

## 1 HOUSE BILL NO. 93

2 INTRODUCED BY E. MCCLAFFERTY

3 BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE PUBLIC DEFENDER COMMISSION TO  
6 AWARD FIXED FEE CONTRACTS IN CERTAIN CASES; AND AMENDING SECTION 47-1-216, MCA."

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

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10 **Section 1.** Section 47-1-216, MCA, is amended to read:11 **"47-1-216. Contracted services -- rules.** (1) The commission shall establish standards for a statewide  
12 contracted services program that ensures that contracting for public defender services is done fairly and  
13 consistently statewide and within each public defender region and that contracting for appellate defender services  
14 is done fairly and consistently statewide.15 (2) The chief contract manager shall oversee the contracting program and may not maintain a client  
16 caseload.17 (3) The office of state public defender and each regional office, in a manner consistent with statewide  
18 standards adopted by the commission pursuant to this section, may contract to provide public defender,  
19 professional nonattorney, and other personal services necessary to deliver public defender services within each  
20 public defender region. The chief appellate defender, in a manner consistent with statewide standards adopted  
21 by the commission pursuant to this section, may contract to provide appellate defender, professional nonattorney,  
22 and other personal services necessary to deliver appellate defender services in the state. All contracting pursuant  
23 to this section is exempt from the Montana Procurement Act as provided in 18-4-132.24 (4) (a) Except as provided in subsection (4)(b), contracts ~~Contracts~~ may not be awarded based solely  
25 on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the  
26 number of cases assigned.27 (b) The following contracts may be awarded on a fixed fee basis:28 (i) contracts for legal representation of individuals appearing before specialty courts, including but not  
29 limited to drug treatment courts, mental health treatment courts, and DUI courts; and30 (ii) contracts with consortiums for legal representation of individuals in proceedings pursuant to Title 41,

1 chapter 3. For purposes of this subsection (4)(b)(ii), a consortium is a group of attorneys who have joined together  
2 for representation of individuals for a fixed fee in certain types of proceedings and have agreed to monitor the  
3 charges for legal representation.

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

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

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

10 (b) attorney qualifications necessary to provide effective assistance of counsel that meet the standards  
11 issued by the Montana supreme court for counsel for indigent persons in capital cases;

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

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

14 (e) reporting protocols and caseload monitoring processes;

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

16 (g) a process for conflict resolution; and

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

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

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

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

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

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

29 - END -



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2015 Biennium

**Bill #** HB0093

**Title:** Authorize fixed-fee contracts in certain cases

**Primary Sponsor:** McClafferty, Edith (Edie)

**Status:** As Introduced

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|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input type="checkbox"/> Needs to be included in HB 2  | <input type="checkbox"/> Technical Concerns              |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>
<b>Expenditures:</b>				
General Fund	=====UNABLE TO QUANTIFY=====			
<b>Revenue:</b>				
General Fund				
<b>Net Impact-General Fund Balance:</b>	=====	=====	=====	=====

**Description of fiscal impact:** The Office of the State Public Defender (OPD) has the statutory obligation to represent individuals charged with a crime who cannot afford to hire counsel. Some of these cases are diverted to specialty courts, and OPD represents individuals in these courts. OPD also has the statutory obligation to represent indigent parents and children in civil dependent/neglect cases.

### FISCAL ANALYSIS

**Assumptions:**

1. Title 47-1-216 (4) MCA prohibits awarding contracts based solely on the lowest bid or providing compensation to contractors based solely on a fixed fee paid regardless of the number of cases assigned.
2. This legislation allows for the use of fixed fee contracts in specialty courts (drug treatment courts, mental health treatment courts and DUI courts) and in dependent neglect cases.

3. The Montana Public Defender Commission will monitor fixed fee contracts to assure there is no harm to the level of service provided to the client.
4. The agency believes that fixed fee contracts may help the agency control costs and create financial savings for the state.
5. A recent performance audit conducted by the Legislative Audit Division noted that the agency had four fixed fee contracts in violation of current law. The agency canceled these contracts as the result of this audit finding.

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*Sponsor's Initials*

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*Date*

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*Budget Director's Initials*

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*Date*