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HOUSE BILL NO. 555

INTRODUCED BY J. CARLSON, M. CAFERRO, D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO COUNSEL FOR CHILDREN IN ABUSE AND NEGLECT CASES; PROVIDING QUALIFICATIONS AND PRACTICE STANDARDS FOR COUNSEL REPRESENTING CHILDREN IN ABUSE AND NEGLECT CASES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO LEVERAGE AND MAXIMIZE FEDERAL RESOURCES TO SUPPORT THE PROVISION OF LEGAL REPRESENTATION TO CHILDREN; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 47-1-105 AND 47-1-121, MCA."

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

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

**"47-1-105. Director -- duties -- report -- rules.** (1) The director shall supervise and direct the system.

In addition to other duties assigned pursuant to this chapter, the director shall:

- (a) establish the qualifications, duties, and compensation of the public defender division administrator provided for in 47-1-201, hire the public defender division administrator after considering qualified applicants, and regularly evaluate the performance of the public defender division administrator;
- (b) establish the qualifications, duties, and compensation of the appellate defender division administrator provided for in 47-1-301, hire the appellate defender division administrator after considering qualified applicants, and regularly evaluate the performance of the appellate defender division administrator;
- (c) establish the qualifications, duties, and compensation of the conflict defender division administrator provided for in 47-1-401, hire the conflict defender division administrator after considering qualified applicants, and regularly evaluate the performance of the conflict defender division administrator; and
- (d) establish the qualifications, duties, and compensation of the central services division administrator provided for in 47-1-119, hire the central services division administrator after considering qualified applicants, and regularly evaluate the performance of the central services division administrator.

(2) The director shall establish statewide standards for the qualification and training of attorneys

1 providing public defender services to ensure that services are provided by competent counsel and in a manner  
2 that is fair and consistent throughout the state. The standards must take into consideration:

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

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

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

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

11 (e) practice standards;

12 (f) performance criteria; and

13 (g) performance evaluation protocols.

14 (3) In addition to the director's duties to establish statewide standards under subsection (2), the  
15 director shall establish specific standards for the qualification and training of attorneys providing public defender  
16 services to a child in an abuse and neglect case. The standards must take into consideration:

17 (a) additional training required to competently represent a child, which may include:

18 (i) methods for communicating with a child in a developmentally appropriate manner;

19 (ii) methods for presenting child testimony and alternatives to direct testimony;

20 (iii) early childhood, child, and adolescent development;

21 (iv) the dynamics of abuse and neglect, child sexual abuse, trauma, grief, and attachment;

22 (v) mental health issues, substance abuse issues, and the impact of domestic violence; and

23 (vi) available services and community resources for families;

24 (b) continuing education requirements specific to representing a child; and

25 (c) practice standards for representing a child, which may include:

26 (i) ensuring the child understands the role of counsel in the proceedings, including counsel's duty  
27 to maintain confidentiality, provide loyal and independent legal representation, and to advocate for the child's  
28 position;

1           (ii) taking all steps reasonably necessary to represent the child in the proceedings, including but  
2 not limited to interviewing the child, advising the child of the child's rights, educating the child about the legal  
3 process, informing the child of the child's options, counseling the child's decisionmaking, preparing a case  
4 theory and strategy, preparing for and participating in negotiations and hearings, and drafting and submitting  
5 motions, memoranda, and orders;

6           (iii) reviewing and accepting or declining, after appropriate consultation with the child, any  
7 proposed stipulation for an order affecting the child and explaining to the court the basis for any opposition to  
8 the proposed stipulation;

9           (iv) taking action counsel considers appropriate to expedite the proceedings and the resolution of  
10 contested issues;

11           (v) maintaining frequent and intentional contact with the child, at a minimum, prior to and after  
12 each court hearing, after every placement change, and no less than one in-person meeting every 3 months;

13           (vi) as directed by the child, consulting with the child's court-appointed special advocate or  
14 guardian ad litem in accordance with the rules of professional conduct, communicating and collaborating with  
15 all other parties to the case;

16           (vii) investigating and taking necessary legal action regarding the child's medical, mental health,  
17 social, and educational needs and overall well-being;

18           (viii) visiting the home, residence, or any prospective residence of the child, including each time the  
19 placement is changed;

20           (ix) seeking court orders or taking any other necessary steps in accordance with the child's  
21 direction to ensure that the child's health, mental health, educational, developmental, cultural, and placement  
22 needs are met; and

23           (x) ensuring opportunities for the meaningful participation of the child in court hearings and other  
24 case events, including advising the child of the right to participate in the proceedings. If the child does not want  
25 to participate or wishes to waive the right to attend after being informed of the right and the nature of the  
26 proceedings, counsel for the child shall inform the court of the child's decision not to attend.

27           (3)(4) The director shall also:

28           (a) review and approve the strategic plan and budget based on proposals submitted by the public

1 defender division administrator, the central services division administrator, the appellate defender division  
2 administrator, and the conflict defender division administrator;

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

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

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

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

9 ~~(4)~~(5) The office of state public defender shall adopt administrative rules pursuant to the Montana  
10 Administrative Procedure Act to implement the provisions of this chapter."  
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12 **Section 2.** Section 47-1-121, MCA, is amended to read:

13 **"47-1-121. Contracted services.** (1) The director shall establish standards for a statewide contracted  
14 services program to be managed by the central services division provided for in 47-1-119. The director shall  
15 ensure that contracting for public defender services is done fairly and consistently statewide and within each  
16 public defender region.

17 (2) There is a contract manager position in the central services division hired by the central  
18 services division administrator. The contract manager is responsible for the administrative oversight of  
19 contracting for attorney and nonattorney support for units of the office of state public defender.

20 (3) All contracting pursuant to this section is exempt from the Montana Procurement Act as  
21 provided in 18-4-132.

22 (4) Contracts may not be awarded based solely on the lowest bid or provide compensation to  
23 contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

24 (5) Contracting for attorney services must be done through a competitive process that must, at a  
25 minimum, involve the following considerations:

26 (a) attorney qualifications necessary to provide effective assistance of counsel;

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