

Unofficial Draft Copy

As of: November 15, 2010 (10:38am)

LC0181

**** Bill No. ****

Introduced By *****

By Request of the Legislative Finance Committee

A Bill for an Act entitled: "An Act imposing financial responsibility for legal representation of certain defendants on city or county governments when the charge includes a city or county misdemeanor with the possibility of incarceration; providing reimbursement to the office of state public defender; superseding the unfunded mandate laws; amending sections 46-8-113, 46-8-114, and 47-1-110, MCA; providing an effective date; and providing an applicability date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Payment by city or county**

government for assigned counsel. (1) If the office of state public defender, provided for in 47-1-201, represents a defendant and the offense charged includes a city or county misdemeanor with the possibility of incarceration, the city or county is responsible for paying the allocable attorney fees and costs and expenses incurred by the office of state public defender in defense of the city or county misdemeanor.

(2) The office of state public defender shall submit an itemized bill to the city or county that charged the defendant with the city or county misdemeanor no later than 90 days after judgment or an order dismissing the case. The bill must include

at least:

(a) a listing of the total attorney hours spent and the total costs and expenses incurred for the defense of the case;

(b) a listing of the attorney hours spent and the costs and expenses incurred for the defense of the city or county misdemeanor;

(c) the hourly attorney rate applied to the hours spent in subsection (1) (b); and

(d) any amount payable to the city or county government pursuant to 46-8-113 and 46-8-114.

(3) The hourly rate charged in subsection (2) (c) must have a reasonable relationship to the actual cost incurred by the office of state public defender for the attorney services.

Section 2. 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) As part of or as a condition under of a sentence imposed by a city or county misdemeanor with the possibility of incarceration or under the provisions of this title, the court shall require a convicted defendant to pay the costs of counsel assigned to represent the defendant as follows, except as provided in subsections (2) and (3):

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

(b) in every felony case, \$500.

(2) Costs must be limited to costs incurred by the office of state public defender, provided for in 47-1-201, for providing the defendant with counsel in the criminal proceeding.

_____ (a) If the criminal proceeding includes a jury trial, counsel assigned by 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.

_____ (b) If the criminal proceeding includes a city or county misdemeanor with the possibility of incarceration, counsel assigned by the office of state public defender shall file with the court a statement that includes the following information:

_____ (i) a listing of the total attorney hours spent and the total costs and expenses incurred for the defense of the case;

_____ (ii) a listing of the attorney hours spent and the costs and expenses incurred for the defense of the city or county misdemeanor; and

_____ (iii) a reasonable hourly attorney rate that may be applied by the court to the hours spent in subsection (2) (b) (ii). ~~and,~~ except

(c) Except as provided in subsection (3), the court shall require the defendant to pay the costs of counsel and other costs and expenses as reflected in the statement.

(3) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay them. 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.

(4) If the awarded costs of counsel includes the defense of a city or county misdemeanor with the possibility of

incarceration the court shall indicate how much of the award is payable to the city or county government and the office of state public defender.

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

{Internal References to 46-8-113:

46-8-114x 46-18-101x 46-18-201x 46-18-201x
47-1-110a 61-8-731x }

Section 3. Section 46-8-114, MCA, is amended to read:

"46-8-114. Time and method of payment. When a defendant is sentenced to pay the costs of assigned counsel pursuant to 46-8-113, the court may order payment to be made within a specified period of time or in specified installments. If the payments are made to a city our county government and the office of state public defender pursuant to 46-8-113, the court shall set time periods and installments for each set of payments on a pro rata basis. Payments ~~must be made~~ to the office of state public defender, provided for in 47-1-201, and must be deposited in the account established in 47-1-110."

{Internal References to 46-8-114: None.x}

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Section 4. Section 47-1-110, MCA, is amended to read:

"47-1-110. Public defender account. (1) There is a public defender account in the state special revenue fund. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) ~~Beginning July 1, 2006, money~~ Money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant the Montana Youth Court Act; ~~and~~

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; and

(d) payments made for the cost of a public defender paid by a city or county government pursuant to [section 1]."

{Internal References to 47-1-110:
46-8-114x 47-1-201x }

NEW SECTION. **Section 5. Unfunded mandate laws superseded.**

The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

NEW SECTION. **Section 6. {standard} Codification**

instruction. [Section 1] is intended to be codified as an

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integral part of Title 46, chapter 8, part 1, and the provisions of Title 46, chapter 8, part 1, apply to [section 1].

NEW SECTION. **Section 7. {standard} Effective date.** [This act] is effective on July 1, 2012.

NEW SECTION. **Section 8. {standard} Applicability.** [This act] applies to attorney fees and costs and expenses incurred by the office of the state public defender on or after July 1, 2011.

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{Name : Jaret R. Coles
Title : Legislative Staff Attorney
Agency: Legislative Services
Phone : 406-444-4026
E-Mail: jcoles@mt.gov}