

HOUSE BILL NO. 143

INTRODUCED BY N. MCCONNELL

BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT SUSPENDING PAYMENT OF PUBLIC DEFENDER FEES DURING PERIODS OF INCARCERATION; AND AMENDING SECTIONS 46-8-113 AND 46-8-114, MCA."

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

**Section 1.** 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) Subject to the provisions of subsections (2) and (3), as part of or as a condition of a sentence that is imposed under the provisions of this title, the court shall determine whether a convicted defendant should pay the costs of counsel assigned to represent the defendant as follows:

(a) If the defendant pleads guilty prior to trial:

- (i) to one or more misdemeanor charges and no felony charges, the cost of counsel is \$250; or
- (ii) to one or more felony charges, the cost of counsel is \$800.

(b) If the case goes to trial, the defendant shall pay the costs incurred by the office of state public defender for providing the defendant with counsel in the criminal trial. 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 for the trial.

(2) Any costs imposed pursuant to this section must be paid in accordance with 46-18-251(2)(e).

(3) 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.

(4) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay the costs imposed by subsection (1). The court may find that the defendant is able to pay only a portion of the costs assessed. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

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

6 (6) A defendant's obligation to make payments for the cost of counsel is suspended during periods of  
7 incarceration.

8 ~~(6)~~(7) Any costs imposed under this section must be included in the court's judgment."  
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10 **Section 2.** Section 46-8-114, MCA, is amended to read:

11 **"46-8-114. Time and method of payment.** ~~(1) When~~ Except as provided in subsection (2), when a  
12 defendant is sentenced to pay the costs of assigned counsel pursuant to 46-8-113, the court may order payment  
13 to be made within a specified period of time or in specified installments.

14 (2) A defendant's obligation to make payments for the cost of counsel is suspended during periods of  
15 incarceration.

16 (3) Payments must be made to the clerk of the sentencing court for allocation as provided in 46-18-201,  
17 46-18-232, and 46-18-251 and deposited in the account established in 47-1-110."

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