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As of: September 1, 2016 (1:15pm)

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising the structure of the state public defender system; providing for a chief administrator appointed by the public defender commission; revising exemptions from the state classification and pay plan; consolidating administrative functions into an office of chief administrator; allowing conflict of interest cases to be handled by staff defenders in addition to contracted defenders; changing the conflicts manager position title to chief conflict defender; revising and reorganizing the statutes of the Montana public defender act to clarify and clearly separate the roles and responsibilities of the offices of the chief administrator, chief public defender, chief appellate defender, and chief conflict defender; providing for contingent voidness; and amending sections 2-18-103, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-15-115, 46-17-203, 46-21-201, 47-1-103, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-216, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, and 72-5-408, MCA."

Be it enacted by the Legislature of the State of Montana:

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

"2-18-103. Officers and employees excepted. Parts 1 through

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3 and 10 do not apply to the following officers and employees in state government:

- (1) elected officials;
- (2) county assessors and their chief deputies;
- (3) employees of the office of consumer counsel;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;
- (11) four professional staff positions under the board of oil and gas conservation;
- (12) assistant director for security of the Montana state lottery;
- (13) executive director and employees of the state compensation insurance fund;
- (14) state racing stewards employed by the executive

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secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) the following positions in the chief public defender system appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed by the chief public defender; and

~~— (22) chief appellate defender in the office of appellate defender;~~

(a) the chief administrator appointed as provided in 47-1-105;

(b) the chief public defender appointed as provided in 47-1-105;

(c) the chief appellate defender appointed as provided in 47-1-105;

(d) the chief conflict defender appointed as provided in 47-1-105;

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(e) the regional deputy defenders appointed as provided in 47-1-201;

(f) the training coordinator appointed as provided in 47-1-210; and

(g) the contract manager appointed as provided in 47-1-216."

{*Internal References to 2-18-103:*

x2-18-101	x2-18-201	x2-18-301	x32-1-211
x44-4-101	x47-1-201	x47-1-201	x47-1-205 }

Section 2. Section 41-5-1413, MCA, is amended to read:

"41-5-1413. Right to counsel -- assignment of counsel. In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

{*Internal References to 41-5-1413:*

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x41-5-1607 x47-1-104 }

Section 3. Section 42-2-405, MCA, is amended to read:

"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel to represent the minor parent."

{ *Internal References to 42-2-405:*

x42-4-301 }

Section 4. Section 46-4-304, MCA, is amended to read:

"46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness

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has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

{ *Internal References to 46-4-304:*
x47-1-104 }

Section 5. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel to represent the defendant without unnecessary

delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

{*Internal References to 46-8-101:*
x46-7-102 x47-1-104 }

Section 6. Section 46-8-104, MCA, is amended to read:

"46-8-104. Assignment of counsel after trial -- definition.

(1) Any court of record may order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent any petitioner or appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or appellant is eligible for the appointment of counsel and:

(a) the district court determines that a hearing on the

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petition is required pursuant to 46-21-201;

(b) the ~~state public defender's office~~ office of state public defender requests appointment of a public defender and demonstrates good cause for the appointment;

(c) a statute specifically mandates the appointment of counsel;

(d) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution;
or

(e) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing in English."

{*Internal References to 46-8-104: None.*}

Section 7. Section 46-15-115, MCA, is amended to read:

"46-15-115. Subpoena for witness when defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs

incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined in 47-1-103, a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) If the defendant is represented by a public defender, as defined in 47-1-103, witness costs must be paid by the office of state public defender as provided for in ~~47-1-201~~ [section 12]."

{Internal References to 46-15-115: None.}

Section 8. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty must be accepted, and a plea of nolo contendere may be accepted with the consent of the court and the prosecutor, when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2) (b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before

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the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

{*Internal References to 46-17-203:*

x3-5-303 x3-11-301 x46-17-311 x46-17-311 }

Section 9. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on petition. (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be sent to the county attorney in the county in which the conviction took place and to the attorney general and order that a responsive pleading be filed. The attorney general shall determine whether the attorney general will respond to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing

civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice require, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel for a petitioner who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, Title 47, chapter 1.

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and wishes to file a petition under this chapter, the court will order the office of state public defender, ~~provided for in 47-1-201,~~ to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) order the office of state public defender to assign counsel to represent the person pending a determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that the person either has accepted the offer of assigned counsel or is unable to competently decide whether to accept the offer of assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment of counsel.

(c) The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent but becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment of counsel as provided in subsection (3) (b) (i).

(e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

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(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

{*Internal References to 46-21-201:*

x46-8-104 x46-8-104 x47-1-104 }

Section 10. Section 47-1-103, MCA, is amended to read:

"47-1-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commission" means the public defender commission established in 2-15-1028.

(2) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

(3) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

(4) "Office" means the office of state public defender established in ~~47-1-201~~ [section 12].

(5) "Public defender" or "defender" means an attorney

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employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, including attorneys employed by or under contract with the office of chief public defender, the office of chief appellate defender, and the office of chief conflict defender.

(6) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to this chapter."

{*Internal References to 47-1-103:*

x3-1-804	x3-1-804	x3-1-804	x3-1-804
x3-1-804	x3-5-511	x3-5-604	x26-2-506
x26-2-506	x26-2-508	x26-2-510	x46-15-115
x46-15-115	x46-15-116	x46-21-201	x46-21-201 }

Section 11. Section 47-1-105, MCA, is amended to read:

"47-1-105. Commission -- duties ~~---report~~ -- rules. (1) The commission shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the commission shall:

~~(1)~~ (a) establish the qualifications, duties, and compensation of the chief public defender, ~~as~~ as provided for in 47-1-201, appoint ~~a~~ the chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender; ~~and~~

(b) establish the qualifications, duties, and compensation of the chief appellate defender, ~~as~~ as provided for in 47-1-205, appoint ~~a~~ the chief appellate defender after considering qualified applicants, and regularly evaluate the performance of the chief appellate defender;

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(c) establish the qualifications, duties, and compensation of the chief conflict defender, provided for in 47-1-118, appoint the chief conflict defender after considering qualified applicants, and regularly evaluate the performance of the chief conflict defender; and

(d) establish the qualifications, duties, and compensation of the chief administrator, provided for in [section 13], appoint the chief administrator after considering qualified applicants, and regularly evaluate the performance of the chief administrator;

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

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

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

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

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

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- (e) practice standards;
- (f) performance criteria; and
- (g) performance evaluation protocols.

(3) The commission shall also:

(a) review and approve the strategic plan and budget proposals submitted by the chief public defender, the ~~administrative director~~ the chief administrator, and the chief appellate defender, and the chief conflict defender;

~~(4)~~ (b) review and approve any proposal to create permanent staff positions;

~~(5)~~ (c) ~~establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

~~(6)~~ establish policies and procedures for handling excess caseloads; and

~~(7)~~ (d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system;.

~~(8)~~ (4) The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter; ~~and~~

~~(9)~~ submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and

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~~5-5-226. The report must cover the preceding biennium and include:~~

~~—— (a) all policies or procedures in effect for the operation and administration of the statewide public defender system;~~

~~—— (b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;~~

~~—— (c) the number of deputy public defenders and the region supervised by each;~~

~~—— (d) the number of public defenders employed or contracted with in the system, identified by region;~~

~~—— (e) the number of attorney and nonattorney staff supervised by each deputy public defender;~~

~~—— (f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;~~

~~—— (g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;~~

~~—— (h) the annual caseload and workload of each public defender, except for the chief public defender, and of the office of appellate defender, identified by region, court, and case type;~~

~~—— (i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;~~

~~—— (j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or~~

~~contracted with in the system; and~~

~~—— (k) detailed expenditure data by court and case type."~~

{Internal References to 47-1-105: None.}

NEW SECTION. **Section 12. Office of state public defender.**

(1) There is an office of state public defender that is the agency headed by the commission pursuant to this chapter.

(2) The office of state public defender consists of the following offices:

(a) the office of chief administrator provided for in [section 13];

(b) the office of chief public defender provided for in 47-1-201;

(c) the office of chief appellate defender provided for in 47-1-205; and

(d) the office of chief conflict defender provided for in 47-1-118.

NEW SECTION. **Section 13. Office of chief administrator -- system headquarters -- functions -- payable expenses.**

(1) There is an office of chief administrator, which is the administrative headquarters of the system. The office must be located in Butte, Montana.

(2) The head of the office is the chief administrator who is supervised and appointed by the commission as provided for in 47-1-105. The chief administrator position is exempt from the state classification and pay plan, as provided in 2-18-103. The

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chief administrator must be experienced in business and contract management and must be chosen solely on the basis of training, experience, and other qualifications consistent with administration and management of public agencies. The chief administrator need not be licensed to practice law, but if licensed to practice law, may not maintain a client caseload.

(3) The chief administrator shall serve as the executive secretary of the commission and represent the office of state public defender in all official communications, including communications with the governor, the legislature, the media, and the public.

(4) The administrative functions of the office include but are not limited to:

- (a) eligibility determination under 47-1-111;
- (b) administrative support for contracting under 47-1-216;
- (c) coordination of training pursuant to 47-1-210; and
- (d) actively seeking gifts, grants, and donations that may be available through the federal government or other sources to help fund the system.

(5) The office shall establish standard administrative procedures to:

- (a) handle complaints about defender performance and work with the chief public defender, chief appellate defender, and chief conflict defender to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the

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rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

(b) ensure that employees and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported; and

(c) ensure that court appointments of counsel are referred to the appropriate office within the system.

(6) (a) The office shall also establish the budgeting, reporting, and related administrative requirements for all offices within the system, including procedures for the approval, payment, recording, reporting, and management of all defense expenses.

(b) The following expenses are payable by the office if the expense is incurred at the request of a public defender:

(i) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(ii) transcript fees, as provided in 3-5-604.

(c) If the costs to be paid pursuant to this subsection (4) are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(7) The provisions of this section may not be implemented in a way that interferes with the legal and ethical duties of defenders to their clients.

Section 14. Section 47-1-110, MCA, is amended to read:

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"47-1-110. Public defender account. (1) There is a public defender account in the state special revenue fund to the credit of the office. The office may accept gifts, grants, and donations to carry out the purposes of this chapter. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; and

(d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally disabled person when the respondent is determined to have the financial ability to pay for a public defender and a judge orders payment under 47-1-111."

{*Internal References to 47-1-110:*

a2-15-1028 x46-8-114 a47-1-201 }

Section 15. Section 47-1-111, MCA, is amended to read:

"47-1-111. Eligibility -- determination of indigence --

rules. (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded.

(c) (i) The applicant may request that the court conduct a hearing on the motion to rescind appointment. If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

(iv) The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

(vii) Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.

(d) If the applicant does not request a hearing on the motion to rescind appointment, does not appear at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment of counsel to be rescinded.

(e) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded.

(f) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services who is

eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the ~~commission~~ office of chief administrator provided for in [section 13]. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42

U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The ~~commission~~ the chief administrator shall establish administrative procedures ~~and adopt~~ pursuant to rules adopted by the office of state public defender to implement this section.

~~Commission~~ The procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit a public defender from performing

eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may ~~perform~~ oversee eligibility screening pursuant to this section.

{ *Internal References to 47-1-111:*

x41-3-425 x46-8-101 x47-1-103 x47-1-104
x47-1-110 x53-20-112 x61-5-218 }

NEW SECTION. **Section 16. Reports.** (1) (a) The office of chief administrator shall submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the chief administrator shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226.

(b) The biennial report must cover the preceding biennium and include:

(i) all policies or procedures in effect for the operation and administration of the system;

(ii) all standards of practice established or being considered by commission;

(iii) the number of deputy public defenders and the region supervised by each;

(iv) the number of public defenders employed or contracted within the system, identified by region, if appropriate, and office;

(v) the number nonattorney staff employed or contracted within the system, identified by region, if appropriate, and office;

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(vi) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(vii) the total number of persons represented by the office of chief public defender, the office of chief appellate defender, and the office of chief conflict defender identified by region, if appropriate, court, and case type;

(viii) the annual caseload and workload of each public defender identified by region, if appropriate, court, and case type;

(ix) the training programs conducted and the number of attorney and nonattorney staff who attended each program;

(x) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(xi) detailed expenditure data by court and case type.

(2) (a) The office of chief administrator shall report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the governor and legislative fiscal analyst. The report must include unduplicated count data for all cases for which representation is paid for by the office of chief administrator, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type.

(b) The office of chief administrator shall report to the governor and the legislative fiscal analyst for each fiscal year

by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid.

(c) Reports under this subsection (2) must be provided in an electronic format.

Section 17. Section 47-1-118, MCA, is amended to read:

"47-1-118. Conflicts of interest -- office of chief conflict defender. (1) ~~The commission shall establish a conflicts office to contract for attorneys to represent indigent defendants~~ There is an office of conflict defender headed by the chief conflict defender appointed by the commission as provided in 47-1-105. The office shall provide for the representation of a client in circumstances where, because of conflict of interest, the public defender program office of chief public defender or the office of appellate defender is unable to provide representation to a defendant the client.

(2) (a) ~~The commission shall appoint a conflicts manager to oversee the office. The position of chief conflict defender is exempt from the state classification and pay plan as provided in 2-18-103.~~

(b) ~~The conflicts manager~~ chief conflict defender reports directly to the commission and not to the chief public defender, chief appellate defender, or chief administrator. ~~The conflicts manager~~ chief conflict defender may not ~~handle cases~~ maintain a

client caseload.

(3) (a) ~~All attorneys contracted for conflict of interest cases shall report to the conflicts manager~~ The chief conflict defender shall hire or contract for and supervise personnel necessary to perform the functions of the office of conflict defender, including:

(i) assistant conflict defenders; and

(ii) other necessary administrative and professional support staff for the office of chief conflict defender.

(b) Positions established pursuant to subsection (3)(a) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18."

{Internal References to 47-1-118: None.}

NEW SECTION. **Section 18. Chief conflict defender duties.**

(1) The chief conflict defender shall:

(a) attend commission meetings;

(b) ensure that the assignment of a conflict defender is made promptly to a qualified and appropriate defender who is promptly available to represent the indigent client;

(c) in accordance with administrative protocols established by the chief administrator, establish procedures for managing caseloads and assigning cases in a manner that takes into account case complexity, the severity of the charges and potential punishments, the legal skills required to provide effective assistance of counsel, and the experience, training, and

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caseloads of the conflict defender;

(d) assist the commission and the chief administrator in maintaining and improving the state system and establishing the standards, policies, and procedures required pursuant to this chapter;

(e) assist the chief administrator in developing and presenting for commission approval strategic plans for the delivery of conflict defender services;

(f) assist the chief administrator in preparing a budget for the office of chief conflict defender and submitting for commission approval other financial information needed to carry out the functions of the office of the conflict defender;

(g) establish with the chief administrator processes and procedures to ensure that staff and contract personnel for the office of conflict defender use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(h) establish with the chief administrator administrative and management procedures for the office of conflict defender;

(i) confer with the chief administrator, training coordinator, and chief contract manager on training and performance evaluation programs for conflict defenders, nonattorney staff members, and contractors for the office of chief conflict defender;

(j) confer with the chief administrator for presenting the commission with plans, studies, and reports;

(k) comply with the standards, policies, and directives of

the commission;

(1) confer with the chief administrator on procedures to handle complaints about conflict defender performance pursuant to procedures adopted under [section 13(5)]; and

(m) perform all other duties assigned by the commission.

(2) The chief conflict defender may not maintain a client caseload.

Section 19. Section 47-1-201, MCA, is amended to read:

"47-1-201. Office of state chief public defender -- ~~personnel -- compensation -- expenses -- reports.~~ (1) There is an office of state chief public defender. ~~The office must be located in Butte, Montana.~~ The head of the office is the chief public defender, who is appointed and supervised by the commission as provided in 47-1-105.

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

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office of state chief public defender ~~and to implement the~~

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~~provisions of this chapter, including but not limited to:~~

~~(a) the following personnel who are exempt from the state classification and pay plan as provided in 2-18-103:~~

~~(i) an administrative director, who must be experienced in business management and contract management;~~

~~(ii) a chief contract manager to oversee and enforce the contracting program;~~

~~(iii) a training coordinator, appointed as provided in 47-1-210;~~

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

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office.

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

~~(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:~~

~~(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and~~

~~(b) transcript fees, as provided in 3-5-604.~~

~~(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.~~

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~~(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.~~

~~(8) The office shall provide assistance with the budgeting, reporting, and related administrative functions of the office of appellate defender as provided in 47-1-205.~~

~~(9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, including defense expenses paid for work performed by or for the office of appellate defender.~~

~~(10) (a) The office of public defender is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative fiscal analyst. The report must be provided in an electronic format and include unduplicated count data for all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type.~~

~~(b) The office of public defender is required to report to the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount~~

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~~remaining unpaid. The report must be provided in an electronic format."~~

{ *Internal References to 47-1-201:*

x to all

2-15-1028	2-18-103	3-5-511	3-5-604
3-5-901	3-5-901	3-5-901	3-5-901
3-5-901	26-2-506	41-5-111	41-5-1413
42-2-405	46-4-304	46-8-101	46-8-104
46-15-115	46-17-203	46-21-201	46-21-201
47-1-103	47-1-105	47-1-202	50-20-509
53-9-104	53-9-104	53-20-112	53-21-112
53-21-116	53-21-122	53-21-122	53-24-302
72-5-225	72-5-234	72-5-315	72-5-408
72-5-408	}		

Section 20. Section 47-1-202, MCA, is amended to read:

"47-1-202. Chief public defender —duties. (1) In addition to the duties provided in 47-1-201, the chief public defender shall:

- ~~(a) act as secretary to the commission and provide administrative staff support to the commission until the commission can hire its staff as provided in 2-15-1028(6)(b);~~
- ~~(b) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to this chapter;~~
- ~~(c) develop and present for the commission's approval a regional strategic plan for the delivery of public defender services;~~
- ~~(d) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;~~

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~~—— (e) establish administrative management procedures for regional offices;~~

~~—— (f) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;~~

~~—— (g) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;~~

~~—— (h) establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;~~

~~—— (i) establish procedures to handle complaints about public defender performance and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;~~

~~—— (j) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system; and~~

~~—— (k) perform all other duties assigned by the commission~~

~~pursuant to this chapter.~~

(a) attend commission meetings;

(b) ensure that the assignment of a staff or contract defender of the office of chief public defender is made promptly to a qualified and appropriate defender who is promptly available to represent the indigent client;

(c) in accordance with administrative protocols established by the chief administrator, establish procedures for managing caseloads and assigning cases in a manner that takes into account case complexity, the severity of the charges and potential punishments, the legal skills required to provide effective assistance of counsel, and the experience, training, and caseloads of the defender;

(d) assist the commission and the chief administrator in maintaining and improving the state system and establishing the standards, policies, and procedures required pursuant to this chapter;

(e) assist the chief administrator in developing and presenting for commission approval strategic plans for the delivery of defender services by region;

(f) assist the chief administrator in preparing a budget for the office of chief public defender and submitting for commission approval other financial information needed to carry out the functions of the office of the chief public defender;

(g) establish with the chief administrator processes and procedures to ensure that staff and contract personnel for the office of chief public defender use information technology and

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caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(h) establish with the chief administrator administrative and management procedures for the office of chief public defender;

(i) confer with the chief administrator, training coordinator, and chief contract manager on training and performance evaluation programs for defenders, nonattorney staff members, and contractors of the office of chief public defender;

(j) confer with the chief administrator for presenting the commission with plans, studies, and reports;

(k) comply with the standards, policies, and directives of the commission;

(l) confer with the chief administrator on procedures to handle complaints about defender performance pursuant to procedures adopted under [section 13(5)]; and

(m) perform all other duties assigned by the commission.

(2) The chief public defender may not maintain a client caseload."

{*Internal References to 47-1-202:*
x47-1-205 x47-1-215 }

Section 21. Section 47-1-205, MCA, is amended to read:

"47-1-205. Office of chief appellate defender -- ~~chief appellate defender~~ -- personnel. (1) There is an office of chief appellate defender. The office of chief appellate defender must be located in Helena, Montana.

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(2) (a) ~~The commission shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender. The head of the office is the chief appellate defender is appointed by and the commission as provided in 47-1-105. The chief appellate defender serves at the pleasure of the commission. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.~~

(b) The chief appellate defender must be an attorney licensed to practice law in the state.

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

(3) (a) The chief appellate defender shall:

~~(a) direct, manage, and supervise all public defender services provided by the office of appellate defender, including budgeting, reporting, and related functions;~~

~~(b) ensure that when a court orders the office of appellate defender to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;~~

~~(c) ensure that appellate defender assignments comply with the provisions of 47-1-202(1)(f) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;~~

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~~— (d) hire and supervise the work of office of appellate defender personnel as authorized by the appellate defender;~~

~~— (e) contract for services as provided in 47-1-216 and as authorized by the commission according to the strategic plan for the delivery of public defender services;~~

~~— (f) keep a record of appellate defender services and expenses of the office of appellate defender and submit records and reports to the commission as requested through the office of state public defender;~~

~~— (g) implement standards and procedures established by the commission for the office of appellate defender;~~

~~— (h) maintain a minimum client caseload as determined by the commission;~~

~~— (i) confer with the chief public defender on budgetary issues and submit budgetary requests and the reports required by law or by the governor through the chief public defender; and~~

~~— (j) perform all other duties assigned to the chief appellate defender by the commission hire or contract for and supervise personnel necessary to perform the function of the office of chief appellate defender, including:~~

~~(i) assistant appellate defenders; and~~

~~(ii) other administrative and professional support staff.~~

~~(b) Positions established pursuant to this subsection (3) are classified positions and persons in the positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18. "~~

{ Internal References to 47-1-205:

x47-1-105 x47-1-201 }

NEW SECTION. **Section 22. Chief appellate defender duties.**

(1) In addition to the duties provided in 47-1-205, the chief appellate defender shall:

(a) attend commission meetings;

(b) ensure that the assignment of a staff or contract defender of the office of appellate defender is made promptly to a qualified and appropriate defender who is promptly available to represent the indigent client;

(c) in accordance with administrative protocols established by the chief administrator, establish procedures for managing caseloads and assigning cases in a manner that takes into account case complexity, the severity of the charges and potential punishments, the legal skills required to provide effective assistance of counsel, and the experience, training, and caseloads of the defender;

(d) assist the commission and the chief administrator in maintaining and improving the state system and establishing the standards, policies, and procedures required pursuant to this chapter;

(e) assist the chief administrator in developing and presenting for commission approval strategic plans for the delivery of appellate defender services;

(f) assist the chief administrator in preparing a budget for the office of chief appellate defender and submitting for commission approval other financial information needed to carry

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out the functions of the office of the chief appellate defender;

(g) establish with the chief administrator processes and procedures to ensure that staff and contract personnel for the office of chief appellate defender use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(h) establish with the chief administrator administrative and management procedures for the office of chief appellate defender;

(i) confer with the chief administrator, training coordinator, and chief contract manager on training and performance evaluation programs for defenders, nonattorney staff members, and contractors of the office of chief appellate defender;

(j) confer with the chief administrator for presenting the commission with plans, studies, and reports;

(k) comply with the standards, policies, and directives of the commission;

(l) confer with the chief administrator on procedures to handle complaints about defender performance pursuant to procedures adopted under [section 13(5)]; and

(m) perform all other duties assigned by the commission.

(2) The chief appellate defender may maintain a minimum client caseload as approved by the commission.

Section 23. Section 47-1-210, MCA, is amended to read:

"47-1-210. Training program -- coordinator. (1) There is

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within the office of state public defender provided for in [section 12] a position of training coordinator for public defenders, nonattorney staff members, and contractors.

(2) The chief ~~public defender~~ administrator provided for in [section 13] shall appoint the training coordinator.

(3) The training coordinator shall:

(a) coordinate training ~~to~~ for public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

(d) provide assistance with research or briefs and provide other technical assistance requested by a public defender;

(e) apply for and assist in the disbursement of federal funds or other grant money to aid the statewide public defender system; and

(f) perform other duties assigned by the chief ~~public defender~~ administrator."

{ *Internal References to 47-1-210:*
x47-1-201 }

Section 24. Section 47-1-216, MCA, is amended to read:

"47-1-216. Contracted services ~~---rules.~~ (1) The ~~commission~~ chief administrator provided for in [section 13], shall establish

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standards for a statewide contracted services program that ensures that contracting for public defender and other services is done fairly and consistently statewide and within each public defender region ~~and that contracting for appellate defender services is done fairly and consistently statewide.~~

(2) (a) There is a contract manager position within the office of chief administrator. The ~~chief~~ contract manager shall ~~oversee the~~ be hired by the chief administrator.

(b) The contract manager is responsible for administrative oversight of contracting program and may not maintain a client caseload for the office of chief public defender, the office of chief appellate defender, and the office of chief conflict defender.

(3) ~~The office of state public defender and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. The chief appellate defender, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide appellate defender, professional nonattorney, and other personal services necessary to deliver appellate defender services in the state. All contracting pursuant to this section is exempt from the Montana Procurement Act as provided in 18-4-132.~~

(4) (a) Except as provided in subsection (4) (b), contracts may not be awarded based solely on the lowest bid or provide

compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

(b) Contracts for legal representation of individuals appearing before the following specialty courts may be awarded based on a fixed fee:

(i) a drug treatment court, as defined in 46-1-1103, including an adult, a juvenile, and a family drug court;

(ii) a mental health treatment court, as defined in 46-1-1203;

(iii) a DUI court, as defined in 61-5-231;

(iv) a court that serves participants with co-occurring disorders, including a mental health treatment court that is combined with a drug treatment court; or

(v) a veterans treatment court.

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

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

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

(b) attorney qualifications necessary to provide effective assistance of counsel that meets the standards issued by the

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Montana supreme court for counsel for indigent persons in capital cases;

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

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

(e) reporting protocols and caseload monitoring processes;

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

(g) a process for conflict resolution; and

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

(6) ~~The~~ With the assistance and support of the contract manager, the chief public defender, deputy public defenders, and the chief appellate defender, and chief conflict defender shall provide for contract oversight and enforcement to ensure compliance with established standards supervise the personnel contracted for their respective offices and ensure compliance with the standards established in the contract.

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

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

(9) The commission shall limit the number of contract

attorneys so that all contracted attorneys may be meaningfully evaluated.

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

{*Internal References to 47-1-216:*

x18-4-132 x47-1-104 x47-1-205 x47-1-215 }

Section 25. Section 50-20-509, MCA, is amended to read:

"50-20-509. Procedure for judicial waiver of consent. (1)

The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are

confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the requirement for consent is waived.

(4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian.

(5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both parents, a legal guardian, or a custodian; or

(b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a

confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition."

{*Internal References to 50-20-509:*
x47-1-104 x50-20-507 }

Section 26. Section 53-9-104, MCA, is amended to read:

"53-9-104. (Temporary) Powers and duties of office. (1) The office shall:

- (a) adopt rules to implement this part;
- (b) prescribe forms for applications for compensation;
- (c) determine all matters relating to claims for compensation; and
- (d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual

under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201~~ [section 12], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a

claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2) (b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

53-9-104. (Effective July 1, 2021) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted

of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201~~ [section 12], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance

payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

{*Internal References to 53-9-104:*

x47-1-110 x50-16-530 x53-9-112 x53-9-112 }

Section 27. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights -- appointment of counsel.

(1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent

has the right to:

- (a) be present at any hearing held pursuant to this part;
- (b) be represented by counsel in any hearing;
- (c) offer evidence and cross-examine witnesses in any

hearing; and

(d) have the respondent examined by a professional of the parents' or guardian's choice when a professional is reasonably available unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel for the respondent. If the parents are indigent and the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."

{ *Internal References to 53-20-112:*

x47-1-104 x47-1-104 x47-1-110 }

Section 28. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1)

Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

- (a) a facility;

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(b) a person licensed in this state to practice medicine;
or

(c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to

assign counsel for the minor."

{ *Internal References to 53-21-112:*
x47-1-104 x53-21-113 }

Section 29. Section 53-21-116, MCA, is amended to read:

"53-21-116. Right to be present at hearing or trial -- assignment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to immediately assign counsel to represent the person at either the hearing or the trial, or both."

{ *Internal References to 53-21-116:*
x41-5-1504 * x47-1-104 x53-20-112 *
x53-21-122 x53-21-140 }

Section 30. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to immediately assign counsel for the respondent, and the respondent

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must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its

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designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in ~~47-1-201~~ [section 12], to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

{*Internal References to 53-21-122:*

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hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

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(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been

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committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no

longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

{*Internal References to 53-24-302:*
x47-1-104 x53-24-207 * }

Section 32. Section 72-5-225, MCA, is amended to read:

"72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

- (a) the minor, if the minor is 14 years of age or older;
- (b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and
- (c) any living parent of the minor.

(2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public

defender, provided for in ~~47-1-201~~ [section 12], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

{*Internal References to 72-5-225:*
x40-6-602 }

Section 33. Section 72-5-234, MCA, is amended to read:

"72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

{*Internal References to 72-5-234: None.*}

Section 34. Section 72-5-408, MCA, is amended to read:

"72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 12], to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send

a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."

{*Internal References to 72-5-408: None.*}

NEW SECTION. Section 35. {standard} Codification

instruction -- instructions to code commissioner. (1) [Sections 12, 13, and 16] are intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to [sections 12, 13, and 16].

(2) [Section 22] is intended to be codified as an integral part of a new part 3 on appellate defender services in Title 47, chapter 1, and the provisions of Title 47, chapter 1, apply to [section 22].

(3) [Section 18] is intended to be codified as an integral part of a new part 4 on conflict defender services in Title 47, chapter 1, and the provisions of Title 47, chapter 1, apply to [section 18].

(4) The code commissioner is instructed to:

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(a) renumber 47-1-210 so that it becomes a section under Title 47, chapter 1, part 1;

(b) renumber 47-1-216 so that it becomes a section under Title 47, chapter 1, part 1;

(c) renumber 47-1-205 so that it becomes a section under a new part 3 on appellate defender services; and

(e) renumber 47-1-118 so that it becomes a section under a new part 4 on conflict defender services.

NEW SECTION. **Section 36. Contingent voidness.** If funding is not provided for in House Bill No. 2 for public defender services organized as provided for in [this act], then [this act] is void.

- END -

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