

SENATE BILL NO. 26

INTRODUCED BY S. FITZPATRICK

BY REQUEST OF THE SUPREME COURT

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE COURT'S RESPONSIBILITY TO PAY CERTAIN FEES FOR PROSECUTION WITNESSES; PROVIDING THAT THE ATTORNEY GENERAL MAY SHALL REIMBURSE A COUNTY FOR WITNESS EXPENSES; AMENDING SECTIONS 26-2-506 AND 46-15-116, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 26-2-506, MCA, is amended to read:

"26-2-506. Fees paid by party subpoenaing -- exceptions. (1) Except as provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the witness to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in 47-1-103, the fees and expenses must be paid by the office of state public defender as provided in 47-1-119.

(b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901 county EXCEPT AS PROVIDED IN SUBSECTION (2)(C):

(C) THE ATTORNEY GENERAL MAY SHALL REIMBURSE A COUNTY FOR FEES AND COMPENSATION OF A WITNESS UP TO THE AMOUNT APPROPRIATED FOR WITNESS EXPENSES. IF MONEY APPROPRIATED FOR THE EXPENSES LISTED IN SUBSECTION (2)(B) IS INSUFFICIENT TO FULLY FUND THOSE EXPENSES, THE COUNTY IS RESPONSIBLE FOR AND THE ATTORNEY GENERAL MUST SPLIT THE PAYMENT OF THE BALANCE.

~~(c)(D)~~ In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in 47-1-103, but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901."

Section 2. Section 46-15-116, MCA, is amended to read:

"46-15-116. Fees, costs, and expenses. (1) When a person attends before a judge, grand jury, or court

1 as a witness in a criminal case upon a subpoena, the witness must receive the witness fee prescribed by Title
2 26, chapter 2, part 5, except as otherwise provided in this section.

3 ~~(2) The court, on motion by either party, may allow additional fees for expert witnesses.~~

4 ~~(3)~~(2) The court may determine the reasonable and necessary expenses of subpoenaed witnesses for
5 an indigent defendant not represented by a public defender, as defined in 47-1-103, and order the clerk of court
6 to pay the expenses.

7 ~~(4)~~(3) When a person is subpoenaed in this state to testify in another state or is subpoenaed from
8 another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum
9 equal to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend
10 as a witness. If the state where the witness is found has by statute required that the subpoenaed witness be paid
11 an amount in excess of the amount specified in this section, the witness may be paid the amount required by that
12 state.

13 ~~(5)~~(4) The witness fees, costs, and expenses must be paid as provided in 26-2-506."
14

15 NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 2019.

16 - END -