

Unofficial Draft Copy

As of: September 1, 2016 (10:57am)

LCpd11

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act requiring the public defender commission to set case compensatory maximums; providing a process for a contract attorney to receive additional compensation; amending section 47-1-216, MCA; ; and providing an effective date."

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

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

"47-1-216. Contracted services -- case compensatory maximums-- rules. (1) The commission shall establish standards for a statewide contracted services program that ensures that contracting for public defender 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) The commission shall set case compensatory maximums for attorneys who contract to provide public defender services. The case compensatory maximum is the maximum amount a contract attorney can earn for his or her services on a particular case and depends on the nature and quantity charges filed against the contract attorney's client who is a recipient of public defender services.

(3) In cases where a contract attorney believes the case compensatory maximum is insufficient given the complexity of a client's case, the contract attorney shall submit a written request to earn additional compensation to the chief contract manager. The chief contract manager shall inform the contract attorney in writing whether and what amount of potential additional compensation is permitted within 10 business days of receiving the attorney's request.

~~(2)~~(4) The chief contract manager shall oversee the contracting program and may not maintain a client caseload.

~~(3)~~(5) 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)~~(5) (a) Except as provided in subsection ~~(4)(b)~~ (6)(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)~~ (6)(b) may not be awarded without the approval of the commission and without verifiable assurances that effective representation will be provided.

~~(5)~~(7) Contracting for public defender and appellate 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 Montana supreme court for counsel for indigent persons in capital cases;

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

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(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)~~(8) The chief public defender, deputy public defenders, and the chief appellate defender shall provide for contract oversight and enforcement to ensure compliance with established standards.

~~(7)~~(9) The commission shall adopt rules to establish reasonable compensation and compensation limits for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services.

~~(8)~~(10) Contract attorneys may not take any money or benefit from an appointed client or from anyone for the benefit of the appointed client.

~~(9)~~(11) The commission shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

~~(10)~~(12) 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:*

18-4-132x 47-1-104x 47-1-205x 47-1-215x }

NEW SECTION. **Section 2. {standard} Effective date.** [This
act] is effective October 1, 2016.

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