

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"> • strikes language concerning the commission's budgetary duties and certain restrictions on the commission's hiring of staff. • requires that the commission meet quarterly. 	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.

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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"> • chief public defender • deputy defenders • appellate defender • administrative manager • chief contract manager • training program coordinator <p>The following position is not exempt:</p> <ul style="list-style-type: none"> • conflicts manager 	<p>The following positions would remain exempt:</p> <ul style="list-style-type: none"> • chief public defender • appellate defender (renamed chief appellate defender) • deputy defenders <p>The following position is added as exempt:</p> <ul style="list-style-type: none"> • conflicts manager (renamed chief conflict defender) <p>The following positions would no longer be exempt:</p> <ul style="list-style-type: none"> • administrative manager (renamed administrator) • contract manager • training coordinator 	<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"> • "advisory" is added to the definition for "commission" • "director" is a new term and definition • the term "office" will now mean the overall agency, not just the chief public defender's office 	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. Commission Director -- 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>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>

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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"> • Provides for the title "chief conflict defender" who would be appointed by the director, not the commission. • 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. • 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. 	<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"> • the commission would retain appointment authority over the position. • 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.
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"> • Consolidates the language in various current sections about administrative functions. • 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. • The office would administer the following: <ul style="list-style-type: none"> - training - contracting - complaint process - eligibility screening - budgeting/accounting - IT • 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.) • Reporting requirements are stricken so that they can be moved to a consolidated section on reporting. See Section 20. 	<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"> • The position title would be "Chief Administrator" and the office would be called the "Office of Chief Administrator". • The commission would appoint the Chief Administrator. • The Chief Administrator position would remain exempt from the classification and pay plan. • The commission would remain allocated to the Department of Administration for administrative purposes.

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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 state chief public defender -- personnel -- compensation -- expenses -- reports .	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"> • the training coordinator position would be moved to the central services office • the training coordinator would be hired by the central services office administrator • the position would no longer be exempt 	<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.

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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.

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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. Title 2, chapter 15 - Executive Branch New Section 2 - Office of State Public Defender Title 47, chapter 1 - Montana Public Defender Act 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.