

1 SENATE BILL NO. 187

2 INTRODUCED BY J. SHOCKLEY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA PUBLIC DEFENDER ACT
5 AND RELATED STATUTES; RESTRICTING AND LIMITING CASELOAD LEVELS FOR THE CHIEF PUBLIC
6 DEFENDER AND DEPUTY PUBLIC DEFENDERS; REQUIRING NOTARIZED AFFIDAVITS OF INDIGENCY;
7 REVISING THE PROVISION FOR PAYMENT BY DEFENDANTS OF PUBLIC DEFENDER SERVICES;
8 AMENDING SECTIONS 46-8-113, 47-1-102, 47-1-105, 47-1-111, 47-1-202, AND 47-1-215, MCA; AND
9 PROVIDING AN EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 46-8-113, MCA, is amended to read:

14 **"46-8-113. Payment by defendant for assigned counsel -- costs to be filed with court.** (1) As part
15 of or as a condition under a sentence imposed under the provisions of this title, the court shall require a convicted
16 defendant to pay the costs of counsel assigned to represent the defendant as follows, except as provided in
17 subsections (2) and (3):

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

19 (b) in every felony case, ~~\$500~~ attorney fees at the rate of \$75 an hour up to a maximum of \$5,000.

20 (2) Costs must be limited to costs incurred by the office of state public defender, provided for in 47-1-201,
21 for providing the defendant with counsel in the criminal proceeding. If the criminal proceeding includes a jury trial,
22 counsel assigned by the office of state public defender shall file with the court a statement of the hours spent on
23 the case and the costs and expenses incurred and, except as provided in subsection (3), the court shall require
24 the defendant to pay the costs of counsel and other costs and expenses as reflected in the statement.

25 (3) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant
26 is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into
27 account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

28 (4) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced
29 the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the
30 satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the

1 defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of
2 payment."

3

4 **Section 2.** Section 47-1-102, MCA, is amended to read:

5 **"47-1-102. Purpose.** The purposes of this chapter are to:

6 (1) establish a statewide public defender system to provide effective assistance of counsel to indigent
7 criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public
8 expense;

9 (2) ensure that the system is free from undue political interference and conflicts of interest;

10 (3) provide that public defender services are delivered by qualified and competent counsel in a manner
11 that is fair and consistent throughout the state;

12 (4) establish a system that utilizes state employees, contracted services, or other methods of providing
13 services in a manner that is responsive to and respectful of regional and community needs and interests; ~~and~~

14 (5) ensure that adequate public funding of the statewide public defender system is provided and
15 managed in a fiscally responsible manner; and

16 (6) ensure that clients of the statewide public defender system pay reasonable costs for services
17 provided by the system based on the clients' financial ability to pay."

18

19 **Section 3.** Section 47-1-105, MCA, is amended to read:

20 **"47-1-105. Commission -- duties -- report -- rules.** The commission shall supervise and direct the
21 system. In addition to other duties assigned pursuant to this chapter, the commission shall:

22 (1) establish the qualifications, duties, and compensation of the chief public defender, as provided in
23 47-1-201, appoint a chief public defender after considering qualified applicants, and regularly evaluate the
24 performance of the chief public defender;

25 (2) establish statewide standards for the qualification and training of attorneys providing public defender
26 services to ensure that services are provided by competent counsel and in a manner that is fair and consistent
27 throughout the state. The standards must take into consideration:

28 (a) the level of education and experience that is necessary to competently handle certain cases and case
29 types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types in order to
30 provide effective assistance of counsel;

- 1 (b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads
2 are manageable;
- 3 (c) access to and use of necessary professional services, such as paralegal, investigator, and other
4 services that may be required to support a public defender in a case;
- 5 (d) continuing education requirements for public defenders and support staff;
- 6 (e) practice standards;
- 7 (f) performance criteria; and
- 8 (g) performance evaluation protocols.
- 9 (3) review and approve the strategic plan and budget proposals submitted by the chief public defender
10 and the administrative director;
- 11 (4) review and approve any proposal to create permanent staff positions;
- 12 (5) establish policies and procedures for identifying cases in which public defenders may have a conflict
13 of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical
14 standards;
- 15 (6) establish policies and procedures for handling excess caseloads;
- 16 (7) establish policies and procedures to ensure that detailed expenditure and caseload data is collected,
17 recorded, and reported to support strategic planning efforts for the system;
- 18 (8) establish policies and procedures to ensure that clients of the statewide public defender system pay
19 reasonable costs for services provided by the system based on the clients' financial ability to pay;
- 20 ~~(8)(9)~~ adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement
21 the provisions of this chapter; and
- 22 ~~(9)(10)~~ submit a biennial report to the governor, the supreme court, and the legislature, as provided in
23 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee
24 established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:
- 25 (a) all policies or procedures in effect for the operation and administration of the statewide public
26 defender system;
- 27 (b) all standards established or being considered by the commission or the chief public defender;
- 28 (c) the number of deputy public defenders and the region supervised by each;
- 29 (d) the number of public defenders employed or contracted with in the system, identified by region;
- 30 (e) the number of attorney and nonattorney staff supervised by each deputy public defender;

- 1 (f) the number of new cases in which counsel was assigned to represent a party, identified by region,
2 court, and case type;
- 3 (g) the total number of persons represented by the office, identified by region, court, and case type;
- 4 (h) the annual caseload and workload of each public defender, identified by region, court, and case type;
- 5 (i) the training programs conducted by the office and the number of attorney and nonattorney staff who
6 attended each program;
- 7 (j) the continuing education courses on criminal defense or criminal procedure attended by each public
8 defender employed or contracted with in the system; and
- 9 (k) detailed expenditure data by court and case type."
10

11 **Section 4.** Section 47-1-111, MCA, is amended to read:

12 **"47-1-111. Eligibility -- determination of indigence -- rules.** (1) (a) When a court orders the office to
13 assign counsel, the office shall immediately assign counsel prior to a determination under this section.

14 (b) If the person for whom counsel has been assigned is later determined pursuant to this section to be
15 ineligible for public defender services, the office shall immediately notify the court so that the court's order may
16 be rescinded.

17 (c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until
18 the court's order requiring the assignment is rescinded.

19 (d) Any determination pursuant to this section is subject to the review and approval of the court. The
20 propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an
21 assignment.

22 (2) (a) An applicant who is eligible for a public defender only because the applicant is indigent shall also
23 provide a detailed financial statement and ~~sign an~~ a notarized affidavit.

24 (b) The application, financial statement, and affidavit must be on a form prescribed by the commission.

25 (c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or
26 criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant
27 for perjury or false swearing.

28 (d) The office may not withhold the timely provision of public defender services for delay or failure to fill
29 out an application. However, a court may find a person in civil contempt of court for a person's unreasonable
30 delay or failure to comply with the provisions of this subsection (2).

1 (3) An applicant is indigent if:

2 (a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the
3 poverty level set according to the most current federal poverty guidelines updated periodically in the Federal
4 Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2);
5 or

6 (b) the disposable income and assets of the applicant and the members of the applicant's household are
7 insufficient to retain competent private counsel without substantial hardship to the applicant or the members of
8 the applicant's household.

9 (4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or
10 solely because the applicant is employed.

11 (5) A determination may be modified by the office or the court if additional information becomes available
12 or if the applicant's financial circumstances change.

13 (6) The commission shall establish procedures and adopt rules to implement this section. Commission
14 procedures and rules:

15 (a) must ensure that the eligibility determination process is fair and consistent statewide;

16 (b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from
17 the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the
18 members of the applicant's household;

19 (c) may provide for the use of other public or private agencies or contractors to conduct eligibility
20 screening under this section;

21 (d) must avoid unnecessary duplication of processes; and

22 (e) must prohibit individual public defenders from performing eligibility screening pursuant to this section."
23

24 **Section 5.** Section 47-1-202, MCA, is amended to read:

25 **"47-1-202. Chief public defender -- duties.** (1) In addition to the duties provided in 47-1-201, the chief
26 public defender shall:

27 (1)(a) act as secretary to the commission and provide administrative staff support to the commission;

28 (2)(b) assist the commission in establishing the state system and establishing the standards, policies,
29 and procedures required pursuant to this chapter;

30 (3)(c) develop and present for the commission's approval a regional strategic plan for the delivery of

1 public defender services;

2 ~~(4)(d)~~ establish processes and procedures to ensure that when a case that is assigned to the office
3 presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and
4 ethically;

5 ~~(5)(e)~~ establish processes and procedures to ensure that office and contract personnel use information
6 technology and caseload management systems so that detailed expenditure and caseload data is accurately
7 collected, recorded, and reported;

8 ~~(6)(f)~~ establish administrative management procedures for regional offices;

9 ~~(7)(g)~~ establish procedures for managing caseloads and assigning cases in a manner that ensures that
10 public defenders are assigned cases according to experience, training, and manageable caseloads and taking
11 into account case complexity, the severity of charges and potential punishments, and the legal skills required to
12 provide effective assistance of counsel;

13 ~~(8)(h)~~ establish policies and procedures for assigning counsel in capital cases that are consistent with
14 standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

15 ~~(9)(i)~~ establish and supervise a training and performance evaluation program for attorneys and
16 nonattorney staff members and contractors;

17 ~~(10)(j)~~ establish procedures to handle complaints about public defender performance and to ensure that
18 public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that
19 office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated
20 pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter
21 61;

22 ~~(11) maintain a minimum client caseload, as determined by the commission;~~

23 ~~(12)(k)~~ actively seek gifts, grants, and donations that may be available through the federal government
24 or other sources to help fund the system; and

25 ~~(13)(l)~~ perform all other duties assigned by the commission pursuant to this chapter.

26 (2) The chief public defender may not maintain a client caseload but may assist deputy public defenders
27 and assistant public defenders on specific cases, as authorized by the commission."

28

29 **Section 6.** Section 47-1-215, MCA, is amended to read:

30 **"47-1-215. Regional offices -- deputy public defenders -- office space.** (1) ~~Beginning July 1, 2006,~~

1 ~~the~~ The chief public defender shall hire, assign, and supervise a deputy public defender to manage and supervise
2 each regional office established pursuant to 47-1-104(2).

3 (2) Each deputy public defender shall:

4 (a) manage and supervise all public defender services provided within the deputy public defender's
5 assigned region;

6 (b) establish protocols so that when a court orders the office to assign counsel, the assignment is made
7 promptly to an appropriate public defender and so that a public defender is immediately available when
8 necessary;

9 (c) ensure that public defender assignments within the region comply with the provisions of 47-1-202(7);

10 (d) hire and supervise the work of regional office personnel as authorized by the chief public defender;

11 (e) contract for services as provided in 47-1-216 and authorized by the chief public defender according
12 to the strategic plan approved by the commission;

13 (f) keep a record of public defender and associated services and expenses in the region and submit the
14 records to the chief public defender as requested;

15 (g) implement the standards and procedures established by the commission and chief public defender
16 for the region;

17 (h) maintain a minimum client caseload, consisting of no more than 15 active cases at a time, as
18 determined by the chief public defender; and

19 (i) perform all other duties as assigned by the chief public defender.

20 (3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must
21 be paid by the office and may not be considered a county or city obligation."

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23 NEW SECTION. Section 7. Effective date. [This act] is effective July 1, 2011.

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