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*** Bill No. ***

Introduced By *****

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act clarifying the courts' punitive authority including jail time under the contempt provisions, even if no jail time is imposed as part of the original sentence; amending section 46-8-101, MCA."

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

Section 1. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel to

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represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned.™

(4) When a defendant, who is sentenced to make payments pursuant to subsection (3) and allowed by 46-18-201, defaults in payment or of any installment, the court on motion of the prosecutor or on its own motion may require the defendant to show cause why the default should not be treated as contempt of court and may issue a show cause

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citation or an arrest warrant requiring the defendant's appearance.

(5) Every defendant cited to show cause pursuant to subsection (4) must be informed of the right to have counsel and must be asked if the aid of counsel is desired. If the defendant desires assigned counsel because of financial inability to retain private counsel the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(6) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant's part to make a good faith effort to make the payment, the court may find that the default constitutes civil contempt.

(7) The term of imprisonment for contempt for nonpayment must be set forth in the judgment and may not exceed 1 day for each \$25 of the payment or 30 days, whichever is the shorter period. A person committed for nonpayment must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

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(8) If it appears to the satisfaction of the court that the default is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment of the unpaid portion in whole or in part.

(9) A default in the payment or any installment may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for collection may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected."

{*Internal References to 46-8-101:*
46-7-102 47-1-104 }

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