



MONTANA LEGISLATIVE BRANCH

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DATE: September 24, 2004
TO: Legislative Finance Committee
FROM: Harry Freebourn
RE: Statewide Public Defender System

PURPOSE

The purpose of this report is to provide the Legislative Finance Committee with an update on the Statewide Public Defender System. This project may result in legislation to establish a statewide public defender system, which could have a significant fiscal impact on the state's finances.

BACKGROUND

In March of 2004, the Law and Justice Committee formed a subcommittee and instructed that its members develop legislation to establish a statewide public defender system. This subcommittee presented draft legislation to the full committee in August 2004. On September 8, 2004 the full committee added certain provisions to this legislation and voted unanimously to submit it to the legislature for its consideration.

This legislation, LC 214, is partially in response to a lawsuit filed in district court by the ACLU against the State of Montana and Missoula County. The ACLU alleges that defendants are not being provided public defender services in a fair and consistent manner among jurisdictions. Also, the ACLU argues that the current system creates a conflict of interest when the judge appoints a public defender for a case that is being adjudicated by that judge. The Attorney General and the ACLU signed a stipulation placing the lawsuit on hold until May 2005 pending the actions of the legislature and outcome of the proposed legislation.

The system proposed in LC 214 would provide public defender services in criminal and certain civil cases for any individual who is: 1) determined to be financially unable to retain private counsel; and 2) accused of an offense that could result in the person's loss of life or liberty if the person is convicted. The proposed system would provide public defender services in the Supreme Court or in any district court, justice court, or city or municipal court in the state. A Public Defender Commission, comprised of seven individuals appointed by the governor would head the statewide system. The commission would oversee a Chief Public Defender Office responsible for managing regional public defender offices, contracts with private attorneys and the appellate defender function.

COST INFORMATION

Cost Estimates for the 2007 Biennium

The current estimate of the cost of the public defender system for the 2007 biennium is \$14.1 million. Table 1 illustrates the level of new costs that mostly relate to the establishment and operation of a Chief Public Defender Office vs. costs that are currently being paid for by either the state or by the collective counties and cities.

	Amount	Percent
Current Costs*	\$ 10,604,998	75%
New Costs**	<u>3,495,805</u>	<u>25%</u>
2007 Biennium	<u>\$ 14,100,803</u>	100%
Fiscal 2006 (transition year)	\$ 655,503	
Fiscal 2007 (first full year)	13,455,300	
One-Time (start-up) costs	\$ 548,731	
Ongoing new costs (annual)	2,947,074	

*Currently paid by either the state, city or county
 **Mostly those of the Chief Public Defender Office

Table 2 illustrates how current public defender services are funded. These costs include payments for public defender services provided by the seven county managed public defender offices, services provided by private attorneys, transcripts, private investigator services and witness fees and expenses.

		Dollar Amount	Percent
State	Funds certain district court costs	\$ 8,153,295	77%
Counties	Funds certain district court costs	\$ 674,157	
	Funds justice court costs	1,040,000	16%
Cities	Funds city and municipal court costs	<u>737,546</u>	<u>7%</u>
Total Costs Currently Funded		<u>\$ 10,604,998</u>	<u>100%</u>

Cost Estimates for a Biennium Without a Transition Period

Fiscal 2006 would be a year of transition, whereby the commission and the statewide office would undertake a process to convert the current system of services provided by the state and the

collective counties and cities, to one that provides services by a statewide system. Table 3 illustrates the costs for the system under a biennium without a transition period.

Table 3		
Estimated Costs of the Statewide Public Defender System for a Biennium Without a Transition Period		
Dollars in Millions		
	Amount	Percent
Current Costs*	\$ 21.2	78%
New Costs**	5.9	22%
	<u>\$ 27.1</u>	<u>100%</u>

*Currently paid by either the state, city or county
 **Mostly those of the Chief Public Defender

Sharing the Costs of the Statewide System

The draft legislation recommends that the cost of the statewide system be shared by the state and by each county and city. The percentage that each entity currently contributes to the total cost of the current system forms the cost sharing formula. Therefore, the cost of the statewide system would be allocated as follows: 1) about 77 percent to the state; 2) about 16 percent to the counties; and 3) about seven percent to the cities. The amount allocated to each county or city would be determined by the commission and the public defender office by applying a statutory formula using cost allocation factors. The county cost allocation factors would be based on: 1) population; 2) taxable value; and 3) the number of index crimes committed in the county. The city cost allocation factors would be based on: 1) population; and 2) taxable value. Implementation language in the legislation instructs the commission to recommend how these cost allocation factors could be changed to include an actual caseload factor when accurate caseload data becomes available.

ADDITIONAL INFORMATION

The Law and Justice Interim Committee’s final report will be available prior to the session and detailed presentations, analyses, and studies are posted on the Law and Justice Committee’s web site: http://leg.mt.gov/css/committees/interim/2003_2004/law_justice/full_schedule.asp.