

1 HOUSE BILL NO. 73

2 INTRODUCED BY K. DUDIK

3 BY REQUEST OF THE STATE PUBLIC DEFENDER

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE CLASSIFICATION OF
6 CERTAIN EMPLOYEES OF THE OFFICE OF STATE PUBLIC DEFENDER; AMENDING SECTIONS 2-18-103,
7 47-1-105, 47-1-201, 47-1-301, AND 47-1-401, MCA; AND PROVIDING AN EFFECTIVE DATE."

8

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

10

11 **Section 1.** Section 2-18-103, MCA, is amended to read:

12 **"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following
13 officers and employees in state government:

14 (1) elected officials;

15 (2) county assessors and their chief deputies;

16 (3) employees of the office of consumer counsel;

17 (4) judges and employees of the judicial branch;

18 (5) members of boards and commissions appointed by the governor, the legislature, or other elected
19 state officials;

20 (6) officers or members of the militia;

21 (7) agency heads appointed by the governor;

22 (8) academic and professional administrative personnel with individual contracts under the authority of
23 the board of regents of higher education;

24 (9) academic and professional administrative personnel and live-in houseparents who have entered into
25 individual contracts with the state school for the deaf and blind under the authority of the state board of public
26 education;

27 (10) investment officer, assistant investment officer, executive director, and five professional staff
28 positions of the board of investments;

29 (11) four professional staff positions under the board of oil and gas conservation;

30 (12) assistant director for security of the Montana state lottery;

- 1 (13) executive director and employees of the state compensation insurance fund;
- 2 (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;
- 3 (15) executive director of the Montana wheat and barley committee;
- 4 (16) commissioner of banking and financial institutions;
- 5 (17) training coordinator for county attorneys;
- 6 (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
- 7 (19) chief information officer in the department of administration;
- 8 (20) chief business development officer and six professional staff positions in the office of economic
9 development provided for in 2-15-218; and
- 10 (21) ~~the following positions in the office of state public defender established in 2-15-1029:~~
- 11 ~~—— (a) the public defender division administrator appointed as provided in 47-1-105;~~
- 12 ~~—— (b) the deputy public defenders provided for in 47-1-201(3)(a), who are appointed by the public defender
13 division administrator;~~
- 14 ~~—— (c) the appellate defender division administrator appointed as provided in 47-1-105;~~
- 15 ~~—— (d) the conflict defender division administrator appointed as provided in 47-1-105; and~~
- 16 ~~—— (e) the director of the office of state public defender provided for in 2-15-1029."~~

17

18 **Section 2.** Section 47-1-105, MCA, is amended to read:

19 **"47-1-105. Director -- duties -- report -- rules.** (1) The director shall supervise and direct the system.
20 In addition to other duties assigned pursuant to this chapter, the director shall:

- 21 (a) establish the qualifications, duties, and compensation of the public defender division administrator
22 provided for in 47-1-201, ~~appoint~~ hire the public defender division administrator after considering qualified
23 applicants, and regularly evaluate the performance of the public defender division administrator;
- 24 (b) establish the qualifications, duties, and compensation of the appellate defender division administrator
25 provided for in 47-1-301, ~~appoint~~ hire the appellate defender division administrator after considering qualified
26 applicants, and regularly evaluate the performance of the appellate defender division administrator; ~~and~~
- 27 (c) establish the qualifications, duties, and compensation of the conflict defender division administrator
28 provided for in 47-1-401, ~~appoint~~ hire the conflict defender division administrator after considering qualified
29 applicants, and regularly evaluate the performance of the conflict defender division administrator; and
- 30 (d) establish the qualifications, duties, and compensation of the central services division administrator

1 provided for in 47-1-119, hire the central services division administrator after considering qualified applicants, and
2 regularly evaluate the performance of the central services division administrator.

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

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

9 (b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads
10 are manageable;

11 (c) access to and use of necessary professional services, such as paralegal, investigator, and other
12 services that may be required to support a public defender in a case;

13 (d) continuing education requirements for public defenders and support staff;

14 (e) practice standards;

15 (f) performance criteria; and

16 (g) performance evaluation protocols.

17 (3) The director shall also:

18 (a) review and approve the strategic plan and budget based on proposals submitted by the public
19 defender division administrator, the central services division administrator, the appellate defender division
20 administrator, and the conflict defender division administrator;

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

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

23 (d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected,
24 recorded, and reported to support strategic planning efforts for the system; and

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

27 (4) The office of state public defender shall adopt administrative rules pursuant to the Montana
28 Administrative Procedure Act to implement the provisions of this chapter."
29

30 **Section 3.** Section 47-1-201, MCA, is amended to read:

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

4 (2) The public defender division administrator must be an attorney licensed to practice law in the state.
5 ~~The public defender division administrator is appointed by and serves at the pleasure of the director. The position~~
6 ~~of public defender division administrator is exempt from the state classification and pay plan as provided in~~
7 ~~2-18-103. The director shall establish compensation for the position commensurate with the position's duties and~~
8 ~~responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.~~

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

11 (a) deputy public defenders, as provided in 47-1-215, ~~who are exempt from the state classification and~~
12 ~~pay plan as provided in 2-18-103;~~

13 (b) assistant public defenders; and

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

15 ~~(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons~~
16 ~~in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18."~~

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18 **Section 4.** Section 47-1-301, MCA, is amended to read:

19 **"47-1-301. Appellate defender division -- division administrator.** (1) There is an appellate defender
20 division. The appellate defender division must be located in Helena, Montana.

21 (2) (a) The director shall hire and supervise the appellate defender division administrator to manage and
22 supervise the appellate defender division. ~~The appellate defender division administrator is appointed by and~~
23 ~~serves at the pleasure of the director. The director shall establish compensation for the position commensurate~~
24 ~~with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with~~
25 ~~similar responsibilities.~~

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

28 ~~(c) The position of appellate defender division administrator is exempt from the state classification and~~
29 ~~pay plan as provided in 2-18-103.~~

30 (3) Subject to approval by the director, the appellate defender division administrator shall:

- 1 (a) direct, manage, and supervise all public defender services provided by the appellate defender
 2 division;
- 3 (b) ensure that when a court orders the appellate defender division to assign an appellate lawyer or when
 4 a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly
 5 to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when
 6 necessary;
- 7 (c) ensure that appellate defender assignments comply with the provisions of 47-1-202(1)(c) and
 8 standards for counsel for indigent persons in capital cases issued by the Montana supreme court;
- 9 (d) hire and supervise the work of appellate defender division personnel;
- 10 (e) contract for services as provided in 47-1-121 and as authorized by the director according to the
 11 strategic plan for the delivery of public defender services;
- 12 (f) keep a record of appellate defender services and expenses of the appellate defender division and
 13 submit records and reports to the central services division provided for in 47-1-119;
- 14 (g) implement standards and procedures established by the director for the appellate defender division;
- 15 (h) maintain a minimum client caseload as determined by the director;
- 16 (i) confer with the director on budgetary issues and submit budgetary requests and information for the
 17 reports required by law or by the governor; and
- 18 (j) perform all other duties assigned to the appellate defender division administrator by the director."
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20 **Section 5.** Section 47-1-401, MCA, is amended to read:

21 **"47-1-401. Conflicts of interest -- conflict defender division administrator.** (1) The director shall
 22 establish a conflict defender division to provide for the representation of indigent defendants in circumstances
 23 in which, because of conflict of interest, the public defender division or the appellate defender division is unable
 24 to provide representation to a defendant.

25 (2) The position of conflict defender division administrator is ~~appointed~~ hired and supervised by the
 26 director under 47-1-105 and is exempt from the state classification and pay plan as provided in ~~2-18-103~~. The
 27 conflict defender division administrator reports directly to the director and not to the public defender division
 28 administrator.

29 (3) The conflict defender division administrator may not handle cases.

30 (4) All attorneys handling conflict of interest cases shall report to the conflict defender division

1 administrator."

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3 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2019.

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