

SENATE BILL NO. 151

INTRODUCED BY D. LENZ, A. REGIER, B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DIRECTOR OF THE OFFICE OF THE STATE PUBLIC DEFENDER TO ESTABLISH UNITS TO PROVIDE FAMILY DEFENSE AND CHILD REPRESENTATION SERVICES; AMENDING SECTION 47-1-105, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Direction to the director. ~~(1) In implementing [section 2] 47-1-105(1)(E) AND (1)(F), the director of the office of the state public defender shall:~~

~~(1) _____ limit the office's reliance on and utilization of contract attorneys to the extent ethically and practically possible; ; AND~~

~~(2) In implementing [section 2(1)(f)], the director shall collaborate with the department of public health and human services to leverage and maximize federal resources under Title IV-E of the Social Security Act.~~

Section 2. 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;

(e) establish no more than two organizational TRIAL units to provide counsel to parents, guardians, and legal custodians as required under 41-3-425(2)(a) that must include a managing attorney for each unit; and

(f) establish an organizational TRIAL unit to provide counsel to children as required under 41-3-425 that must include a managing attorney for the unit.

(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;

(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;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

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

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

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

placement is changed;

(ix) seeking court orders or taking any other necessary steps in accordance with the child's 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) 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.

(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."

NEW SECTION. **SECTION 3. TRANSITION.** NOTWITHSTANDING THE EFFECTIVE DATE IN [SECTION 5], FOR THE PURPOSES OF [THIS ACT] THE OFFICE OF THE STATE PUBLIC DEFENDER SHALL CREATE 21 NEW STAFF POSITIONS, 10 OF WHICH MUST BE CREATED DURING THE FISCAL YEAR BEGINNING JULY 1, 2025, AND 11 OF WHICH MUST BE CREATED DURING THE FISCAL YEAR BEGINNING JULY 1, 2026.

NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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