “(f) The commission and public defense providers shall systematically re-
3 view appointed counsel for efficiency and for effective representation ac-
4 cording to commission standards.

5 “(3) The commission shall be organized in a manner for the effective de-
6 livery of public defense services as prescribed by the policies and procedures
7 created pursuant to statute to financially eligible persons and consistent
8 with the budgetary structure established for the commission by the Legisla-
9 tive Assembly.

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

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

19 “(b) The payment of panel counsel:

20 “(A) May not be lower than the hourly rate established by the commis-
21 sion.

22 “(B) Shall be adjusted to reflect the same percentage amount of any pos-
23 itive cost of living adjustment granted to employees in the management ser-
24 vice in other executive branch agencies.

25 “(C) May not provide a financial conflict of interest or economic incen-
26 tives or disincentives that impair an attorney’s ability to provide effective
27 representation.

28 “(6)(a) The commission may enter into contracts for the provision of
29 public defense services with nonprofit public defense organizations.

30 “[*b*] *The commission may enter into contracts with entities that subcontract*

1 *with other entities or persons for the provision of public defense services.]*

2 “[(c)] (b) The commission may not enter into a contract or agreement that
3 pays appointed counsel a flat fee per case.

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

7 “(8) Policies, procedures, standards and guidelines adopted by the com-
8 mission supersede any conflicting rules, policies or procedures of the Public
9 Defender Committee, State Court Administrator, circuit courts, the Court of
10 Appeals, the Supreme Court and the Psychiatric Security Review Board re-
11 lated to the exercise of the commission’s administrative responsibilities un-
12 der this section and transferred duties, functions and powers as they occur.

13 “(9) The commission may accept gifts, grants or contributions from any
14 source, whether public or private. However, the commission may not accept
15 a gift, grant or contribution if acceptance would create a conflict of interest.
16 Moneys accepted under this subsection shall be deposited in the Public De-
17 fense Services Account established by ORS 151.225 and expended for the
18 purposes for which given or granted.

19 “(10) With the approval of a majority of the voting members of the com-
20 mission, the commission may advocate for or against legislation before the
21 Legislative Assembly or policies or budgets being considered by the Legisla-
22 tive Assembly.

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

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

28

29 **“(Operative Dates)”**

30

1 **“SECTION 101. (1)(a) The amendments to ORS 151.211, 151.216 and**
2 **151.219 by sections 93 to 95 of this 2023 Act become operative on July**
3 **1, 2025.**

4 **“(b) The amendments to ORS 151.216 by section 100 of this 2023 Act**
5 **become operative on July 1, 2027.**

6 **“(2) The Oregon Public Defense Commission, the Oregon Depart-**
7 **ment of Administrative Services and the Governor may take any**
8 **action before the operative dates specified in subsection (1) of this**
9 **section that is necessary to enable the commission to exercise, on and**
10 **after the operative dates specified in subsection (1) of this section, all**
11 **of the duties, functions and powers conferred on those entities by the**
12 **amendments to ORS 151.211, 151.216 and 151.219 by sections 93 to 95 and**
13 **100 of this 2023 Act.**

14

15

“CAPTIONS

16

17 **“SECTION 102. The unit captions used in this 2023 Act are provided**
18 **only for the convenience of the reader and do not become part of the**
19 **statutory law of this state or express any legislative intent in the**
20 **enactment of this 2023 Act.**

21

22

“EMERGENCY CLAUSE

23

24 **“SECTION 103. This 2023 Act being necessary for the immediate**
25 **preservation of the public peace, health and safety, an emergency is**
26 **declared to exist, and this 2023 Act takes effect on its passage.”.**

27
