

HOUSE BILL NO. 71

INTRODUCED BY R. LYNCH

BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "GROSS HOUSEHOLD INCOME" AND "HOUSEHOLD" FOR THE PURPOSES OF ELIGIBILITY DETERMINATIONS FOR ASSIGNING COUNSEL AT PUBLIC EXPENSE; AND AMENDING SECTIONS 47-1-103 AND 47-1-111, MCA."

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

Section 1. Section 47-1-103, MCA, is amended to read:

"47-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Commission" means the public defender commission established in 2-15-1028.

(2) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

(3) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(4) "Household" means an association of individuals who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, renters, or roomers and boarders on contract.

~~(3)~~(5) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

~~(4)~~(6) "Office" means the office of state public defender established in 47-1-201.

~~(5)~~(7) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, including attorneys employed by or under contract with the office of appellate defender.

~~(6)~~(8) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to this chapter."

Section 2. Section 47-1-111, MCA, is amended to read:



1 **"47-1-111. Eligibility -- determination of indigence -- rules.** (1) (a) When a court orders the office to
2 assign counsel, the office shall immediately assign counsel prior to a determination under this section.

3 (b) If the person for whom counsel has been assigned is later determined pursuant to this section to be
4 ineligible for public defender services, the office shall immediately notify the court so that the court's order may
5 be rescinded.

6 (c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until
7 the court's order requiring the assignment is rescinded.

8 (d) Any determination pursuant to this section is subject to the review and approval of the court. The
9 propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an
10 assignment.

11 (2) (a) An applicant who is eligible for a public defender because the applicant is indigent shall also
12 provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the
13 defendant is subject to criminal charges for any false statement made on the financial statement.

14 (b) The application, financial statement, and affidavit must be on a form prescribed by the commission.
15 The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be
16 prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

17 (c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or
18 criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant
19 for perjury or false swearing.

20 (d) The office may not withhold the timely provision of public defender services for delay or failure to fill
21 out an application. However, a court may find a person in civil contempt of court for a person's unreasonable
22 delay or failure to comply with the provisions of this subsection (2).

23 (3) An applicant is indigent if:

24 (a) the applicant's gross household income, ~~as defined in 15-30-2337~~, is at or less than 133% of the
25 poverty level set according to the most current federal poverty guidelines updated periodically in the Federal
26 Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2);
27 or

28 (b) the disposable income and assets of the applicant and the members of the applicant's household are
29 insufficient to retain competent private counsel without substantial hardship to the applicant or the members of
30 the applicant's household.

