

HOUSE BILL NO. 117

INTRODUCED BY K. HOLMLUND

BY REQUEST OF THE STATE PUBLIC DEFENDER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO ELIGIBILITY FOR PUBLIC DEFENDER SERVICES; PROVIDING THAT THE OFFICE OF THE STATE PUBLIC DEFENDER MAY FILE A MOTION TO RESCIND APPOINTMENT FOR FAILURE TO PROVIDE REQUESTED FINANCIAL DOCUMENTATION; AMENDING SECTION 47-1-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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 to an applicant for public defender services, 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defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded.

(c) (i) The applicant may request that the court conduct a hearing on the motion to rescind appointment. If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

(iv) The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or

1 evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may  
2 be used during any criminal action.

3 (vii) Evidence regarding financial eligibility under this section may not be used in any criminal action,  
4 except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's  
5 claim of entitlement to public defender services.

6 (d) If the applicant does not request a hearing on the motion to rescind appointment, does not appear  
7 at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial  
8 eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to  
9 have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment  
10 of counsel to be rescinded.

11 (e) A person for whom counsel is assigned is entitled to the full benefit of public defender services until  
12 the court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded.

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

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

20 (b) The application, financial statement, and affidavit must be on a form prescribed by the central  
21 services division provided for in 47-1-119. The affidavit must clearly state that it is signed under the penalty of  
22 perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information  
23 contained in the affidavit.

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

27 (d) ~~The office may not withhold the timely provision of public defender services for delay or file a motion~~  
28 ~~to rescind the appointment for failure to fill out an application or to provide any requested financial documentation.~~  
29 ~~However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to~~  
30 ~~comply with the provisions of this subsection (2).~~ A COURT MAY FIND A PERSON IN CIVIL CONTEMPT OF COURT FOR A

1 PERSON'S UNREASONABLE DELAY OR FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBSECTION (2).

2 (3) An applicant is indigent if:

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

6 or

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

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

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

14 (6) The central services division shall ensure that determinations based on presumptive eligibility, income  
15 and assets, and substantial hardships are done in a consistent manner throughout the state. The central services  
16 division shall verify information on the application form for all applicants seeking counsel under subsection (3)(b).

17 (7) The central services division shall establish procedures and adopt rules to implement this section.  
18 The procedures and rules:

19 (a) must ensure that the eligibility determination process is done timely and is fair and consistent  
20 statewide;

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

24 (B) MUST ALLOW A QUALIFIED PRIVATE ATTORNEY TO REPRESENT AN APPLICANT IF THE ATTORNEY AGREES TO  
25 ACCEPT FROM THE APPLICANT A COMPENSATION RATE THAT WILL NOT CONSTITUTE A SUBSTANTIAL FINANCIAL HARDSHIP  
26 TO THE APPLICANT OR THE MEMBERS OF THE APPLICANT'S HOUSEHOLD;

27 ~~(c)(b)(C)~~ may provide for the use of other public or private agencies or contractors to conduct eligibility  
28 screening under this section;

29 ~~(d)(e)(D)~~ must avoid unnecessary duplication of processes; and

30 ~~(e)(d)(E)~~ must prohibit a public defender from performing eligibility screening for the public defender's

1 own cases pursuant to this section. A deputy public defender or individual public defender reviewing another  
2 public defender's case may oversee eligibility screening pursuant to this section."

3

4 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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