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DATE 4/5/2011
SB 187

MONTANA MAGISTRATES ASSOCIATION
JUDITH BASIN COUNTY JUSTICE OF THE PEACE

Judge Larry Carver
P.O. Box 339
Stanford, Mt 59479
(406-566-2277, Ext.117)

Testimony Outline- Senate Bill 187 as amended 4/5/2011

President of the Montana Magistrates Association
Chairman-Legislative Committee
Chairman Automation Committee

Interpretation of bill is confusing and contradictory; Section 3 Pg 3

Amendment 10; 46-8-113.....(1) As part of or as a condition under a sentence imposed under the provisions of this title, **the court shall require a convicted defendant to pay the costs of counsel assigned to represent the defendant as follows,**

- 1(a) in every misdemeanor case, \$250; and
- 1(b) in every felony case, \$800.

except as provided in subsections (2) and (3):

“(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.

WHICH IS IT SUB 1(a), 1(b) OR SUB 2 THE COST INCURRED-

If sub 2 is the legislative intent, what is the purpose of 1(a) and 1(b)?

NEXT SENTENCE SUB 2;

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.

- WHAT ABOUT DISTRICT COURT BENCH TRIALS?
- WHAT ABOUT TRIALS CONDUCTED IN MUNICIPAL COURTS?
- WHAT ABOUT TRIALS CONDUCTED IN CITY COURTS?

HOW WILL THESE COURTS DETERMINE COSTS INCURRED (PURSUANT TO SUB 2) WITHOUT COST STATEMENTS INTRODUCED? WHY ARE THESE COURTS EXCLUDED?

WHY DO THE COUNTY COURTS HAVE A DIFFERENT PROVISION? (JUSTICE COURTS) ALL COURTS MAY BECOME COURTS OF RECORD IF THAT IS THE ISSUE.

WHAT IF THE DEFENDANT PLEADS GUILTY AND IS REPRESENTED BY OSPD?

GUILTY PLEAS ARE A CONVICTION
COSTS WILL BE INCURRED FOR NEGOTIATING PLEA AGREEMENTS
GUILTY PLEAS MUST BE GIVEN IN OPEN COURT (a criminal proceeding sub 2)
HOW CAN COSTS BE DETERMINED WITHOUT A STATEMENT OF COSTS
(not required unless jury trial or justice court trial)

SUBSECTION 3;

“(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.

AGAIN, WHAT IS THE PURPOSE OF SUB 1(A) AND 1(B)?

AGAIN, HOW WILL COSTS BE DETERMINED IF NO STATEMENT OF COSTS ARE REQUIRED TO BE FILED?

NEXT SENTENCE SUB 3;

In any proceeding provided for in this part for the determination of the amount of costs of counsel that should be paid the offender may assert any defense that could be raised in a civil action.

DEFENDANT MUST HAVE A STATEMENT OF COSTS TO PRESENT A DEFENSE.

FINALLY, IF NO COSTS ARE FILED, WHAT DUTY DOES THE COURT HAVE TO COLLECT? HOW MUCH?

CLOSING;

THE MONTANA LEGISLATURE CREATED THE PUBLIC DEFENDER SYSTEM TO PROVIDE COUNSEL TO DEFENDANT'S BECAUSE OF FINANCIAL INABILITY TO RETAIN COUNSEL. BY DESIGN, TO COLLECT REIMBURSEMENT COSTS OF

ASSIGNED COUNSEL FROM THESE FOLKS IS DIFFICULT IF THEY DON'T HAVE THE RESOURCES TO PAY. IN THESE CASES THE OSPD MAKES THE FINANCIAL DETERMINATION OF ELIGIBILITY. USUALLY, THE COURT DOES NOT REVIEW THE FINANCIAL AFFIDAVIT OF THE APPLICANT. NOW BASED ON OSPD FINANCIAL DETERMINATIONS, THIS LEGISLATION RELIEVES THEM OF THE OBLIGATION TO COLLECT THE COSTS INCURRED, OBLIGATION TO REQUEST THAT COSTS BE IMPOSED AND NOW RELIEVES THEM OF THE OBLIGATION TO PROVIDE A STATEMENT OF COSTS. PLACES THE ENTIRE COLLECTION SOLELY ON THE COURTS.

DOES IT REALLY MAKE SENSE TO RAISE THE UNCOLLECTABLE FEES LISTED IN SUB 1 AND PLACE THE ENTIRE BURDEN UPON THE ALREADY UNDERFUNDED AND UNDERSTAFFED COUNTY COURTS? HOW ARE THE COUNTIES GOING TO RECOVER THEIR OPERATING COSTS?

THEREFORE, PURSUANT TO REASONS STATED ABOVE AND THE REASONS STATED IN THE LETTER SUBMITTED BY MONTANA MAGISTRATES PRESIDENT, GREGORY P. MOHR, THE MONTANA MAGISTRATES OPPOSE THIS BILL AND REQUEST THAT BILL NOT PASS.