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As of: May 14, 2016 (6:14pm)

LC6271

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act providing for the professional management and administration of the nonattorney functions of the office of public defender and the office of appellate defender; transferring certain duties, responsibilities, and authority of the chief public defender and the chief appellate defender to the executive director of the office of public defender; authorizing the executive director of the office of public defender to compile relevant financial, workload, productivity, and efficiency and effectiveness data and information; amending sections 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, and 47-1-216, MCA; and providing an effective date and a transition period."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 47-1-201, MCA, is amended to read:

**"47-1-201. Office of state public defender -- personnel -- compensation -- expenses -- reports.** (1) There is an office of state public defender. The office must be located in Butte, Montana. The head of the office is the ~~chief public defender~~ executive director, who is supervised by the commission.

(2) The executive director is appointed by and serves at the pleasure of the commission. The position of executive

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director is exempt from the state classification and pay plan as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to executive directors with similar responsibilities.

~~(2)~~(3) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

~~(3)~~(4) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office of state functions for which the chief public defender is responsible and to implement the provisions of this chapter, including but not limited to:

~~(a) the following personnel who are exempt from the state classification and pay plan as provided in 2-18-103:~~

~~— (i) an administrative director, who must be experienced in business management and contract management;~~

~~— (ii) a chief contract manager to oversee and enforce the contracting program;~~

~~— (iii) a training coordinator, appointed as provided in 47-1-210;~~

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~~——(iv)(a)~~ deputy public defenders, as provided in 47-1-215, who are exempt from the classification and pay plan as provided in 2-18-103;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office.

~~(4)(5)~~ Positions established pursuant to subsections (3)(b) and ~~(3)(c)~~ (4)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

~~(5)(6)~~ The following expenses are payable by the office if the expense is incurred at the request of a public defender pursuant to procedures set out by the executive director:

(a) witness and interpreter fees and expenses provided for in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

~~(6)(7)~~ If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

~~(7)(8)~~ The office, through the executive director, may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.

~~(8)(9)~~ The office shall provide assistance to the executive director with the budgeting, reporting, and related administrative functions of the office ~~of appellate defender as provided in 47-1-205.~~

~~(9)(10)~~ The ~~chief public defender~~ executive director shall

establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, including defense expenses paid for work performed by or for the office of appellate defender.

~~(10)~~(11) (a) The ~~office of public defender~~ executive director is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative fiscal analyst. The report must be provided in an electronic format and include unduplicated count data for all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type.

(b)(i) The ~~office of public defender~~ executive director is required to report to the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. The report must be provided in an electronic format.

(ii) The executive director shall prepare forms as necessary for the effective and consistent collection and reporting of the data described in subsection (11)(b)(i). The

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executive director shall collaborate with the administrator of the supreme court and direct appropriate personnel of the judiciary, including employees of district courts and local governments, to fully and accurately complete and submit the forms at the time specified by the executive director."

{Internal References to 47-1-201:

2-15-1028	2-18-103	3-5-511	3-5-604
3-5-901	3-5-901	3-5-901	3-5-901
3-5-901	26-2-506	41-5-111	41-5-1413
42-2-405	46-4-304	46-8-101	46-8-104
46-15-115	46-17-203	46-21-201	46-21-201
47-1-103	47-1-105	47-1-202	50-20-509
53-9-104	53-9-104	53-20-112	53-21-112
53-21-116	53-21-122	53-21-122	53-24-302
72-5-225	72-5-234	72-5-315	72-5-408
72-5-408	}		

**Section 2.** Section 47-1-202, MCA, is amended to read:

**"47-1-202. Chief public defender -- duties.** (1) In addition to the duties provided in 47-1-201(3), the chief public defender shall:

~~(a) act as secretary to the commission and provide administrative staff support to the commission until the commission can hire its staff as provided in 2-15-1028(6)(b);~~

~~(b)(a) assist the commission and the executive director in establishing the state system and establishing the standards, policies, and procedures required pursuant to this chapter;~~

~~(c)(b) develop and present for the commission's approval a regional strategic plan for the delivery of public defender services;~~

~~(d)(c) in collaboration with the executive director:~~

~~(i) establish processes and procedures to ensure that~~

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office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

~~(e)~~(ii) establish administrative management procedures for regional offices;

~~(f)~~(d) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

~~(g)~~(e) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

~~(h) establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;~~

~~(i)~~(f) in consultation with the executive director, establish procedures to handle complaints about public defender performance and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

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~~(j) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system; and~~

(k)(g) perform all other duties assigned by the commission pursuant to this chapter.

(2) The chief public defender may not maintain a client caseload."

{*Internal References to 47-1-202:*  
47-1-205      47-1-215 }

NEW SECTION.    **Section 3. Executive director -- duties.** (1)

The is an executive director of the office of public defender.

The executive director shall:

(a) act as secretary to the commission and provide administrative staff support to the commission;

(b) hire or contract for and supervise other personnel necessary to perform the administrative and management functions of the office of state public defender, the office of appellate defender, and the office of conflict coordinator and is responsible to implement the provisions of this chapter, including but not limited to:

(i) the following personnel who are exempt from the state classification and pay plan as provided in 2-18-103:

(A) administrative or management personnel who must be experienced in business management and contract management;

(B) a chief contract manager to oversee and enforce the contracting program; and

(C) a training coordinator, appointed as provided in 47-1-210; and

(ii) other necessary administrative and professional support staff for the office; and

(c) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system.

**Section 4.** Section 47-1-205, MCA, is amended to read:

**"47-1-205. Office of appellate defender -- chief appellate defender.** (1) There is an office of appellate defender. The office of appellate defender must be located in Helena, Montana.

(2) (a) The commission shall hire and supervise a chief appellate defender to manage and supervise the ~~office of~~ functions for which the appellate defender is responsible. The chief appellate defender is appointed by and serves at the pleasure of the commission. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(b) The chief appellate defender must be an attorney licensed to practice law in the state.

(c) The position of chief appellate defender is exempt from the state classification and pay plan as provided in 2-18-103.

(3) The chief appellate defender shall:

(a) direct, manage, and supervise all public defender services provided by attorneys employed by or who contract with

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the office of appellate defender, ~~including~~ and shall assist the executive director with the budgeting, reporting, and related functions of the office;

(b) ensure that when a court orders the office of appellate defender to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202(1)(f) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of attorneys employed by the office of appellate defender and hire and supervise other personnel as authorized by the appellate defender executive director;

(e) contract for services as provided in 47-1-216 and as authorized by the commission according to the strategic plan for the delivery of public appellate defender services;

(f) in the manner required by the executive director, keep a record of appellate defender services and expenses of the office of appellate defender and submit records and reports to the ~~commission as requested through the office of state public defender~~ executive director;

(g) implement standards and procedures established by the commission and by the executive director for the functions of the

office of appellate defender;

(h) maintain a minimum client caseload as determined by the commission;

(i) confer with the ~~chief public defender~~ executive director on budgetary issues and submit budgetary requests and the reports required by law or by the governor through the ~~chief public defender~~ executive director; and

(j) perform all other duties assigned to the chief appellate defender by the commission."

{*Internal References to 47-1-205:*  
47-1-105      47-1-201 }

**Section 5.** Section 47-1-210, MCA, is amended to read:

**"47-1-210. Training program -- coordinator.** (1) There is within the office a position of training coordinator for public defenders.

(2) The ~~chief public defender~~ executive director shall appoint the training coordinator.

(3) The training coordinator shall:

(a) coordinate training to public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

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(d) consistent with guidelines prescribed by the executive director, provide assistance with research or briefs and provide other technical assistance requested by a public defender;

(e) apply for and assist in the disbursement of federal funds or other grant money to aid in providing training to staff employed by and others who contract with the statewide public defender system; ~~and~~

(f) assist in the development and dissemination of standards, procedures, and policies that will ensure that managerial, administrative, human resource, and budgeting procedures and guidelines are consistently followed throughout the state;

(g) develop and conduct training for all staff and contractors on the standards, policies, procedures, and guidelines referred to in subsection (3)(f); and

~~(f)~~(h) perform other duties assigned by the chief public defender commission or by the executive director."

{*Internal References to 47-1-210:*  
47-1-201 }

**Section 6.** Section 47-1-215, MCA, is amended to read:

**"47-1-215. Regional offices -- deputy public defenders -- office space.** (1) The chief public defender shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to 47-1-104(2).

(2) Each deputy public defender shall:

(a) pursuant to procedures adopted by the executive

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director or the commission, manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) establish protocols so that when a court orders the office to assign counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of 47-1-202(1)(f);

(d) consistent with policies and procedures adopted by the executive director, hire and supervise the work of regional office personnel as authorized by the ~~chief public defender~~ executive director;

(e) contract for services as provided in 47-1-216 and authorized by the ~~chief public defender~~ executive director according to the strategic plan approved by the commission;

(f) consistent with guidelines provided by the executive director, keep a record of public defender and associated services and expenses in the region and submit the records to the ~~chief public defender~~ executive director as requested;

(g) implement the standards and procedures established by the commission, the executive director, and chief public defender for the region;

(h) maintain a minimum client caseload as determined by the chief public defender; and

(i) perform all other duties as assigned by the chief public defender or the executive director.

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(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office through the executive director and may not be considered a county or city obligation."

{*Internal References to 47-1-215:*  
47-1-104      47-1-201 }

**Section 7.** Section 47-1-216, MCA, is amended to read:

**"47-1-216. Contracted services -- rules.** (1) The commission shall establish standards for a statewide contracted services program that ensures that contracting for public defender services is done fairly and consistently statewide and within each public defender region and that contracting for appellate defender services is done fairly and consistently statewide.

(2) The executive director shall hire and supervise the chief contract manager who shall oversee the contracting program and may not. If the chief contract manager is an attorney, the manager may not maintain a client caseload.

(3) The office of state public defender and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section and with guidelines adopted by the executive director, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. The chief appellate defender, in a manner consistent with statewide standards adopted by the commission pursuant to this section and with guidelines adopted by the

executive director, may contract to provide appellate defender, professional nonattorney, and other personal services necessary to deliver appellate defender services in the state. All contracting pursuant to this section is exempt from the Montana Procurement Act as provided in 18-4-132.

(4) (a) Except as provided in subsection (4)(b), contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

(b) Contracts for legal representation of individuals appearing before the following specialty courts may be awarded based on a fixed fee:

(i) a drug treatment court, as defined in 46-1-1103, including an adult, a juvenile, and a family drug court;

(ii) a mental health treatment court, as defined in 46-1-1203;

(iii) a DUI court, as defined in 61-5-231;

(iv) a court that serves participants with co-occurring disorders, including a mental health treatment court that is combined with a drug treatment court; or

(v) a veterans treatment court.

(c) A contract for legal representation pursuant to subsection (4)(b) may not be awarded without the approval of the commission and without verifiable assurances that effective representation will be provided.

(5) Contracting for public defender and appellate defender services must be done through a competitive process that must, at

a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel that meets the standards established by the commission;

(b) attorney qualifications necessary to provide effective assistance of counsel that meets the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; and

(h) continuing education requirements in accordance with standards set by the commission.

(6) The executive director, with the assistance of the chief public defender, deputy public defenders, and the chief appellate defender, shall provide for contract oversight and enforcement to ensure compliance with established standards.

(7) The commission shall adopt rules to establish reasonable compensation for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services.

(8) Contract attorneys may not take any money or benefit

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from an appointed client or from anyone for the benefit of the appointed client.

(9) The commission shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

(10) The commission shall implement rules requiring evaluation of every contract attorney on at least a biennial basis ~~by the~~. The chief contract manager shall conduct the evaluations based on written evaluation criteria and shall develop with the executive director written procedures designed to elevate the performance of contract attorneys whose performance is evaluated to be less than acceptable and to terminate the contract of any attorney whose performance is evaluated as unacceptable."

{*Internal References to 47-1-216:*

18-4-132      47-1-104      47-1-205      47-1-215 }

NEW SECTION.    **Section 8. {standard} Effective date -- transition.** (1) [This act] is effective July 1, 2017.

(2) The public defender commission shall have hired an executive director of the office of public defender prior to July 1, 2018.

(3) The executive director, working cooperatively with the public defender commission, the chief public defender, the chief appellate defender, the conflict coordinator, and others, shall implement the provisions of [sections 1 through 7] by July 1, 2019.

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