

HB 2614 -1, -2, -3, -5, -7 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 3/5, 3/6, 4/9

WHAT THE MEASURE DOES:

The measure directs the Oregon Public Defense Commission (OPDC) to study ways to improve the provision of public defense services within this state.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 The amendment replaces the measure. Extends the authority of the Oregon Public Defense Commission (OPDC) to continue to contract with entities that subcontract with other entities or persons for the provision of public defense services until July 1, 2029. Modifies the duties of the OPDC to require that compensation, resources, and caseloads of public defense providers are in accordance with the requirements of the Oregon and United States Constitutions. Declares an emergency, effective on passage.

-2 The amendment replaces the measure. Extends the authority of the Oregon Public Defense Commission (OPDC) to continue to contract with entities that subcontract with other entities or persons for the provision of public defense services until July 1, 2029. Provides that the executive director of OPDC and its members serve at the pleasure of the Governor and may be removed at any time. Requires the Governor to appoint an executive director of the commission who is well qualified by training and experience to perform the functions of the office. Modifies the duties of the OPDC to require that compensation, resources, and caseloads of public defense providers are in accordance with the requirements of the Oregon and United States Constitutions. Directs OPDC to submit an agency budget request to the Oregon Department of Administrative Services. Removes language requiring the chairperson of the commission to present the budget to the Legislative Assembly after approval by the voting members of the commission. Removes language authorizing OPDC to advocate for or against legislation before the Legislative Assembly or policies or budgets being considered by the Legislative Assembly. Declares an emergency, effective on passage.

-3 The amendment replaces the measure. Defines trial attorney as an attorney who is a member of the Oregon State Bar not employed by a public body, who has appeared as an attorney of record in any court in this state in 2025. Requires a trial attorney to provide at least 120 hours of public defense services before December 21, 2028. Directs the Oregon Public Defense Commission to provide training in criminal defense to prepare trial attorneys to satisfy the requirements established by the measure. Repeals the measure on January 2, 2029.

-5 The amendment replaces the measure. Extends the authority of the Oregon Public Defense Commission (OPDC) to continue to contract with entities that subcontract with other entities or persons for the provision of public defense services until July 1, 2033. Provides that, beginning July 1, 2027, any member, including the executive director of the Oregon Public Defense Commission, may be removed by the Governor for cause.

Provides that the Governor shall appoint an executive director of OPDC after consultation with the board of commissioners and subject to confirmation by the Senate. The person appointed as executive director must be well qualified by training and experience to perform the functions of the office. Defines 'consultation with the commission' for purposes of the section. Modifies the duties of OPDC to require that compensation, resources, and caseloads of public defense providers are in accordance with the requirements of the Oregon and United States Constitutions. Directs OPDC to submit an agency budget request to the Oregon Department of

This summary has not been adopted or officially endorsed by action of the committee.

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Administrative Services. Removes language requiring the chairperson of the commission to present the budget to the Legislative Assembly after approval by the voting members of the commission. Removes language authorizing OPDC to advocate for or against legislation before the Legislative Assembly or policies or budgets being considered by the Legislative Assembly.

Requires OPDC to maintain an accurate and current list of all attorneys providing public defense services in this state and the qualifications for each attorney. Establish minimum requirements relating to governance and dispute resolution for entities with whom OPDC may enter into a contract with if that entity subcontracts for the provision of public defense services.

Declares an emergency, effective on passage.

-7 Replaces the measure.

Section 2:

Establishes case load standards and limits for Oregon Public Defense Commission (OPDC) contracted providers of public defense and includes criteria for case weighting dependent on the case type and severity. Includes exceptions to caseload limits for attorney's with other responsibilities or duties in addition to indigent defense.

Provides guidance for caseload accounting in specific circumstances including when multiple attorneys are assigned to a case; when an attorney withdraws from a case; or when a defendant fails to appear after appointment of the attorney.

Section 3:

Defines "overage-eligible attorney." Authorizes the OPDC to contract with overage-eligible attorney at up to 125 percent of the caseload limits established by the measure in certain circumstances. Authorizes increased compensation for work in excess of caseload limits.

Section 4:

Defines relevant terms. Provides that any appointed counsel whose quarterly average caseload is below 95 percent of caseload limits, in certain circumstances, shall be subject to reduced compensation as provided by the measure.

Section 5:

Defines "crisis district" for purposes of the measure. Establishes and assigns duties to the presiding judge and circuit court judges in a crisis district related to appointment of defense counsel on cases within a crisis district. Establishes procedures for the appointment and compensation of defense counsel assigned to cases within a crisis district.

Section 6:

Directs the Oregon Criminal Justice Commission (CJC) to establish a program providing logistical and financial grant funding support for implementation of public defense system improvements described in the measure.

Section 7:

Directs the CJC to study Oregon's public defense system and assess the impact of sections 2 through 7 of this act on reducing the number of unrepresented defendants in Oregon and make recommendations related to reform of the system in a report to the Legislative Assembly no later than July 30, 2027.

BACKGROUND:

In 2018, the Sixth Amendment Center, a nonpartisan, nonprofit organization that provides technical assistance and evaluation services to policymakers focusing on the constitutional requirement to provide effective assistance of counsel, assessed the OPDC and the systems they maintain to provide public defense for indigent defendants in Oregon's criminal Justice system.

That assessment found: [T]he state has created a complex bureaucracy that collects a significant amount of indigent defense data, yet does not provide sufficient oversight or financial accountability. In some instances, the complex bureaucracy is itself a hindrance to effective assistance of counsel. Moreover, the report concludes that this complex bureaucracy obscures an attorney compensation plan that is at root a fixed fee contract system that pits appointed lawyers' financial self-interest against the due process rights of their clients, and is prohibited by national public defense standards.

In light of those findings, the Sixth Amendment Center made recommendations for changes to Oregon's defense system that have been under the consideration of an interim workgroup to address the Sixth Amendment Center's recommendations and ensure that the provision of public defense in Oregon is constitutional.

Senate Bill 337 (2023) was enacted to address some of the concerns and recommendations made as part of the Sixth Amendment Center report. Among the changes made to OPDC by SB 337 were: It modified the makeup of the Oregon Public Defense Commission to include appointments or recommendations from each branch of government; it transferred the commission from the judicial branch to the executive branch and provided that until July 1, 2027, the executive director and commission members serve at the pleasure of the Governor; beginning July 1, 2027, the executive director would serve at the pleasure of the voting members of the commission and commission members may be removed by the Governor only for inefficiency, neglect of duty or malfeasance in office; it disallowed economic incentives or disincentives in the pay structure that could interfere with the ability of appointed counsel to provide effective assistance of counsel and prohibited a flat fee model; directed the commission to contract directly with providers and prohibited subcontracting with an exception for nonprofits beginning July 1, 2027; required the commission to promulgate and enforce standards, provide oversight and supervision, collect specific data, and regularly report to the Legislative Assembly on progress and needs.