

**Unofficial Draft Copy**

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.

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