

**PROPOSED CONFERENCE COMMITTEE AMENDMENTS TO
B-ENGROSSED HOUSE BILL 2614**

1 On page 1 of the printed B-engrossed bill, line 3, delete “sections 92
2 and” and insert “section”.

3 Delete lines 6 through 20 and delete pages 2 through 6.

4 On page 7, delete lines 1 and 2 and insert:

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

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

10 **“(b)** The amendments to ORS 151.213 [*and 151.216*] by [*sections 100 and*
11 *101 of this 2023 Act*] **section 100, chapter 281, Oregon Laws 2023**, become
12 operative on July 1, 2027.

13 **“(c) The amendments to ORS 151.216 by section 101, chapter 281,**
14 **Oregon Laws 2023, become operative on January 1, 2026.**

15 **“(2)(a)** A person who is a member of the Oregon Public Defense Commis-
16 sion on July 1, 2027, may finish the person’s term as a commission member
17 and is eligible for reappointment, but, beginning July 1, 2027, may be re-
18 moved by the Governor only for **just cause or, if the Governor has re-**
19 **moved three or more members of the commission within the 12-month**
20 **period preceding the removal, only for** inefficiency, neglect of duty or
21 malfeasance in office.

22 **“(b)** The person serving as executive director of the Oregon Public De-

1 fense Commission on July 1, 2027, may finish the person's term as executive
2 director and is eligible for reappointment, but, beginning on July 1, 2027,
3 serves at the pleasure of the voting members of the commission.

4 “(3) The Oregon Public Defense Commission, the Oregon Department of
5 Administrative Services and the Governor may take any action before the
6 operative dates specified in subsection (1) of this section that is necessary
7 to enable the commission to exercise, on and after the operative dates spec-
8 ified in subsection (1) of this section, all of the duties, functions and powers
9 conferred on those entities by the amendments to ORS 151.211, 151.213,
10 151.216 and 151.219 by sections 93 to 95, 100 and 101, *[of this 2023 Act]*
11 **chapter 281, Oregon Laws 2023.**

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

14 “151.213. (1) The Oregon Public Defense Commission is established in the
15 executive branch of state government. *[Except for the appointment or removal*
16 *of commission members, the commission and employees of the commission are*
17 *not subject to the exercise of administrative authority and supervision by the*
18 *Governor.]*

19 “(2)(a) Nine voting members and four nonvoting members shall be ap-
20 pointed to the commission by the Governor as follows:

21 “(A) The Governor shall appoint:

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

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

26 “(iii) Two nonvoting members who are currently employed as public de-
27 fense providers in this state, one of whom is from an urban area and one of
28 whom is from a rural area.

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

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

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

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

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

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

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

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

16 “(ii) One nonvoting member who is a member of the House of Represen-
17 tatives at the time of appointment.

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

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

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

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

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

30 “(D) Ensure that members appointed to the commission have demon-

1 strated a strong commitment to quality public defense representation.

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

6 “(A) A prosecuting attorney.

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

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

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

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

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

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

30 “(5) A majority of the voting members constitutes a quorum for the

1 transaction of business.

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

3 “(A) Review the policies, procedures, standards and guidelines required
4 by ORS 151.216 and provide input before the approval vote described in par-
5 agraph (b) of this subsection.

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

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

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

10 “(A) Approve by majority vote the policies, procedures, standards and
11 guidelines required by ORS 151.216 before those policies, procedures, stan-
12 dards and guidelines may take effect.

13 “(B) Approve by majority vote the **agency request** budget of the com-
14 mission before submission to the [*Legislative Assembly*] **Oregon Department**
15 **of Administrative Services**.

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

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

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

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

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

24 “(9)(a) The Governor shall appoint an executive director of the commis-
25 sion, subject to confirmation by the Senate in the manner prescribed by ORS
26 171.562 and 171.565. The person appointed as executive director must be well
27 qualified by training and experience to perform the functions of the office.

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

30 “(c) Before the expiration of the executive director’s term, the Governor

1 shall appoint a successor to take office upon the date of the expiration. The
2 executive director is eligible for reappointment. If there is a vacancy for any
3 cause, the Governor shall make an appointment to become immediately ef-
4 fective for the unexpired term.

5 **“SECTION 3.** ORS 151.213, as amended by sections 77 and 100, chapter
6 281, Oregon Laws 2023, is amended to read:

7 “151.213. (1) The Oregon Public Defense Commission is established in the
8 executive branch of state government. *[Except for the appointment or removal*
9 *of commission members, the commission and employees of the commission are*
10 *not subject to the exercise of administrative authority and supervision by the*
11 *Governor.]*

12 “(2)(a) Nine voting members and four nonvoting members shall be ap-
13 pointed to the commission by the Governor as follows:

14 “(A) The Governor shall appoint:

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

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

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

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

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

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

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

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

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

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

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

9 “(ii) One nonvoting member who is a member of the House of Represen-
10 tatives at the time of appointment.

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

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

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

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

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

23 “(D) Ensure that members appointed to the commission have demon-
24 strated a strong commitment to quality public defense representation.

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

29 “(A) A prosecuting attorney.

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

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

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

6 “(e) As used in this subsection, ‘law enforcement agency’ means an entity
7 that employs corrections officers, parole and probation officers, police offi-
8 cers, certified reserve officers or reserve officers, as those terms are defined
9 in ORS 181A.355.

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

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

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

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

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

1 “(A) Review the policies, procedures, standards and guidelines required
2 by ORS 151.216 and provide input before the approval vote described in par-
3 agraph (b) of this subsection.

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

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

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

8 “(A) Appoint an executive director of the commission. The term of office
9 of the executive director is four years, but the executive director serves at
10 the pleasure of the voting members of the commission.

11 “(B) Approve by majority vote the policies, procedures, standards and
12 guidelines required by ORS 151.216 before those policies, procedures, stan-
13 dards and guidelines may take effect.

14 “(C) Approve by majority vote the **agency request** budget of the com-
15 mission before submission to the [*Legislative Assembly*] **Oregon Department**
16 **of Administrative Services**.

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

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

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

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

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

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

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

27 “**SECTION 6.** ORS 151.216, as amended by sections 78, 94 and 101, chap-
28 ter 281, Oregon Laws 2023, is amended to read:

29 “151.216. (1) The Oregon Public Defense Commission shall:

30 “(a) Establish and maintain a public defense system that ensures the

1 provision of public defense services consistent with the Oregon Constitution,
2 the United States Constitution and Oregon and national standards of justice.

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

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

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

9 “[*(C)*] **(B)** Ensure funding and resources to support required data col-
10 lection and training requirements; and

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

16 “(c) Establish operational and contracting systems that allow for over-
17 sight, ensure transparency and stakeholder engagement and promote equity,
18 inclusion and culturally specific representation.

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

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

26 “(f) Submit [*the budget of the commission to the Legislative Assembly after*
27 *the budget is submitted to the commission by the executive director and ap-*
28 *proved by the voting members of the commission. The chairperson of the com-*
29 *mission shall present the budget to the Legislative Assembly]* **an agency**
30 **request budget to the Oregon Department of Administrative Services**

1 **as described in ORS 291.208.**

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

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

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

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

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

13 “(D) Appointed counsel compensation disputes;

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

16 “(F) The types of fees and expenses subject to a preauthorization re-
17 quirement.

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

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

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

3 “(L) Establish a system, policies and procedures for the mandatory col-
4 lection of data concerning the operation of the commission and all public
5 defense providers.

6 “(m) Enter into contracts and hire attorneys to bring the delivery of
7 public defense services into and maintain compliance with the minimum
8 policies, procedures, standards and guidelines described in this subsection.
9 All contracts for the provision of public defense services to which the com-
10 mission is a party must include a requirement for collection by the commis-
11 sion of data determined by the commission to be qualitatively necessary for
12 any report required to be submitted to the Legislative Assembly.

13 “(n) At least once every two years, report to the interim committees of
14 the Legislative Assembly related to the judiciary, in the manner provided in
15 ORS 192.245, and to the Governor and Chief Justice, concerning compliance
16 metrics for the minimum standards described in this subsection and recom-
17 mendations for legislative changes.

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

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

23 “(q) Ensure access to systematic and comprehensive training programs for
24 attorneys for the purpose of meeting statewide standards set by the commis-
25 sion.

26 “(r) Enter into contracts or interagency agreements with the Oregon De-
27 partment of Administrative Services for the purpose of supporting state
28 public defense population forecasts and other related forecasts.

29 “(s) Establish any other policies, procedures, standards and guidelines for
30 the conduct of the commission’s affairs and promulgate policies necessary to

1 carry out all powers and duties of the commission.

2 “(2) When establishing the minimum policies, procedures, standards and
3 guidelines described in this section, the commission shall adhere to the fol-
4 lowing principles:

5 “(a) Appointed counsel shall be provided sufficient time and a space
6 where attorney-client confidentiality is safeguarded for meetings with cli-
7 ents.

8 “(b) The workload of appointed counsel must be controlled to permit ef-
9 fective representation. Economic disincentives or incentives that impair the
10 ability of appointed counsel to provide effective assistance of counsel must
11 be avoided. The commission may develop workload controls to enhance ap-
12 pointed counsel’s ability to provide effective representation.

13 “(c) The ability, training and experience of appointed counsel must match
14 the nature and complexity of the case to which the counsel is appointed.

15 “(d) The same appointed counsel shall continuously represent a client
16 throughout the pendency of the case and shall appear at every court ap-
17 pearance other than ministerial hearings.

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

22 “(f) The commission and public defense providers shall systematically re-
23 view appointed counsel for efficiency and for effective representation ac-
24 cording to commission standards.

25 “(3) The commission shall be organized in a manner for the effective de-
26 livery of public defense services as prescribed by the policies and procedures
27 created pursuant to statute to financially eligible persons and consistent
28 with the budgetary structure established for the commission by the Legisla-
29 tive Assembly.

30 “(4) The commission shall hire attorneys to serve as appointed counsel,

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

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

9 “(b) The payment of panel counsel:

10 “(A) May not be lower than the hourly rate established by the commis-
11 sion.

12 “(B) Shall be adjusted to reflect the same percentage amount of any pos-
13 itive cost of living adjustment granted to employees in the management ser-
14 vice in other executive branch agencies.

15 “(C) May not provide a financial conflict of interest or economic incen-
16 tives or disincentives that impair an attorney’s ability to provide effective
17 representation.

18 “(6)(a) The commission may enter into contracts for the provision of
19 public defense services with nonprofit public defense organizations **and pri-**
20 **vate law firms.**

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

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

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

29 “(8) Policies, procedures, standards and guidelines adopted by the com-
30 mission supersede any conflicting rules, policies or procedures of the Public

1 Defender Committee, State Court Administrator, circuit courts, the Court of
2 Appeals, the Supreme Court and the Psychiatric Security Review Board re-
3 lated to the exercise of the commission's administrative responsibilities un-
4 der this section and transferred duties, functions and powers as they occur.

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

11 “[~~(10)~~ *With the approval of a majority of the voting members of the com-*
12 *mission, the commission may advocate for or against legislation before the*
13 *Legislative Assembly or policies or budgets being considered by the Legislative*
14 *Assembly.*]

15 “[~~(11)~~ **(10)** The commission shall request that the Governor include in the
16 Governor's requested budget, for each fiscal period, at a minimum, the
17 amount of funds identified by the commission as being necessary to carry out
18 the duties and activities of the commission.

19 “[~~(12)~~ **(11)** The commission may adopt rules pursuant to ORS chapter
20 183.”.

21 On page 18, delete line 7.

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