

SENATE BILL NO. 490

INTRODUCED BY GRIMES, ESP, MANGAN, MCGEE, TROPILA, WHEAT
BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING STATE ASSUMPTION OF DISTRICT COURT COSTS; REVISING CERTAIN DISTRICT COURT EXPENSES; CLARIFYING WHEN DISTRICT COURT EXPENSES MUST BE PAID DIRECTLY BY THE STATE OR PAID BY THE COUNTIES AND REIMBURSED BY THE STATE; PROVIDING FOR RETROACTIVE COUNTY RESPONSIBILITY FOR ACCUMULATED SICK AND VACATION LEAVE FOR COUNTY EMPLOYEES WHO BECAME STATE EMPLOYEES UPON STATE ASSUMPTION OF DISTRICT COURT EXPENSES; CREATING A SPECIAL REVENUE ACCOUNT TO BE USED BY THE SUPREME COURT FOR PAYMENT OF ACCUMULATED VACATION AND SICK LEAVE FOR COUNTY EMPLOYEES WHO BECAME STATE EMPLOYEES ON JULY 1, 2002; AMENDING SECTIONS 3-1-130, 3-5-604, 3-5-901, 3-5-902, ~~AND 41-5-111, 46-8-202, 53-21-116, AND 53-21-132~~, MCA, AND SECTION 57, CHAPTER 585, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 3-1-130, MCA, is amended to read:

"3-1-130. Supreme court -- adoption of judicial branch personnel plan. (1) The supreme court shall adopt a plan of personnel administration for employees of the judicial branch, other than justices, judges, the supreme court administrator, the librarian of the state law library, and the clerk of the supreme court, ~~county attorneys, deputy county attorneys, salaried public defenders, assistant public defenders, employees of the offices of public defenders, clerks of district court, and employees of the offices of the clerks of district court.~~ The plan must include but not be limited to classification and pay, recruitment and selection, performance appraisal, training, and promotion.

(2) The court administrator appointed under 3-1-701 shall, under the direction of the supreme court, administer the judicial branch personnel plan adopted under this section."

Section 2. Section 3-5-604, MCA, is amended to read:

"3-5-604. Court reporters -- transcript of proceedings -- costs. (1) Each court reporter shall furnish,

upon request, with all reasonable diligence, to a party or a party's attorney in a case in which the court reporter has attended the trial or hearing a transcript from stenographic notes of the testimony and proceedings of the trial or hearing or a part of a trial or hearing upon payment by the person requiring the transcript of \$2 a page for the original transcript, 50 cents a page for the first copy, and 25 cents a page for each additional copy.

(2) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (1) must be paid to the clerk of district court who shall forward the amount to the department of revenue for deposit in the state general fund.

(3) ~~(a) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the state as provided in 3-5-901.~~

(b) If the county attorney or the attorney general requires a transcript in a criminal case, the reporter shall furnish the transcript and only the reporter's actual cost of preparation may be paid by the county or the office of the attorney general.

(4) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge. In civil cases, all transcripts required by the county must be furnished, and only the reporter's actual costs of preparation may be paid by the county.

(5) If it appears to the judge that a defendant in a criminal case or a parent or guardian in a proceeding brought pursuant to Title 41, chapter 3, part 4 or 6, is unable to pay for a transcript, it must be furnished to the party and paid for by the state as provided in 3-5-901."

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)~~ (4).

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~~ expenses for indigent defense that are paid under contract or at an hourly rate,

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;~~

(F) IN INVOLUNTARY COMMITMENT CASES PURSUANT TO 53-21-121, REASONABLE COMPENSATION FOR SERVICES AND RELATED EXPENSES FOR COUNSEL APPOINTED BY THE COURT;

~~(g)(f)(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)(g)(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)(h)(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; AND

(J) COSTS OF THE YOUTH COURT AND YOUTH COURT DIVISION OPERATIONS PURSUANT TO 41-5-111 AND

SUBSECTION (1)(A) OF THIS SECTION, EXCEPT FOR THOSE COSTS PAID BY OTHER ENTITIES IDENTIFIED IN TITLE 41, CHAPTER 5, AND THE COSTS OF PROVIDING YOUTH 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)~~(2) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall fund and directly pay:

~~(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) (a)~~(3) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall reimburse counties, within 30 days of receipt of a claim, for the following:

~~(i)~~(a) in district court criminal cases only;

~~(i)~~ expenses for indigent defense that are not paid under subsection (1)(b); and

~~(ii)~~ juror fees and necessary expenses; and

~~(iii)~~ witness fees and necessary expenses as provided in 46-15-116;

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

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

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

~~(c)~~ costs of juror and witness fees and witness expenses before a grand jury.

~~(b) If money appropriated for the expenses listed in subsection (4)(a) is insufficient to fully fund those expenses, the county is responsible for payment of the balance.~~

- (4) 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 offices of county attorneys;
 - (d) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;
 - (e) costs of providing and maintaining district court office space; or
 - (f) charges incurred against a county by virtue of any provision of Title 7 or 46. (Subsections (3)(b) and (4)(b) terminate June 30, 2003--sec. 65, Ch. 585, L. 2001.)"

Section 4. Section 3-5-902, MCA, is amended to read:

"3-5-902. Fiscal administration for payment of court expenses. The supreme court administrator shall establish procedures for ~~disbursement of funds for~~ the direct payment of district court expenses listed in 3-5-901 and for the reimbursement of district court expenses to counties as provided in 3-5-901 and shall record payments at a detailed level for budgeting and auditing purposes. The supreme court administrator shall reimburse counties for district court expenses in a timely manner."

SECTION 5. SECTION 41-5-111, MCA, IS AMENDED TO READ:

"41-5-111. Court costs and expenses. The following expenses ~~shall~~ must be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

- ~~(1) the costs of medical and other examinations and treatment of a youth ordered by the court;~~
- ~~(2)~~(1) reasonable compensation for services and related expenses for counsel appointed by the court for a party;
- ~~(3)~~(2) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;
- ~~(4)~~(3) reasonable compensation of a guardian ad litem appointed by the court; and
- ~~(5)~~(4) cost of transcripts and printing briefs on appeal."

Section 6. Section 46-8-202, MCA, is amended to read:

"46-8-202. Public defender's office. Any county through its board of county commissioners may provide for the creation of a public defender's office and the appointment of a salaried public defender 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 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)."

SECTION 7. SECTION 53-21-116, MCA, IS AMENDED TO READ:

"53-21-116. Right to be present at hearing or trial -- appointment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present at any hearing or trial. If the person ~~has no attorney~~ is indigent, the judge shall appoint ~~one~~ counsel to represent the person at either the hearing or the trial, or both, ~~who~~ and the counsel must be compensated ~~from the public funds of the county where the respondent resides~~ pursuant to 3-5-901(1)(f)."

SECTION 8. SECTION 53-21-132, MCA, IS AMENDED TO READ:

"53-21-132. Cost of examination and commitment. (1) The cost of precommitment examination, detention, treatment, and taking a person who is suffering from a mental disorder and who requires commitment to a mental health facility must be paid by the county in which the person resides at the time that the person is committed. The sheriff must be allowed the actual expenses incurred in taking a committed person to the facility, as provided by 7-32-2144.

(2) The county of residence shall also pay all precommitment expenses, including transportation to a mental health facility, incurred in connection with the detention, examination, and precommitment custody of the respondent and any cost associated with testimony during an involuntary commitment proceeding by a professional person acting pursuant to 53-21-123. However, the county of residence is not required to pay costs of treatment and custody of the respondent after the respondent is committed pursuant to this part. Precommitment costs related to the use of two-way electronic audio-video communication in the county of commitment must be paid by the county in which the person resides at the time that the person is committed. The costs of the use of two-way electronic audio-video communication from the state hospital for a patient who is under a voluntary or involuntary commitment to the state hospital must be paid by the state. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

(3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and custody

ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public mental health program funds.

(4) A community service provider that is a private, nonpublic provider may not be required to treat or treat without compensation a person who has been committed."

NEW SECTION. Section 9. Judiciary branch account created. (1) There is an account in the state special revenue fund to be used by the supreme court for payment of accumulated vacation and sick leave for county employees who became state employees on July 1, 2002.

(2) The money paid to the state by the counties for the counties' share of accumulated sick leave and accumulated vacation leave accruals under subsection (4) of section 57, Chapter 585, Laws of 2001, must be deposited in the account established in subsection (1).

Section 10. Section 57, Chapter 585, Laws of 2001, is amended to read:

"Section 57. Transition -- transfer of county employees to state employment -- preservation of rights. (1) District court employees who are employed by the county on June 30, 2002, and who are transferred to state employment by [this act] become state employees on July 1, 2002, except for purposes of application of the judiciary branch personnel plan, as provided in [section 63].

(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, 2002.

(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, 2002, or remain on the employee's county benefit plan through the remainder of the plan year in effect on June 30, 2002. 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, 2002, ~~and become an obligation of the state at that time.~~ On January 1, 2004, and on January 1, 2005, the counties shall pay the state 12.5% of the sick leave accrual and 50% of vacation leave accrual for each employee who transferred to state employment on July 1, 2002, at the rate of pay as of June 30,

2002. 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. Upon termination from employment, sick leave must be paid out at one-fourth of its value as provided in 2-18-618(6).

(5) The state becomes a successor employer with regard to any collective bargaining agreement existing on July 1, 2002, that prior to July 1, 2002, 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.

(6) In the development of a plan of personnel administration for employees of the judicial branch, the supreme court may recognize an appropriate bargaining unit."

NEW SECTION. Section 11. Coordination instruction. If Senate Bill No. 218 and [this act] are both passed and approved, then:

(1) [section 5 ~~6~~ of this act], amending 46-8-202, is void;

(2) [section 3] of Senate Bill No. 218, amending 3-5-901, is void and [section 3 of this act], amending 3-5-901, must 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)~~ (3).

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)~~(f) 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)~~(g) 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)~~(h) 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; and

(i) district court expenses related to involuntary commitment proceedings and youth court proceedings, excluding expenses of providing legal services.

~~(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) (a)(2)~~ In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall reimburse counties, within 30 days of receipt of a claim, for the following:

~~(i)(a)~~ in district court criminal cases only;

~~(i)~~ expenses for indigent defense that are not paid under [section 4 of Senate Bill No. 218] or subsection (1)(b) of this section; and

(ii) juror fees and necessary expenses; and

(iii) witness fees and necessary expenses as provided in 46-15-116;

~~(ii)(b)~~ 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; and

(c) costs of juror and witness fees and witness expenses before a grand jury.

~~(b) If money appropriated for the expenses listed in subsection (4)(a) is insufficient to fully fund those expenses, the county is responsible for payment of the balance.~~

(3) 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 offices of county attorneys;

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

(e) costs of providing and maintaining district court office space; or

(f) charges incurred against a county by virtue of any provision of Title 7 or 46. (Subsections (3)(b) and (4)(b) terminate June 30, 2003--sec. 65, Ch. 585, L. 2001.)"

(3) [section 4] of Senate Bill No. 218 must read:

"NEW SECTION. Section 4. Indigent defense -- state expense. (1) In addition to the district court costs assumed by the state under the state-funded district court program, as provided in 3-5-901, the state shall fund the expenses of the statewide criminal trial and appellate public defender system. These ~~costs~~ EXPENSES must include the ~~expenses for~~ COSTS OF providing legal services in proceedings in district court on behalf of:

(a) indigent defendants, when counsel is assigned under 46-8-101, including trial defense and appellate defense;

(b) a youth, when counsel is assigned to represent a youth in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6; ~~and~~

(c) A YOUTH, WHEN COUNSEL IS ASSIGNED TO REPRESENT A YOUTH IN A PROCEEDING HELD PURSUANT TO TITLE 41, CHAPTER 5; AND

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

(2) These ~~costs~~ EXPENSES are separate from district court expenses assumed under 3-5-901 and must be allocated to and paid by the department of administration."

NEW SECTION. Section 12. Effective date. [This act] is effective July 1, 2003.

NEW SECTION. Section 13. Retroactive applicability. [Section 7 10] applies retroactively, within the meaning of 1-2-109, to July 1, 2002.

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