

House Bill 2734

Sponsored by Representative WALLAN, Senators SOLLMAN, SMITH DB; Representatives ANDERSEN, LEWIS, NERON, Senator THATCHER (Presession filed.)

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 **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act authorizes OPDC to contract with certain entities to provide public defense. The Act takes effect on the 91st day after sine die. (Flesch Readability Score: 64.2).

Authorizes the Oregon Public Defense Commission to contract with specified individuals and entities for the provision of public defense services.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the Oregon Public Defense Commission; creating new provisions; amending ORS 151.211
3 and 151.216 and section 102, chapter 281, Oregon Laws 2023; and prescribing an effective date.

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

5 **SECTION 1.** ORS 151.216, as amended by sections 78, 94 and 101, chapter 281, Oregon Laws
6 2023, is amended to read:

7 151.216. (1) The Oregon Public Defense Commission shall:

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

11 (b) Adopt policies for public defense providers that:

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

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

16 (C) Ensure funding and resources to support required data collection and training requirements;
17 and

18 (D) Recognize the need to consider overhead costs that account for the cost of living and busi-
19 ness cost differences in each county or jurisdiction, including but not limited to rent, professional
20 membership dues, malpractice insurance and other insurance and other reasonable and usual oper-
21 ating costs.

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

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

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

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 (f) Submit the budget of the commission to the Legislative Assembly after the budget is submit-
 2 ted to the commission by the executive director and approved by the voting members of the com-
 3 mission. The chairperson of the commission shall present the budget to the Legislative Assembly.

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

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

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

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

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

13 (D) Appointed counsel compensation disputes;

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

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

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

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

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

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

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

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

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

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

45 (q) Ensure access to systematic and comprehensive training programs for attorneys for the

1 purpose of meeting statewide standards set by the commission.

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

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

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

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

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

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

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

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

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

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

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

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

36 (b) The payment of panel counsel:

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

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

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

42 (6)(a) The commission may enter into contracts for the provision of public defense services
43 with:

44 (A) Nonprofit public defense organizations;

45 (B) **Entities that subcontract with other entities or persons for the provision of public**

1 **defense services;**

2 (C) **Individual attorneys who are not part of the panel described in subsection (5) of this**
 3 **section; and**

4 (D) **Private law firms.**

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

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

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

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

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

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

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

26 **SECTION 2.** Section 102, chapter 281, Oregon Laws 2023, is amended to read:

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

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

31 (c) **The amendments to ORS 151.216 by section 101, chapter 281, Oregon Laws 2023, be-**
 32 **come operative on the effective date of this 2025 Act.**

33 (d) **The amendments to ORS 151.216 by section 1 of this 2025 Act become operative on the**
 34 **effective date of this 2025 Act.**

35 (2)(a) A person who is a member of the Oregon Public Defense Commission on July 1, 2027, may
 36 finish the person’s term as a commission member and is eligible for reappointment, but, beginning
 37 July 1, 2027, may be removed by the Governor only for inefficiency, neglect of duty or malfeasance
 38 in office.

39 (b) The person serving as executive director of the Oregon Public Defense Commission on July
 40 1, 2027, may finish the person’s term as executive director and is eligible for reappointment, but,
 41 beginning on July 1, 2027, serves at the pleasure of the voting members of the commission.

42 (3) The Oregon Public Defense Commission, the Oregon Department of Administrative Services
 43 and the Governor may take any action before the operative dates specified in subsection (1) of this
 44 section that is necessary to enable the commission to exercise, on and after the operative dates
 45 specified in subsection (1) of this section, all of the duties, functions and powers conferred on those

1 entities by the amendments to ORS 151.211, 151.213, 151.216 and 151.219 by sections 93 to 95, 100
2 and 101, [*of this 2023 Act*] **chapter 281, Oregon Laws 2023.**

3 **SECTION 3. The Oregon Public Defense Commission shall consult with the individuals**
4 **and entities described in ORS 151.216 (6)(a) when:**

5 (1) **Developing and adopting the policies, procedures, standards and guidelines described**
6 **in ORS 151.216; and**

7 (2) **Determining how those policies, procedures, standards and guidelines applicable to**
8 **those individuals and entities are implemented.**

9 **SECTION 4. Section 3 of this 2025 Act is repealed on July 1, 2027.**

10 **SECTION 5. ORS 151.211, as amended by section 93, chapter 281, Oregon Laws 2023, is**
11 **amended to read:**

12 151.211. For purposes of ORS 151.211 to 151.221:

13 (1) "Appointed counsel" includes trial-level and appellate attorneys who are employees of the
14 Oregon Public Defense Commission, attorneys employed by a nonprofit public defense organization,
15 **attorneys employed by a private law firm who provide public defense services, attorneys who**
16 **provide public defense services as part of an entity that subcontracts with other entities or**
17 **persons for the provision of public defense services** and attorneys [*on the panel of qualified*
18 *counsel described in ORS 151.216 (5)*] who contract **directly** with the commission to provide public
19 defense services, **regardless of whether the attorney is on the panel of qualified counsel de-**
20 **scribed in ORS 151.216 (5).**

21 (2) "Chief Justice" means the Chief Justice of the Supreme Court.

22 (3) "Commission" means the Oregon Public Defense Commission.

23 (4) "Nonprofit public defense organization" means a nonprofit organization that employs attor-
24 neys who provide public defense services.

25 **SECTION 6. This 2025 Act takes effect on the 91st day after the date on which the 2025**
26 **regular session of the Eighty-third Legislative Assembly adjourns sine die.**

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