

SENATE BILL NO. 61

INTRODUCED BY R. DRISCOLL

BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING A COURT'S PUNITIVE AUTHORITY RELATING TO THE NONPAYMENT OF FINES, COSTS, OR OTHER AMOUNTS; PROVIDING FOR A SHOW CAUSE HEARING FOR NONPAYMENT; PROVIDING FOR CIVIL CONTEMPT WITH THE POSSIBILITY OF INCARCERATION FOR NONPAYMENT; PROVIDING FOR THE RIGHT TO COUNSEL; AMENDING SECTIONS 46-8-101 AND 47-1-104, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Nonpayment of fines, costs, or other amounts -- show cause hearing.**

(1) When a defendant who is sentenced to make payments imposed under 46-18-201(3) through (5) defaults in any payment or installment, the court on motion of the prosecutor or on its own motion may require the defendant to show cause why the default should not be treated as contempt of court. A court may issue a show cause citation or arrest warrant requiring the defendant's appearance.

(2) A defendant cited to show cause pursuant to subsection (1) must be informed of the right to have counsel as provided in 46-8-101(2).

(3) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant's part to make a good faith effort to make the payment, the court may find that the default constitutes civil contempt.

(4) The term of imprisonment for contempt for nonpayment must be set forth in the judgment and may not exceed 1 day for each \$25 of the payment or 30 days, whichever is the shorter period. A person committed for nonpayment must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(5) If it appears to the satisfaction of the court that the default is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment of the unpaid portion in whole or in part.

(6) A default in a payment or installment may be collected by any means authorized by law for the

1 enforcement of a judgment. The writ of execution for collection may not discharge a defendant committed to  
 2 imprisonment for contempt until the amount of the payment for fees and costs has actually been collected.

3

4 **Section 2.** Section 46-8-101, MCA, is amended to read:

5 **"46-8-101. Right to counsel.** (1) (a) During the initial appearance before the court, every defendant  
 6 must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

7 (2)(b) Except as provided in subsection ~~(3)~~ (1)(c), if the defendant desires assigned counsel because  
 8 of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor  
 9 and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state  
 10 public defender, provided for in 47-1-201, to assign counsel to represent the defendant without unnecessary delay  
 11 pending a determination of eligibility under the provisions of 47-1-111.

12 ~~(3)(c)~~ If the defendant desires assigned counsel because of financial inability to retain private counsel  
 13 and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted,  
 14 during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the  
 15 defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel  
 16 at public expense through the office of state public defender is not available and that time will be given to consult  
 17 with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may  
 18 not be assigned.

19 (2) If incarceration was not a sentencing option for the original offense pursuant to subsection (1)(c), a  
 20 defendant cited to show cause pursuant to 46-8-115 for nonpayment of costs of assigned counsel and [section  
 21 1] for default in payments of amounts imposed under 46-18-201(3) through (5) must be informed of the right to  
 22 have counsel and must be asked if the aid of counsel is desired. If the defendant desires assigned counsel  
 23 because of financial inability to retain private counsel, the court shall order the office of state public defender  
 24 provided for in 47-1-201 to assign counsel to represent the defendant without unnecessary delay pending a  
 25 determination of eligibility under the provisions of 47-1-111."

26

27 **Section 3.** Section 47-1-104, MCA, is amended to read:

28 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public**  
 29 **expense.** (1) There is a statewide public defender system, which is required to deliver public defender services  
 30 in all courts in this state. The system is supervised by the commission and administered by the office.

1 (2) The commission shall approve a strategic plan for service delivery and divide the state into not more  
2 than 11 public defender regions. The commission may establish a regional office to provide public defender  
3 services in each region, as provided in 47-1-215, establish a contracted services program to provide services in  
4 the region, or utilize other service delivery methods as appropriate and consistent with the purposes described  
5 in 47-1-102.

6 (3) When a court orders the office or the office of appellate defender to assign counsel, the appropriate  
7 office shall immediately assign a public defender qualified to provide the required services. The commission shall  
8 establish protocols to ensure that the offices make appropriate assignments in a timely manner.

9 (4) A court may order an office to assign counsel under this chapter in the following cases:

10 (a) in cases in which a person is entitled to assistance of counsel at public expense because of financial  
11 inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

12 (i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of  
13 incarceration, as provided in 46-8-101;

14 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in  
15 40-6-119;

16 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any  
17 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child  
18 Welfare Act, as provided in 41-3-425;

19 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

20 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

21 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

22 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally  
23 disabled person to a residential facility, as provided in 53-20-112;

24 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in  
25 53-21-116;

26 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as  
27 provided in 53-24-302; ~~and~~

28 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304-; and

29 (xi) for a defendant cited to show cause pursuant to 46-8-115 and [section 1] when incarceration was not  
30 a sentencing option for the original offense pursuant to 46-8-101(2);

1 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless  
2 of the person's financial ability to retain private counsel, as follows:

3 (i) as provided for in 41-3-425;

4 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in  
5 need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution  
6 Act, as provided in 41-5-1607;

7 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles,  
8 as provided in 41-6-101;

9 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent  
10 for Abortion Act of 2013, as provided in 50-20-509;

11 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled  
12 person to a residential facility, as provided in 53-20-112;

13 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

14 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a  
15 proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

16 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental  
17 disorder of the ward, as provided in 72-5-322; and

18 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

19 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a  
20 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title  
21 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

22 (b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender  
23 services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a  
24 proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the  
25 statewide public defender system and does not result in a conflict of interest."

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27 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an  
28 integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section 1].  
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30 **NEW SECTION. Section 5. Applicability.** [This act] applies to offenses committed on or after [the

1 effective date of this act].

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