

UNEDITED

Amendments to Senate Bill No. 187
3rd Reading Copy

Requested by Representative Ken Peterson

For the House Judiciary Committee

Prepared by David Niss
April 5, 2011 (8:27am)

1. Title, line 8.

Strike: "46-18-251,"
Insert: "46-8-114"

2. Page 1, line 17.

Strike: "seven"
Insert: "11"

3. Page 1, line 18.

Strike: "the chief justice of"

4. Page 1, line 21.

Following: "defender,"
Insert: "as follows:

- (i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full time public defender;
- (ii)"

5. Page 1, line 22.

Strike: "of whom must be"
Insert: "attorney"

6. Page 1.

Following: line 24
Insert: "(iii) one attorney who represents criminal defense lawyers;"

7. Page 1, line 27.

Strike: "."
Insert: ";

8. Page 2, line 7 through line 8.

Strike: subsection (3) in its entirety
Insert: "(d) one person who is a member of an organization that advocates on behalf of indigent persons;
(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;
(f) one person who is a member of an organization that advocates

on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants."

9. Page 2, line 14.

Following: "commission"

Insert: "once the new revenue under 46-8-113(1)(a) and (b) have produced a balance in the public defender account established by 47-1-110 that would sustain any staff position approved by the commission for at least one fiscal year,"

10. Page 3, line 19 through page 8, line 3.

Strike: sections 3 and 4 in their entirety

Insert: "**Section 3.** Section 46-8-113, MCA, is amended to read:

"46-8-113. Payment by defendant for assigned counsel -- costs to be filed with court. (1) As part of or as a condition under a sentence imposed under the provisions of this title, the court shall, by including the costs of counsel in the court's judgment, require a convicted defendant to pay the costs of counsel assigned to represent the defendant as follows, except as provided in subsections (2) and (3):

(a) in every misdemeanor case, ~~\$150~~ \$250; and

(b) in every felony case, ~~\$500~~ \$800.

(2) Costs must be limited to costs incurred by the office of state public defender, provided for in 47-1-201, for providing the defendant with counsel in the criminal proceeding. If the criminal proceeding includes a jury trial or a justice's court trial, ~~counsel assigned by~~ the office of state public defender shall file with the court a statement of the hours spent on the case and the costs and expenses incurred ~~and, except as provided in subsection (3), the court shall require the defendant to pay the costs of counsel and other costs and expenses as reflected in the statement.~~ In any proceeding for the determination of whether a defendant is or will be able to pay the costs of counsel, the court shall question the defendant as to the defendant's ability to pay those costs and shall inform the defendant that purposely false or misleading statements by the defendant may result in criminal charges against the defendant.

(3) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the hours spent on the

case and the costs and expenses incurred, the financial resources of the defendant, and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."

{Internal References to 46-8-113:

46-8-114a 46-18-101x 46-18-201x 46-18-201x
47-1-110x 61-8-731x }"

Insert: "Section 4. Section 46-8-114, MCA, is amended to read:

"**46-8-114. Time and method of payment.** When a defendant is sentenced to pay the costs of assigned counsel pursuant to 46-8-113, the court may order payment to be made within a specified period of time or in specified installments. Payments must be made to the ~~office of state public defender, provided for in 47-1-201,~~ clerk of the sentencing court for allocation as provided in 46-18-201, 46-18-232, and 46-18-251, and deposited in the account established in 47-1-110."

{Internal References to 46-8-114: None.}"

11. Page 10, line 6.

Strike: "and deputy public defender"

12. Page 12, line 2.

Following: "~~commission,~~"

Insert: "(a) act as secretary to the commission and provide administrative staff support to the commission until the commission can hire its staff as provided in 2-15-1028(6)(a);"

Renumber: subsequent subsections

13. Page 14, line 14.

Strike: "and"

14. Page 14.

Following: line 15

Insert: "(h) maintain a minimum client caseload as determined by the chief public defender; and"

Renumber: subsequent subsection

15. Page 15, line 23.

Strike: "annual"

Insert: "biennial"

16. Page 16, line 4 through line 11.

Strike: section 13 in its entirety

Renumber: subsequent sections

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