

STATE JUDICIAL
T NO. 1
2/2/11
SB 187

31 January 2011

These are some of the ideas that I wish to be implemented in a bill to generally revise the Office of Public Defender (OPD); i.e., SB 187.

Representative Mike Menahan and I helped teach David Aronofsky's class. His students drafted a bill and many of the ideas listed below originated from them.

1. The Commission will be reduced from 11 members with special "qualifications" to 5. They will be appointed by the governor from nominations by the Chief Justice, the Governor himself, the Speaker of the House, President of the Senate, and the State Bar.
2. Reduce the 11 Pubic Defender districts to perhaps 6.
3. The Chief Defender, whoever that might be, could not try cases under any circumstances.
4. Dependent and neglect D/N cases would no longer be under the OPD, and the money in their budget for that purpose would go to the courts. The courts would assign attorneys for D/N cases as they did prior to the inception of the OPD. The court could assign OPD if the judge wished, or Montana Legal Services, or even an attorney who wanted to work on his or her pro bono hours.
5. All cases would be billed by the hour. The amount owed would be placed in the judgement if the court felt that it was reasonable to make the defendant pay as the law now exists. The Department of Corrections would collect attorneys fees as it does other funds that a judgement requires to be paid. I would also revise the list of priorities for payments made per the judgement, and attorney fees would not be at the bottom of the list.
6. If the justice of the peace tells a defendant that if he is convicted, or pleads guilty, he not receive any jail time (not even suspended jail time) no attorney will be appointed.
7. In open court the defendant will be asked by the judge if his income statement is accurate, advised that his statement is under oath, and that an

untruth will result in a criminal charge.

8. The judge may, but is not required, to inquire into the truth of the financial statement.

9. It would be clear that the assets of the defendant, liquid or not, would be subject to the debt reflected in the judgement. However, no one who could not pay attorneys fees under the existing statute would be required to pay under any change to the OPD system.

10. The appointment of a contractor to a case would be made from the central office to avoid making it appear that the contractor was simply an extension of the regional office.

11. The Commission would have a small staff, independent of the OPD, or the appellate division.

12. The appellate function would be entirely separate from the OPD and report directly to the Commission.