

1 HOUSE BILL NO. 102

2 INTRODUCED BY J. SOOKTIS

3 BY REQUEST OF THE OFFICE OF PUBLIC DEFENDER

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE OFFICE OF
6 STATE PUBLIC DEFENDER; CREATING A DISTINCTION BETWEEN CONFLICT AND NONCONFLICT
7 REGIONAL OFFICES; REVISING THE DUTIES OF THE DIRECTOR, THE CONFLICT DEFENDER DIVISION
8 ADMINISTRATOR, THE APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND THE CENTRAL
9 SERVICES DIVISION ADMINISTRATOR; REMOVING THE REQUIREMENT FOR THE DIRECTOR TO
10 ESTABLISH STANDARDS SPECIFIC TO CHILD ABUSE AND NEGLECT MATTERS; REVISING THE
11 RESPONSIBILITIES OF THE CENTRAL SERVICES DIVISION TO INCLUDE REQUIREMENTS FOR
12 MANAGING CONTRACTED SERVICES AND AGENCY TRAINING EFFORTS; PROVIDING REPORTING
13 REQUIREMENTS; REVISING TITLES OF DIVISION PERSONNEL TO INCLUDE REGIONAL PUBLIC
14 DEFENDERS AND MANAGING PUBLIC DEFENDERS; AMENDING SECTIONS 18-4-132, 47-1-104, 47-1-
15 105, 47-1-119, 47-1-125, 47-1-201, 47-1-202, 47-1-215, 47-1-301, AND 47-1-401, MCA; AND REPEALING
16 SECTIONS 47-1-120 AND 47-1-121, MCA."

17

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19

20 NEW SECTION. **Section 1. Conflict defender division administrator -- duties.** (1) In addition to
21 the duties provided for in 47-1-401 and subject to approval by the director, the conflict defender division
22 administrator shall:

23 (a) develop and implement a regional strategic plan for the delivery of conflict defender services;
24 (b) ensure that administrative management procedures for conflict regional offices are consistent
25 with the policies and procedures provided by the central services division established in 47-1-119;

26 (c) establish procedures for managing caseloads and assigning cases in a manner that ensures
27 that conflict public defenders are assigned cases according to experience, training, and manageable caseloads
28 and taking into account case complexity, the severity of charges and potential punishments, and the legal skills

- 1 required to provide effective assistance of counsel;
- 2 (d) establish policies and procedures for assigning counsel in capital cases that are consistent with
- 3 standards issued by the Montana supreme court for counsel for indigent persons in capital cases;
- 4 (e) work with the central services division to establish and supervise a training and performance
- 5 evaluation program for attorneys and nonattorney staff members and contractors;
- 6 (f) work with the central services division to establish procedures to handle complaints about
- 7 conflict public defender performance; and
- 8 (g) perform all other duties assigned by the director pursuant to this chapter.
- 9 (2) The conflict defender division administrator may not maintain a client caseload.

10

11 **NEW SECTION. Section 2. Conflict regional offices -- conflict regional public defenders.** (1) The

12 conflict defender division administrator may, with the approval of the director, hire, assign, and supervise a

13 conflict regional public defender to manage and supervise each conflict regional office in the conflict defender

14 division established pursuant to 47-1-104(2).

15 (2) Subject to approval by the conflict defender division administrator, each conflict regional public

16 defender shall:

- 17 (a) manage and supervise all conflict public defender services provided within the conflict regional
- 18 public defender's assigned region;
- 19 (b) establish protocols so that when a court orders the assignment of counsel, the assignment is
- 20 made promptly to an appropriate public defender and so that a conflict public defender is immediately available
- 21 when necessary;
- 22 (c) ensure that conflict public defender assignments within the region comply with the provisions of
- 23 47-1-202(1)(c);
- 24 (d) hire and supervise the work of conflict regional office personnel as authorized by the conflict
- 25 defender division administrator;
- 26 (e) coordinate with the central services division to contract for necessary conflict public defender
- 27 services;
- 28 (f) implement the standards and procedures established by the director and the conflict defender

1 division administrator for the region;

2 (g) perform all other duties as assigned by the conflict defender division administrator.

3

4 NEW SECTION. **Section 3. Appellate defender division administrator -- duties.** (1) In addition to
5 the duties provided in 47-1-301 and subject to approval by the director, the appellate defender division
6 administrator shall:

7 (a) develop and implement a strategic plan for the delivery of appellate public defender services;

8 (b) ensure that administrative management procedures for appellate offices are consistent with the
9 policies and procedures provided by the central services division established in 47-1-119;

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

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

16 (e) work with the central services division to establish and supervise a training and performance
17 evaluation program for attorneys and nonattorney staff members and contractors;

18 (f) work with the central services division to establish procedures to handle complaints about
19 appellate public defender performance; and

20 (g) perform all other duties assigned by the director pursuant to this chapter.

21 (2) The appellate defender division administrator may maintain a minimum client caseload as
22 determined by the director.

23

24 **Section 4.** Section 18-4-132, MCA, is amended to read:

25 **"18-4-132. Application.** (1) This chapter applies to:

26 (a) the expenditure of public funds irrespective of their source, including federal assistance money,
27 by this state acting through a governmental body under any contract, except a contract exempted from this
28 chapter by this section or by another statute;

(b) a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state; and

(c) the disposal of state supplies.

(2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) This chapter does not apply to:

(a) either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4;

(b) construction contracts;

(c) expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system;

(d) contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000;

(e) contracts entered into by the state compensation insurance fund to procure insurance-related services;

(f) contracts with:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(iv) consulting actuaries;

(v) a private person contracted by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(vi) a private person contracted by the Montana state lottery;

(vii) a private investigator licensed by any jurisdiction;

1 (viii) a claims adjuster; or

2 (ix) a court reporter appointed as an independent contractor under 3-5-601;

3 (g) electrical energy purchase contracts by the university of Montana or Montana state university,
4 as defined in 20-25-201. Any savings accrued by the university of Montana or Montana state university in the
5 purchase or acquisition of energy must be retained by the board of regents of higher education for university
6 allocation and expenditure.

7 (h) the purchase or commission of art for a museum or public display;

8 (i) contracting under ~~47-1-124~~ 47-1-119 of the Montana Public Defender Act;

9 (j) contracting under Title 90, chapter 4, part 11; or

10 (k) contracting under Title 90, chapter 14, part 1.

11 (4) (a) Food products produced in Montana may be procured by either standard procurement
12 procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:

13 (i) the quality of available Montana-produced food products is substantially equivalent to the
14 quality of similar food products produced outside the state;

15 (ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and

16 (iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the
17 lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the
18 lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food
19 products for a governmental body, the higher bid is reasonable and capable of being paid out of that
20 governmental body's existing budget without any further supplemental or additional appropriation.

21 (b) The department shall adopt any rules necessary to administer the optional procurement
22 exception established in this subsection (4).

23 (5) As used in this section, the following definitions apply:

24 (a) "Food" means articles normally used by humans as food or drink, including articles used for
25 components of articles normally used by humans as food or drink.

26 (b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or
27 manufactured."
28

1 **Section 5.** Section 47-1-104, MCA, is amended to read:

2 **"47-1-104. (Temporary) Statewide system -- structure and scope of services -- assignment of**
3 **counsel at public expense.** (1) There is a statewide public defender system, which is required to deliver public
4 defender services in all courts in this state. The system is supervised by the director.

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

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

13 (4) A court may order assignment of a public defender under this chapter in the following cases:

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

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

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

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

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

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

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

26 (vii) for a witness in a criminal grand jury proceeding, as provided in 46-4-304;

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

- 1 (i) as provided for in 41-3-425;
- 2 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent
- 3 or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction
- 4 Prosecution Act, as provided in 41-5-1607;
- 5 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on
- 6 Juveniles, as provided in 41-6-101;
- 7 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental
- 8 Consent for Abortion Act of 2013, as provided in 50-20-509;
- 9 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
- 10 person to a residential facility, as provided in 53-20-112;
- 11 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
- 12 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in
- 13 a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;
- 14 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a
- 15 mental disorder of the ward, as provided in 72-5-322;
- 16 (ix) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
- 17 removal, placement, or termination proceeding pursuant to 41-3-422 and as required under the federal Indian
- 18 Child Welfare Act and 41-3-1316, as provided in 41-3-425;
- 19 (x) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided
- 20 in 53-21-116; and
- 21 (xi) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as
- 22 provided in 53-24-302; and
- 23 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).
- 24 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
- 25 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
- 26 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.
- 27 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public
- 28 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad

1 item in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service
2 for the statewide public defender system and does not result in a conflict of interest. (Terminates June 30,
3 2025--sec. 55, Ch. 716, L. 2023.)

4 **47-1-104. (Effective July 1, 2025) Statewide system -- structure and scope of services --**
5 **assignment of counsel at public expense.** (1) There is a statewide public defender system, which is required
6 to deliver public defender services in all courts in this state. The system is supervised by the director. The
7 director must be an attorney licensed to practice law in the state.

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

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

16 (4) A court may order assignment of a public defender under this chapter in the following cases:

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

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

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

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

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

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

- 1 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;
- 2 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
3 disabled person to a residential facility, as provided in 53-20-112;
- 4 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided
5 in 53-21-116;
- 6 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as
7 provided in 53-24-302; and
- 8 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.
- 9 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense
10 regardless of the person's financial ability to retain private counsel, as follows:
- 11 (i) as provided for in 41-3-425;
- 12 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent
13 or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction
14 Prosecution Act, as provided in 41-5-1607;
- 15 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on
16 Juveniles, as provided in 41-6-101;
- 17 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental
18 Consent for Abortion Act of 2013, as provided in 50-20-509;
- 19 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
20 person to a residential facility, as provided in 53-20-112;
- 21 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
- 22 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in
23 a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;
- 24 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a
25 mental disorder of the ward, as provided in 72-5-322; and
- 26 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).
- 27 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
28 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title

1 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

2 (b) A private attorney who is contracted with under the provisions of ~~47-1-424~~ this title to provide
3 public defender services under this chapter may be appointed as a court-appointed special advocate or
4 guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the
5 attorney's service for the statewide public defender system and does not result in a conflict of interest."

6

7 **Section 6.** Section 47-1-105, MCA, is amended to read:

8 **"47-1-105. Director -- duties -- report -- standards for public defender services qualification and**
9 **training.** (1) The director shall supervise and direct the system. In addition to other duties assigned pursuant to
10 this chapter, the director shall:

11 (a) establish the qualifications, duties, and compensation of the public defender division
12 administrator provided for in 47-1-201, hire the public defender division administrator after considering qualified
13 applicants, and regularly evaluate the performance of the public defender division administrator;

14 (b) establish the qualifications, duties, and compensation of the appellate defender division
15 administrator provided for in 47-1-301, hire the appellate defender division administrator after considering
16 qualified applicants, and regularly evaluate the performance of the appellate defender division administrator;

17 (c) establish the qualifications, duties, and compensation of the conflict defender division
18 administrator provided for in 47-1-401, hire the conflict defender division administrator after considering
19 qualified applicants, and regularly evaluate the performance of the conflict defender division administrator; and

20 (d) establish the qualifications, duties, and compensation of the central services division
21 administrator provided for in 47-1-119, hire the central services division administrator after considering qualified
22 applicants, and regularly evaluate the performance of the central services division administrator.

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

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

- 1 (b) acceptable caseloads and workload monitoring protocols to ensure that public defender
2 workloads are manageable;
- 3 (c) access to and use of necessary professional services, such as paralegal, investigator, and
4 other services that may be required to support a public defender in a case;
- 5 (d) continuing education requirements for public defenders and support staff;
- 6 (e) nationally recognized practice standards for each type of case in which the office of state public
7 defender provides representation;
- 8 (f) performance criteria; and
- 9 (g) performance evaluation protocols.
- 10 ~~(3)——In addition to the director's duties to establish statewide standards under subsection (2), the~~
11 ~~director shall establish specific standards for the qualification and training of attorneys providing public defender~~
12 ~~services to a child in an abuse and neglect case. The standards must take into consideration:~~
- 13 (a)——additional training required to competently represent a child, which may include:
- 14 (i)——methods for communicating with a child in a developmentally appropriate manner;
- 15 (ii)——methods for presenting child testimony and alternatives to direct testimony;
- 16 (iii)——early childhood, child, and adolescent development;
- 17 (iv)——the dynamics of abuse and neglect, child sexual abuse, trauma, grief, and attachment;
- 18 (v)——mental health issues, substance abuse issues, and the impact of domestic violence; and
- 19 (vi)——available services and community resources for families;
- 20 (b)——continuing education requirements specific to representing a child; and
- 21 (c)——practice standards for representing a child, which may include:
- 22 (i)——ensuring the child understands the role of counsel in the proceedings, including counsel's duty
23 ~~to maintain confidentiality, provide loyal and independent legal representation, and to advocate for the child's~~
24 ~~position;~~
- 25 (ii)——taking all steps reasonably necessary to represent the child in the proceedings, including but
26 ~~not limited to interviewing the child, advising the child of the child's rights, educating the child about the legal~~
27 ~~process, informing the child of the child's options, counseling the child's decisionmaking, preparing a case~~
28 ~~theory and strategy, preparing for and participating in negotiations and hearings, and drafting and submitting~~

1 motions, memoranda, and orders;

2 (iii) ~~reviewing and accepting or declining, after appropriate consultation with the child, any~~
3 ~~proposed stipulation for an order affecting the child and explaining to the court the basis for any opposition to~~
4 ~~the proposed stipulation;~~

5 (iv) ~~taking action counsel considers appropriate to expedite the proceedings and the resolution of~~
6 ~~contested issues;~~

7 (v) ~~maintaining frequent and intentional contact with the child, at a minimum, prior to and after~~
8 ~~each court hearing, after every placement change, and no less than one in-person meeting every 3 months;~~

9 (vi) ~~in accordance with the rules of professional conduct, communicating and collaborating with all~~
10 ~~other parties to the case;~~

11 (vii) ~~investigating and taking necessary legal action regarding the child's medical, mental health,~~
12 ~~social, and educational needs and overall well-being;~~

13 (viii) ~~visiting the home, residence, or any prospective residence of the child, including each time the~~
14 ~~placement is changed;~~

15 (ix) ~~seeking court orders or taking any other necessary steps in accordance with the child's~~
16 ~~direction to ensure that the child's health, mental health, educational, developmental, cultural, and placement~~
17 ~~needs are met; and~~

18 (x) ~~ensuring opportunities for the meaningful participation of the child in court hearings and other~~
19 ~~case events, including advising the child of the right to participate in the proceedings. If the child does not want~~
20 ~~to participate or wishes to waive the right to attend after being informed of the right and the nature of the~~
21 ~~proceedings, counsel for the child shall inform the court of the child's decision not to attend.~~

22 (4)(3) The director shall also:

23 (a) ~~review and approve the strategic plan and budget based on proposals submitted by the public~~
24 ~~defender division administrator, the central services division administrator, the appellate defender division~~
25 ~~administrator, and the conflict defender division administrator;~~

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

27 (c) establish policies and procedures for handling excess caseloads;

28 (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; and

(e) examine workloads and workload standards for all levels within the office of state public defender and include its findings in the biennial report provided for in 47-1-125;

(f) establish standards for a statewide contracted services program to be managed by the central services division provided for in 47-1-119 to ensure that contracting for public defender services is done fairly and consistently statewide and within each public defender region;

(g) establish reasonable compensation for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services; and

(h) ensure that there are procedures for conducting assessments of each contract attorney on a biennial basis.

~~(5)(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."

Section 7. Section 47-1-119, MCA, is amended to read:

"47-1-119. Central services division -- responsibilities -- contracted services -- training -- department of administration to support. (1) There is a central services division in the office of state public defender. The division must be located in Butte, Montana. The central services division is supervised by an administrator hired and supervised by the director.

(2) The central services division administrator shall:

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

(b) manage agency contracting under 47-1-121 pursuant to subsection (3);

(c) manage agency training pursuant to 47-1-120, practice standards, and litigation support pursuant to subsection (4);

(d) provide administrative support to the director; and

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

(3) (a) The central services division administrator shall hire an individual who is responsible for the administrative oversight and assignment of contracted public defenders and service providers for the office of

1 state public defender.

2 (b) All contracting pursuant to this section is exempt from the Montana Procurement Act as
3 provided in 18-4-132.

4 (c) Contracts may not be awarded based solely on the lowest bid or provide compensation to
5 contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

6 (d) (i) Contracting pursuant to this section must be done through a competitive process that must,
7 at a minimum, involve the following considerations:

8 (A) attorney qualifications necessary to provide effective assistance of counsel that meets relevant
9 and applicable standards for any case assigned;

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

11 (C) reporting protocols and caseload monitoring processes;

12 (D) a process for assessment of performance;

13 (E) a process for conflict resolution;

14 (F) continuing education requirements;

15 (G) cost of services provided; and

16 (H) compliance with agency and state policies, procedures, protocols, and standards.

17 (ii) Contract public defenders may not take any money, compensation, or benefit from, or on behalf
18 of, any client assigned to them under this section.

19 (4) (a) The central services division administrator shall hire an individual who is responsible for the
20 administrative oversight and management of agency training, practice standards, and litigation support
21 services.

22 (b) The individual shall coordinate training efforts for all agency employees, contract public
23 defenders, and contracted service providers. The training efforts must include:

24 (i) current aspects of criminal and civil law involving public defense;

25 (ii) current and emerging technologies affecting public defense; and

26 (iii) best practices and standard operating procedures needed for the effective and efficient
27 performance of duties.

28 (c) The individual shall manage the development and dissemination of practice standards and

1 standard operating procedures affecting the delivery of public defender services.

2 (d) The individual shall ensure articles, opinions, motions, briefs, and other relevant sources of
3 information regarding important aspects of public defense are collected, compiled, and made available to
4 agency employees, contract public defenders, and contracted service providers.

5 (e) The individual shall develop and manage a litigation support services program to provide co-
6 counsel and other direct litigation assistance as necessary to public defenders.

7 ~~(3)~~(5) The central services division shall establish for the office of state public defender:

8 (a) standard procedures to handle complaints about public defender performance and work with
9 the public defender division administrator, appellate defender division administrator, and conflict defender
10 division administrator to ensure that public defenders, office personnel, and clients are aware of avenues
11 available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of
12 the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and
13 the applicable provisions of Title 37, chapter 61;

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

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

20 ~~(4)~~(6) The following expenses are payable by the central services division if the expense is incurred
21 at the request of a public defender and is authorized by the director:

22 (a) witness and interpreter fees and expenses as provided for in Title 26, chapter 2, part 5, and 46-
23 15-116; and

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

25 ~~(5)~~(7) If the costs to be paid pursuant to subsection ~~(4)~~(6) are not paid directly, reimbursement must
26 be made within 30 days of the receipt of a claim.

27 ~~(6)~~(8) The department of administration established in 2-15-1001 shall provide central services
28 support to the extent feasible and efficient."

1

2 **Section 8.** Section 47-1-125, MCA, is amended to read:

3 **"47-1-125. Reports.** (1) (a) The office shall submit a biennial report to the governor, the supreme
4 court, and the law and justice interim committee in accordance with 5-11-210.

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

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

8 (ii) all standards of practice established or being considered by the director for the public defender
9 division, the appellate defender division, and the conflict defender division;

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

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

13 (v) the number of nonattorney staff employed or contracted with in the system, identified by region,
14 if appropriate, and office;

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

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

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

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

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

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

26 (2) The office shall report data for each fiscal year by September 30 of the subsequent fiscal year
27 representing the caseload for the entire statewide public defender system to the governor, the legislature in
28 accordance with 5-11-210, 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. The report must be provided in an electronic format.

(3) (a) For the fiscal year beginning July 1, 2011, and every 5 years thereafter, the legislative fiscal analyst shall compare the percentage change in general fund revenue for the previous 5 years to the percentage change in the amounts allocated to local governments under the provisions of 15-1-121, as amended in 2005, and the actual costs for public defender services for the same time period.

(b) The results of the comparison must be reported to the governor, legislative finance committee, law and justice interim committee, and supreme court the following fiscal year and in accordance with 5-11-210."

Section 9. Section 47-1-201, MCA, is amended to read:

"47-1-201. Public defender division -- personnel. (1) There is a public defender division. The head of the division is the public defender division administrator, who is hired and supervised by the director.

(2) The public defender division administrator must be an attorney licensed to practice law in the state.

(3) The public defender division administrator shall hire ~~or contract for~~ and supervise other personnel necessary to perform the function of the public defender division, including but not limited to:

(a) ~~deputy~~ regional public defenders, as provided in 47-1-215;

(b) ~~assistant~~ managing public defenders; and

(c) public defenders; and

~~(e)(d)~~ other necessary administrative and professional support staff for the public defender division."

Section 10. Section 47-1-202, MCA, is amended to read:

"47-1-202. Public defender division administrator -- duties. (1) In addition to the duties provided in 47-1-201 and subject to approval by the director, the public defender division administrator shall:

(a) develop and implement a regional strategic plan for the delivery of public defender services;

(b) ensure that administrative management procedures for regional offices are consistent with the policies and procedures provided by the central services division established in 47-1-119;

(c) 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;

(d) 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;

(e) work with the ~~training coordinator provided for in 47-1-120~~ central services division to establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;

(f) work with the central services division to establish procedures to handle complaints about public defender performance; and

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

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

Section 11. Section 47-1-215, MCA, is amended to read:

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

(2) Subject to approval by the public defender division administrator, each ~~deputy regional~~ public defender shall:

(a) manage and supervise all public defender services provided within the ~~deputy regional~~ public defender's assigned region;

(b) establish protocols so that when a court orders 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-

1 202(1)(c);

2 (d) hire and supervise the work of regional office personnel as authorized by the public defender
3 division administrator;

4 (e) coordinate with the ~~contract manager provided for in 47-1-124 central services division~~ to
5 contract for necessary public defender services as authorized by the public defender division administrator
6 according to the strategic plan approved by the director;

7 (f) ~~keep a record of public defender and associated services and expenses in the region and~~
8 ~~submit the records to the public defender division administrator as requested~~;

9 (g)(f) implement the standards and procedures established by the director and the public defender
10 division administrator for the region; and

11 (h) ~~maintain a minimum client caseload as determined by the public defender division~~
12 ~~administrator; and~~

13 (i)(g) perform all other duties as assigned by the public defender division administrator.

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

17

18 **Section 12.** Section 47-1-301, MCA, is amended to read:

19 **"47-1-301. Appellate defender division -- division administrator personnel.** (1) There is an
20 appellate defender division. The appellate defender division must be located in Helena, Montana. The head of
21 the division is the appellate defender division administrator, who is hired and supervised by the director.

22 (2) (a) ~~The director shall hire and supervise the appellate defender division administrator to~~
23 ~~manage and supervise the appellate defender division.~~

24 (b) ~~The appellate defender division administrator must be an attorney licensed to practice law in~~
25 ~~the state.~~

26 (3) Subject to approval by the director, the appellate defender division administrator shall hire and
27 supervise other personnel necessary to perform the function of the appellate defender division, including but
28 not limited to:

1 (a) managing appellate public defenders;
 2 (b) appellate public defenders; and
 3 (c) other necessary administrative and professional support staff for the appellate defender
 4 division.
 5 ~~(a) — direct, manage, and supervise all public defender services provided by the appellate defender~~
 6 ~~division;~~
 7 ~~(b) — ensure that when a court orders the appellate defender division to assign an appellate lawyer~~
 8 ~~or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made~~
 9 ~~promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or~~
 10 ~~petitioner when necessary;~~
 11 ~~(c) — ensure that appellate defender assignments comply with the provisions of 47-1-202 (1)(c) and~~
 12 ~~standards for counsel for indigent persons in capital cases issued by the Montana supreme court;~~
 13 ~~(d) — hire and supervise the work of appellate defender division personnel;~~
 14 ~~(e) — contract for services as provided in 47-1-121 and as authorized by the director according to the~~
 15 ~~strategic plan for the delivery of public defender services;~~
 16 ~~(f) — keep a record of appellate defender services and expenses of the appellate defender division~~
 17 ~~and submit records and reports to the central services division provided for in 47-1-119 ;~~
 18 ~~(g) — implement standards and procedures established by the director for the appellate defender~~
 19 ~~division;~~
 20 ~~(h) — maintain a minimum client caseload as determined by the director;~~
 21 ~~(i) — confer with the director on budgetary issues and submit budgetary requests and information for~~
 22 ~~the reports required by law or by the governor; and~~
 23 ~~(j) — perform all other duties assigned to the appellate defender division administrator by the~~
 24 ~~director."~~

25
26 **Section 13.** Section 47-1-401, MCA, is amended to read:

27 **"47-1-401. Conflicts of interest -- conflict defender division administrator.** (1) The director shall
 28 ~~establish~~ There is a conflict defender division to provide for the representation of indigent defendants agency

clients in circumstances in which, because of conflict of interest, lack of caseload capacity, or to further the client's best interest, the public defender division or the appellate defender division is unable to provide representation to a defendant. The head of the division is the conflict defender division administrator, who is hired and supervised by the director.

(2) ~~The position of conflict defender division administrator is hired and supervised by the director under 47-1-105. The conflict defender division administrator reports directly to the director and not to the public defender division administrator. The conflict defender division administrator must be an attorney licensed to practice law in the state.~~

(3) ~~The conflict defender division administrator may not handle cases. The conflict defender division administrator shall hire and supervise other personnel necessary to perform the function of the conflict defender division, including but not limited to:~~

(a) regional conflict public defenders;

(b) conflict managing public defenders;

(c) conflict public defenders; and

(d) other necessary administrative and professional support staff for the public defender division.

~~(4) All attorneys handling conflict of interest cases shall report to the conflict defender division administrator."~~

NEW SECTION. Section 14. Repealer. The following sections of the Montana Code Annotated are repealed:

47-1-120. Training program -- coordinator.

47-1-121. Contracted services.

NEW SECTION. Section 15. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 47, chapter 1, part 4, and the provisions of Title 47, chapter 1, part 4, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 47, chapter 1, part 3, and the provisions of Title 47, chapter 1, part 3, apply to [section 3].

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