

SENATE BILL NO. 218  
INTRODUCED BY W. MCNUTT

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A STATEWIDE PUBLIC DEFENDER SYSTEM FOR CRIMINAL TRIALS; PROVIDING FOR STATE ADMINISTRATION OF AND PAYMENT FOR THE SYSTEM; CREATING THE PUBLIC DEFENDER COMMISSION AND MAKING THE COMMISSION RESPONSIBLE FOR THE CRIMINAL TRIAL PUBLIC DEFENDER SYSTEM; CREATING THE OFFICE OF CHIEF PUBLIC DEFENDER AND PROVIDING FOR THE SELECTION OF DEPUTY PUBLIC DEFENDERS AND ASSISTANT PUBLIC DEFENDERS; PROVIDING FOR TRANSFER OF SALARIED PUBLIC DEFENDERS AND STAFF FROM COUNTY EMPLOYMENT TO STATE EMPLOYMENT WITH FULL BENEFITS AND PROTECTIONS; AMENDING SECTIONS 2-18-103, 3-5-901, 46-8-101, 46-8-201, AND 46-8-202, MCA; AND PROVIDING EFFECTIVE DATES."

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

**NEW SECTION. Section 1. Public defender commission -- duties -- rules.** (1) There is a public defender commission.

(2) The commission consists of five members appointed by the governor as follows:

(a) one district judge nominated by the district judges under a nominating procedure initiated and conducted by the supreme court and certified by the chief justice of the supreme court;

(b) three attorneys, at least one of whom has particular knowledge of American Indian culture and problems. In selecting the attorney appointees, the governor shall consider recommendations submitted by the president of the state bar of Montana and appoint members who meet the following requirements:

(i) at least two attorneys who are experienced in the defense of felonies, at least one of whom has served a minimum of 1 year as a full-time public defender for a governmental agency or a public corporation; and

(ii) at least one attorney who has been licensed to practice law in this state for a minimum of 10 years.

(c) one member of the general public who is not an attorney or a judge, active or retired.

(3) The members shall serve staggered 3-year terms.

(4) The commission is allocated to the department of administration for administrative purposes only pursuant to 2-15-121.

(5) While serving a term on the commission, a member of the commission may not serve as a county

attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(6) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(7) The commission shall make rules for the conduct of its affairs.

(8) The commission shall develop a system of trial defense services for indigent defendants to be provided by salaried or contracted public defenders as provided in 46-8-202, and shall develop and disseminate standards, procedures, training, and policies that will ensure that criminal defense is conducted consistently and uniformly throughout Montana.

(9) The commission shall appoint a chief public defender, as provided in [section 7].

(10) The commission shall establish qualifications, duties, and priorities for the chief public defender and deputy and assistant public defenders provided for in 46-8-202.

(11) The commission shall propose to the supreme court minimum standards to which all trial public defenders, including locally assigned private counsel, shall conform.

(12) The commission shall compile and keep current a statewide roster of attorneys eligible for assignment by an appropriate court as trial defense counsel for indigent defendants. The roster must be supplied to all supreme court justices and judges in the state.

**Section 2.** Section 2-18-103, MCA, is amended to read:

**"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

- (1) elected officials;
- (2) county assessors and their chief deputies;
- (3) employees of the office of consumer counsel;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of

the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) chief public defender."

**Section 3.** Section 3-5-901, MCA, is amended to read:

**"3-5-901. State assumption of district court expenses.** (1) There is a state-funded district court program. Under this program, the state shall fund all district court costs, except as provided in subsection (2).

These costs include but are not limited to:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases, fees for transcripts of proceedings, as provided in 3-5-604, witness fees and necessary expenses, juror fees, and expenses for psychiatric examinations;

(c) the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

- (i) transcript fees;
- (ii) witness fees; and
- (iii) expenses for psychiatric examinations;

(e) the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

- (iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and
- (v) expenses associated with court-ordered alternative dispute resolution;

(f) costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) all district court expenses associated with civil jury trials if those expenses were paid out of the district court budget in fiscal year 1998 or fiscal year 1999; and

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors, costs of the youth court and youth division offices, and costs of training for persons listed in subsections (1)(a)(i) through (1)(a)(v), but excluding the cost of providing district court office, courtroom, and other space as provided in 3-1-125.

(2) For the purposes of subsection (1), district court costs do not include:

- (a) one-half of the salaries of county attorneys;
- (b) salaries of deputy county attorneys;
- (c) salaries of employees and expenses of the office of county attorney;

(d) costs for clerks of district court and employees and expenses of the office of the clerks of district court; or

(e) costs of providing district court office space.

~~————(3) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall fund:~~

~~————(a) the expenses of the appellate defender program. These costs must be allocated to and paid by the appellate defender program.~~

~~————(b) district court expenses related to involuntary commitment proceedings and youth court proceedings in an annual amount not to exceed the district court expense for those proceedings in fiscal year 2001 plus a 3% growth factor each year. Any amount that exceeds the district court expense for those proceedings is the responsibility of the county.~~

~~(4)(3)~~ (a) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall reimburse counties:

~~————(i) in district court criminal cases only, expenses for indigent defense; and~~

~~————(ii) in proceedings under subsection (1)(e):~~

~~(A)(i)~~ expenses for ~~appointed~~ assigned counsel for the youth; and

~~(B)(ii)~~ expenses for ~~appointed~~ assigned counsel for the parent, guardian, or other person having physical or legal custody of the youth.

(b) If money appropriated for the expenses listed in subsection ~~(4)(a)~~ ~~(3)(a)~~ is insufficient to fully fund those expenses, the county is responsible for payment of the balance. ~~(Subsections (3)(b) and (4)(b) terminate~~ (Subsection (3)(b) terminates June 30, 2003--sec. 65, Ch. 585, L. 2001.)"

**NEW SECTION. Section 4. Indigent defense -- state expense.** In criminal cases, the state shall fund the expenses of the criminal trial public defender system and the appellate defender program, including trial defense for indigent defendants and appellate defense. These costs are separate from district court expenses assumed under 3-5-901 and must be allocated to and paid by the department of administration.

**Section 5.** Section 46-8-101, MCA, is amended to read:

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

(2) If the defendant desires counsel, is unable to employ counsel, and is entitled to have counsel

assigned, the court shall assign counsel to the defendant without unnecessary delay.

(3) The defendant, if unable to employ counsel, is entitled to have counsel assigned if:

(a) the offense charged is a felony;

(b) the offense charged is a misdemeanor and the court desires to retain imprisonment as a sentencing option; or

(c) the interests of justice would be served by assignment.

(4) The court may assign as counsel under subsection (2) of this section a public defender, provided for in 46-8-202, or any other attorney who is licensed to practice law in this state and whose name is on the statewide roster maintained by the public defender commission that lists attorneys who are eligible for assignment as trial defense counsel for indigent defendants."

**Section 6.** Section 46-8-201, MCA, is amended to read:

**"46-8-201. Remuneration of ~~appointed~~ assigned counsel.** (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel and a public defender is not available under 46-8-202, the attorney must be paid for the services a sum ~~as that~~ a judge or justice of the state supreme court certifies to be a reasonable compensation and be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) must be paid by the state as provided in ~~3-5-904~~ [section 4], except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; or

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency."

NEW SECTION. **Section 7. Chief public defender -- appointment -- salary -- functions.** (1) There is an office of chief public defender. The chief public defender must be an attorney licensed to practice law in this state and must be appointed by and serves at the pleasure of the public defender commission.

(2) The position of chief public defender is an exempt position as provided in 2-18-103. The salary for this position is the same as that provided in 7-4-2503 for a county attorney in a county with a population in excess of 30,000.

(3) The chief public defender shall:

(a) provide indigent legal services as provided in [section 9(2)];

(b) hire and supervise the work of supporting personnel authorized by the commission;

(c) select and supervise the work of deputy public defenders, as provided in 46-8-202;

(d) supervise the operation of the statewide criminal trial public defender system and the administration of public defender services throughout the state;

(e) prepare and present budget requests for the statewide criminal trial public defender system to the legislature. Budget requests for the system must be included in the budget for the department of administration and must be included in the budget submitted by the governor under 17-7-122.

(f) keep a record of public defender's services and of the expenses of the statewide criminal trial public defender system;

(g) assist the commission in developing and disseminating standards, procedures, training, and policies that will ensure that criminal defense is conducted consistently and uniformly throughout Montana;

(h) aid the commission in compiling and keeping current a statewide roster of attorneys eligible for assignment by an appropriate court as trial defense counsel for indigent defendants; and

(i) perform duties as may be provided by law or established by the public defender commission.

(4) Supporting personnel in the chief public defender's office must be classified according to the state classification pay plan and are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

**Section 8.** Section 46-8-202, MCA, is amended to read:

**"46-8-202. Public defender's office -- deputy public defenders -- assistant public defenders.** ~~Any county through its board of county commissioners~~ (1) The chief public defender may provide for the creation of a public defender's office offices throughout the state and the appointment assignment of a salaried deputy public defender defenders and any assistant public defenders that may be necessary to satisfy the legal requirements in providing counsel for defendants unable to employ counsel. The costs of the office offices must be paid by the state according to procedures established under 3-5-901(4) and, to the extent that those costs are not paid by the state, must be paid by the county in accordance with 3-5-901(4) as provided in [section 4]. Public defender services as trial defense counsel for indigent defendants may be provided by salaried state employees or by contracted employees, as determined by the chief public defender.

(2) The deputy public defender in a public defender's office must be contracted with or hired by the chief

public defender and serves at the pleasure of the chief public defender. Assistant public defenders and staff of a public defender's office must be contracted with or hired by the deputy public defender and serve at the pleasure of the deputy public defender.

(3) Salaried deputy public defenders, assistant public defenders, and staff must be classified according to the state classification pay plan and are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18."

**NEW SECTION. Section 9. Public defenders -- qualifications -- duties.** (1) A public defender, whether the chief deputy public defender, a deputy public defender, or an assistant public defender:

- (a) must be an attorney licensed to practice law in this state;
- (b) shall perform duties as may be provided by law or established by the public defender commission;

and

- (c) must have those qualifications otherwise required by the commission.

(2) The duties of a public defender are to provide legal services in proceedings in district court on behalf of:

- (a) indigent defendants, when assigned under 46-8-101;
- (b) a youth, when assigned as counsel for a youth in a proceeding held pursuant to Title 41, chapter 3,

part 4 or 6; and

(c) a person who is the subject of a petition for commitment under 53-21-121, when assigned to represent the person.

- (3) In addition to the duties listed in subsection (2), a deputy public defender shall:

(a) administer public defender services within the judicial district in which the deputy public defender is assigned;

(b) aid the commission in compiling and keeping current a statewide roster of attorneys eligible for assignment by an appropriate court as trial defense counsel for indigent defendants;

- (c) hire and supervise the work of supporting personnel authorized by the chief public defender; and

(d) keep a record of the public defender's services and expenses of the public defender's office for the chief public defender.

**NEW SECTION. Section 10. Implementation of staggered terms.** (1) To implement the staggered terms provided for in [section 1], the members of the commission must be appointed as follows:



- (a) the member of the general public to a term that begins July 1, 2003, and expires June 30, 2004;
  - (b) two of the attorney members to terms that begin July 1, 2003, and expire June 30, 2005, as designated by the president of the Montana state bar association at the time of recommendation;
  - (c) the other members to terms that begin July 1, 2003, and expire June 30, 2006.
- (2) Upon expiration of the original terms established by this section, the succeeding terms must be 3-year terms.

**NEW SECTION. Section 11. Transition -- transfer of county employees to state employment -- preservation of rights.** (1) Public defenders and staff who are employed by a county on June 30, 2004, and who are transferred to state employment by [this act] become state employees on July 1, 2004.

(2) The compensation of former county employees who become state employees under [this act] may not be impaired. This subsection does not preserve the right of any former county employee to any salary or compensation, including longevity benefits, that was payable while the employee was employed by the county and that was not accrued and payable as of June 30, 2004.

(3) An employee who is transferred from county employment to state employment under [this act] may elect to become a member of the state employee benefit plan on July 1, 2004, or remain on the employee's county benefit plan through the remainder of the plan year in effect on June 30, 2004. For an employee who elects to remain on a county benefit plan, the monthly state contribution toward insurance benefits must be transferred to the county benefit plan. Any benefit costs in excess of the state contribution must be paid by the employee.

(4) Accumulated sick and vacation leave and years of service with a county must be transferred fully to the state as of July 1, 2004, and become an obligation of the state at that time. Any liability for accumulated compensatory time of employees who are transferred from county employment to state employment under [this act] is not transferred to the state and remains an obligation of the county that employed the employee prior to the transfer, subject to federal law and the county's personnel policies.

(5) The state becomes a successor employer with regard to any collective bargaining agreement existing on July 1, 2004, that prior to July 1, 2004, covered any employee transferred from county employment to state employment by [this act]. The responsibilities and obligations of the parties to an agreement to which the state becomes a successor employer must, as applied to a transferred employee, continue until the expiration date of the agreement.

**NEW SECTION. Section 12. Rights to property.** (1) Subject to subsection (2), office equipment, computer equipment, furniture, and fixtures that are owned by a county and used by a public defender on June 30, 2004, remain the property of the county.

(2) (a) A public defender that becomes a state employee under [this act] retains the right to use all personal property relating to the functions of the office and being used by the public defender on June 30, 2004. The property includes records, office equipment, computer equipment, supplies, contracts, books, papers, documents, maps, grant and earmarked account balances, vehicles, and all other similar property. However, the public defender may not use or divert money in a fund or account for a purpose other than as provided by law.

(b) Whenever the state replaces office equipment, computer equipment, furniture, or fixtures used by a public defender and belonging to a county as referred to in subsection (1), the right to use the office equipment, computer equipment, furniture, or fixtures reverts to the county.

(3) This section does not apply to property owned by the federal government.

**NEW SECTION. Section 13. Transition -- state classification pay plan -- salaries for FY 2005.** (1) All public defender employees become subject to the state classification pay plan on July 1, 2004.

(2) During fiscal year 2005, each public defender employee who was a former county employee and who becomes a state employee under [this act] is entitled to the person's salary and compensation, including longevity payments, that the person is entitled to on June 30, 2004. In addition, the person is entitled to an increase equal to the average pay increase for employees subject to the state classification pay plan if any pay increase is granted for fiscal year 2005.

(3) An employee's compensation may not be reduced by transfer to the state classification pay plan. If application of the state classification pay plan would reduce an employee's compensation, the employee's compensation must remain the same as the compensation earned at the time of transfer until compensation under the plan requires an increase in the employee's compensation.

**NEW SECTION. Section 14. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 1].

(2) [Section 4] is intended to be codified as an integral part of Title 3, chapter 5, part 9, and the provisions of Title 3, chapter 5, part 9, apply to [section 4].

(3) [Sections 7 and 9] are intended to be codified as an integral part of Title 46, chapter 8, part 2, and

the provisions of Title 46, chapter 8, part 2, apply to [sections 7 and 9].

NEW SECTION. **Section 15. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 16. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2004.

(2) [Sections 1 and 10 and this section] are effective July 1, 2003.

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