

HOUSE BILL NO. 102

INTRODUCED BY J. SOOKTIS

BY REQUEST OF THE OFFICE OF PUBLIC DEFENDER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE OFFICE OF STATE PUBLIC DEFENDER; CREATING A DISTINCTION BETWEEN CONFLICT AND NONCONFLICT REGIONAL OFFICES; REVISING THE DUTIES OF THE DIRECTOR, THE CONFLICT DEFENDER DIVISION ADMINISTRATOR, THE APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND THE CENTRAL SERVICES DIVISION ADMINISTRATOR; ~~REMOVING THE REQUIREMENT FOR THE DIRECTOR TO ESTABLISH STANDARDS SPECIFIC TO CHILD ABUSE AND NEGLECT MATTERS;~~ REVISING THE RESPONSIBILITIES OF THE CENTRAL SERVICES DIVISION TO INCLUDE REQUIREMENTS FOR MANAGING CONTRACTED SERVICES AND AGENCY TRAINING EFFORTS; PROVIDING REPORTING REQUIREMENTS; REVISING TITLES OF DIVISION PERSONNEL TO INCLUDE REGIONAL PUBLIC DEFENDERS AND MANAGING PUBLIC DEFENDERS; AMENDING SECTIONS 18-4-132, 47-1-104, 47-1-105, 47-1-119, 47-1-125, 47-1-201, 47-1-202, 47-1-215, 47-1-301, AND 47-1-401, MCA; AND REPEALING SECTIONS 47-1-120 AND 47-1-121, MCA."

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

NEW SECTION. **Section 1. Conflict defender division administrator -- duties.** (1) In addition to the duties provided for in 47-1-401 and subject to approval by the director, the conflict defender division administrator shall:

- (a) develop and implement a regional strategic plan for the delivery of conflict defender services;
- (b) ensure that administrative management procedures for conflict regional offices are consistent with the policies and procedures provided by the central services division established in 47-1-119;
- (c) establish procedures for managing caseloads and assigning cases in a manner that ensures that conflict 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

41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of ~~47-1-424~~ this title to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 6. Section 47-1-105, MCA, is amended to read:

"47-1-105. Director -- duties -- report -- standards for public defender services qualification and training. (1) The director shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the director shall:

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

(b) establish the qualifications, duties, and compensation of the appellate defender division administrator provided for in 47-1-301, hire the appellate defender division administrator after considering qualified applicants, and regularly evaluate the performance of the appellate defender division administrator;

(c) establish the qualifications, duties, and compensation of the conflict defender division administrator provided for in 47-1-401, hire the conflict defender division administrator after considering qualified applicants, and regularly evaluate the performance of the conflict defender division administrator; and

(d) establish the qualifications, duties, and compensation of the central services division administrator provided for in 47-1-119, hire the central services division administrator after considering qualified applicants, and regularly evaluate the performance of the central services division administrator.

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

- 1 (b) acceptable caseloads and workload monitoring protocols to ensure that public defender
2 workloads are manageable;
- 3 (c) access to and use of necessary professional services, such as paralegal, investigator, and
4 other services that may be required to support a public defender in a case;
- 5 (d) continuing education requirements for public defenders and support staff;
- 6 (e) nationally recognized practice standards for each type of case in which the office of state public
7 defender provides representation;
- 8 (f) performance criteria; and
- 9 (g) performance evaluation protocols.
- 10 ~~(3) In addition to the director's duties to establish statewide standards under subsection (2), the~~
11 ~~director shall establish specific standards for the qualification and training of attorneys providing public defender~~
12 ~~services to a child in an abuse and neglect case. The standards must take into consideration:~~
- 13 (a) additional training required to competently represent a child, which may include:
- 14 (i) methods for communicating with a child in a developmentally appropriate manner;
- 15 (ii) methods for presenting child testimony and alternatives to direct testimony;
- 16 (iii) early childhood, child, and adolescent development;
- 17 (iv) the dynamics of abuse and neglect, child sexual abuse, trauma, grief, and attachment;
- 18 (v) mental health issues, substance abuse issues, and the impact of domestic violence; and
- 19 (vi) available services and community resources for families;
- 20 (b) continuing education requirements specific to representing a child; and
- 21 (c) practice standards for representing a child, which may include:
- 22 (i) ensuring the child understands the role of counsel in the proceedings, including counsel's duty
23 to maintain confidentiality, provide loyal and independent legal representation, and to advocate for the child's
24 position;
- 25 (ii) taking all steps reasonably necessary to represent the child in the proceedings, including but
26 not limited to interviewing the child, advising the child of the child's rights, educating the child about the legal
27 process, informing the child of the child's options, counseling the child's decisionmaking, preparing a case
28 theory and strategy, preparing for and participating in negotiations and hearings, and drafting and submitting

1 motions, memoranda, and orders;

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

5 (iv) ~~taking action counsel considers appropriate to expedite the proceedings and the resolution of~~
6 ~~contested issues;~~

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

9 (vi) ~~in accordance with the rules of professional conduct, communicating and collaborating with all~~
10 ~~other parties to the case;~~

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

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

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

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

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

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

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

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

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

1 (iv) the dynamics of abuse and neglect, child sexual abuse, trauma, grief, and attachment;
2 (v) mental health issues, substance abuse issues, and the impact of domestic violence; and
3 (vi) available services and community resources for families;
4 (b) continuing education requirements specific to representing a child; and
5 (c) practice standards for representing a child, which may include:
6 (i) ensuring the child understands the role of counsel in the proceedings, including counsel's duty
7 to maintain confidentiality, to provide loyal and independent legal representation, and to advocate for the child's
8 position;
9 (ii) taking all steps reasonably necessary to represent the child in the proceedings, including but
10 not limited to interviewing the child, advising the child of the child's rights, educating the child about the legal
11 process, informing the child of the child's options, counseling the child's decisionmaking, preparing a case
12 theory and strategy, preparing for and participating in negotiations and hearings, and drafting and submitting
13 motions, memoranda, and orders;
14 (iii) reviewing and accepting or declining, after appropriate consultation with the child, any
15 proposed stipulation for an order affecting the child and explaining to the court the basis for any opposition to
16 the proposed stipulation;
17 (iv) taking action counsel considers appropriate to expedite the proceedings and the resolution of
18 contested issues;
19 (v) maintaining frequent and intentional contact with the child, at a minimum, prior to and after
20 each court hearing, after every placement change, and no less than one in-person meeting every 3 months;
21 (vi) in accordance with the rules of professional conduct, communicating and collaborating with all
22 other parties to the case;
23 (vii) investigating and taking necessary legal action regarding the child's medical, mental health,
24 social, and educational needs and overall well-being;
25 (viii) visiting the home, residence, or any prospective residence of the child, including each time the
26 placement is changed;
27 (ix) seeking court orders or taking any other necessary steps in accordance with the child's
28 direction to ensure that the child's health, mental health, educational, developmental, cultural, and placement

needs are met; and

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

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

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

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

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

(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; and

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

(f) establish standards for a statewide contracted services program to be managed by the central services division provided for in 47-1-119 to ensure that contracting for public defender services is done fairly and consistently statewide and within each public defender region;

(g) establish reasonable compensation for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services; and

(h) ensure that there are procedures for conducting assessments of each contract attorney on a biennial basis.

~~(5)(4)(5)~~ The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter."

Section 7. Section 47-1-119, MCA, is amended to read:

"47-1-119. Central services division -- responsibilities -- contracted services -- training -- department of administration to support. (1) There is a central services division in the office of state public