

## BILL SUMMARY: SB 146 MONTANA PUBLIC DEFENDER ACT

By Request of Senator Dan McGee, Bill Sponsor

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**The meat of the bill is in NEW SECTIONS 1 through 15:**

**Section 1. Short Title.** (p. 2)

**Section 2. Definitions.** (p. 2)

**Section 3. Purpose.** (p. 2)

**Section 4. Scope and structure of the state wide public defender system.** (p. 3)

Structure: A public defender commission would supervise the system, develop a strategic plan, divide the state into regions, provide for the delivery of services:

- by contract with a single attorney or law firm or with a consortium of attorneys or law firms; or
- through a regional office with state staff (see section 11)

Scope: Covers all courts (district, justice, municipal, and city courts)

Covers all the cases listed in subsection (4)

- (4)(a) lists cases where a person is entitled to a PD because they are indigent
- (4)(b) lists the cases where a person is entitled to a PD even if not indigent

**Section 5. Public defender commission composition and membership.** (p. 5)

This section provides that a Public Defender Commission of 11 members would be appointed by the governor as follows:

- 2 attorneys nominated by Supreme Court
- 3 attorneys nominated by President of State Bar
  - 1 experienced in felony defense and was a full-time PD for at least 1 yr
  - 1 experienced in defense of juvenile delinquency and abuse and neglect cases involving the Indian Child Welfare Act
  - 1 who represents criminal defense lawyers
- 2 from general public, not attorneys, judges (active or retired)
- 1 nominated by President of Senate
- 1 nominated by Speaker of the House
- 1 advocate for indigent persons

- 1 advocate for racial minorities
- 1 advocate for people with mental illnesses and dev. disabilities
- 1 employed by an organization providing addictive behavior counseling
- 1 with significant experience in defense of criminal or other cases subject to the public defender act who has a strong commitment to quality representation for indigent defendants

**Section 6. Commission duties and responsibilities. (p. 6)**

This section provides that the Public Defender Commission would:

- hire and supervise a Chief Public Defender
- set statewide standards and policies covering:
  - education
  - experience
  - caseload and workloads
  - access to support services (paralegals, investigators, etc)
  - continuing education/training
  - performance criteria and evaluation
- develop strategic plan and approve budget proposals
- develop process for handling cases presenting conflicts of interests
- ensure process for recording and reporting detailed expenditure and caseload data
- submit a detailed biennial report to the Governor, Supreme Court, and Legislature

**Section 7. Office of state public defender, personnel, compensation, expenses. (p. 8)**

This section:

- establishes central office
- establishes the structure of the central office
  - chief public defender
  - administrative director
  - chief appellate defender
  - chief contract manager
  - training coordinator
  - deputy public defenders in each region
  - assistant public defenders (state staff to assist regions if requested)
  - other positions as needed
- lists other types of operational expenses that are paid by the office:
  - witness fees
  - transcript fees

**Section 8. Chief public defender -- duties. (p. 9)**

This section:

- outlines the duties of the Chief Public Defender to:
  - present to commission a regional strategic plan
  - supervise regional deputy public defenders and state staff of assistant public defenders
  - ensure conflict cases are handled appropriately
  - ensure detailed expenditure and caseload data is kept
  - manage caseloads
  - establish standards for assigning capital cases consistent with Supreme Court guidelines
  - establish and supervise a training program
  - establish performance and evaluation criteria
  - etc.

**Section 9. Office of appellate defender -- chief appellate defender. (p. 10)**

This section provides that:

- the Chief Public Defender hires and supervises the chief appellate defender
- the Chief Appellate Defender supervises the Office of Appellate Defender (contacted services and state appellate staff in regional offices)
- the Office of Appellate Defender, not the public defender who handled the original case, would handle all appeals in which the defendant is entitled to a public defender

**Section 10. Training program -- coordinator. (p. 11)**

This section:

- provides that a centralized training coordinator would be appointed by the Chief Public Defender
- training coordinate would
  - coordinate statewide training
  - help establish standards
  - provide consultation and assistance with research for briefs
  - apply for and assists in disbursement of federal funds or other grant money
  - perform other duties as assigned

**Section 11. Regional offices -- deputy public defenders -- office space. (p. 12)**

This section provides that:

- if a regional office is established by the Commission (rather than having contracted services provided for in the region), then the regional office will be managed by a deputy public defender
  - there are PD offices in Missoula, Yellowstone, Bozeman, Anaconda-Deer Lodge, Cascade, and Lewis & Clark Counties and one FTE in Dawson County

**Section 12. Contracted service program. (p. 12 bottom)**

This section:

- authorizes the Office of State Public Defender and each regional deputy public defender to contract for services.
- contracting must be done fairly and consistently throughout the state and within each region.
- places specific parameters on the contracting to ensure:
  - that contracts consider attorney qualifications and caseloads
  - adequate contract oversight
  - contracts aren't awarded based solely on the lowest bid
  - that there will be no fixed rate contract (i.e. a set fee no matter the caseload handled).

**Section 13. Public defender account. (p. 13)**

This section provides that:

- all gifts, grants, or donations to the Office of State Public Defender would be deposited to a special revenue account
- all payments ordered by a court to pay for the cost of defense provided by a public defender would be deposited to the special revenue account

**Section 14. Eligibility and determination of indigence. (p. 14)**

This section describes the process to be used to determine whether a person is eligible for a public defender.

Under this section:

- the Office of State Public Defender (through the regional offices or through contracted services) will determine whether a person is indigent and eligible for a public defender, or not.
- subsection (3), which begins on page 15, line 4, provides that anyone with a household income at or less than 133% of federal poverty guidelines OR whose disposable income and assets are insufficient to retain competent counsel without substantial hardship will be determined "indigent" and eligible for a public defender.

**Section 15. Right to counsel. (p. 18)**

This section concerns child abuse and neglect cases:

- consolidates current law and
- changes current law to provide that whenever a charge of child abuse or neglect is filed against a parent, the parent is immediately entitled to counsel (a court would no longer have to wait until a petition for the termination of parental rights has been filed)

**Other key sections in the bill**

**Section 21. Amending 15-1-121. Entitlement share payment -- appropriation. (p. 25)**

This section provides the funding mechanism for the Office of State Public Defender.

County and city share of funding: Beginning on **page 26, line 30 through page 33, line 6**, the amount of each county's and cities' entitlement share for FY 2006 will be reduced by the amount shown before the growth factor and entitlement share amount is calculated and paid out for FY 2007. This will permanently reduce the amount of the entitlement share paid to the county's and cities from the general fund.

Audit of certain counties: In order to base entitlement share reduction amounts for the state's largest counties on **actual costs** rather than on estimates, the bill provides that an audit will be conducted of certain county public defender expenses and go back to 1998. The counties to be audited are:

- Cascade
- Gallatin
- Lewis & Clark
- Missoula
- Yellowstone

Amendments:

- SB014608.ash would add Flathead County
- SB014609.ash would have counties share 50% of the cost for the audit

Adjustments next session:

- Law and Justice Interim Committee will offer legislation to adjust the entitlement share reduction amounts according to audit findings and determination of what costs should be state responsibility and what costs should be county responsibility. **(Subsection (5) of Section 72)**

The key language discussing how this audit will be conducted and identifying what expenses will be audited is provided in **Section 72, page 88, beginning on line 22.**

**Section 46. Examination of defendant. (pp. 61 - 62)**

This section relates to mental examination of a defendant's fitness to proceed. Fitness to proceed may be raised by the prosecution, the defense, or the court. Key language to note is in **subsection (4), beginning on page 61, line 22.**

**Section 61. Expense of trial for offenses committed in prison.**

Current language:

- Dept. of Corrections pays all costs "incurred by the county"  
(page 80, line 24)

Change in bill:

- Public defender costs will be paid by the Office of State Public Defender

**Implementation Sections**

**Section 68. Implementation**

Time line:

Public Defender Commission appointed by	July 1, 2005
Chief Public Defender hired by	December 31, 2005
Standards and Procedures in place by	July 1, 2006

**Section 69. Transition -- transfer of county and city employees to state employment**

Local public defender staff become state employees	July 1, 2006
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**Section 70. Transition of appellate defender commission and office**

Appellate Defender Commission and Public Defender Commission work together beginning	July 1, 2005
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Office of Appellate Defender transferred to Office of State Public Defender and Appellate Defender Commission and old statutes repealed	July 1, 2006
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**Section 72. Determination of actual costs -- legislative audit (p. 88)**

Audit of FY 1998 through FY 2005 "actual costs" for  
"public defender services" in district court and justice  
court in the following counties:

- Cascade
- Flathead (would be added by amendment SB014608.ash)
- Lewis & Clark
- Gallatin
- Missoula
- Yellowstone

**Section 75. Interim report.** (p. 91)

The Public Defender Commission and the Office of State Public Defender must provide a progress report in FY 2007 to:

- Governor
- Legislative Audit Committee
- Legislative Finance Committee
- Law and Justice Interim Committee
- Supreme Court

**Section 80. Three-fifths vote required.** (p. 92)

A three-fifths vote of the members of each house is required because the entitlement share statutes state that any adjustments to the entitlement share may be done only by a three-fifths vote.

