

OFFICE OF THE STATE PUBLIC DEFENDER
DRAFT LEGISLATION – SUMMARY
August 8, 2012

FLAT FEE CONTRACTS

47-1-216 (3) does not allow for fixed fee contracts.

A recent performance audit conducted by LAD noted that the agency had four fixed fee contracts.

The agency will cancel them as the result of this audit finding.

The agency expects to submit legislation to allow for the use of fixed fee contracts in those civil cases where they make economic sense and do not harm the level of service provided to the client.

REMOVE JAIL TIME AS A PENALTY IN CERTAIN MISDEMEANORS

45-6-301 Theft

45-6-302 Theft of loss or mislaid property

45-6-305 Theft of labor or services or use of property

45-6-316 Issuing a bad check

45-8-101 Disorderly conduct

45-8-111 Public nuisance

61-5-102 Drivers to be licensed

61-5-212 Driving while licensed suspended or revoked

61-6-302 No proof of insurance

61-6-304 No proof of registration

All above rarely issue jail time but since it is a possibility, an OPD attorney may be assigned.

The agency estimated during last session that it could save over \$500,000 if jail time was removed.

SPECIALTY COURTS

46-1-1103 and 46-1-1203

Current law provides for a public defender or defense attorney in these courts. Some courts appoint a public defender, even if the person does not qualify for services under title 47 rules.

This change removes the word public defender and requires any defense attorney to fulfill this role.

POSTCONVICTION RELIEF

47-1-118

This would expand the conflicts office by hiring an attorney to handle postconviction relief cases, shifting to use of internal resources rather than contract attorneys.

GAL ISSUE

41-3-425

This change transfers the fiscal responsibility for court appointed attorneys (rather than OPD appointed attorneys) to the courts. Currently a court can appoint an attorney to represent a GAL at OPD expense without going through OPD and the eligibility determination process.

CASE DUMPING

47-1-111

If a person hires private counsel at his expense and then becomes indigent during the private attorney period of representation, the private counsel sometimes dumps the case on OPD. This change would prevent that practice.

DEPUTY CHIEF PUBLIC DEFENDER

47-1-201 (3)

This adds a new position to OPD and makes it an exempt position.

NEW HOUSEHOLD DEFINITION FOR PURPOSES OF ELIGIBILITY DETERMINATION

47-1-111 (3)

Under construction

CHANGE TO SB 187 COLLECTION LANGUAGE

46-8-113

This has three parts: (1) it requires the court to provide OPD with a copy of the judgment by including the agency on its certificate of mailing or to provide access to its case management system; (2) it relieves a client's obligation to make payments of public defender fees during periods of incarceration; and (3) it requires that payment be made directly to OPD.