



EXHIBIT 7/1/11  
 DATE 4/5/2011  
 SB 187

**HB 187: GENERALLY REVISE PUBLIC DEFENDER LAWS**

TO: Members of House Judiciary Committee

For: Hearing on April 5, 2011

FROM: Gregory P. Mohr President Montana Magistrates Association

DISTRIBUTED BY: Mary "Marty" Phippen Lobbyist, Montana Magistrates Association

We the Montana Magistrates Association support and defend the rights of indigent defendants to counsel when charged with a crime in the state of Montana. It is clear that very few defendants qualify for a free attorney and are able to pay some or all of the costs of their public defender. To insure this the law mandates a hearing on the defendants ability to pay, none, all or part of the costs of their public defender and by allowing the costs if ordered to be paid over a period of time. The law specifically mandates in MCA 46-8-114 that the payments must be made to the office of the state public defender. This law was re-enforced in the case of the St. of Montana V. Mark Alan Brown 2009 Mt. 452. In that case District Judge Jeffrey Langton ruled that the defendant was responsible for the costs of his public defender and ordered the payments made through the clerk of the district court who then would submit them to the OSPD. The OSPD appealed the decision and the Supreme Court ruled that the statute was clear the payments must be made to the OSPD. For some reason the OSPD has not been collecting the reimbursement amounts ordered by the courts. In Brown the court further stated that "a presumption exists that the Legislature does not pass meaningless legislation;" Because the OSPD has failed to collect the amounts ordered by the courts for whatever reason, this legislation then relieves them of their obligation to collect the amounts ordered and places the burden on the already overworked courts because the OSPD doesn't want to do it. WE vehemently oppose HB 187 ~~Section 9(a)~~ <sup>Section 9(a)</sup> for the above reasons.

We take our jobs very seriously and do what we are mandated to do. We don't have the option of ignoring the law as we see fit. Consider this, if the law specifically stated what was to be done by any agency and that agency didn't do it, for whatever reason, would the answer be in the next legislative session to just pass the obligation on to another branch of government or agency. I think not.

Thank You

Gregory P. Mohr, President MMA