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Governor

OFFICE OF THE STATE PUBLIC DEFENDER
STATE OF MONTANA

INFORMATION SHEET REGARDING SB 569
April 16, 2007

Senator Shockley introduced SB 569 to make changes to Title 47, the Montana Public Defender Act. The Office of the State Public Defender (OPD) has concerns regarding the proposed changes offered in the bill and recently met with the Senator to express these concerns.

First, the bill proposes to allow the court to second-guess the eligibility determination made by OPD. Currently, the court, at the request of a defendant who has been determined ineligible for public defender services, may petition the court for review. This bill goes further and allows the court, in any case, to overrule the determination that a defendant is eligible for services. A major principle of the American Bar Association (ABA) standards for indigent services is independence from the judiciary. There is always an inherent conflict of interest in allowing a judge sitting on a case to determine who does and does not get an attorney.

The OPD has developed policies and procedures for determination of indigent status according to Section 47-1-111, MCA, and has trained persons in each region to do the eligibility determination. Other than one District Court case in Hamilton, there have been no complaints that OPD is serving people not entitled to public defender services.

Second, the bill proposes to require that, in conflict cases, a public defender must be used from an adjoining district, unless it is not cost-effective. There are an estimated 2,500 conflict cases a year. The Montana Public Defender Commission, pursuant to Section 47-1-105, MCA, divided the state into 11 regions. Each region has been determined to be a "law office" for the purpose of conflict cases. It has been the determination of all five attorneys on the Commission that it would be a conflict of interest for a person out of one office in a region to do conflict cases for another office in the same region. These conflict cases are assigned to private attorneys, although whenever possible, FTE attorneys are used across regional lines to pick up some of the conflict cases. This has been most successful in the eastern parts of the state. If the proposed amendment to the Public Defender Act was intended to refer to regions, it is unnecessary because it is already being implemented. If the amendment is intended to refer to offices within a region, it runs afoul of conflict of interest problems.