

## CONFERENCE COMMITTEE AMENDMENTS TO B-ENGROSSED HOUSE BILL 2614

June 25

### Amended Summary

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 January 1, 2026, over the appointment and removal of the executive director of the commission [*and the removal of commission members*]. **Changes the date, from July 1, 2027, to January 1, 2026, on which the authority of the Governor over the removal of commission members is limited.**

[*Extends*] **Removes the sunset on** 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.

Speaker Fahey:

Your Conference Committee to whom was referred B-engrossed House Bill 2614, having had the same under consideration, respectfully reports it back with the recommendation that the House concur in the Senate amendments dated May 28 and that the bill be amended as follows and re-passed.

- 1       On page 1 of the printed B-engrossed bill, delete lines 6 through 20.
- 2       On page 2, delete lines 1 through 9 and insert:
- 3       “**SECTION 1.** Section 102, chapter 281, Oregon Laws 2023, is amended to read:
- 4       “**Sec. 102.** (1)(a) The amendments to ORS 151.211, 151.216 and 151.219 by sections 93 to 95, [*of*
- 5       *this 2023 Act*] **chapter 281, Oregon Laws 2023**, become operative on July 1, 2025.
- 6       “(b) The amendments to ORS 151.213 [*and 151.216*] by [*sections 100 and 101 of this 2023 Act*]
- 7       **section 100, chapter 281, Oregon Laws 2023**, become operative on [*July 1, 2027*] **January 1,**
- 8       **2026.**
- 9       “(c) **The amendments to ORS 151.216 by section 101, chapter 281, Oregon Laws 2023, be-**
- 10       **come operative on January 1, 2026.**
- 11       “(2)(a) A person who is a member of the Oregon Public Defense Commission on [*July 1, 2027*]
- 12       **January 1, 2026**, may finish the person’s term as a commission member and is eligible for reap-
- 13       pointment, but, beginning [*July 1, 2027*] **January 1, 2026**, may be removed by the Governor only for
- 14       inefficiency, neglect of duty or malfeasance in office.
- 15       “(b) The person serving as executive director of the Oregon Public Defense Commission on [*July*
- 16       *1, 2027*] **January 1, 2026**, may finish the person’s term as executive director and is eligible for re-
- 17       appointment, but, beginning on [*July 1, 2027*] **January 1, 2026**, [*serves at the pleasure of the voting*
- 18       *members of the commission*] **may be removed by the Governor only for just cause.**
- 19       “(3) The Oregon Public Defense Commission, the Oregon Department of Administrative Services
- 20       and the Governor may take any action before the operative dates specified in subsection (1) of this

1 section that is necessary to enable the commission to exercise, on and after the operative dates  
2 specified in subsection (1) of this section, all of the duties, functions and powers conferred on those  
3 entities by the amendments to ORS 151.211, 151.213, 151.216 and 151.219 by sections 93 to 95, 100  
4 and 101, *[of this 2023 Act]* **chapter 281, Oregon Laws 2023.**".

5 On page 4, delete lines 13 through 45 and delete page 5.

6 On page 6, delete lines 1 through 24 insert:

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

9 "151.213. (1) The Oregon Public Defense Commission is established in the executive branch of  
10 state government. *[Except for the appointment or removal of commission members, the commission and*  
11 *employees of the commission are not subject to the exercise of administrative authority and supervision*  
12 *by the Governor.]*

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

15 "(A) The Governor shall appoint:

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

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

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

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

23 "(i) One voting member who *[is a retired judge]* **previously served as a judge and who is not**  
24 **currently engaged in judicial functions, including service as a senior judge under ORS 1.300**  
25 **or in any similar capacity.**

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

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

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

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

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

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

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

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

40 "(b) When recommending and appointing members of the commission, the Governor, Chief Jus-  
41 tice, President of the Senate and Speaker of the House of Representatives shall:

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

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

45 "(C) Ensure that members appointed to the commission have significant experience with issues

1 related to public defense or in the case types subject to representation by public defense providers.

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

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

7 “(A) A prosecuting attorney.

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

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

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

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

16 “(3) The term of a member is four years beginning on the effective date of the Governor’s ap-  
17 pointment. A member is eligible for reappointment if qualified for membership at the time of reap-  
18 pointment, but may serve no more than two consecutive four-year terms. The Governor may remove  
19 any member of the commission at any time for inefficiency, neglect of duty or malfeasance in office.  
20 If a vacancy occurs for any cause before the expiration of the term of a member, the Governor shall  
21 make an appointment to fill the vacancy, in the same manner as an appointment to a full term, to  
22 become immediately effective for the unexpired term.

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

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

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

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

30 “(B) Review the **agency request** budget of the commission and provide input before the ap-  
31 proval vote described in paragraph (b) of this subsection.

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

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

34 “[*(A) Appoint an executive director of the commission. The term of office of the executive director*  
35 *is four years, but the executive director serves at the pleasure of the voting members of the*  
36 *commission.*]

37 “[*(B)*] (A) Approve by majority vote the policies, procedures, standards and guidelines required  
38 by ORS 151.216 before those policies, procedures, standards and guidelines may take effect.

39 “[*(C)*] (B) Approve by majority vote the **agency request** budget of the commission before sub-  
40 mission to the [*Legislative Assembly*] **Oregon Department of Administrative Services.**

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

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

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

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

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

3 “(9)(a) **The Governor shall appoint an executive director of the commission after consul-**  
4 **tation with the commission. The appointment is subject to confirmation by the Senate in the**  
5 **manner prescribed by ORS 171.562 and 171.565. The person appointed as executive director**  
6 **must be well qualified by training and experience to perform the functions of the office.**

7 “(b) **The term of office of the executive director is four years, but the Governor may**  
8 **remove the executive director at any time for just cause.**

9 “(c) **The executive director is eligible for reappointment. Before the expiration of the**  
10 **executive director’s term, the Governor shall either reappoint the executive director or ap-**  
11 **point a successor to take office upon the date of the expiration. If there is a vacancy for any**  
12 **cause, the Governor shall make an appointment to become immediately effective for the**  
13 **unexpired term. An appointment or reappointment described in this paragraph is subject to**  
14 **paragraph (a) of this subsection.**

15 “(d) **As used in this subsection, ‘consultation with the commission’ must include, but is**  
16 **not limited to, consulting with the chairperson of the commission prior to the recruitment**  
17 **of a new executive director, allowing the chairperson or another commission member desig-**  
18 **nated by the chairperson to participate in the interview process, and allowing commission**  
19 **members to review and provide comment on the top three candidates prior to the final ap-**  
20 **pointment.”.**

21 On page 12, delete lines 36 through 45 and delete pages 13 and 14.

22 On page 15, delete lines 1 through 35 and insert:

23 “**SECTION 6.** ORS 151.216, as amended by sections 78, 94 and 101, chapter 281, Oregon Laws  
24 2023, is amended to read:

25 “151.216. (1) The Oregon Public Defense Commission shall:

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

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

30 “(A) Ensure compensation, resources and caseloads are in accordance with [*national and re-*  
31 *gional best practices*] **the requirements of the Oregon and United States Constitutions;**

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

34 “[*(C)*] **(B)** Ensure funding and resources to support required data collection and training re-  
35 quirements; and

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

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

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

44 “(e) Adopt a statewide workload plan, based on the caseload policies described in paragraph  
45 (b)(A) of this subsection, that takes into account the needs of each county or jurisdiction, practice

1 structure and type of practice overseen by the commission.

2 “(f) Submit [*the budget of the commission to the Legislative Assembly after the budget is submitted*  
3 *to the commission by the executive director and approved by the voting members of the commission.*  
4 *The chairperson of the commission shall present the budget to the Legislative Assembly]* **an agency**  
5 **request budget to the Oregon Department of Administrative Services as described in ORS**  
6 **291.208.**

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

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

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

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

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

16 “(D) Appointed counsel compensation disputes;

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

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

20 “(i) Reimburse the State Court Administrator from funds deposited in the Public Defense Ser-  
21 vices Account established by ORS 151.225 for the costs of personnel and other costs associated with  
22 location of eligibility verification and screening personnel pursuant to ORS 151.489 by the State  
23 Court Administrator.

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

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

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

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

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

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

45 “(p) In consultation with the Judicial Department, ensure the existence of policies that create

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 “(b) The payment of panel counsel:

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

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

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

45 “(6)(a) The commission may enter into contracts for the provision of public defense services with

1 nonprofit public defense organizations **and private law firms.**

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

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

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

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

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

18 “[10] *With the approval of a majority of the voting members of the commission, the commission*  
19 *may advocate for or against legislation before the Legislative Assembly or policies or budgets being*  
20 *considered by the Legislative Assembly.]*

21 “[11] (10) The commission shall request that the Governor include in the Governor’s requested  
22 budget, for each fiscal period, at a minimum, the amount of funds identified by the commission as  
23 being necessary to carry out the duties and activities of the commission.

24 “[(12)] (11) The commission may adopt rules pursuant to ORS chapter 183.”.

25 On page 18, delete line 7.

26 In line 8, delete “13” and insert “12”.

27 /s/ Jason Kropf  
28 Representative

29 /s/ Paul Evans  
30 Representative

31 /s/ Kevin Mannix  
32 Representative

33 /s/ Floyd Prozanski  
34 Senator

35 /s/ Mike McLane  
36 Senator

37 /s/ James Manning, Jr.  
38 Senator  
39  
40