

B-Engrossed House Bill 2614

Ordered by the Senate May 28
Including House Amendments dated April 15 and Senate Amendments
dated May 28

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Representative Jason Kropf)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act makes various changes to the OPDC. The Act takes effect when the Governor signs it. (Flesch Readability Score: 92.9).

Directs the Oregon Public Defense Commission to submit an agency request budget to the Oregon Department of Administrative Services after approval by commission members. Modifies the requirements for policies concerning compensation and caseloads. Removes the authority of the commission to advocate for or against legislation.

Modifies the authority of the Governor, beginning [July 1, 2027] **January 1, 2026**, over the appointment and removal of the executive director of the commission and the removal of commission members.

Extends the authority of the commission to contract with entities that subcontract with other entities or persons for the provision of public defense services until July 1, 2033. Specifies **standards and** requirements for subcontracting entities.

Declares an emergency, effective on passage.

A BILL FOR AN ACT

Relating to the Oregon Public Defense Commission; creating new provisions; amending ORS 151.213, 151.216 and 151.219 and sections 92 and 102, chapter 281, Oregon Laws 2023; and declaring an emergency.

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

SECTION 1. Section 102, chapter 281, Oregon Laws 2023, is amended to read:

Sec. 102. (1)(a) The amendments to ORS 151.211, 151.216 and 151.219 by sections 93 to 95, [of this 2023 Act] **chapter 281, Oregon Laws 2023**, become operative on July 1, 2025.

(b) The amendments to ORS 151.213 [and 151.216] by [sections 100 and 101 of this 2023 Act] **section 100, chapter 281, Oregon Laws 2023**, become operative on [July 1, 2027] **January 1, 2026**.

(c) **The amendments to ORS 151.216 by section 101, chapter 281, Oregon Laws 2023, become operative on July 1, 2033.**

(2)(a) A person who is a member of the Oregon Public Defense Commission on [July 1, 2027] **January 1, 2026**, may finish the person's term as a commission member and is eligible for reappointment, but, beginning [July 1, 2027] **January 1, 2026**, may be removed by the Governor only 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.

(b) The person serving as executive director of the Oregon Public Defense Commission on [July

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

1, 2027] **January 1, 2026**, may finish the person's term as executive director and is eligible for re-
 appointment, but, beginning on [July 1, 2027] **January 1, 2026**, *[serves at the pleasure of the voting
 members of the commission]* **may be removed by the Governor only for just cause.**

(3) The Oregon Public Defense Commission, the Oregon Department of Administrative Services
 and the Governor may take any action before the operative dates specified in subsection (1) of this
 section that is necessary to enable the commission to exercise, on and after the operative dates
 specified in subsection (1) of this section, all of the duties, functions and powers conferred on those
 entities by the amendments to ORS 151.211, 151.213, 151.216 and 151.219 by sections 93 to 95, 100
 and 101, *[of this 2023 Act]* **chapter 281, Oregon Laws 2023.**

SECTION 2. ORS 151.213, as amended by section 77, chapter 281, Oregon Laws 2023, is
 amended to read:

151.213. (1) The Oregon Public Defense Commission is established in the executive branch of
 state government. *[Except for the appointment or removal of commission members, the commission and
 employees of the commission are not subject to the exercise of administrative authority and supervision
 by the Governor.]*

(2)(a) Nine voting members and four nonvoting members shall be appointed to the commission
 by the Governor as follows:

(A) The Governor shall appoint:

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

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

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

(B) The Governor shall appoint, from among persons recommended by the Chief Justice of the
 Supreme Court:

(i) One voting member who *[is a retired judge]* **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.**

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

(C) The Governor shall appoint, from among persons recommended by the President of the Sen-
 ate:

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

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

(D) The Governor shall appoint, from among persons recommended by the Speaker of the House
 of Representatives:

(i) One voting member who has expertise in juvenile law and criminal defense, or who is a ju-
 venile justice or criminal justice reform advocate.

(ii) One nonvoting member who is a member of the House of Representatives at the time of ap-
 pointment.

(E) The Governor shall appoint one voting member from among persons jointly recommended
 by the President of the Senate and the Speaker of the House of Representatives.

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

(A) Consider input from individuals and organizations with an interest in the delivery of public

defense services.

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

(C) Ensure that members appointed to the commission have significant experience with issues related to public defense or in the case types subject to representation by public defense providers.

(D) Ensure that members appointed to the commission have demonstrated a strong commitment to quality public defense representation.

(c) **Unless the person is a member of the Legislative Assembly appointed as a nonvoting member of the commission under paragraph (a)(C)(ii) or (a)(D)(ii) of this subsection**, the following persons may not be appointed to and may not serve as members of the commission:

(A) A prosecuting attorney.

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

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

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

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

(3) The term of a member is four years beginning on the effective date of the Governor’s appointment, but members serve at the pleasure of the Governor. A member is eligible for reappointment if qualified for membership at the time of reappointment, but may serve no more than two consecutive four-year terms. The Governor may remove any member of the commission at any time. If a vacancy occurs for any cause before the expiration of the term of a member, the Governor shall make an appointment to fill the vacancy, in the same manner as an appointment to a full term, to become immediately effective for the unexpired term.

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

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

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

(A) Review the policies, procedures, standards and guidelines required by ORS 151.216 and provide input before the approval vote described in paragraph (b) of this subsection.

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

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

(b) The voting members of the commission shall:

(A) Approve by majority vote the policies, procedures, standards and guidelines required by ORS 151.216 before those policies, procedures, standards and guidelines may take effect.

(B) Approve by majority vote the **agency request** budget of the commission before submission to the *[Legislative Assembly]* **Oregon Department of Administrative Services**.

(7) The members of the commission may not:

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

(b) Have access to any case file; or

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

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

(9)(a) The Governor shall appoint an executive director of the commission, subject to confirmation by the Senate in the manner prescribed by ORS 171.562 and 171.565. The person appointed as executive director must be well qualified by training and experience to perform the functions of the office.

(b) The term of office of the executive director is four years, but the executive director serves at the pleasure of the Governor.

(c) Before the expiration of the executive director's term, the Governor shall appoint a successor to take office upon the date of the expiration. The executive director is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

SECTION 3. ORS 151.213, as amended by sections 77 and 100, chapter 281, Oregon Laws 2023, is amended to read:

151.213. (1) The Oregon Public Defense Commission is established in the executive branch of state government. *[Except for the appointment or removal of commission members, the commission and employees of the commission are not subject to the exercise of administrative authority and supervision by the Governor.]*

(2)(a) Nine voting members and four nonvoting members shall be appointed to the commission by the Governor as follows:

(A) The Governor shall appoint:

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

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

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

(B) The Governor shall appoint, from among persons recommended by the Chief Justice of the Supreme Court:

(i) One voting member who *[is a retired judge]* **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.**

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

(C) The Governor shall appoint, from among persons recommended by the President of the Senate:

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

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

(D) The Governor shall appoint, from among persons recommended by the Speaker of the House of Representatives:

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

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

(E) The Governor shall appoint one voting member from among persons jointly recommended by the President of the Senate and the Speaker of the House of Representatives.

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

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

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

(C) Ensure that members appointed to the commission have significant experience with issues related to public defense or in the case types subject to representation by public defense providers.

(D) Ensure that members appointed to the commission have demonstrated a strong commitment to quality public defense representation.

(c) **Unless the person is a member of the Legislative Assembly appointed as a nonvoting member of the commission under paragraph (a)(C)(ii) or (a)(D)(ii) of this subsection,** the following persons may not be appointed to and may not serve as members of the commission:

(A) A prosecuting attorney.

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

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

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

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

(3)(a) The term of a member is four years beginning on the effective date of the Governor’s appointment. A member is eligible for reappointment if qualified for membership at the time of reappointment, but may serve no more than two consecutive four-year terms. The Governor may remove any member of the commission at any time *[for inefficiency, neglect of duty or malfeasance in office]* **for just cause, subject to paragraph (b) of this subsection.** If a vacancy occurs for any cause before the expiration of the term of a member, the Governor shall make an appointment to fill the vacancy, in the same manner as an appointment to a full term, to become immediately effective for the unexpired term.

(b) In a given 12-month period, if the Governor has removed three members of the commission within the period, the Governor may only remove a fourth or subsequent member for inefficiency, neglect of duty or malfeasance in office.

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

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

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

(A) Review the policies, procedures, standards and guidelines required by ORS 151.216 and provide input before the approval vote described in paragraph (b) of this subsection.

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

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

(b) The voting members of the commission shall:

(A) Appoint an executive director of the commission **from among candidates submitted to the commission by the Governor under subsection (9) of this section.** *[The term of office of the*

1 *executive director is four years, but the executive director serves at the pleasure of the voting members*
2 *of the commission.]*

3 (B) Approve by majority vote the policies, procedures, standards and guidelines required by ORS
4 151.216 before those policies, procedures, standards and guidelines may take effect.

5 (C) Approve by majority vote the **agency request** budget of the commission before submission
6 to the *[Legislative Assembly]* **Oregon Department of Administrative Services.**

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

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

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

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

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

14 **(9)(a) Prior to the expiration of an executive director's term, or if there is a vacancy in**
15 **the office for any cause, the Governor shall submit the names of three candidates for exec-**
16 **utive director to the commission. The candidates must be well qualified by training and ex-**
17 **perience to perform the functions of the office.**

18 **(b) If the commission does not select an executive director within 60 days of the date the**
19 **Governor submits candidate names as described in paragraph (a) of this subsection, the**
20 **Governor shall appoint an executive director from among the candidates.**

21 **(c) The term of office of the executive director is four years, but the Governor may re-**
22 **move the executive director at any time for just cause. If an executive director is appointed**
23 **to fill a vacancy in the office, the appointment is effective for the unexpired term.**

24 **(d) The executive director is eligible for reappointment.**

25 **SECTION 3a.** Section 92, chapter 281, Oregon Laws 2023, is amended to read:

26 **Sec. 92.** (1)(a) The Oregon Public Defense Commission is transferred from the judicial branch
27 to the executive branch on January 1, 2025.

28 (b) The amendments to ORS 8.105, 42.125, 84.064, 151.213, 151.216, 171.133, 190.490, 283.110,
29 291.002, 291.030, 291.045, 291.227, 293.300, 293.590 and 293.875 by sections 77 to 91, *[of this 2023*
30 *Act]* **chapter 281, Oregon Laws 2023**, become operative on January 1, 2025.

31 (2) The Oregon Public Defense Commission, the Judicial Department, the Oregon Department
32 of Administrative Services and the Governor may take any action before the operative date specified
33 in subsection (1) of this section that is necessary to:

34 (a) Facilitate the transfer of the commission to the executive branch.

35 (b) Enable those entities to exercise, on and after the operative date specified in subsection (1)
36 of this section, all of the duties, functions and powers conferred on those entities by the amendments
37 to ORS 8.105, 42.125, 84.064, 151.213, 151.216, 171.133, 190.490, 283.110, 291.002, 291.030, 291.045,
38 291.227, 293.300, 293.590 and 293.875 by sections 77 to 91, *[of this 2023 Act]* **chapter 281, Oregon**
39 **Laws 2023.**

40 (3)(a) A person who is a member of the Oregon Public Defense Commission on January 1, 2025,
41 may finish the person's term as a commission member and is eligible for reappointment if the person
42 meets the requirements described in ORS 151.213 (2), but, beginning on January 1, 2025, and con-
43 tinuing until *[July 1, 2027]* **January 1, 2026**, serves at the pleasure of the Governor.

44 (b) The person serving as executive director of the Oregon Public Defense Commission on Jan-
45 uary 1, 2025, may finish the person's term as executive director and is eligible for reappointment,

but, beginning on January 1, 2025, and continuing until *[July 1, 2027]* **January 1, 2026**, serves at the pleasure of the Governor.

SECTION 4. ORS 151.216, as amended by section 78, chapter 281, Oregon Laws 2023, is amended to read:

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

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

(b) Adopt policies for public defense providers that:

(A) Ensure compensation, resources and caseloads are in accordance with *[national and regional best practices]* **the requirements of the Oregon and United States Constitutions;**

[(B) Ensure all public defense provider contracts provide for compensation that is commensurate with the character of service performed;]

[(C)] **(B)** Ensure funding and resources to support required data collection and training requirements; and

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

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

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

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

(f) Submit *[the budget of the commission to the Legislative Assembly after the budget is submitted to the commission by the executive director and approved by the voting members of the commission. The chairperson of the commission shall present the budget to the Legislative Assembly]* **an agency request budget to the Oregon Department of Administrative Services as described in ORS 291.208.**

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

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

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

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

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

(D) Appointed counsel compensation disputes;

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

(F) The types of fees and expenses subject to a preauthorization requirement.

(i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services

1 Account established by ORS 151.225 for the costs of personnel and other costs associated with lo-
2 cation of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court
3 Administrator.

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

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

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

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

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

23 (o) Develop standard operating expectations for persons and entities providing public defense
24 services.

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

28 (q) Ensure access to systematic and comprehensive training programs for attorneys for the
29 purpose of meeting statewide standards set by the commission.

30 (r) Enter into contracts or interagency agreements with the Oregon Department of Administra-
31 tive Services for the purpose of supporting state public defense population forecasts and other re-
32 lated forecasts.

33 (s) Establish any other policies, procedures, standards and guidelines for the conduct of the
34 commission's affairs and promulgate policies necessary to carry out all powers and duties of the
35 commission.

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

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

40 (b) The workload of appointed counsel must be controlled to permit effective representation.
41 Economic disincentives or incentives that impair the ability of appointed counsel to provide effective
42 assistance of counsel must be avoided. The commission may develop workload controls to enhance
43 appointed counsel's ability to provide effective representation.

44 (c) The ability, training and experience of appointed counsel must match the nature and com-
45 plexity of the case to which the counsel is appointed.

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

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

(f) The commission and public defense providers shall systematically review appointed counsel for efficiency and for effective representation according to commission standards.

(3) The commission shall be organized in a manner for the effective delivery of public defense services as prescribed by the policies and procedures created pursuant to statute to financially eligible persons and consistent with the budgetary structure established for the commission by the Legislative Assembly.

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

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

(6) Policies, procedures, standards and guidelines adopted by the commission supersede any conflicting rules, policies or procedures of the Public Defender Committee, State Court Administrator, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review Board related to the exercise of the commission's administrative responsibilities under this section and transferred duties, functions and powers as they occur.

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

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

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

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

SECTION 5. ORS 151.216, as amended by sections 78 and 94, chapter 281, Oregon Laws 2023, is amended to read:

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

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

(b) Adopt policies for public defense providers that:

(A) Ensure compensation, resources and caseloads are in accordance with *[national and regional best practices]* **the requirements of the Oregon and United States Constitutions;**

[(B) Ensure all public defense provider contracts provide for compensation that is commensurate with the character of service performed;]

[(C)] (B) Ensure funding and resources to support required data collection and training re-

quirements; and

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

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

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

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

(f) Submit *[the budget of the commission to the Legislative Assembly after the budget is submitted to the commission by the executive director and approved by the voting members of the commission. The chairperson of the commission shall present the budget to the Legislative Assembly]* **an agency request budget to the Oregon Department of Administrative Services as described in ORS 291.208.**

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

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

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

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

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

(D) Appointed counsel compensation disputes;

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

(F) The types of fees and expenses subject to a preauthorization requirement.

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

(j) Develop, adopt and oversee the implementation, enforcement and modification of policies, procedures, minimum standards and guidelines to ensure that public defense providers are providing effective assistance of counsel consistently to all eligible persons in this state as required by statute and the Oregon and United States Constitutions. The policies, procedures, standards and guidelines described in this paragraph apply to employees of the commission and to any person or entity that contracts with the commission to provide public defense services in this state.

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

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

(m) Enter into contracts and hire attorneys to bring the delivery of public defense services into and maintain compliance with the minimum policies, procedures, standards and guidelines described

1 in this subsection. All contracts for the provision of public defense services to which the commission
2 is a party must include a requirement for collection by the commission of data determined by the
3 commission to be qualitatively necessary for any report required to be submitted to the Legislative
4 Assembly.

5 (n) At least once every two years, report to the interim committees of the Legislative Assembly
6 related to the judiciary, in the manner provided in ORS 192.245, and to the Governor and Chief
7 Justice, concerning compliance metrics for the minimum standards described in this subsection and
8 recommendations for legislative changes.

9 (o) Develop standard operating expectations for persons and entities providing public defense
10 services.

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

14 (q) Ensure access to systematic and comprehensive training programs for attorneys for the
15 purpose of meeting statewide standards set by the commission.

16 (r) Enter into contracts or interagency agreements with the Oregon Department of Administra-
17 tive Services for the purpose of supporting state public defense population forecasts and other re-
18 lated forecasts.

19 (s) Establish any other policies, procedures, standards and guidelines for the conduct of the
20 commission's affairs and promulgate policies necessary to carry out all powers and duties of the
21 commission.

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

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

26 (b) The workload of appointed counsel must be controlled to permit effective representation.
27 Economic disincentives or incentives that impair the ability of appointed counsel to provide effective
28 assistance of counsel must be avoided. The commission may develop workload controls to enhance
29 appointed counsel's ability to provide effective representation.

30 (c) The ability, training and experience of appointed counsel must match the nature and com-
31 plexity of the case to which the counsel is appointed.

32 (d) The same appointed counsel shall continuously represent a client throughout the pendency
33 of the case and shall appear at every court appearance other than ministerial hearings.

34 (e) The commission shall establish continuing legal education requirements for public defense
35 providers who are employed by or contract with the commission that are specific to the subject
36 matter area and practice of each type of court-appointed counsel.

37 (f) The commission and public defense providers shall systematically review appointed counsel
38 for efficiency and for effective representation according to commission standards.

39 (3) The commission shall be organized in a manner for the effective delivery of public defense
40 services as prescribed by the policies and procedures created pursuant to statute to financially eli-
41 gible persons and consistent with the budgetary structure established for the commission by the
42 Legislative Assembly.

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

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

(b) The payment of panel counsel:

(A) May not be lower than the hourly rate established by the commission.

(B) Shall be adjusted to reflect the same percentage amount of any positive cost of living adjustment granted to employees in the management service in other executive branch agencies.

(C) May not provide a financial conflict of interest or economic incentives or disincentives that impair an attorney's ability to provide effective representation.

(6)(a) The commission may enter into contracts for the provision of public defense services with nonprofit public defense organizations **and private law firms**.

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

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

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

(8) Policies, procedures, standards and guidelines adopted by the commission supersede any conflicting rules, policies or procedures of the Public Defender Committee, State Court Administrator, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review Board related to the exercise of the commission's administrative responsibilities under this section and transferred duties, functions and powers as they occur.

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

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

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

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

SECTION 6. ORS 151.216, as amended by sections 78, 94 and 101, chapter 281, Oregon Laws 2023, is amended to read:

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

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

(b) Adopt policies for public defense providers that:

(A) Ensure compensation, resources and caseloads are in accordance with *[national and regional best practices]* **the requirements of the Oregon and United States Constitutions;**

[(B) Ensure all public defense provider contracts provide for compensation that is commensurate

1 *with the character of service performed;]*

2 [(C)] (B) Ensure funding and resources to support required data collection and training re-
3 quirements; and

4 [(D)] (C) Recognize the need to consider overhead costs that account for the cost of living and
5 business cost differences in each county or jurisdiction, including but not limited to rent, profes-
6 sional membership dues, malpractice insurance and other insurance and other reasonable and usual
7 operating costs.

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

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

12 (e) Adopt a statewide workload plan, based on the caseload policies described in paragraph
13 (b)(A) of this subsection, that takes into account the needs of each county or jurisdiction, practice
14 structure and type of practice overseen by the commission.

15 (f) Submit *[the budget of the commission to the Legislative Assembly after the budget is submitted*
16 *to the commission by the executive director and approved by the voting members of the commission.*
17 *The chairperson of the commission shall present the budget to the Legislative Assembly]* **an agency**
18 **request budget to the Oregon Department of Administrative Services as described in ORS**
19 **291.208.**

20 (g) Adopt a compensation plan, classification system and affirmative action plan for the com-
21 mission that are commensurate with other state agencies.

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

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

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

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

29 (D) Appointed counsel compensation disputes;

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

32 (F) The types of fees and expenses subject to a preauthorization requirement.

33 (i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services
34 Account established by ORS 151.225 for the costs of personnel and other costs associated with lo-
35 cation of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court
36 Administrator.

37 (j) Develop, adopt and oversee the implementation, enforcement and modification of policies,
38 procedures, minimum standards and guidelines to ensure that public defense providers are providing
39 effective assistance of counsel consistently to all eligible persons in this state as required by statute
40 and the Oregon and United States Constitutions. The policies, procedures, standards and guidelines
41 described in this paragraph apply to employees of the commission and to any person or entity that
42 contracts with the commission to provide public defense services in this state.

43 (k) Set minimum standards by which appointed counsel are trained and supervised.

44 (L) Establish a system, policies and procedures for the mandatory collection of data concerning
45 the operation of the commission and all public defense providers.

1 (m) Enter into contracts and hire attorneys to bring the delivery of public defense services into
2 and maintain compliance with the minimum policies, procedures, standards and guidelines described
3 in this subsection. All contracts for the provision of public defense services to which the commission
4 is a party must include a requirement for collection by the commission of data determined by the
5 commission to be qualitatively necessary for any report required to be submitted to the Legislative
6 Assembly.

7 (n) At least once every two years, report to the interim committees of the Legislative Assembly
8 related to the judiciary, in the manner provided in ORS 192.245, and to the Governor and Chief
9 Justice, concerning compliance metrics for the minimum standards described in this subsection and
10 recommendations for legislative changes.

11 (o) Develop standard operating expectations for persons and entities providing public defense
12 services.

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

16 (q) Ensure access to systematic and comprehensive training programs for attorneys for the
17 purpose of meeting statewide standards set by the commission.

18 (r) Enter into contracts or interagency agreements with the Oregon Department of Administra-
19 tive Services for the purpose of supporting state public defense population forecasts and other re-
20 lated forecasts.

21 (s) Establish any other policies, procedures, standards and guidelines for the conduct of the
22 commission's affairs and promulgate policies necessary to carry out all powers and duties of the
23 commission.

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

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

28 (b) The workload of appointed counsel must be controlled to permit effective representation.
29 Economic disincentives or incentives that impair the ability of appointed counsel to provide effective
30 assistance of counsel must be avoided. The commission may develop workload controls to enhance
31 appointed counsel's ability to provide effective representation.

32 (c) The ability, training and experience of appointed counsel must match the nature and com-
33 plexity of the case to which the counsel is appointed.

34 (d) The same appointed counsel shall continuously represent a client throughout the pendency
35 of the case and shall appear at every court appearance other than ministerial hearings.

36 (e) The commission shall establish continuing legal education requirements for public defense
37 providers who are employed by or contract with the commission that are specific to the subject
38 matter area and practice of each type of court-appointed counsel.

39 (f) The commission and public defense providers shall systematically review appointed counsel
40 for efficiency and for effective representation according to commission standards.

41 (3) The commission shall be organized in a manner for the effective delivery of public defense
42 services as prescribed by the policies and procedures created pursuant to statute to financially eli-
43 gible persons and consistent with the budgetary structure established for the commission by the
44 Legislative Assembly.

45 (4) The commission shall hire attorneys to serve as appointed counsel, including at the trial

1 level in Oregon circuit courts, and shall establish a trial division within the commission consisting
2 of attorneys employed by the commission who are trial-level public defense providers.

3 (5)(a) The commission shall establish, supervise and maintain a panel of qualified counsel who
4 contract with the commission and are directly assigned to cases. The commission shall develop a
5 process for certification of attorneys to the panel with periodic eligibility and case review. Panel
6 attorneys are not employees of the commission.

7 (b) The payment of panel counsel:

8 (A) May not be lower than the hourly rate established by the commission.

9 (B) Shall be adjusted to reflect the same percentage amount of any positive cost of living ad-
10 justment granted to employees in the management service in other executive branch agencies.

11 (C) May not provide a financial conflict of interest or economic incentives or disincentives that
12 impair an attorney's ability to provide effective representation.

13 (6)(a) The commission may enter into contracts for the provision of public defense services with
14 nonprofit public defense organizations **and private law firms**.

15 (b) The commission may not enter into a contract or agreement that pays appointed counsel a
16 flat fee per case.

17 (7) The policies, procedures, standards and guidelines adopted by the commission must be made
18 available in an accessible manner to the public on the commission's website.

19 (8) Policies, procedures, standards and guidelines adopted by the commission supersede any
20 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-
21 tor, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review
22 Board related to the exercise of the commission's administrative responsibilities under this section
23 and transferred duties, functions and powers as they occur.

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

29 *[(10) With the approval of a majority of the voting members of the commission, the commission may*
30 *advocate for or against legislation before the Legislative Assembly or policies or budgets being con-*
31 *sidered by the Legislative Assembly.]*

32 *[(11)]* (10) The commission shall request that the Governor include in the Governor's requested
33 budget, for each fiscal period, at a minimum, the amount of funds identified by the commission as
34 being necessary to carry out the duties and activities of the commission.

35 *[(12)]* (11) The commission may adopt rules pursuant to ORS chapter 183.

36 **SECTION 7.** ORS 151.219 is amended to read:

37 151.219. (1) The executive director of the Oregon Public Defense Commission shall:

38 (a) Designate a deputy director of the commission who serves at the pleasure of the executive
39 director.

40 (b) Hire necessary staff for the commission.

41 (c) Recommend to the commission how to establish and maintain, in a cost-effective manner, the
42 delivery of legal services to persons entitled to, and, where applicable, financially eligible for, ap-
43 pointed counsel at state expense under Oregon statutes, the Oregon Constitution, the United States
44 Constitution and consistent with Oregon and national standards of justice.

45 (d) Implement and ensure compliance with contracts, policies, procedures, standards and guide-

lines adopted by the commission or required by statute.

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

(f) Negotiate contracts, as appropriate, for providing legal services to persons eligible for appointed counsel at state expense.

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

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

(i) Provide services, facilities and materials necessary for the performance of the duties, functions and powers of the commission.

(j) Pay the expenses of the commission.

(k) Prepare and submit to the members of the commission an annual report of the activities of the commission.

(L) Provide for legal representation, advice and consultation for the commission, its members, the executive director and staff of the commission who require such services or who are named as defendants in lawsuits arising from their duties, functions and responsibilities. If requested by the executive director, the Attorney General may also provide for legal representation, advice and consultation for the commission, its members, the executive director and staff of the commission in litigation.

(m) Maintain an accurate and current list of all attorneys providing public defense services in this state under the supervision, employment or contractual authority of the commission, and the qualifications for each attorney.

(2) The executive director may:

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

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

SECTION 8. ORS 151.219, as amended by section 95, chapter 281, Oregon Laws 2023, is amended to read:

151.219. (1) The executive director of the Oregon Public Defense Commission shall:

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

(b) Hire necessary staff for the commission.

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

(d) Implement and ensure compliance with contracts, policies, procedures, standards and guidelines adopted by the commission or required by statute.

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

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

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

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

(i) Provide services, facilities and materials necessary for the performance of the duties, functions and powers of the commission.

(j) Pay the expenses of the commission.

(k) Prepare and submit to the members of the commission an annual report of the activities of the commission.

(L) Provide for legal representation, advice and consultation for the commission, its members, the executive director and staff of the commission who require such services or who are named as defendants in lawsuits arising from their duties, functions and responsibilities. If requested by the executive director, the Attorney General may also provide for legal representation, advice and consultation for the commission, its members, the executive director and staff of the commission in litigation.

(m) Maintain an accurate and current list of all attorneys providing public defense services in this state under the supervision, employment or contractual authority of the commission, and the qualifications for each attorney.

(2) The executive director may:

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

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

SECTION 9. Section 10 of this 2025 Act is added to and made a part of ORS 151.211 to 151.221.

SECTION 10. (1) The Oregon Public Defense Commission may enter into a contract with an entity that subcontracts with other entities or persons for the provision of public defense services only if the entity operates in accordance with standards and requirements established by the commission either through adopted policies or contract language approved by the Department of Justice.

(2) The standards and requirements described in subsection (1) of this section must include, but are not limited to:

(a) A requirement that the entity have a designated administrator with authority to manage case distribution, address concerns and complaints and serve as the point contact for external matters;

(b) A requirement that the entity have defined policies concerning membership structure, including policies on admission criteria, participation expectations and decision-making authority;

(c) A requirement that the entity have internal policies and procedures for conflict resolution, ethical compliance and the removal of members due to misconduct or nonparticipation;

(d) A requirement that the entity comply with commission oversight, reporting requirements and other applicable policies and procedures of the commission; and

(e) A requirement that the entity hold regular meetings among its members or governing body, as appropriate for its size and structure.

(3) The standards and requirements described in subsection (1) of this section for an entity with five or more attorney members must additionally include a requirement that the entity have a board of directors or a steering committee with responsibilities that include

1 but are not limited to the following:

2 (a) The approval of entity policies, budgets and initiatives;

3 (b) Ensuring attorney performance and compliance with legal and financial obligations;

4 (c) Oversight of the administrator; and

5 (d) Resolving disputes among members of the entity.

6 SECTION 11. Section 10 of this 2025 Act becomes operative on July 1, 2027.

7 SECTION 12. Section 10 of this 2025 Act is repealed on July 1, 2033.

8 SECTION 13. This 2025 Act being necessary for the immediate preservation of the public
9 peace, health and safety, an emergency is declared to exist, and this 2025 Act takes effect
10 on its passage.
11
