

HOUSE BILL NO. 139

INTRODUCED BY N. MCCONNELL

BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A REGIONAL PUBLIC DEFENDER TO PARTICIPATE IN CERTAIN ELIGIBILITY DETERMINATIONS; AND AMENDING SECTION 47-1-111, MCA."

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

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

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

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ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

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is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

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

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

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

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

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill

1 out an application. However, a court may find a person in civil contempt of court for a person's unreasonable  
2 delay or failure to comply with the provisions of this subsection (2).

3 (3) An applicant is indigent if:

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

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

11 (4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or  
12 solely because the applicant is employed.

13 (5) A determination may be modified by the office or the court if additional information becomes available  
14 or if the applicant's financial circumstances change.

15 (6) The commission shall establish procedures and adopt rules to implement this section. Commission  
16 procedures and rules:

17 (a) must ensure that the eligibility determination process is fair and consistent statewide;

18 (b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from  
19 the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the  
20 members of the applicant's household;

21 (c) may provide for the use of other public or private agencies or contractors to conduct eligibility  
22 screening under this section;

23 (d) must avoid unnecessary duplication of processes; and

24 (e) must prohibit ~~individual a public defenders defender~~ defender from performing eligibility screening for the public  
25 defender's own cases pursuant to this section."

26 - END -