

HB 2614 A -A8, -A10 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Prepared By: Gillian Fischer, LPRO Analyst

Meeting Dates: 5/13, 5/19

WHAT THE MEASURE DOES:

House Bill 2416 A amends provisions related to the authority and governance of the Oregon Public Defense Commission (OPDC). The amendments include changes to the appointment of the members on the board of commissioners and the executive director; the authority of OPDC to contract with certain public defense providers; the oversight duties and responsibilities of the OPDC and its board of commissioners; and minimum standards applicable to attorneys eligible for appointment as public defenders.

Detailed Summary:

- Extends the authority of the 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 established 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.
- 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 if that entity subcontracts for the provision of public defense services.
- Declares an emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-A8

The amendment replaces the measure.

House Bill 2416 A amends provisions related to the authority and governance of the Oregon Public Defense Commission (OPDC). The amendments include changes to the appointment of the members on the board of commissioners and the executive director; the authority of OPDC to contract with certain public defense providers; the oversight duties and responsibilities of the OPDC and its board of commissioners; and minimum standards applicable to attorneys eligible for appointment as public defenders.

Detailed Summary:

- - Extends the authority of the 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 January 1, 2026, any member, including the executive director of the Oregon Public Defense Commission, may be removed by the Governor for just cause, or, if the Governor has removed three or more members of the commission within the 12-month period preceding the removal, only for inefficiency, neglect of duty or malfeasance in office.
- - Provides that the Governor shall submit the names of three candidates for executive director to the commission. The candidates must be well qualified by training and experience to perform the functions of the office.
- - Directs the voting members of the commission shall appoint an executive director of the commission from among candidates submitted to the commission by the Governor within 60 days of submission or the Governor shall appoint the executive director.
- - Replaces language for requirement that one voting member be a retired judge with a person who previously served as a judge and who is not currently engaged in judicial functions, including service as a senior judge under ORS 1.300 or in any similar capacity.
- - Modifies the duties of OPDC to require that established 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.
- - Requires OPDC to maintain an accurate and current list of all attorneys providing public defense services in this state under the supervision or contractual authority of the commission and the qualifications for each attorney.
- - Establishes minimum requirements relating to governance and dispute resolution for entities with whom OPDC may enter into a contract if that entity subcontracts for the provision of public defense services.

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-A10

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The A10 amendment amends the A8 amendment by clarifying that if the Governor must appoint an Executive Director of OPDC because the commission fails to do so within 60 days as required, the Governor shall appoint from among the three candidates originally presented to the commission for appointment.

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- - Directs the voting members of the commission shall appoint an executive director of the commission from among candidates submitted to the commission by the Governor within 60 days of submission or the Governor shall appoint the executive director from among the three candidates submitted.
- - Replaces language for requirement that one voting member be a retired judge with a person who previously served as a judge and who is not currently engaged in judicial functions, including service as a senior judge under ORS 1.300 or in any similar capacity.

- - Modifies the duties of OPDC to require that established 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.
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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 Oregon Public Defense Commission (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 OPDC 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.