

Members

Robert Harris
Susan Mandiberg
Jennifer Parrish Taylor
Adrian Smith
Jasmine Wright, Nonvoting



Executive Director

Jessica Kampfe

**Oregon Public Defense Commission
Subcommittee on Governance**

Meeting will occur virtually.
Thursday February 29, 2024
9:00 AM – approx. 11:00 AM PST
Via Zoom*

This is a public meeting, subject to public meeting law and it will be digitally recorded. Remember to state your full name for the record, as it is required for making a record of the meeting. For action items requiring commission approval, a roll call vote will occur, unless the chair directs otherwise. The chair shall read any motion requiring commission approval into the record before a vote is taken. We are mindful of everyone’s busy schedule, particularly public defense providers, and we will adhere to the agenda of business unless the chair directs otherwise.

MEETING AGENDA

| Approx. Time | Item | Lead(s) |
|---------------------|---|------------------------|
| 5 min. | Welcome | Commissioner Mandiberg |
| | Action Item: Approve the February 1, 2024, Meeting Minutes | All |
| 90 min. | Review and Discussion of Proposed Commission Bylaws | Commissioner Mandiberg |
| 15 min. | Future Business | Eric Deitrick |

*To join the Zoom meeting, click this link. <https://zoom.us/j/97188083351>

Please make requests for an interpreter 48 hours in advance for the hearing impaired, or other accommodation to opds.info@opds.state.or.us.

Next meeting: **Thursday March 14, 2024, 9:00 to 11:00 AM.**

Meeting dates, times, locations, and agenda items are subject to change by the Commission; future meetings dates are posted at: <https://www.oregon.gov/opds/commission/Pages/meetings.aspx>.

Meeting: Oregon Public Defense Commission Subcommittee on Governance

Date & Time: February 1, 2024, 9:00 AM – approx. 11:00 AM PST

Address/Platform: Meeting occurred virtually via Zoom

Members Present

Robert Harris
Susan Mandiberg
Jennifer Parrish Taylor
Adrian Smith
Jasmine Wright, Nonvoting

Presenting Staff

Eric Deitrick, General Counsel
Lisa Taylor, Government Relations Manager

1. Welcome and Introductions of New Commissioners

Presented by Eric Deitrick

Mr. Deitrick welcomed everyone to the first meeting of the Subcommittee on Governance.

2. General Discussion on Commission Governance

Presented by Eric Deitrick

Mr. Deitrick started a discussion about agency roles and responsibilities, including both challenges and successes of the past. He then initiated a discussion on SB 337 (2023) and the attempts in the bill to clarify commissioner, director, and staff roles. The bill assigns specific responsibilities to the commission, the agency, and the director. Members of the Subcommittee discussed ambiguities they still believe existed. The consensus of the Subcommittee members was that bylaws could be effective in eliminating those ambiguities.

3. Commission Bylaws

Presented by Eric Deitrick

Mr. Deitrick provided a summary of the existing bylaws, including when they were

adopted, the sources examined, and how they have been utilized. A copy of the agency's existing bylaws was provided to the Subcommittee. Mr. Deitrick also provided bylaws from other state agencies and noted provisions that OPDC does not currently have. The Subcommittee group discussed moving forward with the bylaws and begin working on defining the roles and responsibilities.

Mr. Deitrick then went through the bylaws, section by section, discussing the content of the bylaws and gaps that exist. Specific issues discussed by Subcommittee members included compliance with public meeting law, agenda setting, distributing materials, attendance, motions and voting, action items, public comment, record retention, communication, and resolving complaints. The consensus of the Subcommittee was to draft bylaws that provided sufficient structure and guidance to eliminate ambiguities in the future.

4. Commission Subcommittees

Presented by Eric Deitrick

Mr. Deitrick discussed the statutory definition of governing bodies and how public meeting law intersects with subcommittees and workgroups. He then initiated a discussion about the possibility of increasing the use of Commission subcommittees to create content experts and reduce the total number of full Commission meetings per year.

Mr. Deitrick noted that a subcommittee on the agency's 6-year plan could be helpful. Commissioner Parish Taylor discussed the possibility of a legislative subcommittee, and Commissioner Smith discussed a possible subcommittee on juvenile practice.

5. Possible Action Item: Recommendation on Subcommittees

Presented by Eric Deitrick

No action was taken on recommending subcommittees at this time.

6. Action Item: Election of Subcommittee Chair

Presented by Eric Deitrick

Mr. Deitrick summarized the expectations for the Chair of Governance Subcommittee. The Chair would be the point person who would work with Mr. Deitrick on the bylaws and all agenda topics going forward.

Commissioner Harris moved to recommend Commissioner Mandiberg as the chair of the Governance Subcommittee. Commissioner Smith seconded the

motion. The motion passed unanimously.

7. Future Business

Subcommittee Chair Mandiberg will work with Mr. Deitrick to develop a draft of proposed Commission bylaws. They will prepare a draft to the Subcommittee for a meeting on February 29. The Subcommittee will meet again on March 14, with a goal of voting to recommend bylaws to the full Commission when it meets on March 20.

Next meeting: February 29, 2024 @ 9:00 a.m.

BYLAWS

Article 1

AGENCY NAME, AUTHORITY, AND MISSION

- (1) **Name.** The name of this agency is the Oregon Public Defense Commission (“OPDC”).
- (2) **Authority.** The OPDC was established pursuant to ORS 151.213, as amended by SB 337 (2023), effective January 1, 2024. The OPDC is governed by a 13-member commission (“Commission Members”), which includes nine Voting Members and four Non-voting Members.
- (3) **Mission.** The OPDC’s mission is to establish and maintain a public defense system that ensures the provision of public defense services consistent with the Oregon Constitution, the United States Constitution, Oregon and national standards of justice, and Oregon statutes. To that end, the Commission Members shall ensure furtherance of the goals articulated in ORS 151.216 by adopting policies, procedures, standards, and guidelines regarding those mandates, including the public defense service delivery model; public defense provider caseload and workload; qualification and performance standards; compensation, fees, expenses, and reimbursement; budget, resources, and funding; training, supervision, and oversight; data collection; and eligibility for court appointed counsel.

Article 2

COMMISSION MEMBERSHIP

- (1) **Membership.** Membership is defined by ORS 151.213.
- (2) **Terms of Office.** Terms of office are four years, except for the initial terms created by SB 337 (2021) to stagger appointments. Terms begin on January 1 in the first year and expire on December 31 in the final year.
- (3) **Appointments.** Appointments are made pursuant to ORS 151.213. Commission Members may be reappointed but may serve no more than two consecutive four-year terms. Commission Members appointed to fill a vacancy assume the term for the member they replaced. If a vacancy occurs and is not filled by the appointing authority within 45 days, the remaining voting members of the Commission shall, by a majority vote, select a member to fill the vacancy for the remainder of the term.
- (4) **Termination.** A Commission Member may be removed pursuant to ORS 151.213(3).
- (5) **Resignation.** A Commission Member who seeks to resign shall provide written notice to the appointing authority, the Chair of the OPDC, and the Executive Director.
- (6) **Onboarding and Training.** New appointees shall attend an onboarding session as determined by the Executive Director. Members shall attend all trainings as required by Oregon law.
- (7) **Chair and Vice Chair.**

- (a) Voting members shall elect, by majority vote, a Chair and Vice Chair of the Commission.
- (b) The Chair is the public liaison of the Commission Members. It shall be the responsibility of the Chair or other person as directed by the Chair to speak on behalf of the Commission Members for official information concerning the OPDC.
- (c) The Chair shall lead and manage Commission meetings, shall coordinate the planning of Commission meeting agendas with the Executive Director, and shall join with the Executive Director to present the OPDC's annual budget to the Legislative Assembly.
- (d) The Vice Chair shall lead and manage Commission meetings when the Chair is unavailable and support the Chair in furtherance of their responsibilities as requested.

(8) Ethics and Conflicts of Interest.

- (a) Commission Members shall comply with the government ethics provisions of ORS Chapter 244.
- (b) A Commission Member has an actual financial conflict of interest if the proposed action would provide a financial benefit or detriment to the Member, the Member's relative, or any business with which the Member or their relative is associated. When met with an actual conflict of interest, the Member must announce publicly the nature of the conflict and refrain from discussion on the issue. The Member may not vote on the issue from which the conflict arises unless the Member's vote is necessary to meet the minimum number of votes required to take official action.
- (c) A Member has a potential conflict of interest if the proposed action could provide a financial benefit or detriment to the Member, the Member's relative, or any business with which the Member or their relative is associated. When met with a potential conflict of interest, the Member must announce publicly the nature of the conflict but may continue to discuss the issue. The Member may vote on the issue from which the potential conflict arises.

(9) Ex Parte Contacts. Ex parte contacts are not subject to public meeting laws.

- (a) Commission Members may communicate orally or in writing with other Commission Members to the extent that communication does not violate ORS Chapter 192.
- (b) Commission Members may communicate orally or in writing with OPDC staff on non-substantive issues, such as scheduling and IT support.
- (c) Commission Members should not communicate orally or in writing with OPDC staff members regarding agency business without prior authorization from the Executive Director. The Executive Director shall communicate such authorization in writing, including by email.

(10) Compensation and Expenses.

- (a) Voting and non-voting Members are entitled to compensation and expenses as provided in ORS 151.213(8) and ORS 292.495.

(b) Members entitled to compensation shall submit the information required by standards and procedures adopted by the Executive Director.

(11) Indemnification. OPDC Commission Members, officers, employees, and agents shall be indemnified in the manner provided by ORS 30.285.

Article 3

ROLES AND RESPONSIBILITIES GENERALLY

(1) Commission Members. Commission Members are responsible for governing and providing oversight to the OPDC, pursuant to the requirement of ORS 151.213 and 151.216.

(a) Commission members shall:

(i) Review, and provide input prior to an approval vote, the policies, procedures, standards, and guidelines required by ORS 151.216 regarding contracting, funding, compensation of counsel, resources, operations, caseloads and statewide workloads, data collection, training and supervision of appointed counsel, costs, overhead, pre-authorization requirements, financial eligibility of represented persons with appointed counsel, compensation plans, classification systems, and affirmative action plans.

(ii) Review the budget of the Commission and provide input before any approval vote;

(iii) Review the Commission's annual report prior to the vote by Voting Members;

(iv) Meet as needed to carry out their responsibilities.

(b) Voting Commission Members shall:

(i) Approve by majority vote the policies, procedures, standards, and guidelines required by ORS 151.216 before they take effect;

(ii) Approve by majority vote the budget of the Commission before submission to the Legislative Assembly;

(iii) Appoint, by a two-thirds vote, an Executive Director for a term of office of four years. The term may be terminated for cause by a majority vote of the voting Members after notice and a hearing. When the term of an Executive Director ends without termination, the voting Members of the Commission may reappoint the person currently in the position by a majority vote. Upon the vacancy of the Executive Director position, the voting Members shall immediately designate an acting Executive Director by a majority vote. Commission members may not serve as the Executive or Acting director.

(iv) Approve by majority vote the Commission's annual report prior to its submission pursuant to ORS 151.219.

(c) Commission Members shall not make any decision regarding the handling of any individual case; have access to any case file or interfere with the Executive Director or

OPDC staff in carrying out professional duties involving the legal representation of public defense clients.

- (d) Voting Members of the Commission may advocate for or against legislation before the Legislative Assembly with the approval of a majority of the voting members.

(2) Executive Director.

- (a) The Executive Director is the chief executive officer for the Commission, the public liaison for OPDC, and the primary liaison between the Commission Members (voting and non-voting) and OPDC staff. The Executive Director shall ensure the agency carries out the policy directives established by the Commission.
- (b) The Executive Director of the Commission shall carry out the duties set out in ORS 151.219.
- (c) The Executive Director shall prepare an annual report covering the topics listed in Art. 3(1)(a)(i) and (ii) and submit it by December 31 of the calendar year as required by ORS 151.219 .

(3) OPDC Staff.

- (a) OPDC staff is responsible for agency administration and operations, and it performs its actions through the authority of its Executive Director, as defined by ORS 151.219.
- (b) OPDC staff shall carry out the duties set out in ORS 151.216.

Article 4

MEETINGS

(1) Regular Meetings. Commission members shall meet according to a regular schedule, established at the first meeting of each calendar year.

(2) Special Meetings. The Chair of the Commission may call special meetings of the Commission. No special meeting shall be held without the notice, agenda, and materials provided at least twenty-four (24) hours prior to the meeting. Such notice shall be provided to all members and shall be posted on the OPDC website.

(3) Emergency Meetings.

- (a) The Chair may only call an emergency meeting if there is an actual emergency that renders the twenty-four-hour notice impracticable. The emergency meeting notice shall state the nature of the emergency and provide the meeting date, time, place, and (in the event of a virtual meeting) access information. Notice of the meeting, the agenda, and any meeting materials shall be provided to all members and posted on the OPDC website as early as practicable prior to the meeting.
- (b) An emergency is a situation in which the notice requirements of this Article increase the likelihood or severity of injury or damage to persons or property, immediate financial

loss, or disruptions to the provision of public defense services that require an immediate response.

(c) The notice required for an emergency meeting shall include, at a minimum, the meeting date, time, place, and nature of the emergency requiring the meeting. Notice of the meeting shall be posted on the OPDC website as quickly as possible.

(d) The emergency meeting shall be conducted in accordance with other provisions of this Article, and the reason for the emergency shall be stated at the outset of the meeting.

(4) Executive Sessions. The Commission may meet in executive session pursuant to ORS 192.660, and the notice and agenda shall state the provision of law authorizing the executive session.

(5) Public Meeting Laws. All meetings and executive sessions shall comply with public meeting laws pursuant to ORS Chapter 192.

(6) Quorum. A majority of voting members constitutes a quorum of the Commission for the transaction of business. A quorum of the Commission is required to conduct a meeting. If the Commission loses a quorum during a meeting, the meeting shall adjourn.

(7) Agendas, Planning, and Meeting Materials.

(a) Commission meeting agendas will be finalized by the Executive Director and the Chair of the Commission. Any voting or non-voting member of the Commission may request the Chair to include an item on the agenda of an upcoming meeting no later than 10 days prior to the meeting. If the item does not appear on the agenda, a majority of Voting Members may place the item on the agenda for the subsequent meeting.

(b) OPDC staff shall publish the agenda and meeting materials in advance of a meeting, with a goal of publishing those materials one week in advance of each meeting.

(i) Action items and relevant materials shall be published no later than 96 hours in advance of the meeting at which they will be considered.

(ii) Other items and relevant materials shall be published no later than 48 hours in advance of the meeting in which they are considered.

(c) OPDC staff shall prepare meeting materials in plain English. Technological language will be defined and clarified for ease of access to non-technical readers. All acronyms will be explained in full the first time they are used in a document.

(d) The Executive Director and the Chair may amend the agenda up until the start of the meeting. No action items may be added within 96 hours of the meeting.

(8) Conduct of Meetings.

(a) The Commission may conduct meetings in-person, virtually, or through a combination of in-person and virtual attendance. All meetings shall afford the public the opportunity to access and attend the meeting virtually.

- (b) To ensure accurate assessment of a quorum during virtual meetings, Commission Members shall have cameras on and name identification posted. Commission staff shall have names posted but may turn cameras off.
- (c) The Commission will not use Robert's Rules of Order in conducting a meeting but will follow the procedural rules set out in these bylaws.
- (d) The Chair shall lead and manage the meeting, or the Vice-chair in the Chair's absence. Public comment may be allowed and shall be posted on the agenda when authorized. Deliberation of issues will only be conducted by Commission members, but the Commission may authorize OPDC staff or members of the public to provide information on any topic.

(9) Public Comment.

- (a) Oral. Members of the public may apply to the Commission for the opportunity to comment in person at Commission meetings. Such applications must be received by the Commission by the close of business the business day prior to the date scheduled for the meeting. The Chair shall allow all reasonable requests for public comment. Public comment shall be limited to 3 minutes unless, in the Chair's sole discretion, more time is allowed.
- (b) Written. Members of the public may submit written comment regarding items on the agenda of upcoming meetings. Submissions received by the close of business the business day prior to the date scheduled for the meeting shall be submitted to voting and non-voting members prior to the meeting. Submissions received after the close of business the business day prior to the date scheduled for the meeting shall be submitted to voting and non-voting members after the close of the meeting. Written submissions shall be made available on the OPDC website.

(10) Action Items. All action items shall be identified as such on the agenda, and no Commission action can be taken unless the proposed topic is published on the agenda as an action item. All action items shall include time for discussion before a vote occurs. A quorum of the Voting Members of the Commission is required to endorse an action item.

(11) Motions.

- (a) Any Voting Member of the Commission may make a motion regarding a posted action item, and that motion must receive the endorsement of a second Voting Member of the Commission before a vote can occur. Once a motion has been made and received an endorsement from a second Voting Member, there shall be a period for discussion.
- (b) Following the discussion, the motion must be voted upon unless (1) the member who made the motion withdraws the motion, or (2) the member who provided the second endorsement withdraws that endorsement and the motion fails to get another second endorsement.

(12) Voting.

- (a) Commission members must be present to vote.
- (b) Unless any voting member of the Commission requests a roll call vote, the Chair shall ask if any of the voting members of the Commission object to the motion. If no objections are made, the motion will pass, and it will be recorded as endorsed by all voting members present. If any member of the PDSC objects to the motion, a roll call vote will be held.
- (c) Commission members must vote yea or nay, as no abstentions are allowed. Voting members may explain on the record their reasons for a yea or nay vote or for asserting a conflict of interest

(13) Meeting Records and Minutes. All meeting materials, minutes, transcripts, and public comment shall be stored by OPDC and placed on the OPDC website for public access.

Article 5

SUBCOMMITTEES, AUDIT COMMITTEE, EXTERNAL ADVISORY GROUPS

(1) Subcommittees

- (a) The Commission Chair, in consultation with OPDC staff and Voting and Non-voting members of the Commission, may create standing or *ad hoc* subcommittees to advise the Commission. The Chair shall put on the record the members of the subcommittee and the nature of the subcommittee's charge.
- (b) A subcommittee must have at least three, but no more than four, Voting Members. The Chair shall appoint subcommittee members and may ask for volunteers from among Voting and Non-voting members.
- (c) Each subcommittee shall elect a chair to conduct the business of the subcommittee and to report to and consult with the Commission Chair.
- (d) The subcommittee chair may invite one or more members of OPDC staff to attend subcommittee meetings in an advisory capacity.
- (e) Meetings of subcommittees must comply with ORS Chapter 192.

(2) Audit Committee. OPDC shall approve an audit charter and advisory audit committee that is not a governing body to facilitate the OPDC's audit function. The audit committee shall provide an annual report to the Commission members at least once per year and shall provide additional reports to the Commission Members as needed if the committee believes OPDC is engaged in an unreasonable level of risk.

(3) Advisory Committees and Workgroups.

- (a) The Executive Director may, after consultation with the Chair, create advisory committees and workgroups as needed.

- (b) At the Executive Director's discretion, advisory committees and workgroups may include voting and non-voting members, OPDC staff, staff of Oregon judicial and legislative agencies, and members of the public.

Article 6

GRIEVANCE PROCEDURE

Persons aggrieved by OPDC actions or inaction should seek redress as follows:

- (1) If the complaint is a consequence of OPDC policy, a letter should be addressed to the Chair of the Commission requesting the complaint to be placed on the Commission's meeting agenda; the Chair shall have the sole discretion either to place the item on the agenda of an upcoming meeting or to refer the matter to the Executive Director for investigation.
- (2) If the complaint relates to administrative practices of the OPDC, the complainant should address a letter to the Executive Director of the OPDC; a complainant who is unsatisfied with how the complaint is handled may address a letter to the Chair of the Commission requesting the complaint to be placed on the Commission's meeting agenda; the Chair shall have the sole discretion either to place the item on the agenda of an upcoming meeting or to refer the matter to the Executive Director to report to the Chair on resolution of the complaint.
- (3) If a Voting or Non-voting Member is approached by an aggrieved person the Member should direct the person to the correct course of action to be pursued; the Member shall not discuss the complaint with the aggrieved person.
- (4) All communications covered by sub-sections (1) through (3) shall be in writing. A member who is approached by word of mouth shall so inform the aggrieved persons and shall send a memorandum to the Chair identifying the aggrieved persons and indicating the time of the conversation and the instructions conveyed by the Member to the aggrieved person.

Article 7

AMENDMENTS

These bylaws may be amended by a two-thirds vote of the Voting Members at any meeting provided the topic is posted as an action item and the proposed language is provided to all Voting and Non-voting Members one week prior to the meeting.