

# **Options for Revising Montana's Public Defender System**

Prepared for the  
***Task Force On State Public Defender Operations***

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## OVERVIEW

This packet contains the preliminary bill drafts requested by the Task Force on Public Defender Operations at its May 16, 2016, meeting. Also included are section-by-section summaries of selected bill drafts, organizational charts, and a spreadsheet presenting fiscal information related to the organizational options.

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### Organizational Charts

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### Section-by-section bill draft summaries

Section-by-Section Summary of LCpd1a

Section-by-Section Summary of LCpd02

Section-by-Section Summary of LCpd03

Section-by-Section Summary of LCpd04

Section-by-Section Summary of LCpd09

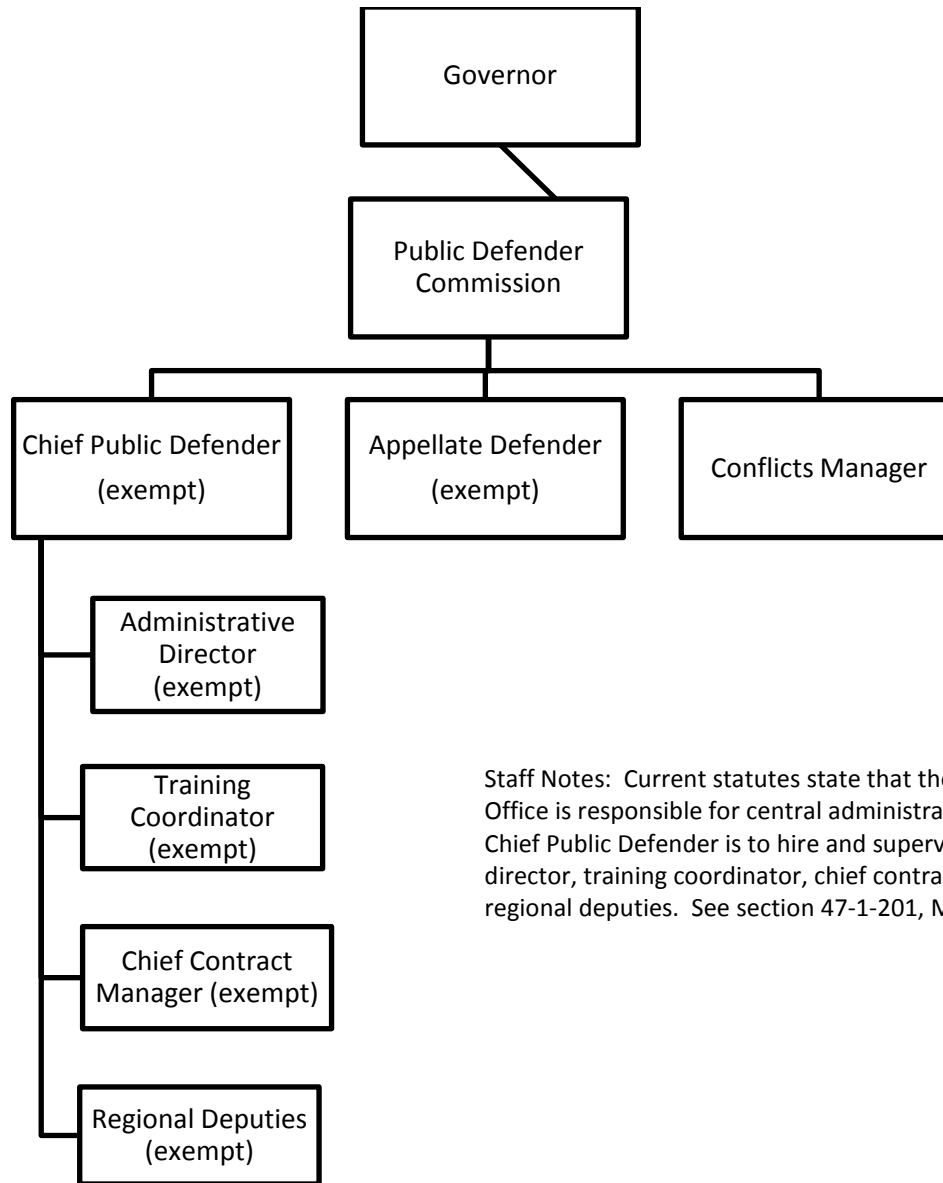
### Bill Drafts

LCpd1a            Director appointed by the governor to be agency head. The Public Defender Commission to become an advisory body.  
*(Drafter: Sheri Scurr)*

LCpd1b            A secondary bill was drafted by request of Presiding Officer Rep. Kimberly Dudik (D-Missoula) to provide that the director of the Department of Administration rather than the governor would appoint the OPD director. *(Drafter: Sheri Scurr)*

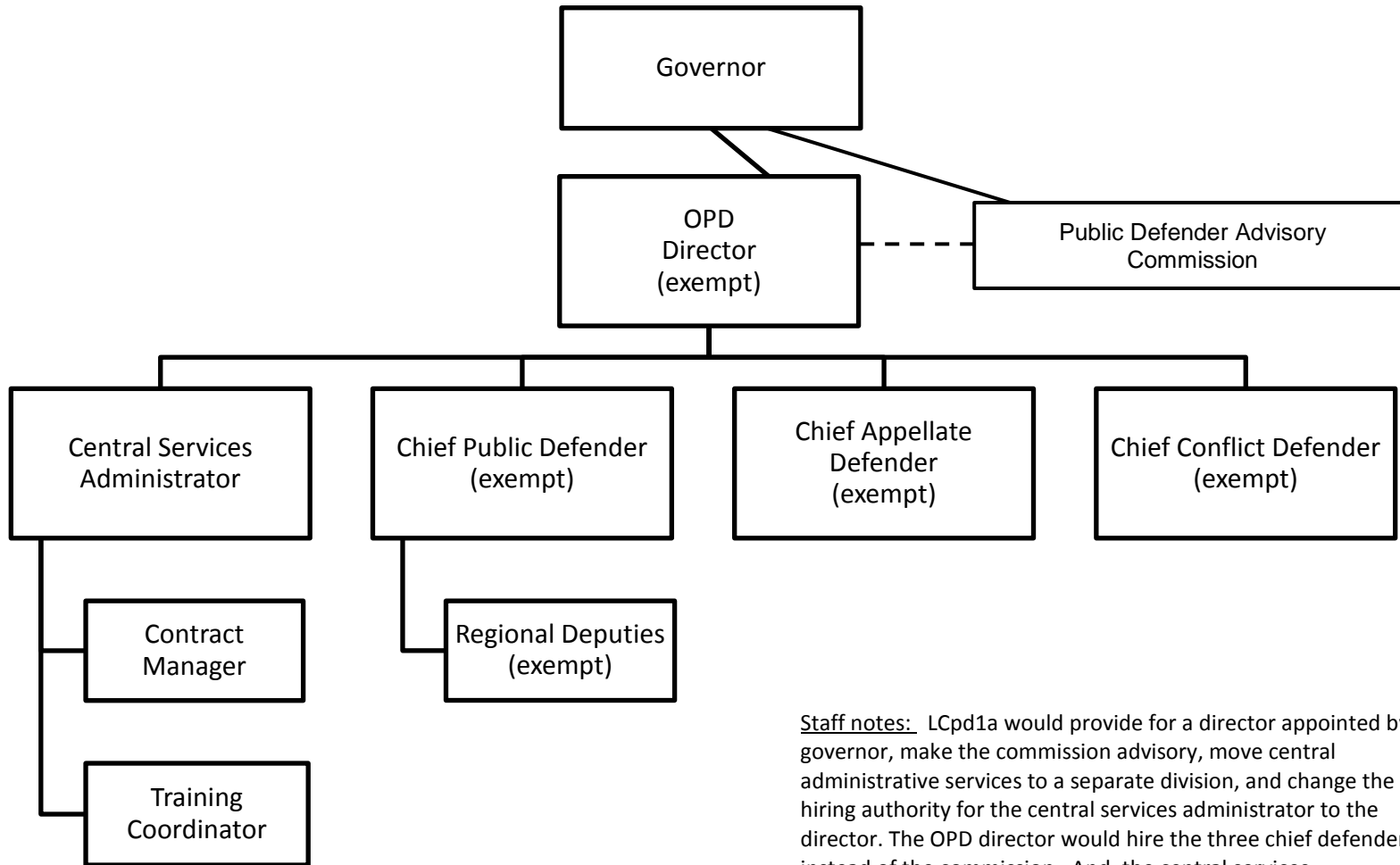
- LCpd02      Establish a chief administrator position appointed by the Public Defender Commission to head an Office of Chief Administrator. This would enact the Public Defender Commission's current strategic plan *(Drafter: Sheri Scurr)*
- LCpd03      Transfer determination of eligibility for a public defender services from the OPD to the presiding court. *(Drafter: Julie Johnson)*
- LCpd04      Transfer determination of eligibility for a public defender from the OPD to the Department of Public Health and Human Services. *(Drafter: Julie Johnson)*
- LCpd05      Make the Montana Department of Revenue responsible for collecting the fee imposed by a judge pursuant to 46-8-113, MCA, for public defender services. *(Drafter: Julie Johnson)*
- LCpd06      Establish a holistic defense pilot program in four locations around Montana. The program would be modeled on the Confederated Salish and Kootenai Tribal Defenders program. *(Drafter: Sheri Scurr)*
- LCpd07      Require the Public Defender Commission to contract for a workload assessment study. *(Drafter: Julie Johnson)*
- LCpd08      Clarify statute to clearly grant the Public Defender Commission and the OPD the authority to set different contractor rates in different areas of the state. *(Drafter: Julie Johnson)*
- LCpd09      Statutorily separate the OPD, the Appellate Defender Office, and the Conflict Coordinator Office to ensure there is no conflict or consultation in budgeting between the separate offices. *(Drafter: Julie Johnson)*
- LCpd10      Statutorily prohibit the OPD from providing legal counsel to a putative father in a dependent neglect case. *(Drafter: Julie Johnson)*
- LCpd11      Statutorily require the Public Defender Commission to set "soft caps" for OPD and Appellate Defender Office contractor caseloads. *(Drafter: Julie Johnson)*

Current Statutes  
Appointment/Hiring Structure  
Public Defender System



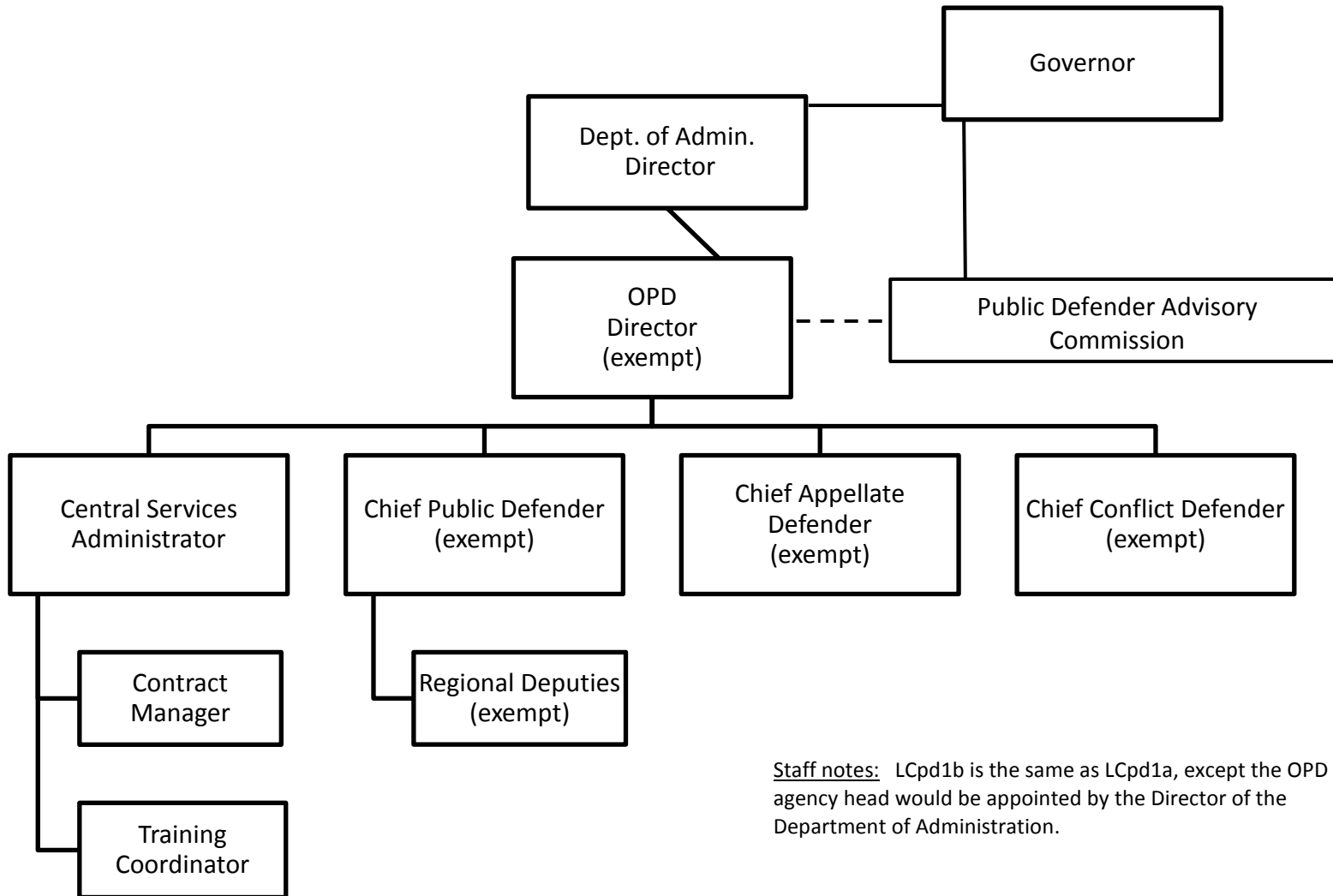
Staff Notes: Current statutes state that the Chief Public Defender's Office is responsible for central administrative functions and that the Chief Public Defender is to hire and supervise the administrative director, training coordinator, chief contract manager, and the regional deputies. See section 47-1-201, MCA.

Chart 1a – LCpd1a (Haynes motion)  
Appointment/Hiring Structure  
Public Defender System



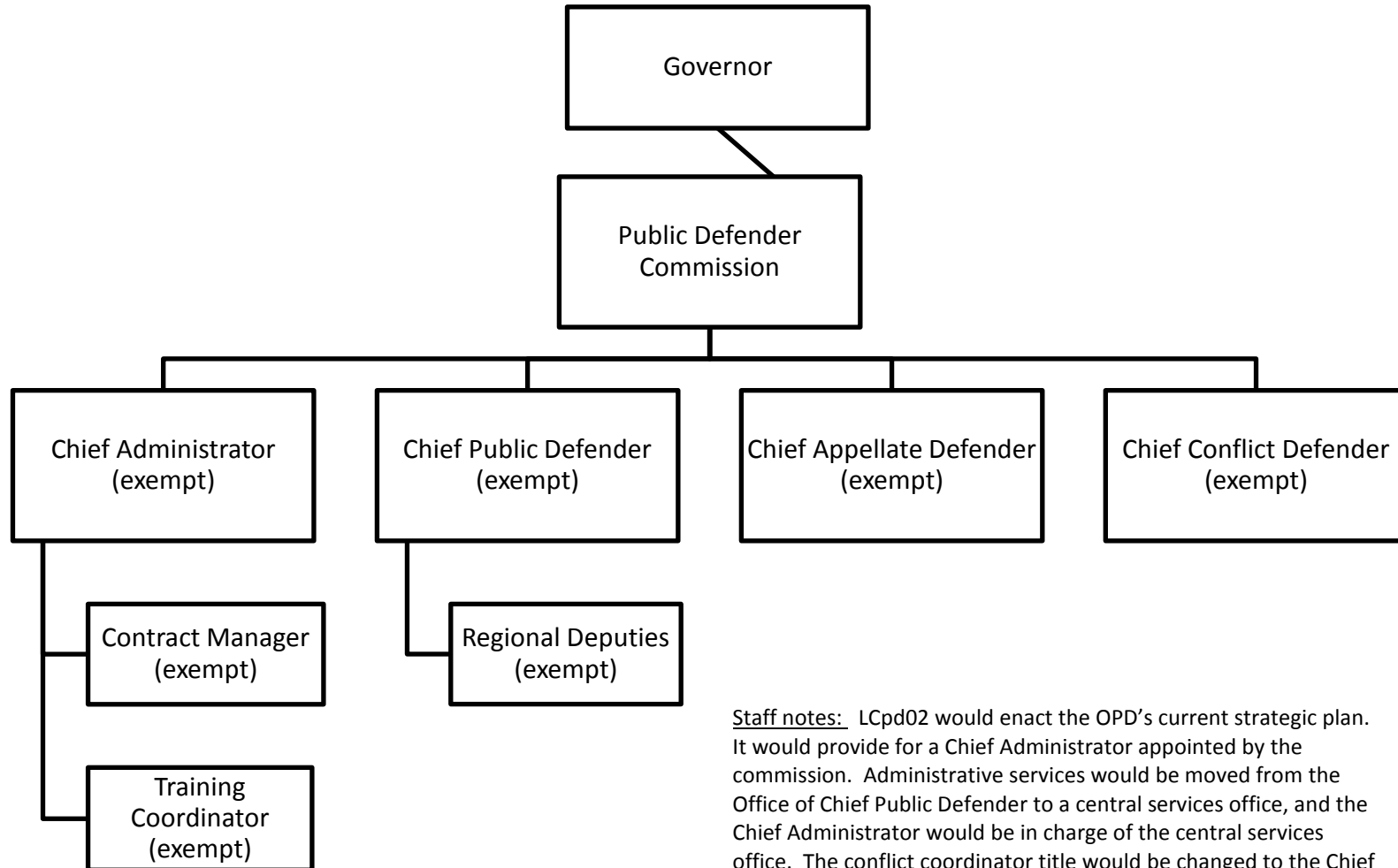
Staff notes: LCpd1a would provide for a director appointed by the governor, make the commission advisory, move central administrative services to a separate division, and change the hiring authority for the central services administrator to the director. The OPD director would hire the three chief defenders instead of the commission. And, the central services administrator, contract manager, and training coordinator would become classified positions. The contract coordinator title would be changed to Chief Conflict Defender and the position would become exempt.

Chart 1b – LCpd1b (Haynes motion- subsequent instructions for this second bill)  
Appointment/Hiring Structure  
Public Defender System



Staff notes: LCpd1b is the same as LCpd1a, except the OPD agency head would be appointed by the Director of the Department of Administration.

Chart 2 - LCpd02 (Holden motion)  
Appointment/Hiring Structure  
Public Defender System



Staff notes: LCpd02 would enact the OPD's current strategic plan. It would provide for a Chief Administrator appointed by the commission. Administrative services would be moved from the Office of Chief Public Defender to a central services office, and the Chief Administrator would be in charge of the central services office. The conflict coordinator title would be changed to the Chief Conflict Defender and would become an exempt position. The Chief Administrator, contract manager, and training coordinator would remain exempt.

**LCpd02 - Section-by-Section Analysis  
Chief Administrator Appointed by Commission  
(Commission's Strategic Plan)**

Section No.	Catchline	Current Law	Under LCpd02	Comments
1	2-18-103. Officers and employees excepted.	<p>Under current law, the following positions are exempt from the state classification and pay plan:</p> <ul style="list-style-type: none"> <li>• chief public defender</li> <li>• deputy defenders</li> <li>• appellate defender</li> <li>• administrative manager</li> <li>• chief contract manager</li> <li>• training program coordinator</li> </ul> <p>The following position is not exempt:</p> <ul style="list-style-type: none"> <li>• chief conflict defender</li> </ul>	<p>The following position is added as exempt:</p> <ul style="list-style-type: none"> <li>• chief conflict defender</li> </ul>	<p>LCpd1a and 1b would make the following positions subject to the classification and pay plan (no longer exempt):</p> <ul style="list-style-type: none"> <li>• central services administrator</li> <li>• contract manager</li> <li>• training program coordinator</li> </ul>
2 through 9	Multiple sections	These statues have internal references to the office of state public defender provided in 47-1-201, which is the office under the direction of the chief public defender.	The internal references to 47-1-201 are changed to the New Section 12 that establishes the Office of State Public Defender as the name of the overall agency run by the commission.	
10	47-1-103. Definitions.	Defines terms used in the Montana Public Defender Act. (Title 47, Chapter 1)	<p>Revisions include minor style changes and:</p> <ul style="list-style-type: none"> <li>• the term "office" will now mean the overall agency, not just the chief public defender's office</li> <li>• clarifies the "defender" means any defender under any of the offices</li> </ul>	
11	47-1-105. Commission -- duties --report-- rules.	This section currently describes the duties of the commission to supervise and direct the system, provide a biennial report, and adopt rules.	<p>Language is added about the chief administrator and chief conflict defender to provide that these positions are on par with the chief public defender and chief appellate defender.</p> <p>A reference to the "administrative director" is changed to be "chief administrator". See Section 13 in this bill.</p> <p>Language requiring reporting is stricken so it can be moved to a new consolidated section on reporting. See Section 16.</p> <p>Language about the conflicts office is stricken so provisions can be consolidated in the conflicts office statute - Sections 17 and 18.</p>	Similar to LCpd1a and 1b. Except that under this bill, the commission would be the head of the agency.



Section No.	Catchline	Current Law	Under LCpd02	Comments
12	NEW SECTION. Office of state public defender.	Currently, the Office of State Public Defender is the office run by the Chief Public Defender.	The Office of State Public Defender would refer to the entire agency run by the commission.	Under LCpd1a and 1b, the Office of State Public Defender is created in a new section under Title 2, Chapter 15 as headed by the director appointed by the governor (1a) or by the executive director appointed by the director of the Dept. of Administration (1b).
13	NEW SECTION. Office of chief administrator -- system headquarters -- functions -- payable expenses.	<p>Currently there is an administrative manager hired by the chief public defender.</p> <p>The Office of State Public Defender headed by the chief public defender is statutorily responsible for:</p> <ul style="list-style-type: none"> <li>- training</li> <li>- contracting</li> <li>- complaint process</li> <li>- eligibility screening</li> <li>- budgeting/accounting</li> <li>- IT</li> </ul>	<p>Establishes an office for central administrative services called the Office of Chief Administrator headed by a chief administrator appointed by the commission.</p> <p>The Office of Chief Administrator would administer the following:</p> <ul style="list-style-type: none"> <li>- training</li> <li>- contracting</li> <li>- complaint process</li> <li>- eligibility screening</li> <li>- budgeting/accounting</li> <li>- IT</li> </ul>	The changes are similar to LCpd1a and 1b, except those bills call the office the "central services office" and the administrator of that office would be hired by the director or the executive director rather than the commission. Also, the administrator of this office would be changed to a classified position (no longer exempt).
14	47-1-110. Public defender account.	This section establishes a special revenue account for the public defender system.	The revisions make it clear that the account is for the entire agency. Language about gifts, grants, and donations is inserted from another section that included overlapping language. <sup>5</sup>	Same clean up as provided for in LCpd1a and 1b.
15	47-1-111. Eligibility -- determination of indigence -- rules.	This section outlines the process that must be followed for eligibility determinations and motions to rescind eligibility. It requires the commission to adopt procedures and rules to implement the section. Currently, the office is headed by the chief public defender.	<p>Under the revisions, the Office of Chief Administrator would be in charge of administering the eligibility screening process for the entire agency, though regional offices would still handle the actual execution of this.</p> <p>In subsection (6)(e), "perform" is replace by "oversee" to clarify that defenders do not do the screening but are the oversight authority for the process and would still be filing the relevant motions in court.</p>	Similar to LCpd1a and 1b in that eligibility screening would be placed under the central services office as an administrative function for the entire agency.

Section No.	Catchline	Current Law	Under LCpd02	Comments
16	NEW SECTION. Reports.	Reporting requirements under current law are outlined in two different sections: 47-1-105, which outlines the duties of the commission, and 47-1-201, which outlines the duties of the office of public defender.	This new section consolidates the reporting requirements into one section that would be codified in the general provisions part of the chapter (Part 1). Minor technical changes are made to the language concerning the reports. The director would be responsible for providing the required reports for the entire agency.	No substantive changes are made to the reporting requirements. The same changes are made in LCpd1a and 1b.
17	47-1-118. Conflicts of interest -- <u>office of chief conflict defender</u> .	This section currently says the commission shall establish a conflicts office to contract for attorneys to handle cases when there is a conflict of interest. The conflicts manager is appointed by the commission. The statute does not exempt this position from the statewide classification and pay plan.	Revises the section to provide for the title "chief conflict defender" and provides that this person would be appointed by the director, not the commission. Makes the position exempt from the state classification and pay plan so that it is on par with the chief public defender and chief appellate defender positions. Authorizes conflict defender services to be provided by agency staff and not just contracted for.	LCpd1a and 1b makes similar changes but provides for an overall agency head that would hire the chief conflict defender (rather than the commission).
18	NEW SECTION. Chief conflict defender duties.	Currently, the conflict office and duties of the conflict manager is contained in one section 47-1-118.	This bill sets up a structure for the chief public defender office, appellate defender office, and conflict office that provides one section establishing the office and a separate section outlining the duties for the chief of the office. The duties listed are also listed for the chief public defender and the chief appellate defender, and articulate what is in the commission's strategic plan.	LCpd1a and 1b do not follow the same approach because those two bills do not add the list of duties that are articulated in this bill for each of the chiefs pursuant to the commission's strategic plan.
19	47-1-201. Office of <del>state</del> <u>chief public defender</u> -- personnel -- compensation -- expenses -- <del>reports</del> .	This section is the current law that establishes the Office of State Public Defender. As originally envisioned, this office was the overall office for the entire agency and the chief public defender was the head of the agency. However, revisions to the original act have established co-equal offices - the conflicts office and the office of appellate defender.	The revisions clean up and streamline the statutory language to clearly provide that this statute is not about the overall agency. But is about the Office of Chief Public Defender headed by the chief public defender.  The revisions strike all of the centralized services functions so that they may be placed in a new Office of Chief Administrator. (See New Section 13).	Similar to the changes made in LCpd1a and 1b, except LCpd1a and 1b provide that the chief public defender would be appointed by the agency director rather than the commission.

Section No.	Catchline	Current Law	Under LCpd02	Comments
20	47-1-202. Chief public defender <del>---</del> duties.	This section outlines the current duties of the chief public defender, which initially were intended to be similar to an agency executive director. However, subsequent revisions to the Public Defender Act made the conflict office and added the appellate defender office as separate co-equal offices.	Revisions strike the duties that would now reside with the chief administrator and adds language that is similarly added to the chief appellate and chief conflict defender duties, as reflected in the commission's strategic plan.	LCpd1a and 1b do not add the list of duties that are reflected in the commission's strategic plan.
21	47-1-205. Office of <u>chief appellate defender</u> -- <u>personnel</u> .	Establishes a chief appellate defender office located in Helena, with the chief hired and supervised by the commission.	Revises the section to be consistent with the way the chief public defender and chief conflict defender offices are provided for in statute.	LCpd1a and 1b make the chief appellate defender a position hired by the director or executive director rather than the commission.
22	NEW SECTION. Chief appellate defender duties.	Currently, the chief appellate defender's duties are articulated in 47-1-205.	This new section follows the same structure as is used for the chief public defender and chief conflict defender by listing the duties reflected in the commission's strategic plan.	LCpd1a and 1b do not create a new section to list the duties of the chief appellate defender, so those duties remain in 47-1-205.
23	47-1-210. Training program -- coordinator.	The training coordinator is currently a position under the chief public defender's supervision. However, current law also provides that this training support be provided for all defenders (those under the conflict defender office and the appellate defender office). The position of training coordinator is currently exempted from the state classification and pay plan.	The revisions move the training coordinator position to the Office of Chief Administrator. The position would remain exempt.	LCpd1a and 1b also move this training coordinator to a central service office, but the position would no longer be exempt.
24	47-1-216. Contracted services <del>==</del> rules.	<p>Under current law, the commission establishes the contracting program and standards and hires the "chief contract manager", which is an exempt position.</p> <p>A contract may not be awarded without approval of the commission. But, the chief public defender, the deputy public defenders, and the chief appellate defender are tasked to each provide for contract oversight and enforcement.</p> <p>Also, the commission sets the compensation of the contracted personnel and "shall implement rules requiring evaluation of every contract attorney".</p>	<p>Under this bill, the chief administrator would establish the policies governing the contracting program.</p> <p>The chief public defender, chief appellate defender, and chief conflict defender would still have a responsibility to supervise the contract personnel working for them, but not to administer the contracting program itself.</p> <p>The contract manager would remain an exempt position.</p>	LCpd1a and 1b make similar changes by specifying that contracting is administratively handled by the central services office, but the contract manager position would become a classified position.

Section No.	Catchline	Current Law	Under LCpd02	Comments
25 through 34	Multiple sections	Multiple current statutes have an internal reference to the office of state public defender established in 47-1-201, which is the office supervised by the chief public defender.	The internal reference to 47-1-201 is changed to the New Section 12, which establishes the Office of State Public Defender as the overall agency under the commission.	These changes are consistent with the typical way executive branch agencies referenced in other MCA sections.
35	Codification instruction -- instructions to code commissioner.	The current organization of statutes in the Montana Public Defender Act is: Part 1 - General Provisions Part 2 - Public Defender Services	The codification instruction section is a standard administrative section that provides instructions about where in the MCA the new sections are to codified and how to reorganize the statutes that make up the Montana Public Defender Act to conform to the changes made in the bill.  The statutory structure would be:  <b>Title 47, Chapter 1 - Montana Public Defender Act</b> Part 1 - General Provisions Part 2 - Office of Chief Public Defender Part 3 - Office of Appellate Defender Part 4 - Office of Chief Conflict Defender	LCpd1a and 1b follow a similar statutory structure.
36	New Section 39. Contingent voidness.	The current budget for the Office of State Public Defender is based on a one-time-only appropriation.	This section voids the bill if the revisions in this bill are not accounted for in the state budget.	
No effective date section	N/A	N/A	N/A	Without a specified effective date, the bill would be effective on Oct. 1, 2017.  This is a starting point for further discussion.  An option is to make the bill effective on July 1, 2017, which would coincide with the start of the fiscal year.

**LCpd1a - Section-by-Section Analysis**  
**Office of State Public Defender Under a Governor-Appointed Director**

Section No.	Catchline	Current Law	Under LCpd1a	Comments
1	2-15-104. Structure of executive branch.	Montana's constitution allows for up to 20 departments. Currently, we have 16 departments as listed in this section.	<p>This bill effectively adds an 17th department-level agency - the Office of State Public Defender.</p> <p>Revisions provide an exception to the "division" structure, so that the term "office" may still be used.</p> <p>Staff note: Retaining "office" seems more efficient and appropriate than specifying that this agency is a "Department of Public Defender". Also, staff chose not to change the designations of the subordinate offices to "divisions".</p>	<p>An agency head appointed by the governor is typically a member of the governor's cabinet and has all the powers of a department director. These powers are outlined in other MCA sections so that they do not have to be repeated for each agency.</p> <p>Without the exception to the division structure, the bill would need to be revised to rename the public defender, appellate defender, and conflict offices to divisions.</p>
2	New Section 2. Office of state public defender - head.	The Office of State Public Defender is currently under a commission administratively attached to the Department of Administration.	The New Section 2 uses standard language to establish the Office of State Public Defender with a director appointed by the governor.	
3	2-15-1028. Public defender <u>advisory</u> commission.	The public defender system is currently governed by the commission. The commission is appointed by the governor.	<p>This bill makes the commission advisory to the director and:</p> <ul style="list-style-type: none"> <li>• strikes language concerning the commission's budgetary duties and certain restrictions on the commission's hiring of staff.</li> <li>• requires that the commission meet quarterly.</li> </ul>	The requirement to meet quarterly is offered by staff as a discussion item. This is typical language used for some other advisory councils to avoid a scenario where the council is rarely consulted. The director would be able to call special meetings as needed.

Section No.	Catchline	Current Law	Under LCpd1a	Comments
4	2-18-103. Officers and employees excepted.	<p>Under current law, the following positions are exempt from the state classification and pay plan:</p> <ul style="list-style-type: none"> <li>• chief public defender</li> <li>• deputy defenders</li> <li>• appellate defender</li> <li>• administrative manager</li> <li>• chief contract manager</li> <li>• training program coordinator</li> </ul> <p>The following position is not exempt:</p> <ul style="list-style-type: none"> <li>• conflicts manager</li> </ul>	<p>The following positions would remain exempt:</p> <ul style="list-style-type: none"> <li>• chief public defender</li> <li>• appellate defender (renamed chief appellate defender)</li> <li>• deputy defenders</li> </ul> <p>The following position is added as exempt:</p> <ul style="list-style-type: none"> <li>• conflicts manager (renamed chief conflict defender)</li> </ul> <p>The following positions would no longer be exempt:</p> <ul style="list-style-type: none"> <li>• administrative manager (renamed administrator)</li> <li>• contract manager</li> <li>• training coordinator</li> </ul>	<p>Staff offers this structure as a starting point for discussion. (See also the organizational chart packet.)</p> <p>Exemption is appropriate when there are very few similar jobs that may be compared to the position and when flexibility is needed in setting compensation rates in order to recruit and retain.</p> <p>Certain positions are renamed to be consistent with the structure provided for in this bill.</p>
5 through 12	Multiple sections	These statutes have internal references to the office of state public defender provided in 47-1-201, which is the office under the direction of the chief public defender.	The internal references to 47-1-201 are changed to the New Section 2 that establishes the Office of State Public Defender headed by a director appointed by the governor.	The changes reflect the typical internal reference structure used to refer to other executive branch agencies.
13	47-1-103. Definitions.	Defines terms used in the Montana Public Defender Act. (Title 47, Chapter 1)	<p>Revisions include:</p> <ul style="list-style-type: none"> <li>• "advisory" is added to the definition for "commission"</li> <li>• "director" is a new term and definition</li> <li>• the term "office" will now mean the overall agency, not just the chief public defender's office</li> </ul>	Changes follow typical definition structure.
14	47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense.	This section establishes the statewide public defender system, provides that the commission administers the system, and sets forth the scope of public defender services.	Revisions provide that the director appointed by the governor administers the system rather than the commission.	No changes are made with respect to the overall scope of services outlined.

Section No.	Catchline	Current Law	Under LCpd1a	Comments
15	47-1-105. <del>Commission Director</del> -- duties -- <del>report</del> -- rules.	This section currently describes the duties of the commission to supervise and direct the system, provide a biennial report, and adopt rules.	<p>The bill would provide that the director appointed by the governor would supervise and direct the system in consultation with the advisory commission.</p> <p>Language is added about the chief conflict defender to clarify that this position is appointed by the director and is on par with the chief public defender and chief appellate defender.</p> <p>A reference to the "administrative director" is changed to be "administrator of the central services office". See Section 19 in this bill.</p> <p>Language requiring reporting is stricken so it can be moved to a new consolidated section on reporting. See Section 20.</p> <p>Language about the conflicts office is stricken so it can be moved to the section about the conflicts office. See Section 18.</p>	Similar clean up is drafted into LCpd02, which would enact the commission's strategic plan, except LCpd02 keeps the commission as the head of the agency.
16	47-1-110. Public defender account.	This section establishes a special revenue account for the public defender system.	The revisions make it clear that the account is for the entire agency. Language about gifts, grants, and donations is inserted from another section that included overlapping language.	These are cleanup revisions. Nothing substantive. The same cleanup is provided in LCpd02.
17	47-1-111. Eligibility -- determination of indigence -- rules.	This section outlines the process that must be followed for eligibility determinations and motions to rescind eligibility. It requires the commission to adopt procedures and rules to implement the section. Currently, the chief public defender heads this process with the assistance of the administrative manager.	<p>Under the revisions, the administrative director would become the administrator of the central services office and be in charge of administering the eligibility screening process for the entire agency.</p> <p>In subsection (6)(e), the word "perform" is stricken before eligibility screening because the public defenders do not do the actual screening, this is handled by the administrative staff. However, the defender has to file the motions in court and so is the person that oversees the process.</p>	<p>Other Task Force bill drafts (LCpd03, 04, and 05) offer other approaches to oversight of the eligibility screening process. This bill keeps eligibility determination within OPD, but moves it to the central services office. Without this change eligibility would continue to be under the chief public defender's office.</p> <p>Similar changes are made in LCpd02, except that the administrator's title would be chief administrator and the office would be called the Office of Chief Administrator instead of the Central Services Office. And. the chief administrator would be appointed by the commission rather than the governor.</p>

Section No.	Catchline	Current Law	Under LCpd1a	Comments
18	47-1-118. Conflicts of interest -- <u>chief conflict defender office.</u>	This section currently provides that the commission shall establish a conflicts office to contract for attorneys to handle cases when there is a conflict of interest. The conflicts manager is appointed by the commission. The statute does not exempt this position from the statewide classification and pay plan.	<ul style="list-style-type: none"> <li>• Provides for the title "chief conflict defender" who would be appointed by the director, not the commission.</li> <li>• The position would be exempt from the state classification and pay plan so that it is on par with the chief public defender and chief appellate defender positions.</li> <li>• Would allow for the hiring of staff for the conflict office so that all conflict services do not have to be provided for by contract.</li> </ul>	<p>The revisions are consistent with the OPD's current organizational structure.</p> <p>Similar revisions are made in LCpd02, except:</p> <ul style="list-style-type: none"> <li>• the commission would retain appointment authority over the position.</li> <li>• LCpd02 adds a new section that lists the duties for the chief conflict defender, which is also done for the other chiefs to reflect the OPD's strategic plan.</li> </ul>
19	New Section 19. Central services office -- duties -- department of administration to support.	<p>The Montana Public Defender Act does not specify that there is a central services office, probably because the agency is attached to the Dept. of Admin. for administrative purposes.</p> <p>Currently, administrative duties are assigned to the "administrative director" who works for the chief public defender.</p> <p>Current law also provides that this "administrative director" position is exempt from the state classification and pay plan.</p> <p>Also, the statutory language concerning administrative functions such as budgeting, payment of expenses, indigence determinations, training, IT, etc., are peppered throughout various other statutory sections, but are under the overall supervision of the chief public defender.</p>	<p>This new section:</p> <ul style="list-style-type: none"> <li>• Consolidates the language in various current sections about administrative functions.</li> <li>• The current position of "administrative director" would be changed to "administrator" who would be hired by the director rather than the chief public defender and the position would no longer be exempt from the state classification and pay plan.</li> <li>• The office would administer the following: <ul style="list-style-type: none"> <li>- training</li> <li>- contracting</li> <li>- complaint process</li> <li>- eligibility screening</li> <li>- budgeting/accounting</li> <li>- IT</li> </ul> </li> <li>• The Department of Administration would still be required to provide central services support to the extent feasible and efficient. (This language is intended to facilitate the continuation of the current situation.)</li> <li>• Reporting requirements are stricken so that they can be moved to a consolidated section on reporting. See Section 20.</li> </ul>	<p>Similar changes are made in LCpd02 to reflect the commission's strategic plan, with the following exceptions - in LCpd02</p> <ul style="list-style-type: none"> <li>• The position title would be "Chief Administrator" and the office would be called the "Office of Chief Administrator".</li> <li>• The commission would appoint the Chief Administrator.</li> <li>• The Chief Administrator position would remain exempt from the classification and pay plan.</li> <li>• The commission would remain allocated to the Department of Administration for administrative purposes.</li> </ul>



Section No.	Catchline	Current Law	Under LCpd1a	Comments
20	New Section 20. Reports.	Reporting requirements under current law are outlined in two different sections: 47-1-105, which outlines the duties of the commission, and 47-1-201, which outlines the duties of the office of public defender.	This new section consolidates the reporting requirements into one section that would be codified in the general provisions part of the chapter (Part 1). Minor technical changes are made to the language concerning the reports. The director would be responsible for providing the required reports for the entire agency.	No substantive changes are made to the reporting requirements.  The same change is made in LCpd02.
21	47-1-201. Office of <del>state</del> chief public defender -- personnel -- compensation -- expenses -- <del>reports</del> .	This section is the current law that establishes the Office of State Public Defender. As originally envisioned, this office was the overall office for the entire agency and the chief public defender was the head of the agency. However, revisions to the original act have established co-equal offices - the conflicts office and the office of appellate defender.	This bill would clean up and streamline the statutory language to clearly provide that this statute is not about the overall agency, which is now headed by a director, but is about the Office of Chief Public Defender headed by the chief public defender.  The revisions also strike all of the centralized services functions so that they may be placed in a new central services office (See New Section 19) under an administrator hired by the director.	Similar revisions are made in LCpd02, except under that bill, the commission retains appointment authority over the chief public defender.
22	47-1-202. Chief public defender -- duties.	This section outlines the current duties of the chief public defender, who was originally to be the head of the entire agency. However, subsequent revisions to the Public Defender Act made the conflict office and the appellate defender office separate co-equal offices not supervised by the chief public defender, but supervised by the commission..	This bill would strike the duties that would now reside with the new director appointed by the governor or come under the central services office administrator. The chief public defender would be appointed by the director, not the commission.	The chief public defender would still be the direct supervisor for the deputy defenders and regional offices, but the regional strategic plan would be subject to the director's approval.  Similar revisions are made in LCpd02 except that the commission would retain appointment authority over the chief public defender.

Section No.	Catchline	Current Law	Under LCpd1a	Comments
23	47-1-205. Office of <u>chief</u> appellate defender -- chief appellate defender	This section establishes an appellate defender office located in Helena, with the chief appointed and supervised by the commission.	<p>Revisions strike references to the commission and insert the director.</p> <p>Also, the appellate defender would no longer confer with the chief public defender on budget matters, but would be working directly with the director on budget matters.</p> <p>The name of the office would be changed to the "Office of Chief Appellate Defender" to be consistent with the names of the other offices.</p>	<p>This bill and code commissioner instructions in Section 38 would provide a clear statutory structure to reflect that the appellate defender office is separate from and co-equal with the chief public defender office (Part 2) and the chief conflict defender office (Part 4).</p> <p>Similar changes are made in LCpd02, except the commission would retain appointment and supervisory authority and a new section would list duties as reflected in the commission's strategic plan.</p> <p>The Task Force requested this separation of offices under a motion by Rep. Dudik and so is also provided for in a stand-alone bill - LCpd09</p>
24	47-1-210. Training program -- coordinator.	<p>The training coordinator is currently a position under the chief public defender's supervision. Current law also provides that this training support be provided for all defenders (those under the conflict defender office and the appellate defender office).</p> <p>The position of training coordinator is currently exempted from the state classification and pay plan.</p>	<p>Under this bill:</p> <ul style="list-style-type: none"> <li>• the training coordinator position would be moved to the central services office</li> <li>• the training coordinator would be hired by the central services office administrator</li> <li>• the position would no longer be exempt</li> </ul>	<p>Section 38 in this bill instructs the code commissioner to renumber and move this section so that this section would be under general provisions in Part 1 of the chapter.</p> <p>Similar changes are made in LCpd02, except that the position would remain exempt from the classification and pay plan, so pay would be set by the Chief Administrator.</p>
25	47-1-215. Regional offices -- deputy public defenders -- office space.	This section outlines the regional office and deputy public defender structure that is under the chief public defender's supervision. Current language seems to empower the deputy public defenders to directly contract for services in their regions as needed.	The revisions require that the management of and contracting for the regional offices is subject to the approval of the chief public defender, who is in turn supervised by the director. However, the standard administrative functions of contracting would be the responsibility of the central services office.	LCpd02 does not amend this section, so current law would remain as is.

Section No.	Catchline	Current Law	Under LCpd1a	Comments
26	47-1-216. Contracted services.	<p>Under current law, the commission establishes the contracting program and standards and hires the "chief contract manager", which is an exempt position.</p> <p>A contract may not be awarded without approval of the commission. But, in other statutes, the chief public defender, the deputy public defenders, and the chief appellate defender are tasked to each provide for contract oversight and enforcement.</p> <p>Also, the commission sets the compensation of the contracted personnel and "shall implement rules requiring evaluation of every contract attorney".</p>	<p>Under the bill, the director, in consultation with the advisory commission, would establish the policies governing the contracting program.</p> <p>The contract manager would not be a "chief" but would come under the central services office supervised by the administrator who is hired by the director.</p> <p>The contract manager position would no longer be an exempt position.</p> <p>The chief public defender, appellate defender, and conflict defender would still have a responsibility to supervise the contract personnel working for them, but not to administer the contracting program itself.</p> <p>The director, through supervision of the contract manager, would set the compensation for the contracted personnel and "implement procedures for conducting an evaluation of every contract attorney".</p>	<p>The original vision of the contracting program was that it would be used for all conflict of interest cases and that it would be supervised by the "chief contract manager" who would be an attorney who would not carry a caseload. (In other words, the chief would be similar to the chief public defender). The contracting program was to be supervised by the chief public defender, who was envisioned as the head of the entire system.</p> <p>However, due to subsequent revisions to the Public Defender Act, the contracting program was expanded to meet a variety of needs as specified in the current section, not just conflict of interest cases. Also, a chief conflict defender office was established to fill the role initially contemplated for the chief contract manager.</p> <p>The revisions in this bill clean up awkward statutory language that resulted from this history and clarify that the contracting process is an administrative function that supports the entire agency.</p> <p>The actual contractors would still be supervised by the respective chief defenders.</p> <p>Section 38 of this bill instructs the code commissioner to renumber and move this section into the general provisions in Part 1 of the chapter.</p> <p>Similar revisions are made in LCpd02, except the contract manager would remain an exempt position and the commission rather than the director would still retain contract approval authority.</p>
27 through 36	Multiple sections	Multiple current statutes have an internal reference to the office of state public defender established in 47-1-201, which is the office supervised by the chief public defender.	The internal reference to 47-1-201 is changed to the New Section 2, which establishes the Office of State Public Defender headed by a director appointed by the governor.	These changes are consistent with the typical way executive branch agencies referenced in other MCA sections.

Section No.	Catchline	Current Law	Under LCpd1a	Comments
37	New Section 37. Transition -- appointment of director of office of state public defender.	N/A	This section is an administrative section specifying the timeframe for the governor's appointment of the director.	January 1, 2018, is a no-later-than deadline. An appointment could be made earlier. This date was chosen by staff as a starting point for further discussion.
38	Codification instruction -- instructions to code commissioner.	The current organization of statutes in the Montana Public Defender Act is: Part 1 - General Provisions Part 2 - Public Defender Services	The codification instruction section is a standard administrative section that provides instructions about where in the MCA the new sections are to codified and how to reorganize the statutes that make up the Montana Public Defender Act to conform to the changes made in the bill.	The codification instructions would set up the following statutory structure.  <b>Title 2, chapter 15 - Executive Branch</b> New Section 2 - Office of State Public Defender  <b>Title 47, chapter 1 - Montana Public Defender Act</b> Part 1 - General Provisions Part 2 - Office of Chief Public Defender Part 3 - Office of Chief Appellate Defender Part 4 - Office of Chief Conflict Defender
39	New Section 39. Contingent voidness.	The current budget for the Office of State Public Defender is based on a one-time-only appropriation.	This section voids the bill if the revisions in this bill are not accounted for in the state budget.	
No effective date section	N/A	N/A	N/A	Without a specified effective date, the bill would be effective on Oct. 1, 2017.  This is a starting point for further discussion.  An option is to make the bill effective on July 1, 2017, which would coincide with the start of the fiscal year.

**LCpd3 - Section-by-Section Analysis  
Determination of Indigence by the Court**

Section No.	Catchline	Current Law	Under LCpd1a	Comments
1	47-1-111(1). Eligibility -- determination of indigence -- rules.	<p>(1)(b) requires OPD to file a motion to rescind when applicant is later determined to be ineligible for public defender services</p> <p>(1)(c) applicant may request the court to hold a hearing on a motion to rescind. If requested the court shall hold a hearing</p> <p>(1)(d) if the applicant does not request a hearing on the motion to rescind, order is rescinded; refers to "motion to rescind"</p> <p>(1)(e) a court may grant a motion to rescind</p> <p>(1)(f) propriety of a assignment of counsel is subject to inquiry by the court</p>	<p>(1)(b) requires the presiding court to determine eligibility. If court later determines the applicant is no longer eligible, the court will schedule a hearing on the rescission of counsel prior to rescinding the appointment of OPD</p> <p>(1)(c) applicant may waive the hearing on the rescission of appointment</p> <p>(1)(d) if applicant waives the hearing on rescission, order is rescinded; eliminates references to "motion to rescind"</p> <p>(1)(e) eliminates references to "motion to rescind", rather the court may order rescission</p> <p>(1)(f) struck because the propriety of the assignment of counsel is determined by the court in the first place</p>	<p>Because the OPD is no longer doing determinations, the court will have the exclusive ability to modify a determination of eligibility. For due process a hearing must be held prior to a rescission in order for the applicant to defend his or her eligibility</p> <p>OPD will no longer file a motion to rescind, rather the court will order a hearing in the event it believes the applicant is no longer eligible.</p>

Section No.	Catchline	Current Law	Under LCpd1a	Comments
1	47-1-111(2). Eligibility -- determination of indigence -- rules.	(2)(b) the application, financial statement and affidavit must be on a form prescribed by the Public Defender Commission  (2)(d) OPD may not withhold provision of services for delay or failure to fill out an application	(2)(b) the application, financial statement and affidavit must be on a form prescribed by the Montana Supreme Court  (2)(d) OPD may not withhold provision of services for delay or failure to fill out an application <u>OR for a delay in eligibility determination</u>	Because the Court is now determining eligibility, it should be explicit that OPD will not delay services in the event there is a delay in an eligibility determination
1	47-1-111(5). Eligibility -- determination of indigence -- rules.	(5) Allows the court or OPD to modify the determination of eligibility if additional information becomes available or if the applicant's financial circumstances change.	(5) Allows the court to modify the determination	

Section No.	Catchline	Current Law	Under LCpd1a	Comments
1	47-1-111(6). Eligibility -- determination of indigence -- rules.	<p>(6) Requires the commission to establish procedures and adopt rules to determine eligibility. Commission procedures and rules:</p> <p>(a) must ensure that the eligibility determination process is fair and consistent statewide;</p> <p>(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;</p> <p>(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;</p> <p>(d) must avoid unnecessary duplication of processes; and</p> <p><i>(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may perform eligibility screening pursuant to this section.</i></p>	<p>(6) requires the presiding court to determine eligibility under subsection (3) and to implement procedures and rules adopted by the Montana Supreme Court.</p> <p>The rules and procedures adopted by the MSC must mirror (6)(a)-(d)</p> <p>eliminates (6)(e)</p>	
2/3	Effective Date/Applicability Date		Amendments to become effective July 1, 2017. OPD will continue with eligibility determinations for any applications received by June 30, 2017.	July 1. 2017.

**LCpd4 - Section-by-Section Analysis  
Determination of Indigence by DPHHS**

Section No.	Catchline	Current Law	Under LCpd1a	Comments
1	47-1-111(1). Eligibility -- determination of indigence -- rules.	<p>(1)(b) requires OPD to file a motion to rescind when applicant is later determined to be ineligible for public defender services</p> <p>(1)(c) applicant may request the court to hold a head on a motion to rescind. If requested the court shall hold a hearing</p> <p>(1)(d) if the applicant does not request a hearing on the motion to rescind, order is rescinded; refers to "motion to rescind"</p> <p>(1)(e) a court may grant a motion to rescind</p> <p>(1)(f) propriety of a assignment of counsel is subject to inquiry by the court</p>	<p>(1)(b) requires DPHHS to determine eligibility. If DPHHS later determines the applicant may no longer be eligible, DPHHS will notify the court and the court will schedule a hearing on the rescission of counsel prior to rescinding the appointment of OPD</p> <p>(1)(c) applicant may waive the hearing on the rescission of appointment</p> <p>(1)(d) if applicant waives the hearing on rescission, order is rescinded; eliminates references to "motion to rescind"</p> <p>(1)(e) eliminates references to "motion to rescind", rather the court may order rescission</p> <p>(1)(f) struck because the propriety of the assignment of counsel is determined by DPHHS in the first place</p>	<p>DPHHS will make the initial determination. Thereafter, the court has the exclusive ability to modify a determination of eligibility. For due process a hearing must be held prior to a rescission in order for the applicant to defend his or her eligibility</p> <p>OPD will no longer file a motion to rescind, rather the court will order a hearing in the event it is notified by DPHHS that it believes the applicant is no longer eligible.</p> <p>Representative from DPHHS shall attend the hearing to answer questions about the determination.</p>



Section No.	Catchline	Current Law	Under LCpd1a	Comments
1	47-1-111(2). Eligibility -- determination of indigence -- rules.	(2)(b) the application, financial statement and affidavit must be on a form prescribed by DPHHS  (2)(d) OPD may not withhold provision of services for delay or failure to fill out an application	(2)(b) the application, financial statement and affidavit must be on a form prescribed by DPHHS  (2)(d) OPD may not withhold provision of services for delay or failure to fill out an application <u>OR for a delay in eligibility determination</u>	Because DPHHS is now determining eligibility, it should be explicit that OPD will not delay services in the event there is a delay in an eligibility determination
1	47-1-111(5). Eligibility -- determination of indigence -- rules.	(5) Allows the court or OPD to modify the determination of eligibility if additional information becomes available or if the applicant's financial circumstances change.	(5) Allows the court to modify the determination made by DPHHS	

Section No.	Catchline	Current Law	Under LCpd1a	Comments
1	47-1-111(6). Eligibility -- determination of indigence -- rules.	<p>(6) Requires the commission to establish procedures and adopt rules to determine eligibility. Commission procedures and rules:</p> <p>(a) must ensure that the eligibility determination process is fair and consistent statewide;</p> <p>(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;</p> <p>(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;</p> <p>(d) must avoid unnecessary duplication of processes; and</p> <p><i>(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may perform eligibility screening pursuant to this section.</i></p>	<p>(6) requires DPHHS to determine eligibility under subsection (3) and to implement procedures and rules adopted by it.</p> <p>The rules and procedures adopted by DPHHS must mirror (6)(a)-(d)</p> <p>eliminates (6)(e)</p>	<p>Where is the DPHHS employee who makes determinations be located? Should it be at a central office or in each region?</p>
2/3	Effective Date/Applicability Date		<p>Amendments to become effective July 1, 2017. OPD will continue with eligibility determinations for any applications received by June 30, 2017.</p>	<p>July 1, 2017.</p>

**LCpd9 - Section-by-Section Analysis  
Separate OPD, OAD, and CCO**

Section No.	Catchline	Current Law	Under LCpd1a	Comments
1	47-1-201. Office of state public defender -- personnel -- compensation -- expenses -- reports.	Requires the chief public defender to shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, <u>including defense expenses paid for work performed by or for the office of appellate defender.</u>	Eliminates the requirement for the chief public defender to establish procedures for work performed by or for the office of appellate defender	
2	47-1-205. Office of appellate defender -- chief appellate defender.	Requires the chief appellate defender to confer with the chief public defender on budgetary issues	Eliminates the requirement for the chief appellate defender to confer on budgetary issues  Requires the chief appellate defender to establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid for work by or for the office of appellate defender.	
3	Effective date.			July 1, 2017

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

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

By Request of the Task Force on State Public Defender Operations

A Bill for an Act entitled: "An Act generally revising the state public defender system; providing for a director appointed by the governor to be the head of the office of state public defender; making the public defender commission advisory; providing that the director appoint and supervise the chief public defender, the chief appellate defender, and the chief conflict defender; revising exemptions from the state classification and pay plan; establishing a central services office under an administrator hired by the director; consolidating administrative functions into the central services office; requiring that the department of administration continue to provide administrative support; reorganizing the order of statutes in the Montana public defender act; providing for contingent voidness; and amending sections 2-15-104, 2-15-1028, 2-18-103, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-15-115, 46-17-203, 46-21-201, 47-1-103, 47-1-104, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, 47-1-216, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, and 72-5-408, MCA."

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

**Section 1.** Section 2-15-104, MCA, is amended to read:

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**"2-15-104. Structure of executive branch.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

- (a) department of administration;
- (b) department of military affairs;
- (c) department of revenue;
- (d) state board of education;
- (e) department of labor and industry;
- (f) department of commerce;
- (g) department of justice;
- (h) department of public health and human services;
- (i) department of corrections;
- (j) department of transportation;
- (k) department of public service regulation;
- (l) department of agriculture;
- (m) department of livestock;
- (n) department of natural resources and conservation;
- (o) department of fish, wildlife, and parks;
- (p) department of environmental quality;
- (q) office of state public defender.

(2) For its internal structure, each department, except as provided by law for the office of state public defender, shall adhere to the following standard terms:

- (a) The principal unit of a department is a division. Each

division is headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau is headed by a chief.

(c) The principal unit of a bureau is a section. Each section is headed by a supervisor."

{ *Internal References to 2-15-104:*  
x2-15-112 }

NEW SECTION. **Section 2. Office of state public defender - head.** There is an office of state public defender. The head of the office is a director appointed by the governor in accordance with 2-15-111.

**Section 3.** Section 2-15-1028, MCA, is amended to read:

**"2-15-1028. Public defender advisory commission.** (1) There is a public defender advisory commission that is administratively attached to the office of state public defender established in [section 2].

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile

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delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) ~~(a) The commission is allocated to the department of~~

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~~administration for administrative purposes only, as provided in 2-15-121, except that:~~

~~—— (i) the commission shall hire staff for the commission subject to subsection (6) (b) and the chief public defender shall hire separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and~~

~~—— (ii) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6) (a) (ii) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.~~

~~—— (b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-8-113(1) (a) and (1) (b) to maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year. The commission shall serve in an advisory capacity, as defined in 2-15-102, to the director of the office of state public defender.~~



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(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in 47-1-201, a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall meet quarterly, establish procedures for the conduct of its affairs, and elect a presiding officer from among its members. The director of the office of state public defender may call special meetings of the commission as needed."

{ *Internal References to 2-15-1028:*

*a47-1-103 a47-1-202 }*

**Section 4.** Section 2-18-103, MCA, is amended to read:

**"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

- (1) elected officials;
- (2) county assessors and their chief deputies;
- (3) employees of the office of consumer counsel;
- (4) judges and employees of the judicial branch;

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(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch

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consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) the following positions in the office of state public defender established in [section 2]:

(a) the chief public defender appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and appointed as provided in 47-1-105;

(b) the employees in the positions listed deputy public defenders provided for in 47-1-201(3) (a), who are appointed by the chief public defender; and

~~(22)~~ (c) the chief appellate defender in the office of appellate defender appointed as provided in 47-1-105; and

(d) the chief conflict defender appointed as provided in 47-1-105."

{ *Internal References to 2-18-103:*

x2-18-101	x2-18-201	x2-18-301	x32-1-211
x44-4-101	a47-1-201	a47-1-201	a47-1-205 }

**Section 5.** Section 41-5-1413, MCA, is amended to read:

**"41-5-1413. Right to counsel -- assignment of counsel.** In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its

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representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

{*Internal References to 41-5-1413:*

*x41-5-1607 x47-1-104 }*

**Section 6.** Section 42-2-405, MCA, is amended to read:

**"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption.** (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive

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parents under 42-7-101, subject to the limitations in 42-7-102.

(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel to represent the minor parent."

{ *Internal References to 42-2-405:*  
x42-4-301 }

**Section 7.** Section 46-4-304, MCA, is amended to read:

**"46-4-304. Conduct of investigative inquiry.** (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

{ *Internal References to 46-4-304:*  
x47-1-104 }

**Section 8.** Section 46-8-101, MCA, is amended to read:

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**"46-8-101. Right to counsel.** (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

{ *Internal References to 46-8-101:*  
x46-7-102 x47-1-104 }

**Section 9.** Section 46-8-104, MCA, is amended to read:

**"46-8-104. Assignment of counsel after trial -- definition.**

(1) Any court of record may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent any petitioner or appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or appellant is eligible for the appointment of counsel and:

(a) the district court determines that a hearing on the petition is required pursuant to 46-21-201;

(b) the ~~state public defender's office~~ office of state public defender requests appointment of a public defender and demonstrates good cause for the appointment;

(c) a statute specifically mandates the appointment of counsel;

(d) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution;  
or

(e) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have

access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing in English."

{*Internal References to 46-8-104: None.*}

**Section 10.** Section 46-15-115, MCA, is amended to read:

**"46-15-115. Subpoena for witness when defendant unable to pay.** (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined in 47-1-103, a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) If the defendant is represented by a public defender, as defined in 47-1-103, witness costs must be paid by the office of state public defender as provided for in ~~47-1-201~~ [section 2]."

{*Internal References to 46-15-115: None.*}

**Section 11.** Section 46-17-203, MCA, is amended to read:

**"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before or during trial, a plea of guilty must be accepted, and a plea of nolo contendere may be



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accepted with the consent of the court and the prosecutor, when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2) (b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

{*Internal References to 46-17-203:*

x3-5-303      x3-11-301      x46-17-311      x46-17-311 }

**Section 12.** Section 46-21-201, MCA, is amended to read:

**"46-21-201. Proceedings on petition.** (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be sent to the county attorney in the county in which the conviction took place and to the attorney general and order that a responsive pleading be filed. The attorney general shall determine whether the attorney general will respond to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of

the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice require, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel for a petitioner who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, Title 47, chapter 1.

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and wishes to file a petition under this chapter, the court will order the office of state public defender, ~~provided for in 47-1-201,~~ to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of assigned counsel in

proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) order the office of state public defender to assign counsel to represent the person pending a determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that the person either has accepted the offer of assigned counsel or is unable to competently decide whether to accept the offer of assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment of counsel.

(c) The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent but becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment of counsel as provided in subsection

(3) (b) (i) .

(e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

{ *Internal References to 46-21-201:*

x46-8-104 x46-8-104 x47-1-104 }

**Section 13.** Section 47-1-103, MCA, is amended to read:

**"47-1-103. Definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions

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apply:

(1) "Commission" means the public defender advisory commission established in 2-15-1028.

(2) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

(3) "Director" means the director of the office of state public defender appointed by the governor pursuant to [section 2].

(4) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

~~(4)~~(5) "Office" means the office of state public defender established in ~~47-1-201~~ [section 2].

~~(5)~~(6) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, including attorneys employed by or under contract with the office of appellate defender.

~~(6)~~(7) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to this chapter."

{*Internal References to 47-1-103:*

*x to all*

3-1-804	3-1-804	3-1-804	3-1-804
3-1-804	3-5-511	3-5-604	26-2-506
26-2-506	26-2-508	26-2-510	46-15-115
46-15-115	46-15-116	46-21-201	46-21-201 }

**Section 14.** Section 47-1-104, MCA, is amended to read:

**"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense.** (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the ~~commission and administered by the office~~ director.

(2) The ~~commission~~ director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The ~~commission~~ director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the ~~office or the office of appellate defender to assign counsel~~ assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The ~~commission~~ director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order ~~an office to assign counsel~~ assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence

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pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the



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assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding

listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

{ *Internal References to 47-1-104:*  
x47-1-215 }

**Section 15.** Section 47-1-105, MCA, is amended to read:

**"47-1-105. Commission Director -- duties -- report -- rules.** (1) The commission director shall supervise and direct the system in consultation with the commission. In addition to other duties assigned pursuant to this chapter, the commission director shall:

(1) (a) establish the qualifications, duties, and compensation of the chief public defender, ~~as~~ as provided for in 47-1-201, appoint ~~a~~ the chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender; ~~and~~

(b) establish the qualifications, duties, and compensation of the chief appellate defender, ~~as~~ provided for in 47-1-205, appoint ~~a~~ the chief appellate defender after considering qualified applicants, and regularly evaluate the performance of the chief appellate defender; and

(c) establish the qualifications, duties, and compensation of the chief conflict defender, provided for in 47-1-118, appoint the chief conflict defender after considering qualified applicants, and regularly evaluate the performance of the chief conflict defender;

(2) The director shall also establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

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- (e) practice standards;
- (f) performance criteria; and
- (g) performance evaluation protocols.

(3) The director shall also:

(a) review and approve the strategic plan and budget based on proposals submitted by the chief public defender, the administrative director administrator of the central services office established in [section 19], and the chief appellate defender, and the chief conflict defender;

~~(4)(b) review and approve any proposal to create permanent staff positions;~~

~~(5)(c) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

~~(6) establish policies and procedures for handling excess caseloads; and~~

~~(7)(d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system;~~

~~(8)(4) The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter; and~~

~~(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law~~

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~~and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:~~

~~—— (a) all policies or procedures in effect for the operation and administration of the statewide public defender system;~~

~~—— (b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;~~

~~—— (c) the number of deputy public defenders and the region supervised by each;~~

~~—— (d) the number of public defenders employed or contracted with in the system, identified by region;~~

~~—— (e) the number of attorney and nonattorney staff supervised by each deputy public defender;~~

~~—— (f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;~~

~~—— (g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;~~

~~—— (h) the annual caseload and workload of each public defender, except for the chief public defender, and of the office of appellate defender, identified by region, court, and case type;~~

~~—— (i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;~~

~~—— (j) the continuing education courses on criminal defense or~~

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~~criminal procedure attended by each public defender employed or  
contracted with in the system; and~~

~~—— (k) detailed expenditure data by court and case type."~~

{Internal References to 47-1-105: None.}

**Section 16.** Section 47-1-110, MCA, is amended to read:

**"47-1-110. Public defender account.** (1) There is a public defender account in the state special revenue fund to the credit of the office. The office may accept gifts, grants, and donations to carry out the purposes of this chapter. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; and

(d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally disabled person when the respondent is determined to have the financial ability to pay

for a public defender and a judge orders payment under 47-1-111."

{*Internal References to 47-1-110:*

a2-15-1028 x46-8-114 a47-1-201 }

**Section 17.** Section 47-1-111, MCA, is amended to read:

**"47-1-111. Eligibility -- determination of indigence -- rules.** (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded.

(c) (i) The applicant may request that the court conduct a hearing on the motion to rescind appointment. If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the

hearing.

(iv) The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

(vii) Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.

(d) If the applicant does not request a hearing on the motion to rescind appointment, does not appear at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment of counsel to be rescinded.

(e) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court grants the motion to rescind appointment and orders the



assignment of counsel to be rescinded.

(f) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the ~~commission~~ administrator of the central services office provided for in [section 19]. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply

with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The ~~commission~~ central services office administrator shall establish administrative procedures ~~and adopt~~ pursuant to rules adopted by the office of state public defender to implement this section. ~~Commission~~ The procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial

financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may ~~perform~~ oversee eligibility screening pursuant to this section."

{ *Internal References to 47-1-111:*

x41-3-425    x46-8-101    x47-1-103    x47-1-104  
x47-1-110    x53-20-112    x61-5-218 }

**Section 18.** Section 47-1-118, MCA, is amended to read:

**"47-1-118. Conflicts of interest -- chief conflict defender office.** (1) The ~~commission~~ director shall establish a conflicts office to ~~contract for attorneys to represent~~ to provide for the representation of indigent defendants in circumstances where, because of conflict of interest, the ~~public defender program~~ office of chief public defender or the office of appellate defender is unable to provide representation to a defendant.

(2) ~~The commission shall appoint a conflicts manager to oversee the office.~~ The position of chief conflict defender appointed by the director under 47-1-105 is exempt from the state classification and pay plan as provided in 2-18-103.

(3) ~~The conflicts manager~~ chief conflict defender reports

directly to the ~~commission~~ director and not to the chief public defender. The ~~conflicts manager~~ chief conflict defender may not handle cases.

(3) All attorneys ~~contracted for~~ handling conflict of interest cases shall report to the ~~conflicts manager~~ chief conflict defender.

{Internal References to 47-1-118: None.}

**NEW SECTION. Section 19. Central services office -- responsibilities -- department of administration to support.** (1)  
There is a central services office in the office of state public defender. The office must be located in Butte, Montana. The central services office is supervised by an administrator hired by the director.

(2) The central services office shall:

(a) manage eligibility determination under 47-1-111;

(b) manage contracting under 47-1-216;

(c) manage training pursuant to 47-1-210; and

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

(3) The central services office shall establish for the office of state public defender:

(a) standard procedures to handle complaints about public defender performance and work with the chief public defender, chief appellate defender, and chief conflict defender to ensure that public defenders, office personnel, and clients are aware of

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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;

(b) processes and procedures to ensure that employees and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported.

(c) budgeting, reporting, and related administrative requirements for the office of state public defender, including procedures for the approval, payment, recording, reporting, and management of all defense expenses.

(4) The following expenses are payable by the central services office if the expense is incurred at the request of a public defender and is authorized by the director:

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

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

(5) If the costs to be paid pursuant to this subsection (4) are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(6) The department of administration established in 2-15-1001 shall provide central services support to the extent feasible and efficient.

NEW SECTION. **Section 20. Reports.** (1) (a) The office shall

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submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the director shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226.

(b) The biennial report must cover the preceding biennium and include:

(i) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(ii) all standards of practice established or being considered by the director for the offices of chief public defender, appellate defender, and conflict coordinator;

(iii) the number of deputy public defenders and the region supervised by each;

(iv) the number of public defenders employed or contracted within the system, identified by region, if appropriate, and office;

(v) the number nonattorney staff employed or contracted within the system, identified by region, if appropriate, and office;

(vi) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(vii) the total number of persons represented by the office of chief public defender, the office of appellate defender, and the office of chief conflict coordinator identified by region, if appropriate, court, and case type;

(viii) the annual caseload and workload of each public defender identified by region, if appropriate, court, and case

type;

(ix) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(x) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(xi) detailed expenditure data by court and case type.

(2) (a) The office shall 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 governor and legislative fiscal analyst. The report must include unduplicated count data for all cases for which representation is paid for by the office, 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) The office shall report to the governor and 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.

(c) Reports under this subsection (2) must be provided in an electronic format.

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As of: September 2, 2016 (5:37pm)

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**Section 21.** Section 47-1-201, MCA, is amended to read:

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

(2) 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  
director. The position of chief public defender is exempt from  
the state classification and pay plan as provided in 2-18-103.  
The commission director 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) The chief public defender shall hire or contract for  
and supervise other personnel necessary to perform the function  
of the office of state chief public defender ~~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~~



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~~47-1-210;~~

~~——(iv) deputy public defenders, as provided in 47-1-215, who are exempt from the state 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 of chief public defender.~~

~~(4) Positions established pursuant to subsections (3) (b) and (3) (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) The following expenses are payable by the office if the expense is incurred at the request of a public defender:~~

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

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

~~——(6) 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) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.~~

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

~~——(9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section,~~

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~~including defense expenses paid for work performed by or for the office of appellate defender.~~

~~—— (10) (a) The office of public defender 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) The office of public defender 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."~~

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

*x to all*

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 22.** 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, and subject to approval by the director, 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) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to this chapter;~~

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

~~(d) establish processes and procedures to ensure that 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)(b) establish ensure that administrative management procedures for regional offices are consistent with the policies and procedures provided by the central services office established in [section 19];~~

~~(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~~

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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)~~(f) work with the training coordinator provided for in 47-1-201 to establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;

~~(i)~~(g) work with the central services office as provided for in [section 19] to ensure ~~establish~~ procedures to handle complaints about public defender performance are followed 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;

~~(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)~~(h) perform all other duties assigned by the ~~commission~~ director pursuant to this chapter.

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

{Internal References to 47-1-202:

x47-1-205    x47-1-215 }

**Section 23.** Section 47-1-205, MCA, is amended to read:

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

(2) (a) The ~~commission~~ director shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender. The chief appellate defender is appointed by and serves at the pleasure of the ~~commission~~ director. The ~~commission~~ director 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~~ Subject to approval by the director, the chief appellate defender shall:

(a) direct, manage, and supervise all public defender services provided by the office of chief appellate defender, ~~including budgeting, reporting, and related functions;~~

(b) ensure that when a court orders the office of chief appellate defender to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate

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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 office of chief appellate defender personnel ~~as authorized by the appellate defender~~;

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

(f) keep a record of appellate defender services and expenses of the office of chief appellate defender and submit records and reports to the ~~commission as requested through the office of state public defender~~ central services office provided in [section 19];

(g) implement standards and procedures established by the ~~commission~~ director for the office of chief appellate defender;

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

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

(j) perform all other duties assigned ~~to the chief~~

~~appellate defender~~ by the ~~commission~~ director."

{ Internal References to 47-1-205:  
x47-1-105 x47-1-201 }

**Section 24.** Section 47-1-210, MCA, is amended to read:

**"47-1-210. Training program -- coordinator.** (1) There is within the ~~office~~ central services office provided for in [section 19] a position of training coordinator for public defenders.

(2) The ~~chief public defender~~ administrator of the central services office shall ~~appoint~~ hire 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;

(d) provide assistance with research or briefs and provide other technical assistance requested by a public defender; and

~~(e) apply for and assist in the disbursement of federal funds or other grant money to aid the statewide public defender system; and~~

~~(f) perform other duties assigned by the chief public defender~~ central services office administrator."

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{ Internal References to 47-1-210:  
x47-1-201 }

**Section 25.** 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~~ Subject to approval by the chief public defender,  
each deputy public defender shall:

(a) 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~~ the assignment of 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) hire and supervise the work of regional office personnel as authorized by the chief public defender;

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

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the chief public defender as requested;



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(g) implement the standards and procedures established by the commission 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.

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

{*Internal References to 47-1-215:*

*x47-1-104 x47-1-201 }*

**Section 26.** Section 47-1-216, MCA, is amended to read:

**"47-1-216. Contracted services ~~---rules~~.** (1) ~~The commission director, in consultation with the commission,~~ shall establish standards for a statewide contracted services program ~~that ensures~~ to be managed by the administrator of the central services office. The director shall ensure that contracting for public defender and other 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) There is a contract manager position within the central services office provided for in [section 19]. ~~The chief~~ contract manager shall ~~oversee the~~ be hired by the administrator of the central services office and is responsible for administrative

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oversight of contracting program and may not maintain a client caseload for the office of chief public defender, the appellate defender office, and the chief conflict defender offices.

(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, 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, 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~~ director and without verifiable assurances that effective representation will be provided.

(5) Contracting for public defender, ~~and~~ appellate defender, and conflict 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

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

(6) The chief public defender, deputy public defenders, ~~and the chief appellate defender, and chief conflict defender~~ shall ~~provide for contract oversight and enforcement to ensure compliance with established standards~~ supervise the personnel contracted for their respective offices and ensure compliance with the standards established in the contract.

(7) The ~~commission~~ director 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 from an appointed client or from anyone for the benefit of the appointed client.

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

(10) The ~~commission~~ director shall ~~implement rules requiring~~ ensure that there are procedures for conducting an evaluation of every contract attorney on a biennial basis ~~by the chief contract manager~~ based on written evaluation criteria."

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

x18-4-132    x47-1-104    x47-1-205    x47-1-215 }

**Section 27.** Section 50-20-509, MCA, is amended to read:

**"50-20-509. Procedure for judicial waiver of consent. (1)**

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The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the requirement for consent is waived.

(4) If the court finds that the minor is competent to

decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian.

(5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both parents, a legal guardian, or a custodian; or

(b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition."

{*Internal References to 50-20-509:*

x47-1-104    x50-20-507 }

**Section 28.** Section 53-9-104, MCA, is amended to read:

**"53-9-104. (Temporary) Powers and duties of office.** (1) The office shall:

- (a) adopt rules to implement this part;
- (b) prescribe forms for applications for compensation;
- (c) determine all matters relating to claims for compensation; and
- (d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201~~ [section 2], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is

greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials



take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

**53-9-104. (Effective July 1, 2021) Powers and duties of office.** (1) The office shall:

- (a) adopt rules to implement this part;
- (b) prescribe forms for applications for compensation;
- (c) determine all matters relating to claims for compensation; and
- (d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201~~ [section 2], for costs associated with

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providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

{*Internal References to 53-9-104:*

x47-1-110 x50-16-530 x53-9-112 x53-9-112 }

**Section 29.** Section 53-20-112, MCA, is amended to read:

**"53-20-112. Procedural rights -- appointment of counsel.**

(1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent has the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional of the parents' or guardian's choice when a professional is reasonably available unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) Upon receipt of a petition for commitment,

recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel for the respondent. If the parents are indigent and the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."

{*Internal References to 53-20-112:*

x47-1-104      x47-1-104      x47-1-110 }

**Section 30.** Section 53-21-112, MCA, is amended to read:

**"53-21-112. Voluntary admission of minors.** (1)

Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

- (a) a facility;
- (b) a person licensed in this state to practice medicine;

or

- (c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

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(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel for the minor."

{*Internal References to 53-21-112:*

*x47-1-104 x53-21-113 }*

**Section 31.** Section 53-21-116, MCA, is amended to read:

**"53-21-116. Right to be present at hearing or trial -- assignment of counsel.** The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of

counsel is in the best interest of justice, the judge shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to immediately assign counsel to represent the person at either the hearing or the trial, or both."

{*Internal References to 53-21-116:*

x41-5-1504 \* x47-1-104 x53-20-112 \*  
x53-21-122 x53-21-140 }

**Section 32.** Section 53-21-122, MCA, is amended to read:

**"53-21-122. Petition for commitment -- filing of -- initial hearing on.** (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The respondent may at this appearance object to the finding of

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probable cause for filing the petition. The judge shall appoint a professional person and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in ~~47-1-201~~ [section 2], to

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immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

{*Internal References to 53-21-122:*

x53-21-114 \* x53-21-129 \*  
x53-21-140 x53-21-140 }

**Section 33.** Section 53-24-302, MCA, is amended to read:

**"53-24-302. Involuntary commitment of alcoholics -- rights.**

(1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has



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threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one

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licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period,

the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than

the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the

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court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

{*Internal References to 53-24-302:*  
x47-1-104 x53-24-207 \* }

**Section 34.** Section 72-5-225, MCA, is amended to read:

**"72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by attorney.** (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

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- (a) the minor, if the minor is 14 years of age or older;
- (b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and
- (c) any living parent of the minor.

(2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

{ *Internal References to 72-5-225:*  
x40-6-602 }

**Section 35.** Section 72-5-234, MCA, is amended to read:

**"72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney.** (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on

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the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

{Internal References to 72-5-234: None.}

**Section 36.** Section 72-5-408, MCA, is amended to read:

**"72-5-408. Procedure concerning hearing and order on original petition.** (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

(2) Upon receipt of a petition for appointment of a

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conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."



{Internal References to 72-5-408: None.}

NEW SECTION. **Section 37. Transition -- appointment of director of office of state public defender.** The governor shall appoint the director of the office of state public defender provided for in [section 2] by no later than January 1, 2018.

NEW SECTION. **Section 38. {standard} Codification instruction -- instructions to code commissioner.** (1) [Section 2] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [section 2].

(2) [Sections 19 and 20] are intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to [sections 19 and 20].

(3) The code commissioner is instructed to:

(a) renumber 2-15-1028 and include it with [section 2] as a section within a new part in Title 2, chapter 15, for the office of state public defender;

(b) renumber 47-1-210 so that it becomes a section under Title 47, chapter 1, part 1;

(c) renumber 47-1-216 so that it becomes a section under Title 47, chapter 1, part 1;

(d) establish a new part 3 in Title 47, chapter 1, and renumber 47-1-205 so that it becomes a section under the new part 3; and

(e) establish a new part 4 in Title 47, chapter 1, and

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renumber 47-1-118 so that it becomes a section under the new part 4.

NEW SECTION. **Section 39. Contingent voidness.** If funding for public defender services organized under a department director is not provided for in House Bill No. 2 or other appropriation bill, then [this act] is void.

- END -

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LCpd1b - Executive Director Appointed by the  
Director of the Department of Administration  
Based off of LCpd1a - Differences Highlighted

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

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

By Request of the Task Force on State Public Defender Operations

A Bill for an Act entitled: "An Act generally revising the statewide public defender system; making the public defender commission an advisory body; providing for an executive director appointed by the governor director of the department of administration to be the head of the office of state public defender; providing that the executive director appoint and supervise the chief public defender, the chief appellate defender, and the chief conflict defender; revising exemptions from the state classification and pay plan; establishing a central services office under an administrator hired by the executive director; consolidating administrative functions into the central services office; requiring that the department of administration to provide administrative support to the central services office; providing for contingent voidness; and amending sections 2-15-104, 2-15-1028, 2-18-103, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-15-115, 46-17-203, 46-21-201, 47-1-103, 47-1-104, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, 47-1-216, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, and 72-5-408, MCA."

Comment [SS1]: The Task Force could use this or another title for this position. Director was used in LCpd1a to be consistent with other appointed department directors and executive director is used here to distinguish this position from the governor-appointed director under LCpd1a. Another title is "administrator", which is a typical title of a division head appointed by a department head.

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

~~Section 1. Section 2-15-104, MCA, is amended to read:~~

**Comment [SS2]:** This section would not need to be amended because the OPD would be subordinate to the Dept. of Admin.

~~"2-15-104. Structure of executive branch. (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:~~

- ~~(a) department of administration;~~
- ~~(b) department of military affairs;~~
- ~~(c) department of revenue;~~
- ~~(d) state board of education;~~
- ~~(e) department of labor and industry;~~
- ~~(f) department of commerce;~~
- ~~(g) department of justice;~~
- ~~(h) department of public health and human services;~~
- ~~(i) department of corrections;~~
- ~~(j) department of transportation;~~
- ~~(k) department of public service regulation;~~
- ~~(l) department of agriculture;~~
- ~~(m) department of livestock;~~
- ~~(n) department of natural resources and conservation;~~
- ~~(o) department of fish, wildlife, and parks;~~
- ~~(p) department of environmental quality;~~

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~~(g) office of state public defender.~~  
~~(2) For its internal structure, each department, except as provided by law for the office of state public defender, shall adhere to the following standard terms:~~  
~~(a) The principal unit of a department is a division. Each division is headed by an administrator.~~  
~~(b) The principal unit of a division is a bureau. Each bureau is headed by a chief.~~  
~~(c) The principal unit of a bureau is a section. Each section is headed by a supervisor."~~  
~~{Internal References to 2-15-104.~~  
~~\*2-15-112 }~~

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**NEW SECTION. Section 2. Office of state public defender - head.** There is an office of state public defender. The head of the office is ~~a~~ **an executive director appointed by the governor in accordance with 2-15-111, director of the department of administration provided for in 2-15-1001.** ~~The office is allocated for administrative purposes only, as provided 2-15-121, to the Department of Administration.~~

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**Comment [SS3]:** The Commission (OPD) is already allocated to the Department of Admin. for administrative purposes. This just moves the language to a new section to make this relationship more clear.

**Section 3.** Section 2-15-1028 , MCA, is amended to read:

**"2-15-1028. Public defender advisory commission.** (1) There is a public defender advisory commission that is administratively attached allocated for administrative purposes to the office of state public defender established in [section 2].

**Comment [SS4]:** This is not the same as an allocation for administrative purposes under 2-15-121 because it is just an advisory council. But, it does mean that OPD must provide administrative support for meeting space, supplies, etc.

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(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides

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addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

~~(6) (a) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:~~

~~—— (i) the commission shall hire staff for the commission subject to subsection (6)(b) and the chief public defender shall hire separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and~~

~~—— (ii) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(a)(ii) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached~~

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~~agencies.~~

~~(b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-8-113(1)(a) and (1)(b) to maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year. The commission shall serve in an advisory capacity, as defined in 2-15-102, to the **executive** director of the office of state public defender.~~

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(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in 47-1-201, a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall meet quarterly, establish procedures for the conduct of its affairs, and elect a presiding officer from among its members. The **executive** director of the office of state public defender may call special meetings of the commission as needed."

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{Internal References to 2-15-1028:



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a47-1-103 a47-1-202 }

**Section 4.** Section 2-18-103 , MCA, is amended to read:

**"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

- (1) elected officials;
- (2) county assessors and their chief deputies;
- (3) employees of the office of consumer counsel;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;
- (11) four professional staff positions under the board of oil and gas conservation;

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- (12) assistant director for security of the Montana state lottery;
- (13) executive director and employees of the state compensation insurance fund;
- (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;
- (15) executive director of the Montana wheat and barley committee;
- (16) commissioner of banking and financial institutions;
- (17) training coordinator for county attorneys;
- (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
- (19) chief information officer in the department of administration;
- (20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) the following positions in the office of state public defender:

- (a) the executive director of the office of state public defender provided for in [section 2];
- (b) the chief public defender appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and appointed by the executive director of the office of state public defender as provided in 47-1-105;
- (bc) the employees in the positions listed deputy public

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Comment [SS5]: A director appointed by the governor is exempt under a different statute. Because the executive director would be appointed by the director of the Dept. of Admin., this amendment is necessary if the Task Force wants to make this position exempt.

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defenders provided for in 47-1-201(3)(a), who are appointed by the chief public defender; and

~~(22)(ed) the chief appellate defender in the office of appellate defender appointed by the executive director of the office of state public defender as provided in 47-1-105; and~~

(de) the chief conflict defender appointed by the executive director of the office of state public defender as provided in 47-1-105."

{Internal References to 2-18-103:

x2-18-101 x2-18-201 x2-18-301 x32-1-211

x44-4-101 a47-1-201 a47-1-201 a47-1-205 }

**Section 5.** Section 41-5-1413 , MCA, is amended to read:

**"41-5-1413. Right to counsel -- assignment of counsel.** In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more

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than 6 months may result from adjudication."

{*Internal References to 41-5-1413:*

x41-5-1607 x47-1-104 }

**Section 6.** Section 42-2-405 , MCA, is amended to read:

**"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption.** (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel to represent the minor parent."

{*Internal References to 42-2-405:*

x42-4-301 }

**Section 7.** Section 46-4-304 , MCA, is amended to read:

**"46-4-304. Conduct of investigative inquiry.** (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant

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to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

{*Internal References to 46-4-304:*

x47-1-104 }

**Section 8.** Section 46-8-101 , MCA, is amended to read:

**"46-8-101. Right to counsel.** (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign

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counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

{*Internal References to 46-8-101:*

x46-7-102 x47-1-104 }

**Section 9.** Section 46-8-104 , MCA, is amended to read:

**"46-8-104. Assignment of counsel after trial -- definition.**

(1) Any court of record may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent any petitioner or appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or appellant is eligible for the appointment of counsel and:

(a) the district court determines that a hearing on the

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petition is required pursuant to 46-21-201;

(b) the ~~state public defender's office~~ office of state public defender requests appointment of a public defender and demonstrates good cause for the appointment;

(c) a statute specifically mandates the appointment of counsel;

(d) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or

(e) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing in English."

{*Internal References to 46-8-104: None.*}

**Section 10.** Section 46-15-115 , MCA, is amended to read:

**"46-15-115. Subpoena for witness when defendant unable to pay.**

(1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the

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witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined in 47-1-103, a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) If the defendant is represented by a public defender, as defined in 47-1-103, witness costs must be paid by the office of state public defender as provided for in 47-1-201."

{*Internal References to 46-15-115: None.*}

**Section 11.** Section 46-17-203 , MCA, is amended to read:

**"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before or during trial, a plea of guilty must be accepted, and a plea of nolo contendere may be accepted with the consent of the court and the prosecutor, when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to



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ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

{*Internal References to 46-17-203:*

x3-5-303    x3-11-301    x46-17-311    x46-17-311 }

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**Section 12.** Section 46-21-201 , MCA, is amended to read:

**"46-21-201. Proceedings on petition.** (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be sent to the county attorney in the county in which the conviction took place and to the attorney general and order that a responsive pleading be filed. The attorney general shall determine whether the attorney general will respond to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing

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is required or if the interests of justice require, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel for a petitioner who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, Title 47, chapter 1.

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and wishes to file a petition under this chapter, the court will order the office of state public defender, ~~provided for in 47-1-201~~, to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) order the office of state public defender to assign counsel to represent the person pending a determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that the person either has accepted the offer of assigned counsel or is unable to competently decide whether to accept the offer of assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a

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hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment of counsel.

(c) The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent but becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment of counsel as provided in subsection (3)(b)(i).

(e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to

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reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

{Internal References to 46-21-201:

x46-8-104 x46-8-104 x47-1-104 }

**Section 13.** Section 47-1-103 , MCA, is amended to read:

**"47-1-103. Definitions.** As used in this chapter unless the context requires otherwise, the following definitions apply:

(1) "Commission" means the public defender advisory commission established in 2-15-1028.

(2) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

(3) "Executive Ddirector" means the executive director of the office of state public defender appointed by the governor-director of the department of administration as provided in [section 2].

(4) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

~~(4)~~(5) "Office" means the office of state public defender established in ~~47-1-201~~ [section 2].

~~(5)~~(6) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, including attorneys employed by or under contract with the office of appellate defender.

~~(6)~~(7) "Statewide public defender system", "state system", or

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"system" means the system of public defender services established pursuant to this chapter."

{Internal References to 47-1-103:

x to all

3-1-804	3-1-804	3-1-804	3-1-804
3-1-804	3-5-511	3-5-604	26-2-506
26-2-506	26-2-508	26-2-510	46-15-115
46-15-115	46-15-116	46-21-201	46-21-201 }

**Section 14.** Section 47-1-104 , MCA, is amended to read:

**"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense.** (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the ~~commission and administered by the office~~ the **executive** director.

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(2) The ~~commission~~ **executive** director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The ~~commission~~ **executive** director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

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(3) When a court orders the ~~office or the office of appellate defender to assign counsel~~ assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The ~~commission~~ **executive** director shall establish protocols to ensure that the offices make

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appropriate assignments in a timely manner.

(4) A court may order ~~an office to assign counsel~~ assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary

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commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the



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provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

{Internal References to 47-1-104:

x47-1-215 }

**Section 15.** Section 47-1-105 , MCA, is amended to read:

"**47-1-105. Commission Executive Director -- duties -- report -- rules.** (1) The ~~commission~~ executive director shall supervise and direct the system in consultation with the commission. In addition to other duties assigned pursuant to this chapter, the ~~commission~~

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executive director shall:

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~~(1)~~ (a) establish the qualifications, duties, and compensation of the chief public defender, ~~as~~ provided for in 47-1-201, appoint a the chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender; ~~and~~

(b) establish the qualifications, duties, and compensation of the chief appellate defender, ~~as~~ provided for in 47-1-205, appoint a the chief appellate defender after considering qualified applicants, and regularly evaluate the performance of the chief appellate defender; and

(c) establish the qualifications, duties, and compensation of the chief conflict defender, provided for in 47-1-118, appoint the chief conflict defender after considering qualified applicants, and regularly evaluate the performance of the chief conflict defender;

(2) The executive director shall also establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

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(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to

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ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) The **executive** director shall also:

(a) review and approve the strategic plan and budget proposals submitted by the chief public defender, the ~~administrative director~~ administrator of the central services office established in [section 19], ~~and~~ the chief appellate defender, and the chief conflict defender;

~~(4)(b) review and approve any proposal to create permanent staff positions;~~

~~(5)(c) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

~~(6) establish policies and procedures for handling excess caseloads; and~~

~~(7)(d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system.~~

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~~(8)(4) The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter; and~~

~~(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:~~

~~(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;~~

~~(b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;~~

~~(c) the number of deputy public defenders and the region supervised by each;~~

~~(d) the number of public defenders employed or contracted with in the system, identified by region;~~

~~(e) the number of attorney and nonattorney staff supervised by each deputy public defender;~~

~~(f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;~~

~~(g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;~~

~~(h) the annual caseload and workload of each public defender, except for the chief public defender, and of the office of appellate~~

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~~defender, identified by region, court, and case type;~~

~~—— (i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;~~

~~—— (j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and~~

~~—— (k) detailed expenditure data by court and case type."~~

{Internal References to 47-1-105: None.}

**Section 16.** Section 47-1-110 , MCA, is amended to read:

**"47-1-110. Public defender account.** (1) There is a public defender account in the state special revenue fund to the credit of the office. The office may accept gifts, grants, and donations to carry out the purposes of this chapter. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; and

(d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter

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5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally disabled person when the respondent is determined to have the financial ability to pay for a public defender and a judge orders payment under 47-1-111."

{*Internal References to 47-1-110:*

a2-15-1028 x46-8-114 a47-1-201 }

**Section 17.** Section 47-1-111 , MCA, is amended to read:

**"47-1-111. Eligibility -- determination of indigence -- rules.** (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded.

(c) (i) The applicant may request that the court conduct a hearing on the motion to rescind appointment. If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

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(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

(iv) The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

(vii) Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.

(d) If the applicant does not request a hearing on the motion to rescind appointment, does not appear at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment of counsel to be rescinded.

(e) A person for whom counsel is assigned is entitled to the

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full benefit of public defender services until the court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded.

(f) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the ~~commission~~ administrator of the central services office provided for in [section 19]. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application.



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However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The ~~commission~~ central services office administrator shall establish administrative procedures and adopt pursuant to rules adopted by the office of state public defender to implement this section. ~~Commission~~ The procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an

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applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. ~~A deputy public defender or individual public defender reviewing another public defender's case may perform eligibility screening pursuant to this section."~~

{Internal References to 47-1-111:

x41-3-425    x46-8-101    x47-1-103    x47-1-104

x47-1-110    x53-20-112    x61-5-218 }

**Section 18.** Section 47-1-118 , MCA, is amended to read:

**"47-1-118. Conflicts of interest -- chief conflict defender office.** (1) The ~~commission~~ **executive** director shall establish a conflicts office to contract for attorneys to represent indigent defendants in circumstances where, because of conflict of interest, the ~~public defender program~~ office of chief public defender or the office of appellate defender is unable to provide representation to a defendant.

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(2) ~~The commission shall appoint a conflicts manager to oversee the office.~~ The position of chief conflict defender appointed by the **executive** director under 47-1-105 is exempt from

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the state classification and pay plan as provided in 2-18-103.

(3) The ~~conflicts manager~~ chief conflict defender reports directly to the ~~commission~~ executive director and not to the chief public defender. The ~~conflicts manager~~ chief conflict defender may not handle cases.

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~~(3)~~(4) All attorneys contracted for conflict of interest cases shall report to the conflicts ~~manager~~ chief conflict defender."

{Internal References to 47-1-118: None.}

NEW SECTION. **Section 19. Central services office --**

**responsibilities -- department of administration to support. (1)**

There is a central services office under the office of state public defender, which is supervised by an administrator hired by the director.

(2) The central services office responsibilities include but are not limited to:

- (a) eligibility determination under 47-1-111;
- (b) administrative support for contracting under 47-1-216;
- (c) coordination of training pursuant to 47-1-210; and
- (d) actively seeking gifts, grants, and donations that may be

available through the federal government or other sources to help fund the system.

(3) The central services office shall establish for the office of state public defender:

- (a) standard procedures to handle complaints about public defender performance and work with the chief public defender, chief

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appellate defender, and chief conflict defender 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;

(b) processes and procedures to ensure that employees and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported.

(c) procedures to provide for the.

(4) (a) The central services office shall also establish the budgeting, reporting, and related administrative requirements for the office of state public defender, including procedures for the approval, payment, recording, reporting, and management of all defense expenses.

(b) The following expenses are payable by the central services office if the expense is incurred at the request of a public defender:

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

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

(c) If the costs to be paid pursuant to this subsection (4) are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(5) The department of administration established in 2-15-

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1001 shall provide central services support to the extent feasible and efficient.

NEW SECTION. **Section 20. Reports.** (1) (a) The office shall submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the director shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. (b)

The biennial report must cover the preceding biennium and include:

(i) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(ii) all standards of practice established or being considered by the director for the offices of chief public defender, appellate defender, and conflict coordinator;

(iii) the number of deputy public defenders and the region supervised by each;

(iv) the number of public defenders employed or contracted within the system, identified by region, if appropriate, and office;

(v) the number nonattorney staff employed or contracted within the system, identified by region, if appropriate, and office;

(vi) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(vii) the total number of persons represented by the office of chief public defender, the office of appellate defender, and the office of chief conflict coordinator identified by region, if appropriate, court, and case type;

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(viii) the annual caseload and workload of each public defender identified by region, if appropriate, court, and case type;

(ix) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(x) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(xi) detailed expenditure data by court and case type.

(2) (a) The office shall 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 governor and legislative fiscal analyst. The report must include unduplicated count data for all cases for which representation is paid for by the office, 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) The office shall report to the governor and 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.

(c) Reports under this subsection (2) must be provided in an electronic format.

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**Section 21.** Section 47-1-201 , MCA, is amended to read:

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

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(2) 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~~ executive director.

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The position of chief public defender is exempt from the state classification and pay plan as provided in 2-18-103. The ~~commission~~ executive director 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.

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(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office of state chief public defender ~~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~~

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~~47-1-210:~~

~~—— (iv) deputy public defenders, as provided in 47-1-215, who are exempt from the state 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 of chief public defender.~~

~~(4) Positions established pursuant to subsections (3)(b) and (3)(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) The following expenses are payable by the office if the expense is incurred at the request of a public defender:~~

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

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

~~—— (6) 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) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.~~

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

~~—— (9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and~~



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~~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) (a) The office of public defender 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) The office of public defender 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."~~

{Internal References to 47-1-201:

x to all

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

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72-5-408 }

**Section 22.** 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, and subject to approval by the executive director, the chief public defender shall:

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

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

~~(d) establish processes and procedures to ensure that 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)~~(b) establish ensure that administrative management procedures for regional offices are consistent with the policies and procedures provided by the central services office established in [section 19];

~~(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

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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)~~(f) work with the training coordinator provided for in 47-1-201 to establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;

~~(i)~~(g) work with the central services office as provided for in [section 19] to ensure ~~establish~~ procedures to handle complaints about public defender performance are followed 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;

~~(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)~~(h) perform all other duties assigned by the ~~commission~~ **executive** director pursuant to this chapter.

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

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caseload."

{Internal References to 47-1-202:

x47-1-205 x47-1-215 }

**Section 23.** 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~~ **executive** director shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender. The chief appellate defender is appointed by and serves at the pleasure of the ~~commission~~ **executive** director. The ~~commission~~ **executive** director 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 Subject to approval by the **executive** director, the chief appellate defender shall:

(a) direct, manage, and supervise all public defender services provided by the office of appellate defender, ~~including budgeting, reporting, and related functions;~~

(b) ensure that when a court orders the office of appellate

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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 office of appellate defender 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~~ executive director according to the strategic plan for the delivery of public defender services;

(f) 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~~ central services office provided in [section 19];

(g) implement standards and procedures established by the ~~commission~~ executive director for the office of appellate defender;

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

(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~~ to the ~~chief public defender~~ executive director; and

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

{Internal References to 47-1-205:

x47-1-105 x47-1-201 }

**Section 24.** Section 47-1-210 , MCA, is amended to read:

**"47-1-210. Training program -- coordinator.** (1) There is within the ~~office~~ central services office provided for in [section 19] a position of training coordinator for public defenders.

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

(3) The training coordinator shall:

(a) coordinate training ~~to~~ for 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;

(d) 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 the statewide public defender system; and

(f) perform other duties assigned by the ~~chief public defender~~

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executive director."

{Internal References to 47-1-210:

x47-1-201 }

**Section 25.** 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~~ Subject to approval by the chief public defender, each deputy public defender shall:

(a) 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~~ the assignment of 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) hire and supervise the work of regional office personnel as authorized by the chief public defender;

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

(f) keep a record of public defender and associated services

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and expenses in the region and submit the records to the chief public defender as requested;

(g) implement the standards and procedures established by the commission 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.

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

{Internal References to 47-1-215:

x47-1-104 x47-1-201 }

**Section 26.** Section 47-1-216 , MCA, is amended to read:

**"47-1-216. Contracted services ~~— rules.~~** (1) The ~~commission~~ director, in consultation with the commission, shall establish standards for a statewide contracted services program that ensures that contracting for public defender and other 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) There is a contract manager position within the central services office provided for in [section 19]. The ~~chief~~ contract manager shall ~~oversee the~~ be hired by the administrator of the central



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services office and is responsible for administrative oversight of contracting program and may not maintain a client caseload for the office of chief public defender, the appellate defender office, and the chief conflict defender office.

~~(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, 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, 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;

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(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~~ **executive** director and without verifiable assurances that effective representation will be provided.

(5) Contracting for public defender, ~~and~~ appellate defender, and conflict 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;

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(g) a process for conflict resolution; and

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

(6) ~~The~~ With the assistance and support of the contract manager, the chief public defender, deputy public defenders, and the chief appellate defender, and chief conflict defender shall provide for contract oversight and enforcement to ensure compliance with established standards supervise the personnel contracted for their respective offices and ensure compliance with the standards established in the contract.

(7) The ~~commission~~ executive director 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 from an appointed client or from anyone for the benefit of the appointed client.

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

(10) The ~~commission~~ the contract manager shall ~~implement rules requiring~~ ensure there are procedures for conducting an evaluation of every contract attorney on a biennial basis by the ~~chief~~ contract manager based on written evaluation criteria."

{Internal References to 47-1-216:

x18-4-132    x47-1-104    x47-1-205    x47-1-215 }

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**Section 27.** Section 50-20-509 , MCA, is amended to read:

**"50-20-509. Procedure for judicial waiver of consent.** (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and

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the requirement for consent is waived.

(4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian.

(5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both parents, a legal guardian, or a custodian; or

(b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition."

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{*Internal References to 50-20-509:*

x47-1-104 x50-20-507 }

**Section 28.** Section 53-9-104 , MCA, is amended to read:

**"53-9-104. (Temporary) Powers and duties of office.** (1) The

office shall:

- (a) adopt rules to implement this part;
- (b) prescribe forms for applications for compensation;
- (c) determine all matters relating to claims for compensation;

and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201~~ [section 2], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is

Comment [6]: <eff>

Comment [7]: </eff>

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entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

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(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

Comment [8]: <eff>

Comment [9]: </eff>

**53-9-104. (Effective July 1, 2021) Powers and duties of**

Comment [10]: <eff>

Comment [11]: </eff>

**office.** (1) The office shall:

- (a) adopt rules to implement this part;
- (b) prescribe forms for applications for compensation;
- (c) determine all matters relating to claims for compensation;

and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the



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office of state public defender, provided for in ~~47-1-201~~ [section 2], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

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(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

{*Internal References to 53-9-104:*

x47-1-110 x50-16-530 x53-9-112 x53-9-112 }

**Section 29.** Section 53-20-112 , MCA, is amended to read:

**"53-20-112. Procedural rights -- appointment of counsel.** (1)

A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent has the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing;

and

(d) have the respondent examined by a professional of the parents' or guardian's choice when a professional is reasonably

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available unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel for the respondent. If the parents are indigent and the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."

{*Internal References to 53-20-112:*

x47-1-104      x47-1-104      x47-1-110 }

**Section 30.** Section 53-21-112 , MCA, is amended to read:

**"53-21-112. Voluntary admission of minors. (1)**

Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

- (a) a facility;
- (b) a person licensed in this state to practice medicine; or
- (c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental

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health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel for the minor."

{*Internal References to 53-21-112:*

x47-1-104 x53-21-113 }

**Section 31.** Section 53-21-116 , MCA, is amended to read:

**"53-21-116. Right to be present at hearing or trial -- assignment of counsel.** The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is

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indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to immediately assign counsel to represent the person at either the hearing or the trial, or both."

{*Internal References to 53-21-116:*

x41-5-1504 \* x47-1-104 x53-20-112 \*

x53-21-122 x53-21-140 }

**Section 32.** Section 53-21-122 , MCA, is amended to read:

**"53-21-122. Petition for commitment -- filing of -- initial hearing on.** (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and

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53-21-1206. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender,

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provided for in ~~47-1-201~~ [section 2], to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

{*Internal References to 53-21-122:*

x53-21-114 \* x53-21-129 \*

x53-21-140 x53-21-140 }

**Section 33.** Section 53-24-302 , MCA, is amended to read:

**"53-24-302. Involuntary commitment of alcoholics -- rights.**

(1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to

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the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one



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licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must

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automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if

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different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the court shall order the office of state public defender, provided for in ~~47-1-201~~

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[section 2], to assign counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

{*Internal References to 53-24-302:*

x47-1-104 x53-24-207 \* }

**Section 34.** Section 72-5-225 , MCA, is amended to read:

**"72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by attorney.** (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

- (a) the minor, if the minor is 14 years of age or older;
- (b) the person who has had the principal care and custody of

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the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

{Internal References to 72-5-225:

x40-6-602 }

**Section 35.** Section 72-5-234 , MCA, is amended to read:

**"72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney.** (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for

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permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

{Internal References to 72-5-234: None.}

**Section 36.** Section 72-5-408 , MCA, is amended to read:

**"72-5-408. Procedure concerning hearing and order on original petition.** (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has

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counsel of the person's own choice, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 2], to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."

{Internal References to 72-5-408: None.}

NEW SECTION. **Section 37. Transition -- appointment of director of office of state public defender.** The ~~governor~~ **director**

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of the department of administration shall appoint the executive director of the office of state public defender provided for in [section 2] by no later than January 1, 2018.

NEW SECTION. Section 38. {standard} Codification instruction -- instructions to code commissioner. (1) [Section 2] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 2].

(2) [Sections 19 and 20] are intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to [sections 19 and 20].

(3) The code commissioner is instructed to:

(a) renumber 2-15-1028 and include it with [section 2] as a section within a new part in Title 2, chapter 15, for the office of state public defender;

(b) renumber 47-1-210 so that it becomes a section under Title 47, chapter 1, part 1;

(c) renumber 47-1-216 so that it becomes a section under Title 47, chapter 1, part 1;

(d) establish a new part 3 in Title 47, chapter 1, and renumber 47-1-205 so that it becomes a section under the new part 3; and

(e) establish a new part 4 in Title 47, chapter 1, and renumber 47-1-118 so that it becomes a section under the new part 4.

NEW SECTION. Section 39. Contingent voidness. If funding for

Comment [SS12]: Part 10 is the part applicable to the Department of Administration.

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public defender services organized under a department director is not provided for in House Bill No. 2 or other appropriation bill, then [this act] is void.

- END -

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

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

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

A Bill for an Act entitled: "An Act revising the structure of the state public defender system; providing for a chief administrator appointed by the public defender commission; revising exemptions from the state classification and pay plan; consolidating administrative functions into an office of chief administrator; allowing conflict of interest cases to be handled by staff defenders in addition to contracted defenders; changing the conflicts manager position title to chief conflict defender; revising and reorganizing the statutes of the Montana public defender act to clarify and clearly separate the roles and responsibilities of the offices of the chief administrator, chief public defender, chief appellate defender, and chief conflict defender; providing for contingent voidness; and amending sections 2-18-103, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-15-115, 46-17-203, 46-21-201, 47-1-103, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-216, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, and 72-5-408, MCA."

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

**Section 1.** Section 2-18-103, MCA, is amended to read:

**"2-18-103. Officers and employees excepted.** Parts 1 through

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3 and 10 do not apply to the following officers and employees in state government:

- (1) elected officials;
- (2) county assessors and their chief deputies;
- (3) employees of the office of consumer counsel;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;
- (11) four professional staff positions under the board of oil and gas conservation;
- (12) assistant director for security of the Montana state lottery;
- (13) executive director and employees of the state compensation insurance fund;
- (14) state racing stewards employed by the executive

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secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) the following positions in the chief public defender system appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed by the chief public defender; and

~~— (22) chief appellate defender in the office of appellate defender;~~

(a) the chief administrator appointed as provided in 47-1-105;

(b) the chief public defender appointed as provided in 47-1-105;

(c) the chief appellate defender appointed as provided in 47-1-105;

(d) the chief conflict defender appointed as provided in 47-1-105;

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(e) the regional deputy defenders appointed as provided in 47-1-201;

(f) the training coordinator appointed as provided in 47-1-210; and

(g) the contract manager appointed as provided in 47-1-216."

{*Internal References to 2-18-103:*

x2-18-101	x2-18-201	x2-18-301	x32-1-211
x44-4-101	x47-1-201	x47-1-201	x47-1-205 }

**Section 2.** Section 41-5-1413, MCA, is amended to read:

**"41-5-1413. Right to counsel -- assignment of counsel.** In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

{*Internal References to 41-5-1413:*

x41-5-1607 x47-1-104 }

**Section 3.** Section 42-2-405, MCA, is amended to read:

**"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption.** (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel to represent the minor parent."

{ *Internal References to 42-2-405:*

x42-4-301 }

**Section 4.** Section 46-4-304, MCA, is amended to read:

**"46-4-304. Conduct of investigative inquiry.** (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness

has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

{ *Internal References to 46-4-304:*  
x47-1-104 }

**Section 5.** Section 46-8-101, MCA, is amended to read:

**"46-8-101. Right to counsel.** (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel to represent the defendant without unnecessary

delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

{*Internal References to 46-8-101:*  
x46-7-102 x47-1-104 }

**Section 6.** Section 46-8-104, MCA, is amended to read:

**"46-8-104. Assignment of counsel after trial -- definition.**

(1) Any court of record may order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent any petitioner or appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or appellant is eligible for the appointment of counsel and:

(a) the district court determines that a hearing on the



petition is required pursuant to 46-21-201;

(b) the ~~state public defender's office~~ office of state public defender requests appointment of a public defender and demonstrates good cause for the appointment;

(c) a statute specifically mandates the appointment of counsel;

(d) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or

(e) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing in English."

{*Internal References to 46-8-104: None.*}

**Section 7.** Section 46-15-115, MCA, is amended to read:

**"46-15-115. Subpoena for witness when defendant unable to pay.** (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs

incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined in 47-1-103, a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) If the defendant is represented by a public defender, as defined in 47-1-103, witness costs must be paid by the office of state public defender as provided for in ~~47-1-201~~ [section 12]."

{Internal References to 46-15-115: None.}

**Section 8.** Section 46-17-203, MCA, is amended to read:

**"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before or during trial, a plea of guilty must be accepted, and a plea of nolo contendere may be accepted with the consent of the court and the prosecutor, when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2) (b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before

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the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

{*Internal References to 46-17-203:*

x3-5-303      x3-11-301      x46-17-311      x46-17-311 }

**Section 9.** Section 46-21-201, MCA, is amended to read:

**"46-21-201. Proceedings on petition.** (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be sent to the county attorney in the county in which the conviction took place and to the attorney general and order that a responsive pleading be filed. The attorney general shall determine whether the attorney general will respond to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing

civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice require, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel for a petitioner who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, Title 47, chapter 1.

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and wishes to file a petition under this chapter, the court will order the office of state public defender, ~~provided for in 47-1-201,~~ to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) order the office of state public defender to assign counsel to represent the person pending a determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that the person either has accepted the offer of assigned counsel or is unable to competently decide whether to accept the offer of assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment of counsel.

(c) The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent but becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment of counsel as provided in subsection (3) (b) (i).

(e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

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(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

{*Internal References to 46-21-201:*

*x46-8-104 x46-8-104 x47-1-104 }*

**Section 10.** Section 47-1-103, MCA, is amended to read:

**"47-1-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commission" means the public defender commission established in 2-15-1028.

(2) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

(3) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

(4) "Office" means the office of state public defender established in ~~47-1-201~~ [section 12].

(5) "Public defender" or "defender" means an attorney

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employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, including attorneys employed by or under contract with the office of chief public defender, the office of chief appellate defender, and the office of chief conflict defender.

(6) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to this chapter."

{*Internal References to 47-1-103:*

x3-1-804	x3-1-804	x3-1-804	x3-1-804
x3-1-804	x3-5-511	x3-5-604	x26-2-506
x26-2-506	x26-2-508	x26-2-510	x46-15-115
x46-15-115	x46-15-116	x46-21-201	x46-21-201 }

**Section 11.** Section 47-1-105, MCA, is amended to read:

**"47-1-105. Commission -- duties ~~---report~~ -- rules.** (1) The commission shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the commission shall:

~~(1)~~ (a) establish the qualifications, duties, and compensation of the chief public defender, ~~as~~ as provided for in 47-1-201, appoint ~~a~~ the chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender; ~~and~~

(b) establish the qualifications, duties, and compensation of the chief appellate defender, ~~as~~ as provided for in 47-1-205, appoint ~~a~~ the chief appellate defender after considering qualified applicants, and regularly evaluate the performance of the chief appellate defender;



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(c) establish the qualifications, duties, and compensation of the chief conflict defender, provided for in 47-1-118, appoint the chief conflict defender after considering qualified applicants, and regularly evaluate the performance of the chief conflict defender; and

(d) establish the qualifications, duties, and compensation of the chief administrator, provided for in [section 13], appoint the chief administrator after considering qualified applicants, and regularly evaluate the performance of the chief administrator;

(2) The commission shall also establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

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- (e) practice standards;
- (f) performance criteria; and
- (g) performance evaluation protocols.

(3) The commission shall also:

(a) review and approve the strategic plan and budget proposals submitted by the chief public defender, the ~~administrative director~~ the chief administrator, and the chief appellate defender, and the chief conflict defender;

~~(4)~~ (b) review and approve any proposal to create permanent staff positions;

~~(5)~~ (c) ~~establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

~~(6)~~ establish policies and procedures for handling excess caseloads; and

~~(7)~~ (d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system;.

~~(8)~~ (4) The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter; ~~and~~

~~(9)~~ ~~submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and~~

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~~5-5-226. The report must cover the preceding biennium and include:~~

~~—— (a) all policies or procedures in effect for the operation and administration of the statewide public defender system;~~

~~—— (b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;~~

~~—— (c) the number of deputy public defenders and the region supervised by each;~~

~~—— (d) the number of public defenders employed or contracted with in the system, identified by region;~~

~~—— (e) the number of attorney and nonattorney staff supervised by each deputy public defender;~~

~~—— (f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;~~

~~—— (g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;~~

~~—— (h) the annual caseload and workload of each public defender, except for the chief public defender, and of the office of appellate defender, identified by region, court, and case type;~~

~~—— (i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;~~

~~—— (j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or~~

~~contracted with in the system; and~~

~~—— (k) detailed expenditure data by court and case type."~~

*{Internal References to 47-1-105: None.}*

NEW SECTION. **Section 12. Office of state public defender.**

(1) There is an office of state public defender that is the agency headed by the commission pursuant to this chapter.

(2) The office of state public defender consists of the following offices:

(a) the office of chief administrator provided for in [section 13];

(b) the office of chief public defender provided for in 47-1-201;

(c) the office of chief appellate defender provided for in 47-1-205; and

(d) the office of chief conflict defender provided for in 47-1-118.

NEW SECTION. **Section 13. Office of chief administrator -- system headquarters -- functions -- payable expenses.**

(1) There is an office of chief administrator, which is the administrative headquarters of the system. The office must be located in Butte, Montana.

(2) The head of the office is the chief administrator who is supervised and appointed by the commission as provided for in 47-1-105. The chief administrator position is exempt from the state classification and pay plan, as provided in 2-18-103. The

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chief administrator must be experienced in business and contract management and must be chosen solely on the basis of training, experience, and other qualifications consistent with administration and management of public agencies. The chief administrator need not be licensed to practice law, but if licensed to practice law, may not maintain a client caseload.

(3) The chief administrator shall serve as the executive secretary of the commission and represent the office of state public defender in all official communications, including communications with the governor, the legislature, the media, and the public.

(4) The administrative functions of the office include but are not limited to:

- (a) eligibility determination under 47-1-111;
- (b) administrative support for contracting under 47-1-216;
- (c) coordination of training pursuant to 47-1-210; and
- (d) actively seeking gifts, grants, and donations that may be available through the federal government or other sources to help fund the system.

(5) The office shall establish standard administrative procedures to:

- (a) handle complaints about defender performance and work with the chief public defender, chief appellate defender, and chief conflict defender 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;

(b) ensure that employees and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported; and

(c) ensure that court appointments of counsel are referred to the appropriate office within the system.

(6) (a) The office shall also establish the budgeting, reporting, and related administrative requirements for all offices within the system, including procedures for the approval, payment, recording, reporting, and management of all defense expenses.

(b) The following expenses are payable by the office if the expense is incurred at the request of a public defender:

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

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

(c) If the costs to be paid pursuant to this subsection (4) are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(7) The provisions of this section may not be implemented in a way that interferes with the legal and ethical duties of defenders to their clients.

**Section 14.** Section 47-1-110, MCA, is amended to read:

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**"47-1-110. Public defender account.** (1) There is a public defender account in the state special revenue fund to the credit of the office. The office may accept gifts, grants, and donations to carry out the purposes of this chapter. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; and

(d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally disabled person when the respondent is determined to have the financial ability to pay for a public defender and a judge orders payment under 47-1-111."

{*Internal References to 47-1-110:*

*a2-15-1028 x46-8-114 a47-1-201 }*

**Section 15.** Section 47-1-111, MCA, is amended to read:

**"47-1-111. Eligibility -- determination of indigence --**

**rules.** (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded.

(c) (i) The applicant may request that the court conduct a hearing on the motion to rescind appointment. If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

(iv) The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.



(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

(vii) Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.

(d) If the applicant does not request a hearing on the motion to rescind appointment, does not appear at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment of counsel to be rescinded.

(e) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded.

(f) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services who is

eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the ~~commission~~ office of chief administrator provided for in [section 13]. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42

U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The ~~commission~~ the chief administrator shall establish administrative procedures ~~and adopt~~ pursuant to rules adopted by the office of state public defender to implement this section.

~~Commission~~ The procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit a public defender from performing

eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may ~~perform~~ oversee eligibility screening pursuant to this section.

{ *Internal References to 47-1-111:*

x41-3-425    x46-8-101    x47-1-103    x47-1-104  
x47-1-110    x53-20-112    x61-5-218 }

NEW SECTION.    **Section 16. Reports.** (1) (a) The office of chief administrator shall submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the chief administrator shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226.

(b) The biennial report must cover the preceding biennium and include:

(i) all policies or procedures in effect for the operation and administration of the system;

(ii) all standards of practice established or being considered by commission;

(iii) the number of deputy public defenders and the region supervised by each;

(iv) the number of public defenders employed or contracted within the system, identified by region, if appropriate, and office;

(v) the number nonattorney staff employed or contracted within the system, identified by region, if appropriate, and office;

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(vi) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(vii) the total number of persons represented by the office of chief public defender, the office of chief appellate defender, and the office of chief conflict defender identified by region, if appropriate, court, and case type;

(viii) the annual caseload and workload of each public defender identified by region, if appropriate, court, and case type;

(ix) the training programs conducted and the number of attorney and nonattorney staff who attended each program;

(x) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(xi) detailed expenditure data by court and case type.

(2) (a) The office of chief administrator shall 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 governor and legislative fiscal analyst. The report must include unduplicated count data for all cases for which representation is paid for by the office of chief administrator, 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) The office of chief administrator shall report to the governor and 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.

(c) Reports under this subsection (2) must be provided in an electronic format.

**Section 17.** Section 47-1-118, MCA, is amended to read:

**"47-1-118. Conflicts of interest -- office of chief conflict defender.** (1) ~~The commission shall establish a conflicts office to contract for attorneys to represent indigent defendants~~ There is an office of conflict defender headed by the chief conflict defender appointed by the commission as provided in 47-1-105. The office shall provide for the representation of a client in circumstances where, because of conflict of interest, the public defender program office of chief public defender or the office of appellate defender is unable to provide representation to a defendant the client.

(2) (a) ~~The commission shall appoint a conflicts manager to oversee the office. The position of chief conflict defender is exempt from the state classification and pay plan as provided in 2-18-103.~~

(b) ~~The conflicts manager~~ chief conflict defender reports directly to the commission and not to the chief public defender, chief appellate defender, or chief administrator. ~~The conflicts manager~~ chief conflict defender may not ~~handle cases~~ maintain a

client caseload.

(3) (a) ~~All attorneys contracted for conflict of interest cases shall report to the conflicts manager~~ The chief conflict defender shall hire or contract for and supervise personnel necessary to perform the functions of the office of conflict defender, including:

(i) assistant conflict defenders; and

(ii) other necessary administrative and professional support staff for the office of chief conflict defender.

(b) Positions established pursuant to subsection (3)(a) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18."

{Internal References to 47-1-118: None.}

NEW SECTION. **Section 18. Chief conflict defender duties.**

(1) The chief conflict defender shall:

(a) attend commission meetings;

(b) ensure that the assignment of a conflict defender is made promptly to a qualified and appropriate defender who is promptly available to represent the indigent client;

(c) in accordance with administrative protocols established by the chief administrator, establish procedures for managing caseloads and assigning cases in a manner that takes into account case complexity, the severity of the charges and potential punishments, the legal skills required to provide effective assistance of counsel, and the experience, training, and

caseloads of the conflict defender;

(d) assist the commission and the chief administrator in maintaining and improving the state system and establishing the standards, policies, and procedures required pursuant to this chapter;

(e) assist the chief administrator in developing and presenting for commission approval strategic plans for the delivery of conflict defender services;

(f) assist the chief administrator in preparing a budget for the office of chief conflict defender and submitting for commission approval other financial information needed to carry out the functions of the office of the conflict defender;

(g) establish with the chief administrator processes and procedures to ensure that staff and contract personnel for the office of conflict defender use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(h) establish with the chief administrator administrative and management procedures for the office of conflict defender;

(i) confer with the chief administrator, training coordinator, and chief contract manager on training and performance evaluation programs for conflict defenders, nonattorney staff members, and contractors for the office of chief conflict defender;

(j) confer with the chief administrator for presenting the commission with plans, studies, and reports;

(k) comply with the standards, policies, and directives of



the commission;

(1) confer with the chief administrator on procedures to handle complaints about conflict defender performance pursuant to procedures adopted under [section 13(5)]; and

(m) perform all other duties assigned by the commission.

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

**Section 19.** Section 47-1-201, MCA, is amended to read:

**"47-1-201. Office of state chief public defender -- personnel -- compensation ~~--- expenses --- reports~~.** (1) There is an office of state chief public defender. ~~The office must be located in Butte, Montana.~~ The head of the office is the chief public defender, who is appointed and supervised by the commission as provided in 47-1-105.

(2) 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) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office of state chief public defender ~~and to implement the~~

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~~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;~~

~~(iv) deputy public defenders, as provided in 47-1-215, who are exempt from the state 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) Positions established pursuant to subsections (3) (b) and (3) (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) The following expenses are payable by the office if the expense is incurred at the request of a public defender:~~

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

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

~~(6) 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.~~

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

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

~~(9) The chief public defender 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) (a) The office of public defender 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) The office of public defender 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."~~

{ Internal References to 47-1-201:

*x to all*

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 20.** 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, 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) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to this chapter;~~
- ~~(c) develop and present for the commission's approval a regional strategic plan for the delivery of public defender services;~~
- ~~(d) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;~~

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

~~—— (f) 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) 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) 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;~~

~~—— (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) perform all other duties assigned by the commission~~

~~pursuant to this chapter.~~

(a) attend commission meetings;

(b) ensure that the assignment of a staff or contract defender of the office of chief public defender is made promptly to a qualified and appropriate defender who is promptly available to represent the indigent client;

(c) in accordance with administrative protocols established by the chief administrator, establish procedures for managing caseloads and assigning cases in a manner that takes into account case complexity, the severity of the charges and potential punishments, the legal skills required to provide effective assistance of counsel, and the experience, training, and caseloads of the defender;

(d) assist the commission and the chief administrator in maintaining and improving the state system and establishing the standards, policies, and procedures required pursuant to this chapter;

(e) assist the chief administrator in developing and presenting for commission approval strategic plans for the delivery of defender services by region;

(f) assist the chief administrator in preparing a budget for the office of chief public defender and submitting for commission approval other financial information needed to carry out the functions of the office of the chief public defender;

(g) establish with the chief administrator processes and procedures to ensure that staff and contract personnel for the office of chief public defender use information technology and

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caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(h) establish with the chief administrator administrative and management procedures for the office of chief public defender;

(i) confer with the chief administrator, training coordinator, and chief contract manager on training and performance evaluation programs for defenders, nonattorney staff members, and contractors of the office of chief public defender;

(j) confer with the chief administrator for presenting the commission with plans, studies, and reports;

(k) comply with the standards, policies, and directives of the commission;

(l) confer with the chief administrator on procedures to handle complaints about defender performance pursuant to procedures adopted under [section 13(5)]; and

(m) perform all other duties assigned by the commission.

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

{ *Internal References to 47-1-202:*  
x47-1-205 x47-1-215 }

**Section 21.** Section 47-1-205, MCA, is amended to read:

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

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(2) (a) ~~The commission shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender. The head of the office is the chief appellate defender is appointed by and the commission as provided in 47-1-105. The chief appellate defender 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) (a) The chief appellate defender shall:

~~(a) direct, manage, and supervise all public defender services provided by the office of appellate defender, including budgeting, reporting, and related functions;~~

~~(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;~~



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~~— (d) hire and supervise the work of office of appellate defender personnel as authorized by the appellate defender;~~

~~— (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 defender services;~~

~~— (f) 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;~~

~~— (g) implement standards and procedures established by the commission for the office of appellate defender;~~

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

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

~~— (j) perform all other duties assigned to the chief appellate defender by the commission hire or contract for and supervise personnel necessary to perform the function of the office of chief appellate defender, including:~~

~~(i) assistant appellate defenders; and~~

~~(ii) other administrative and professional support staff.~~

~~(b) Positions established pursuant to this subsection (3) are classified positions and persons in the positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18. "~~

*{ Internal References to 47-1-205:*

x47-1-105    x47-1-201 }

NEW SECTION.    **Section 22. Chief appellate defender duties.**

(1) In addition to the duties provided in 47-1-205, the chief appellate defender shall:

(a) attend commission meetings;

(b) ensure that the assignment of a staff or contract defender of the office of appellate defender is made promptly to a qualified and appropriate defender who is promptly available to represent the indigent client;

(c) in accordance with administrative protocols established by the chief administrator, establish procedures for managing caseloads and assigning cases in a manner that takes into account case complexity, the severity of the charges and potential punishments, the legal skills required to provide effective assistance of counsel, and the experience, training, and caseloads of the defender;

(d) assist the commission and the chief administrator in maintaining and improving the state system and establishing the standards, policies, and procedures required pursuant to this chapter;

(e) assist the chief administrator in developing and presenting for commission approval strategic plans for the delivery of appellate defender services;

(f) assist the chief administrator in preparing a budget for the office of chief appellate defender and submitting for commission approval other financial information needed to carry

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out the functions of the office of the chief appellate defender;

(g) establish with the chief administrator processes and procedures to ensure that staff and contract personnel for the office of chief appellate defender use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(h) establish with the chief administrator administrative and management procedures for the office of chief appellate defender;

(i) confer with the chief administrator, training coordinator, and chief contract manager on training and performance evaluation programs for defenders, nonattorney staff members, and contractors of the office of chief appellate defender;

(j) confer with the chief administrator for presenting the commission with plans, studies, and reports;

(k) comply with the standards, policies, and directives of the commission;

(l) confer with the chief administrator on procedures to handle complaints about defender performance pursuant to procedures adopted under [section 13(5)]; and

(m) perform all other duties assigned by the commission.

(2) The chief appellate defender may maintain a minimum client caseload as approved by the commission.

**Section 23.** Section 47-1-210, MCA, is amended to read:

**"47-1-210. Training program -- coordinator.** (1) There is

within the office of state public defender provided for in [section 12] a position of training coordinator for public defenders, nonattorney staff members, and contractors.

(2) The chief ~~public defender~~ administrator provided for in [section 13] shall appoint the training coordinator.

(3) The training coordinator shall:

(a) coordinate training ~~to~~ for 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;

(d) 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 the statewide public defender system; and

(f) perform other duties assigned by the chief ~~public defender~~ administrator."

{ *Internal References to 47-1-210:*  
x47-1-201 }

**Section 24.** Section 47-1-216, MCA, is amended to read:

**"47-1-216. Contracted services ~~---rules.~~** (1) The ~~commission~~ chief administrator provided for in [section 13], shall establish

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standards for a statewide contracted services program that ensures that contracting for public defender and other 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) (a) There is a contract manager position within the office of chief administrator. The ~~chief~~ contract manager shall ~~oversee the~~ be hired by the chief administrator.

(b) The contract manager is responsible for administrative oversight of contracting program and may not maintain a client caseload for the office of chief public defender, the office of chief appellate defender, and the office of chief conflict defender.

(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, 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, 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, and conflict 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~~ With the assistance and support of the contract manager, the chief public defender, deputy public defenders, and the chief appellate defender, and chief conflict defender shall provide for contract oversight and enforcement to ensure compliance with established standards supervise the personnel contracted for their respective offices and ensure compliance with the standards established in the contract.

(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 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 a biennial basis by the ~~chief~~ contract manager based on written evaluation criteria."

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

x18-4-132 x47-1-104 x47-1-205 x47-1-215 }

**Section 25.** Section 50-20-509, MCA, is amended to read:

**"50-20-509. Procedure for judicial waiver of consent.** (1)

The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are



confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the requirement for consent is waived.

(4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian.

(5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both parents, a legal guardian, or a custodian; or

(b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a

confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition."

{*Internal References to 50-20-509:*  
x47-1-104 x50-20-507 }

**Section 26.** Section 53-9-104, MCA, is amended to read:

**"53-9-104. (Temporary) Powers and duties of office.** (1) The office shall:

- (a) adopt rules to implement this part;
- (b) prescribe forms for applications for compensation;
- (c) determine all matters relating to claims for compensation; and
- (d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual

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under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201~~ [section 12], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a

claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2) (b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

**53-9-104. (Effective July 1, 2021) Powers and duties of office.** (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted

of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201~~ [section 12], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance

payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

{*Internal References to 53-9-104:*

x47-1-110 x50-16-530 x53-9-112 x53-9-112 }

**Section 27.** Section 53-20-112, MCA, is amended to read:

**"53-20-112. Procedural rights -- appointment of counsel.**

(1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent

has the right to:

- (a) be present at any hearing held pursuant to this part;
- (b) be represented by counsel in any hearing;
- (c) offer evidence and cross-examine witnesses in any

hearing; and

(d) have the respondent examined by a professional of the parents' or guardian's choice when a professional is reasonably available unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel for the respondent. If the parents are indigent and the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."

{*Internal References to 53-20-112:*

*x47-1-104 x47-1-104 x47-1-110 }*

**Section 28.** Section 53-21-112, MCA, is amended to read:

**"53-21-112. Voluntary admission of minors.** (1)

Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

- (a) a facility;

(b) a person licensed in this state to practice medicine;  
or

(c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to



assign counsel for the minor."

{ *Internal References to 53-21-112:*  
x47-1-104 x53-21-113 }

**Section 29.** Section 53-21-116, MCA, is amended to read:

**"53-21-116. Right to be present at hearing or trial -- assignment of counsel.** The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to immediately assign counsel to represent the person at either the hearing or the trial, or both."

{ *Internal References to 53-21-116:*  
x41-5-1504 \* x47-1-104 x53-20-112 \*  
x53-21-122 x53-21-140 }

**Section 30.** Section 53-21-122, MCA, is amended to read:

**"53-21-122. Petition for commitment -- filing of -- initial hearing on.** (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to immediately assign counsel for the respondent, and the respondent

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must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its

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designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in ~~47-1-201~~ [section 12], to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

{*Internal References to 53-21-122:*

x53-21-114 \*                      x53-21-129 \*  
x53-21-140    x53-21-140 }

**Section 31.** Section 53-24-302, MCA, is amended to read:

**"53-24-302. Involuntary commitment of alcoholics -- rights.**

(1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the

hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been

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committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no

longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.



(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

{*Internal References to 53-24-302:*  
x47-1-104 x53-24-207 \* }

**Section 32.** Section 72-5-225, MCA, is amended to read:

**"72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by attorney.** (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

- (a) the minor, if the minor is 14 years of age or older;
- (b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and
- (c) any living parent of the minor.

(2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public

defender, provided for in ~~47-1-201~~ [section 12], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

{*Internal References to 72-5-225:*  
*x40-6-602* }

**Section 33.** Section 72-5-234, MCA, is amended to read:

**"72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney.** (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

{*Internal References to 72-5-234: None.*}

**Section 34.** Section 72-5-408, MCA, is amended to read:

**"72-5-408. Procedure concerning hearing and order on original petition.** (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send

a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."

{*Internal References to 72-5-408: None.*}

**NEW SECTION. Section 35. {standard} Codification**

**instruction -- instructions to code commissioner.** (1) [Sections 12, 13, and 16] are intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to [sections 12, 13, and 16].

(2) [Section 22] is intended to be codified as an integral part of a new part 3 on appellate defender services in Title 47, chapter 1, and the provisions of Title 47, chapter 1, apply to [section 22].

(3) [Section 18] is intended to be codified as an integral part of a new part 4 on conflict defender services in Title 47, chapter 1, and the provisions of Title 47, chapter 1, apply to [section 18].

(4) The code commissioner is instructed to:

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(a) renumber 47-1-210 so that it becomes a section under Title 47, chapter 1, part 1;

(b) renumber 47-1-216 so that it becomes a section under Title 47, chapter 1, part 1;

(c) renumber 47-1-205 so that it becomes a section under a new part 3 on appellate defender services; and

(e) renumber 47-1-118 so that it becomes a section under a new part 4 on conflict defender services.

NEW SECTION. **Section 36. Contingent voidness.** If funding is not provided for in House Bill No. 2 for public defender services organized as provided for in [this act], then [this act] is void.

- END -

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As of: September 2, 2016 (10:21am)

LCpd03

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

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

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

A Bill for an Act entitled: "An Act requiring the presiding court to make determinations of indigence; requiring the court to schedule a hearing on rescission of the appointment of a public defender prior to ordering rescission; requiring the Montana Supreme Court to establish policies for the determination of indigence; amending section 47-1-111, MCA; and providing an effective date and an applicability date."

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

**Section 1.** Section 47-1-111, MCA, is amended to read:

**"47-1-111. Eligibility -- determination of indigence by presiding court -- rules.** (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to a determination under this section.

(b) ~~If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded~~ The presiding court determines the eligibility for public defender services for an applicant. If the presiding court later determines the applicant may no longer be eligible for

public defender services, the court shall schedule a hearing on whether to rescind public defender services for the applicant prior to ordering rescission.

(c) (i) The applicant may ~~request that the court conduct~~ waive ~~a~~ the hearing on the motion to rescind rescission of appointment. If the applicant ~~requests a~~ does not waive the hearing on the ~~motion to rescind~~ rescission of appointment, the court shall hold the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

(iv) The applicant may not be compelled to testify at a hearing on the ~~motion to rescind~~ rescission of appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

(vii) Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.

(d) If the applicant ~~does not request a~~ waives the hearing on the ~~motion to rescind~~ rescission of appointment, does not appear at a hearing on the ~~motion to rescind~~ rescission of appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the ~~motion to rescind~~ rescission of appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and ~~shall grant the motion to rescind appointment~~ and order the assignment of counsel to be rescinded.

(e) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court ~~grants the motion to rescind appointment and~~ orders the assignment of counsel to be rescinded.

~~—(f) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.~~

(2) (a) An applicant for public defender services who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement



made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the ~~commission~~ Montana Supreme Court. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application, or for a delay in eligibility determination. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to

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retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the ~~office or the~~ presiding court if additional information becomes available or if the applicant's financial circumstances change.

(6) The ~~commission~~ Montana Supreme Court shall establish procedures and adopt rules for presiding courts to implement this section. ~~Commission~~ These procedures and rules:

(a) must ensure that the eligibility determination process is done timely, and is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section; and

(d) must avoid unnecessary duplication of processes; ~~and~~

~~(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may perform eligibility screening pursuant to this section."~~

{*Internal References to 47-1-111:*  
41-3-425x    46-8-101x    47-1-103x    47-1-104x  
47-1-110x    53-20-112x    61-5-218x}

NEW SECTION.    **Section 2. {standard} Effective date.** [This act] is effective July 1, 2017.

NEW SECTION.    **Section 3. {standard} Applicability.** [This act] applies to all applicants for public defender services who submit an application for services on or after July 1, 2017.

- END -

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As of: September 2, 2016 (10:21am)

LCpd04

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

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

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

A Bill for an Act entitled: "An Act requiring the department of public health and human services to make determinations of indigence; requiring the court to schedule a hearing on rescission of the appointment of a public defender prior to ordering rescission; requiring the department of public health and human services to establish policies for the determination of indigence; amending section 47-1-111, MCA; and providing an effective date and an applicability date."

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

**Section 1.** Section 47-1-111, MCA, is amended to read:

**"47-1-111. Eligibility -- determination of indigence by the department of public health and human services -- rules.** (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to a determination under this section.

(b) ~~If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded~~ The department of public health and human services determines the eligibility for public defender services for an

applicant. If the department later determines the applicant may no longer be eligible for public defender services, the department shall notify the court as soon as possible and the court shall schedule a hearing on whether to rescind public defender services for the applicant prior to ordering rescission.

(c) (i) The applicant may ~~request that the court conduct~~ waive ~~a~~ the hearing on the motion to rescind rescission of appointment. If the applicant ~~requests a~~ does not waive the hearing on the ~~motion to rescind~~ rescission of appointment, the court shall hold the hearing and a representative of the department shall attend the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

(iv) The applicant may not be compelled to testify at a hearing on the ~~motion to rescind~~ rescission of appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence

introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

(vii) Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.

(d) If the applicant ~~does not request a~~ waives the hearing on the ~~motion to rescind~~ rescission of appointment, does not appear at a hearing on the ~~motion to rescind~~ rescission of appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the ~~motion to rescind~~ rescission of appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and ~~shall grant the motion to rescind appointment~~ and order the assignment of counsel to be rescinded.

(e) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court ~~grants the motion to rescind appointment and~~ orders the assignment of counsel to be rescinded.

(f) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the ~~office~~ department is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services who is eligible for a public defender because the applicant is indigent

shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the ~~commission~~ department of public health and human services. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application, or for a delay in eligibility determination. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42

U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the ~~office or the~~ presiding court if additional information becomes available or if the applicant's financial circumstances change.

(6) The ~~commission~~ department of public health and human services shall establish procedures and adopt rules for presiding courts to implement this section. ~~Commission~~ These procedures and rules:

(a) must ensure that the eligibility determination process is done timely, and is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section; and

(d) must avoid unnecessary duplication of processes; ~~and~~

~~(e) must prohibit a public defender from performing~~



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~~eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may perform eligibility screening pursuant to this section."~~

{*Internal References to 47-1-111:*

41-3-425x    46-8-101x    47-1-103x    47-1-104x  
47-1-110x    53-20-112x    61-5-218x }

NEW SECTION.    **Section 2. {standard} Effective date.** [This act] is effective July 1, 2017.

NEW SECTION.    **Section 3. {standard} Applicability.** [This act] applies to all applicants for public defender services who submit an application for services on or after July 1, 2017.

- END -

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As of: September 2, 2016 (10:02am)

LCpd05

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

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

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

A Bill for an Act entitled: "An Act requiring the department of revenue to collect court imposed costs for public defender services; amending section 46-8-113, MCA; and providing an effective date."

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

**Section 1.** Section 46-8-113, MCA, is amended to read:

**"46-8-113. Payment by defendant for assigned counsel -- costs to be filed with court.** (1) Subject to the provisions of subsections (2) and (3), as part of or as a condition of a sentence that is imposed under the provisions of this title, the court shall determine whether a convicted defendant should pay the costs of counsel assigned to represent the defendant as follows:

(a) If the defendant pleads guilty prior to trial:

(i) to one or more misdemeanor charges and no felony charges, the cost of counsel is \$250; or

(ii) to one or more felony charges, the cost of counsel is \$800.

(b) If the case goes to trial, the defendant shall pay the costs incurred by the office of state public defender for providing the defendant with counsel in the criminal trial. The

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office of state public defender shall file with the court a statement of the hours spent on the case and the costs and expenses incurred for the trial.

(2) ~~Any costs imposed pursuant to this section must be paid in accordance with 46-18-251(2)(e).~~ Any court imposing costs under this section shall notify the department of revenue of the costs assessed against the defendant by sending a copy of the order imposing costs to the department of revenue. The department of revenue is responsible for collecting costs assessed under this section directly from the defendant and depositing the costs in the public defender account established in 46-8-113.

(3) In any proceeding for the determination of whether a defendant is or will be able to pay the costs of counsel, the court shall question the defendant as to the defendant's ability to pay those costs and shall inform the defendant that purposely false or misleading statements by the defendant may result in criminal charges against the defendant.

(4) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay the costs imposed by subsection (1). The court may find that the defendant is able to pay only a portion of the costs assessed. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(5) A defendant who has been sentenced to pay costs may at

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any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment and shall notify the department of revenue of any modification to the amount of costs to collect.

(6) A defendant's obligation to make payments for the cost of counsel is suspended during periods of incarceration.

(7) Any costs imposed under this section must be included in the court's judgment."

{*Internal References to 46-8-113:*

2-15-1028 46-8-114 46-18-101 46-18-201  
46-18-201 47-1-110 61-8-731 }

NEW SECTION. **Section 2. {standard} Effective date.** [This act] is effective July 1, 2017.

- END -

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As of: September 1, 2016 (1:33pm)

LCpd06

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

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

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

A Bill for an Act entitled: "An Act requiring that the office of state public defender establish a holistic defense pilot project; and providing an effective date and a termination date."

WHEREAS, the Task Force on State Public Defender Operations was established under House Bill No. 627 (2015) to develop a long-term organizational plan for the Office of State Public Defender that will allow the office to provide effective assistance of counsel to those who qualify; and

WHEREAS, as part of its work the task force learned about holistic defense and how it is being used successfully by the Confederated Salish and Kootenai Tribes of the Flathead Nation; and

WHEREAS, holistic defense is based on a model of providing public defender services that address that underlying causes and circumstances that drive people into the criminal justice system and the consequences of that involvement by offering comprehensive legal representation, social work support, and interdisciplinary advocacy for the client; and

WHEREAS, the ultimate goal of holistic defense is to reduce recidivism, keep individuals from become stuck in revolving doors within the criminal justice system because of social and economic stresses, mitigate the collateral consequences for families and

communities, and save taxpayer dollars in the long-term; and

WHEREAS, the task force determined that a pilot project would help determine the merits of using a holistic defense approach in Montana's public defender system.

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

NEW SECTION. **Section 1. Holistic defense pilot project.**

(1) The office shall establish a holistic defense pilot project as provided in this section.

(2) The pilot project must be established in four public defender offices located in communities that are a representative cross section of Montana's population demographically and geographically.

(3) The pilot project must be based on accepted best practices for holistic defense and the following four pillars of holistic defense:

(a) seamless access to legal and non-legal services that meet client legal and social support needs;

(b) dynamic interdisciplinary communication;

(c) advocates with interdisciplinary skill sets; and

(d) a robust understanding of and connection to the community served.

(4) (a) The pilot project must involve the establishment in the participating offices of an interdisciplinary team that provides a comprehensive client-centered approach to address a client's legal needs as well as any underlying social concerns

that may have contributed to the client's involvement in criminal justice system.

(b) As needed and appropriate, the interdisciplinary team may include:

- (i) a public defender;
- (ii) a social worker;
- (iii) an investigator;
- (iv) a paralegal; and
- (v) support staff.

(5) To provide for sound analysis and evaluation of pilot project outcomes, the office shall:

(a) establish a set of performance criteria that will be evaluated and a plan for how the criteria will be evaluated;

(b) ensure that there is a baseline level of data on each of the criteria to be evaluated; and

(c) ensure that a community assessment is done to form the basis of the holistic defense approach in each of the communities participating in the pilot project.

(6) The office shall seek any grant funding and any technical assistance that may be available for holistic defense programs.

(7) The office shall provide a report on the pilot project each interim to the law and justice interim committee established in 5-5-226. The report must cover the project's status, evaluation plan, and any measurable outcomes.

NEW SECTION. **Section 2. {standard} Codification**

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As of: September 1, 2016 (1:33pm)

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**instruction.** [Section 1] is intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to [section 1].

NEW SECTION. **Section 3. {standard} Effective date.** [This act] is effective on July 1, 2017.

NEW SECTION. **Section 4. {standard} Termination.** [This act] terminates on July 1, 2019.

- END -

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\*\*\*\* Bill No. \*\*\*\*  
Introduced By \*\*\*\*\*  
By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act appropriating funds for a study of the office of state public defender and attorney workloads; requiring the study be performed by an independent third party; setting parameters of the study; and requiring reporting of the study's findings to the law and justice interim committee."

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

NEW SECTION. **Section 1. Appropriation.** In the biennium beginning July 1, 2017, there is appropriated up to \$ XXX from the general fund to the department of administration for the office of state public defender to provide funding for a study to be performed by an independent third party of the office of state public defender as set forth in [section x].

NEW SECTION. **Section 2. Scope of study.**

(1) As a part of the study authorized in [section 1], the independent party will examine workloads and workload standards for the office's staff attorneys.

(2) The party will examine the office's case weighting system and assist the office in developing a more accurate case weighting system

for the office of state public defender.

NEW SECTION. **Section 3. Reporting of findings.** The report will be made available publicly in an electronic format and shall be presented by the office of state public defender to the law and justice interim committee by May 15, 2018.

- END -

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**Unofficial Draft Copy**

As of: August 17, 2016 (10:56am)

LCpd08

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

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

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

A Bill for an Act entitled: "An Act clarifying that the public defender commission may set different contractor rates; amending section 47-1-216, MCA; and providing an effective date."

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

**Section 1.** 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. The commission has the authority to establish different contract attorney rates for different parts of the state. If the commission sets different contract attorney rates, it shall explain the rationale for different rates when setting the rates.

(2) The chief contract manager shall oversee the contracting program and 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, may contract to provide public defender, professional nonattorney, and other

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As of: August 17, 2016 (10:56am)

LCpd08

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, 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 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

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contracted to provide nonattorney services.

(8) Contract attorneys may not take any money or benefit 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 a biennial basis by the chief contract manager based on written evaluation criteria."

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

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

NEW SECTION. **Section 2. {standard} Effective date.** [This act] is effective July 1, 2017.

- END -

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As of: August 17, 2016 (9:22am)

LCpd09

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

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

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

A Bill for an Act entitled: "An Act clarifying the duties of the office of appellate defender and the chief public defender; amending sections 47-1-201, and 47-1-205, MCA; and providing an effective date."

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, who is supervised by the commission.

(2) 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) The chief public defender shall hire or contract for

and supervise other personnel necessary to perform the function of the office of state public defender 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;

(iv) deputy public defenders, as provided in 47-1-215;

(b) assistant public defenders; and

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

(4) Positions established pursuant to subsections (3)(b) and (3)(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) The following expenses are payable by the office if the expense is incurred at the request of a public defender:

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

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

(6) 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) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.

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

(9) The chief public defender 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) (a) The office of public defender 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) The office of public defender 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."

{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 47-1-205, 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 appellate defender. 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 the office of appellate defender, including budgeting, reporting, and related functions;

(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 office of appellate defender personnel as authorized by the appellate defender;

(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 defender services;

(f) 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;

(g) implement standards and procedures established by the commission for the office of appellate defender;

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

(i) ~~confer with the chief public defender on budgetary issues and~~ submit budgetary requests and the reports required by

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law or by the governor ~~through the chief public defender~~; and

(j) establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section; and

~~(j)~~(k) 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 }

NEW SECTION. Section 3. {standard} Effective date. [This act] is effective July 1, 2017.

- END -

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As of: September 2, 2016 (11:47am)

LCpd10

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

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

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

A Bill for an Act entitled: "An Act limiting the appointment of counsel to a putative father where child is subject to a petition filed pursuant to 41-3-422; amending sections 41-3-422, and 41-3-425, MCA; and providing an effective date."

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

**Section 1.** Section 41-3-422, MCA, is amended to read:

**"41-3-422. Abuse and neglect petitions -- burden of proof.**

(1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

(v) termination of the parent-child legal relationship, as provided in 41-3-607;

(vi) appointment of a guardian pursuant to 41-3-444;

(vii) a determination that preservation or reunification services need not be provided; or

(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the

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person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require. If personal service cannot be made upon a putative father, the court shall not provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the father unless, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard does not make that person a party to the



action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute

resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold

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As of: September 2, 2016 (11:47am)

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a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

{*Internal References to 41-3-422:*  
41-3-302    41-3-425    41-3-425    41-3-425  
41-3-425    41-3-425    41-3-427    41-3-433  
41-3-437    41-3-437    41-3-442    41-3-607  
47-1-104 }

**Section 2.** Section 41-3-425, MCA, is amended to read:

**"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsections (3) ~~and~~ (4), and (5), the court shall immediately appoint the office of state public defender to assign counsel for:

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(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

(5) Except as provided in the federal Indian Child Welfare Act, a district court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, until:

(a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422;

(b) the putative father makes a request to the court in writing to appoint the office of state public defender to assign

counsel."

{*Internal References to 41-3-425:*  
41-3-422    41-3-422    41-3-422    41-3-423  
41-3-432    47-1-104    47-1-104 }

NEW SECTION.    **Section 3. {standard} Effective date.** [This  
act] is effective October 1, 2017.

- END -

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As of: September 1, 2016 (10:57am)

LCpd11

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

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

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

A Bill for an Act entitled: "An Act requiring the public defender commission to set case compensatory maximums; providing a process for a contract attorney to receive additional compensation; amending section 47-1-216, MCA; ; and providing an effective date."

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

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

**"47-1-216. Contracted services -- case compensatory maximums-- 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 commission shall set case compensatory maximums for attorneys who contract to provide public defender services. The case compensatory maximum is the maximum amount a contract attorney can earn for his or her services on a particular case and depends on the nature and quantity charges filed against the contract attorney's client who is a recipient of public defender services.

(3) In cases where a contract attorney believes the case compensatory maximum is insufficient given the complexity of a client's case, the contract attorney shall submit a written request to earn additional compensation to the chief contract manager. The chief contract manager shall inform the contract attorney in writing whether and what amount of potential additional compensation is permitted within 10 business days of receiving the attorney's request.

~~(2)~~(4) The chief contract manager shall oversee the contracting program and may not maintain a client caseload.

~~(3)~~(5) 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, 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, 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)~~(5) (a) Except as provided in subsection ~~(4)(b)~~ (6)(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)~~ (6)(b) may not be awarded without the approval of the commission and without verifiable assurances that effective representation will be provided.

~~(5)~~(7) 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;



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- (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)~~(8) 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)~~(9) The commission shall adopt rules to establish reasonable compensation and compensation limits for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services.

~~(8)~~(10) Contract attorneys may not take any money or benefit from an appointed client or from anyone for the benefit of the appointed client.

~~(9)~~(11) The commission shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

~~(10)~~(12) The commission shall implement rules requiring evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria."

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

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

NEW SECTION. **Section 2. {standard} Effective date.** [This  
act] is effective October 1, 2016.

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