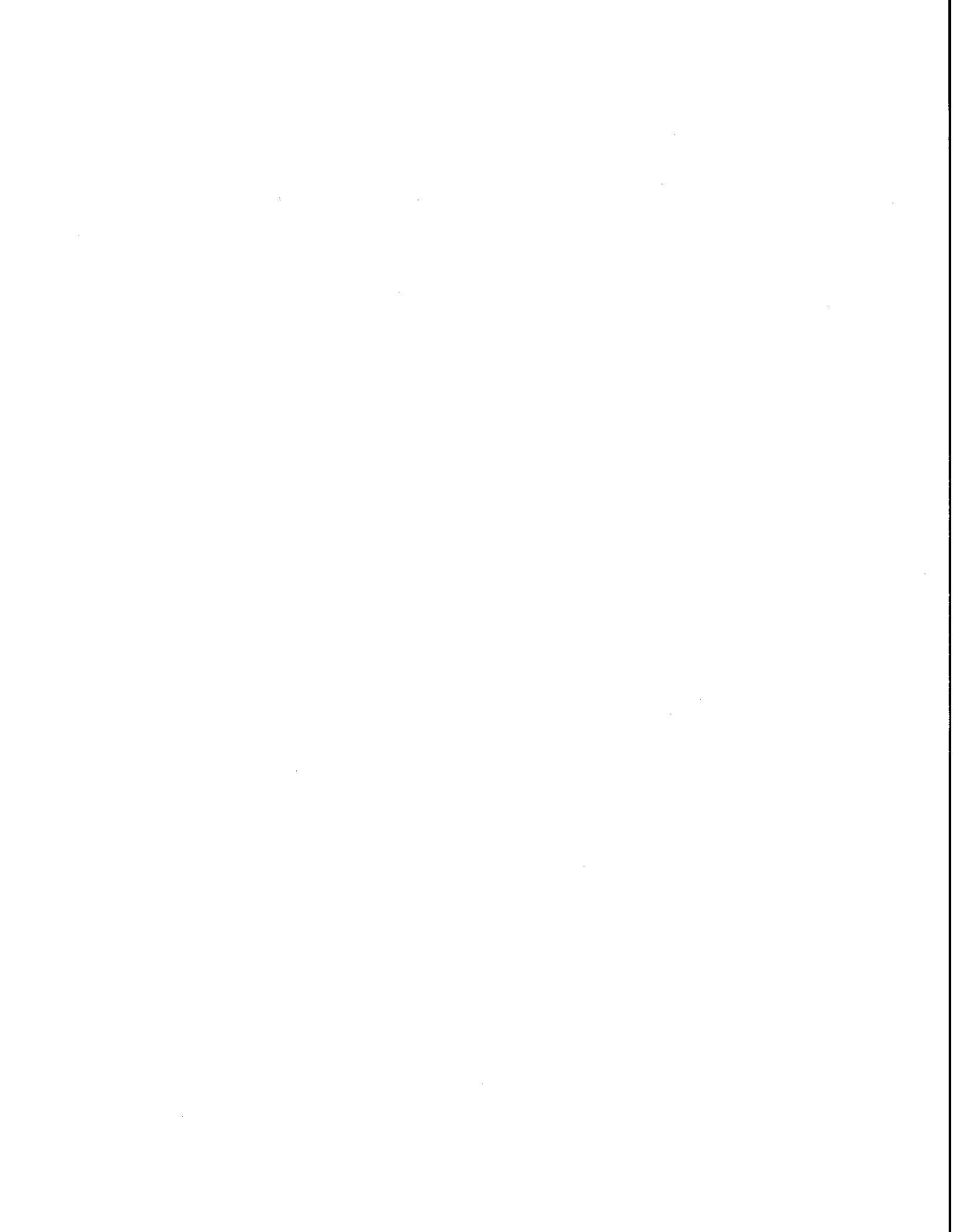


Exhibit Number: 1

This exhibit exceeds 10-page maximum; therefore only a small portion of the exhibit is scanned for your research. The original exhibit is on file at the Montana Historical Society and may be viewed there



SENATE BILL NO. 146

INTRODUCED BY D. MCGEE

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA PUBLIC DEFENDER ACT;

6 PROVIDING PURPOSES AND DEFINITIONS; ESTABLISHING A STATEWIDE PUBLIC DEFENDER SYSTEM

7 TO DELIVER ASSIGNED COUNSEL SERVICES IN STATE, COUNTY, MUNICIPAL, AND CITY COURTS;

8 SPECIFYING THE SCOPE OF PUBLIC DEFENDER SERVICES IN CRIMINAL AND CIVIL PROCEEDINGS TO

9 BE DELIVERED BY THE SYSTEM; REPLACING THE APPELLATE DEFENDER COMMISSION WITH A

10 PUBLIC DEFENDER COMMISSION; ESTABLISHING AN OFFICE OF STATE PUBLIC DEFENDER;

11 ESTABLISHING AN OFFICE OF APPELLATE DEFENDER AND PROVIDING FOR A CHIEF APPELLATE

12 DEFENDER; SPECIFYING DUTIES AND RESPONSIBILITIES; PROVIDING RULEMAKING AUTHORITY;

13 PROVIDING FOR REGIONAL OFFICES; PROVIDING FOR A CONTRACTED SERVICES PROGRAM;

14 PROVIDING CERTAIN EXEMPTIONS FROM THE MONTANA PROCUREMENT ACT; PROVIDING FOR

15 DETERMINATIONS OF ELIGIBILITY AND INDIGENCE; REALLOCATING PAYMENT RESPONSIBILITIES FOR

16 CERTAIN COSTS PAYABLE BY THE OFFICE OF COURT ADMINISTRATOR AND THE NEW OFFICE OF

17 STATE PUBLIC DEFENDER; ESTABLISHING A SPECIAL REVENUE ACCOUNT; PROVIDING A

18 COST-SHARING FORMULA FOR STATE, COUNTY, AND CITY FUNDING; CHANGING THE LOCAL

19 GOVERNMENT ENTITLEMENT SHARE PAYMENT LAW TO COMPENSATE THE STATE FOR LOCAL

20 GOVERNMENT'S SHARE OF THE COSTS OF THE STATEWIDE PUBLIC DEFENDER SYSTEM; CLARIFYING

21 PROVISIONS RELATED TO WITNESS FEES, TRANSCRIPT FEES, AND PSYCHIATRIC EVALUATION AND

22 EXAMINATION COSTS; PROVIDING THAT A PUBLIC DEFENDER BE ASSIGNED AT THE BEGINNING OF

23 ANY CHILD ABUSE AND NEGLECT PROCEEDING; PROVIDING FOR THE TRANSFER OF EMPLOYEES

24 IN COUNTY AND CITY PUBLIC DEFENDER OFFICES TO STATE EMPLOYMENT; PROVIDING FOR AN

25 IMPLEMENTATION AND TRANSITION PERIOD; REQUIRING A LEGISLATIVE AUDIT SO THAT FUNDING

26 RESPONSIBILITIES FOR CERTAIN COUNTIES CAN BE CALCULATED BASED ON ACTUAL COSTS;

27 AMENDING SECTIONS 2-18-103, 3-5-511, 3-5-604, 3-5-901, 7-6-2426, 15-1-121, 18-4-132, 26-2-501,

28 26-2-505, 26-2-506, 26-2-508, 26-2-510, 40-5-236, 40-6-119, 41-3-205, 41-3-422, 41-3-423, 41-3-432, 41-3-607,

29 41-3-1010, 41-3-1012, 41-5-111, 41-5-112, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-8-113,

30 46-8-114, 46-8-115, 46-12-210, 46-14-202, 46-14-221, 46-15-115, 46-15-116, 46-17-203, 46-18-101, 46-18-201,

1 46-21-201, 50-20-212, 53-9-104, 53-20-125, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 53-30-110, 61-8-731,
 2 72-5-225, 72-5-234, 72-5-315, 72-5-322, AND 72-5-408, MCA; REPEALING SECTIONS 2-15-1020, 7-6-4023,
 3 46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, AND 46-8-213, MCA; AND PROVIDING
 4 EFFECTIVE DATES."

5

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

7

8 NEW SECTION. Section 1. Short title. [Sections 1 through 4 and 6 through 14] may be cited as the
 9 "Montana Public Defender Act".

10

11 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 4 and 6 through 14], the
 12 following definitions apply:

- 13 (1) "Commission" means the public defender commission established in [section 5].
- 14 (2) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court,
 15 or a city court.
- 16 (3) "Indigent" means that a person has been determined under the provisions of [section ~~43~~ 14] to be
 17 indigent or partially indigent and financially unable to retain private counsel.
- 18 (4) "Office" means the office of state public defender established in [section 7].
- 19 (5) "Public defender" means an attorney employed by or under contract with the office and assigned
 20 to provide legal counsel to a person under the provisions of [sections 1 through 4 and 6 through 14].
- 21 (6) "Statewide public defender system", "state system", or "system" means the system of public
 22 defender services established pursuant to [sections 1 through 4 and 6 through 14].

23

24 NEW SECTION. Section 3. Purpose. The purposes of [sections 1 through 4 and 6 through 14] are
 25 to:

- 26 (1) establish a statewide public defender system to provide effective assistance of counsel to indigent
 27 criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public
 28 expense;
- 29 (2) ensure that the system is free from undue political interference and conflicts of interest;
- 30 (3) provide that public defender services are delivered by qualified and competent counsel in a manner

1 that is fair and consistent throughout the state;

2 (4) establish a system that utilizes state employees, contracted services, or other methods of providing
3 services in a manner that is responsive to and respective of regional and community needs and interests; and

4 (5) ensure that ADEQUATE public funding of the statewide public defender system is provided and
5 managed in a fiscally responsible manner.

6
7 **NEW SECTION. Section 4. Statewide system -- structure and scope of services -- assignment**

8 **of counsel at public expense.** (1) There is a statewide public defender system, which must deliver public
9 defender services in all courts in this state. The system is supervised by the commission and administered by
10 the office.

11 (2) The commission shall approve a strategic plan for service delivery and divide the state into not more
12 than 11 public defender regions. The commission may establish a regional office to provide public defender
13 services in each region, as provided in [section ~~40~~ 11], establish a contracted services program to provide
14 services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes
15 described in [section 3].

16 (3) Beginning July 1, 2006, when a court orders the office to assign counsel, the office shall immediately
17 assign a public defender qualified to provide the required services. The commission may establish protocols to
18 provide that public defenders work with a court to establish assignment rosters or other methodologies to ensure
19 that the office makes appropriate assignments in a timely manner.

20 (4) Beginning July 1, 2006, a court may order the office to assign counsel under [sections 1 through 4
21 and 6 through 14] in the following cases:

22 (a) in cases in which a person is entitled to assistance of counsel at public expense because of financial
23 inability to retain private counsel, subject to a determination of indigence pursuant to [section ~~43~~ 14], as follows:

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

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

28 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
29 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child
30 Welfare Act, as provided in [section 15];

1 (IV) FOR AN APPLICANT FOR SENTENCE REVIEW PURSUANT TO TITLE 46, CHAPTER 18, PART 9:

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

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

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

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

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

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

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

13 (i) as provided for in [section 15];

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

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

19 (iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice
20 of Abortion Act, as provided in 50-20-212;

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

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

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

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

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

29 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
30 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 [section 44 12] to provide public
3 defender services under [sections 1 through 4 and 6 through 14] may be appointed as a court-appointed special
4 advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from
5 the attorney's service for the statewide public defender system and does not result in a conflict of interest.

6
7 **NEW SECTION. Section 5. Public defender commission.** (1) There is a public defender commission.

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

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

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

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

13 (ii) one attorney experienced in THE DEFENSE OF juvenile delinquency and abuse and neglect cases
14 involving the federal Indian Child Welfare Act; and

15 (iii) one attorney who represents ~~a Montana association for~~ criminal defense lawyers; and

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

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

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

19 (D) ONE PERSON WHO IS A MEMBER OF AN ORGANIZATION THAT ADVOCATES ON BEHALF OF INDIGENT PERSONS;

20 (E) ONE PERSON WHO IS A MEMBER OF AN ORGANIZATION THAT ADVOCATES ON BEHALF OF A RACIAL MINORITY

21 POPULATION IN MONTANA;

22 (F) ONE PERSON WHO IS A MEMBER OF AN ORGANIZATION THAT ADVOCATES ON BEHALF OF PEOPLE WITH MENTAL

23 ILLNESS AND DEVELOPMENTAL DISABILITIES; AND

24 (G) ONE PERSON WHO IS EMPLOYED BY AN ORGANIZATION THAT PROVIDES ADDICTIVE BEHAVIOR COUNSELING.

25 (3) A PERSON APPOINTED TO THE COMMISSION MUST HAVE SIGNIFICANT EXPERIENCE IN THE DEFENSE OF

26 CRIMINAL OR OTHER CASES SUBJECT TO THE PROVISIONS OF [SECTIONS 1 THROUGH 4 AND 6 THROUGH 14] OR MUST HAVE

27 DEMONSTRATED A STRONG COMMITMENT TO QUALITY REPRESENTATION OF INDIGENT DEFENDANTS.

28 ~~(3)~~(4) A vacancy on the commission must be filled in the same manner as the original appointment and
29 in a timely manner.

30 ~~(4)~~(5) Members shall serve staggered 3-year terms.

1 ~~(5)(6)~~ The commission is allocated to the department of administration for administrative purposes only,
2 as provided in 2-15-121, except that:

3 (a) the commission and chief public defender shall hire their own staff, except for any support staff
4 provided by the department of administration for centralized services, such as payroll, human resources,
5 accounting, information technology, or other services determined by the commission and the department to be
6 more efficiently provided by the department; and

7 (b) commission and office of state public defender budget requests prepared and presented to the
8 legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the
9 department of administration. However, nothing in this subsection ~~(5)(b)~~ ~~(6)(B)~~ prohibits the department from
10 providing administrative support for the budgeting process and including the budget requests in appropriate
11 sections of the department's budget requests for administratively attached agencies.

12 ~~(6)(7)~~ While serving a term on the commission, a member of the commission may not serve as a judge,
13 a public defender employed by or under contract with the office of state public defender established in [section
14 7], a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the
15 United States district attorney or an assistant United States district attorney, or a law enforcement official.

16 ~~(7)(8)~~ Members of the commission may not receive a salary for service on the commission but must
17 be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge
18 of official duties.

19 ~~(8)(9)~~ The commission shall establish procedures for the conduct of its affairs and elect a presiding
20 officer from among its members.

21
22 **NEW SECTION. Section 6. Commission -- duties -- report -- rules.** The commission shall supervise
23 and direct the system. In addition to other duties assigned pursuant to [sections 1 through 4 and 6 through 14],
24 the commission shall:

25 (1) establish the qualifications, duties, and compensation of the chief public defender, as provided in
26 [section 7], appoint a chief public defender after considering qualified applicants, and regularly evaluate the
27 performance of the chief public defender;

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