

**LCpd02 - Section-by-Section Analysis
Chief Administrator Appointed by Commission
(Commission's Strategic Plan)**

Section No.	Catchline	Current Law	Under LCpd02	Comments
1	2-18-103. Officers and employees excepted.	<p>Under current law, the following positions are exempt from the state classification and pay plan:</p> <ul style="list-style-type: none"> • chief public defender • deputy defenders • appellate defender • administrative manager • chief contract manager • training program coordinator <p>The following position is not exempt:</p> <ul style="list-style-type: none"> • chief conflict defender 	<p>The following position is added as exempt:</p> <ul style="list-style-type: none"> • chief conflict defender 	<p>LCpd1a and 1b would make the following positions subject to the classification and pay plan (no longer exempt):</p> <ul style="list-style-type: none"> • central services administrator • contract manager • training program coordinator
2 through 9	Multiple sections	These statues have internal references to the office of state public defender provided in 47-1-201, which is the office under the direction of the chief public defender.	The internal references to 47-1-201 are changed to the New Section 12 that establishes the Office of State Public Defender as the name of the overall agency run by the commission.	
10	47-1-103. Definitions.	Defines terms used in the Montana Public Defender Act. (Title 47, Chapter 1)	<p>Revisions include minor style changes and:</p> <ul style="list-style-type: none"> • the term "office" will now mean the overall agency, not just the chief public defender's office • clarifies the "defender" means any defender under any of the offices 	
11	47-1-105. Commission -- duties --report-- rules.	This section currently describes the duties of the commission to supervise and direct the system, provide a biennial report, and adopt rules.	<p>Language is added about the chief administrator and chief conflict defender to provide that these positions are on par with the chief public defender and chief appellate defender.</p> <p>A reference to the "administrative director" is changed to be "chief administrator". See Section 13 in this bill.</p> <p>Language requiring reporting is stricken so it can be moved to a new consolidated section on reporting. See Section 16.</p> <p>Language about the conflicts office is stricken so provisions can be consolidated in the conflicts office statute - Sections 17 and 18.</p>	Similar to LCpd1a and 1b. Except that under this bill, the commission would be the head of the agency.

Section No.	Catchline	Current Law	Under LCpd02	Comments
12	NEW SECTION. Office of state public defender.	Currently, the Office of State Public Defender is the office run by the Chief Public Defender.	The Office of State Public Defender would refer to the entire agency run by the commission.	Under LCpd1a and 1b, the Office of State Public Defender is created in a new section under Title 2, Chapter 15 as headed by the director appointed by the governor (1a) or by the executive director appointed by the director of the Dept. of Administration (1b).
13	NEW SECTION. Office of chief administrator -- system headquarters -- functions -- payable expenses.	<p>Currently there is an administrative manager hired by the chief public defender.</p> <p>The Office of State Public Defender headed by the chief public defender is statutorily responsible for:</p> <ul style="list-style-type: none"> - training - contracting - complaint process - eligibility screening - budgeting/accounting - IT 	<p>Establishes an office for central administrative services called the Office of Chief Administrator headed by a chief administrator appointed by the commission.</p> <p>The Office of Chief Administrator would administer the following:</p> <ul style="list-style-type: none"> - training - contracting - complaint process - eligibility screening - budgeting/accounting - IT 	The changes are similar to LCpd1a and 1b, except those bills call the office the "central services office" and the administrator of that office would be hired by the director or the executive director rather than the commission. Also, the administrator of this office would be changed to a classified position (no longer exempt).
14	47-1-110. Public defender account.	This section establishes a special revenue account for the public defender system.	The revisions make it clear that the account is for the entire agency. Language about gifts, grants, and donations is inserted from another section that included overlapping language. ⁵	Same clean up as provided for in LCpd1a and 1b.
15	47-1-111. Eligibility -- determination of indigence -- rules.	This section outlines the process that must be followed for eligibility determinations and motions to rescind eligibility. It requires the commission to adopt procedures and rules to implement the section. Currently, the office is headed by the chief public defender.	<p>Under the revisions, the Office of Chief Administrator would be in charge of administering the eligibility screening process for the entire agency, though regional offices would still handle the actual execution of this.</p> <p>In subsection (6)(e), "perform" is replace by "oversee" to clarify that defenders do not do the screening but are the oversight authority for the process and would still be filing the relevant motions in court.</p>	Similar to LCpd1a and 1b in that eligibility screening would be placed under the central services office as an administrative function for the entire agency.

Section No.	Catchline	Current Law	Under LCpd02	Comments
16	NEW SECTION. Reports.	Reporting requirements under current law are outlined in two different sections: 47-1-105, which outlines the duties of the commission, and 47-1-201, which outlines the duties of the office of public defender.	This new section consolidates the reporting requirements into one section that would be codified in the general provisions part of the chapter (Part 1). Minor technical changes are made to the language concerning the reports. The director would be responsible for providing the required reports for the entire agency.	No substantive changes are made to the reporting requirements. The same changes are made in LCpd1a and 1b.
17	47-1-118. Conflicts of interest -- <u>office of chief conflict defender</u> .	This section currently says the commission shall establish a conflicts office to contract for attorneys to handle cases when there is a conflict of interest. The conflicts manager is appointed by the commission. The statute does not exempt this position from the statewide classification and pay plan.	Revises the section to provide for the title "chief conflict defender" and provides that this person would be appointed by the director, not the commission. Makes the position exempt from the state classification and pay plan so that it is on par with the chief public defender and chief appellate defender positions. Authorizes conflict defender services to be provided by agency staff and not just contracted for.	LCpd1a and 1b makes similar changes but provides for an overall agency head that would hire the chief conflict defender (rather than the commission).
18	NEW SECTION. Chief conflict defender duties.	Currently, the conflict office and duties of the conflict manager is contained in one section 47-1-118.	This bill sets up a structure for the chief public defender office, appellate defender office, and conflict office that provides one section establishing the office and a separate section outlining the duties for the chief of the office. The duties listed are also listed for the chief public defender and the chief appellate defender, and articulate what is in the commission's strategic plan.	LCpd1a and 1b do not follow the same approach because those two bills do not add the list of duties that are articulated in this bill for each of the chiefs pursuant to the commission's strategic plan.
19	47-1-201. Office of state <u>chief public defender</u> -- personnel -- compensation -- expenses -- reports .	This section is the current law that establishes the Office of State Public Defender. As originally envisioned, this office was the overall office for the entire agency and the chief public defender was the head of the agency. However, revisions to the original act have established co-equal offices - the conflicts office and the office of appellate defender.	The revisions clean up and streamline the statutory language to clearly provide that this statute is not about the overall agency. But is about the Office of Chief Public Defender headed by the chief public defender. The revisions strike all of the centralized services functions so that they may be placed in a new Office of Chief Administrator. (See New Section 13).	Similar to the changes made in LCpd1a and 1b, except LCpd1a and 1b provide that the chief public defender would be appointed by the agency director rather than the commission.

Section No.	Catchline	Current Law	Under LCpd02	Comments
20	47-1-202. Chief public defender --- duties.	This section outlines the current duties of the chief public defender, which initially were intended to be similar to an agency executive director. However, subsequent revisions to the Public Defender Act made the conflict office and added the appellate defender office as separate co-equal offices.	Revisions strike the duties that would now reside with the chief administrator and adds language that is similarly added to the chief appellate and chief conflict defender duties, as reflected in the commission's strategic plan.	LCpd1a and 1b do not add the list of duties that are reflected in the commission's strategic plan.
21	47-1-205. Office of <u>chief appellate defender</u> -- <u>personnel</u> .	Establishes a chief appellate defender office located in Helena, with the chief hired and supervised by the commission.	Revises the section to be consistent with the way the chief public defender and chief conflict defender offices are provided for in statute.	LCpd1a and 1b make the chief appellate defender a position hired by the director or executive director rather than the commission.
22	NEW SECTION. Chief appellate defender duties.	Currently, the chief appellate defender's duties are articulated in 47-1-205.	This new section follows the same structure as is used for the chief public defender and chief conflict defender by listing the duties reflected in the commission's strategic plan.	LCpd1a and 1b do not create a new section to list the duties of the chief appellate defender, so those duties remain in 47-1-205.
23	47-1-210. Training program -- coordinator.	The training coordinator is currently a position under the chief public defender's supervision. However, current law also provides that this training support be provided for all defenders (those under the conflict defender office and the appellate defender office). The position of training coordinator is currently exempted from the state classification and pay plan.	The revisions move the training coordinator position to the Office of Chief Administrator. The position would remain exempt.	LCpd1a and 1b also move this training coordinator to a central service office, but the position would no longer be exempt.
24	47-1-216. Contracted services == rules.	<p>Under current law, the commission establishes the contracting program and standards and hires the "chief contract manager", which is an exempt position.</p> <p>A contract may not be awarded without approval of the commission. But, the chief public defender, the deputy public defenders, and the chief appellate defender are tasked to each provide for contract oversight and enforcement.</p> <p>Also, the commission sets the compensation of the contracted personnel and "shall implement rules requiring evaluation of every contract attorney".</p>	<p>Under this bill, the chief administrator would establish the policies governing the contracting program.</p> <p>The chief public defender, chief appellate defender, and chief conflict defender would still have a responsibility to supervise the contract personnel working for them, but not to administer the contracting program itself.</p> <p>The contract manager would remain an exempt position.</p>	LCpd1a and 1b make similar changes by specifying that contracting is administratively handled by the central services office, but the contract manager position would become a classified position.

Section No.	Catchline	Current Law	Under LCpd02	Comments
25 through 34	Multiple sections	Multiple current statutes have an internal reference to the office of state public defender established in 47-1-201, which is the office supervised by the chief public defender.	The internal reference to 47-1-201 is changed to the New Section 12, which establishes the Office of State Public Defender as the overall agency under the commission.	These changes are consistent with the typical way executive branch agencies referenced in other MCA sections.
35	Codification instruction -- instructions to code commissioner.	The current organization of statutes in the Montana Public Defender Act is: Part 1 - General Provisions Part 2 - Public Defender Services	The codification instruction section is a standard administrative section that provides instructions about where in the MCA the new sections are to codified and how to reorganize the statutes that make up the Montana Public Defender Act to conform to the changes made in the bill. The statutory structure would be: Title 47, Chapter 1 - Montana Public Defender Act Part 1 - General Provisions Part 2 - Office of Chief Public Defender Part 3 - Office of Appellate Defender Part 4 - Office of Chief Conflict Defender	LCpd1a and 1b follow a similar statutory structure.
36	New Section 39. Contingent voidness.	The current budget for the Office of State Public Defender is based on a one-time-only appropriation.	This section voids the bill if the revisions in this bill are not accounted for in the state budget.	
No effective date section	N/A	N/A	N/A	Without a specified effective date, the bill would be effective on Oct. 1, 2017. This is a starting point for further discussion. An option is to make the bill effective on July 1, 2017, which would coincide with the start of the fiscal year.