

1 HOUSE BILL NO. 93

2 INTRODUCED BY E. MCCLAFFERTY

3 BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

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5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE PUBLIC DEFENDER COMMISSION TO
6 AWARD FIXED FEE CONTRACTS IN CERTAIN CASES; AND AMENDING SECTION 47-1-216, MCA."

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

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10 **Section 1.** Section 47-1-216, MCA, is amended to read:11 **"47-1-216. Contracted services -- rules.** (1) The commission shall establish standards for a statewide
12 contracted services program that ensures that contracting for public defender services is done fairly and
13 consistently statewide and within each public defender region and that contracting for appellate defender services
14 is done fairly and consistently statewide.15 (2) The chief contract manager shall oversee the contracting program and may not maintain a client
16 caseload.17 (3) The office of state public defender and each regional office, in a manner consistent with statewide
18 standards adopted by the commission pursuant to this section, may contract to provide public defender,
19 professional nonattorney, and other personal services necessary to deliver public defender services within each
20 public defender region. The chief appellate defender, in a manner consistent with statewide standards adopted
21 by the commission pursuant to this section, may contract to provide appellate defender, professional nonattorney,
22 and other personal services necessary to deliver appellate defender services in the state. All contracting pursuant
23 to this section is exempt from the Montana Procurement Act as provided in 18-4-132.24 (4) (a) Except as provided in subsection (4)(b), contracts ~~Contracts~~ may not be awarded based solely
25 on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the
26 number of cases assigned.27 (b) The following contracts may be awarded on a fixed fee basis:28 (i) contracts for legal representation of individuals appearing before specialty courts, including but not
29 limited to drug treatment courts, mental health treatment courts, and DUI courts; and30 (ii) contracts with consortiums for legal representation of individuals in proceedings pursuant to Title 41,

1 chapter 3. For purposes of this subsection (4)(b)(ii), a consortium is a group of attorneys who have joined together
2 for representation of individuals for a fixed fee in certain types of proceedings and have agreed to monitor the
3 charges for legal representation.

4 (c) A contract for legal representation pursuant to subsection (4)(b) may not be awarded without the
5 approval of the commission and without verifiable assurances that effective representation will be provided.

6 (5) Contracting for public defender and appellate defender services must be done through a competitive
7 process that must, at a minimum, involve the following considerations:

8 (a) attorney qualifications necessary to provide effective assistance of counsel that meets the standards
9 established by the commission;

10 (b) attorney qualifications necessary to provide effective assistance of counsel that meet the standards
11 issued by the Montana supreme court for counsel for indigent persons in capital cases;

12 (c) attorney access to support services, such as paralegal and investigator services;

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

14 (e) reporting protocols and caseload monitoring processes;

15 (f) a process for the supervision and evaluation of performance;

16 (g) a process for conflict resolution; and

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

18 (6) The chief public defender, deputy public defenders, and the chief appellate defender shall provide
19 for contract oversight and enforcement to ensure compliance with established standards.

20 (7) The commission shall adopt rules to establish reasonable compensation for attorneys contracted to
21 provide public defender and appellate defender services and for others contracted to provide nonattorney
22 services.

23 (8) Contract attorneys may not take any money or benefit from an appointed client or from anyone for
24 the benefit of the appointed client.

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

27 (10) The commission shall implement rules requiring evaluation of every contract attorney on a biennial
28 basis by the chief contract manager based on written evaluation criteria."

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