

## 1 SENATE BILL NO. 315

2 INTRODUCED BY S. SALES

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS ON PUBLIC DEFENDER REPRESENTATION  
5 RELATED TO LOCAL ORDINANCES; REQUIRING A LOCAL GOVERNMENT TO PROVIDE COUNSEL TO A  
6 DEFENDANT CHARGED SOLELY WITH A VIOLATION OF AN ORDINANCE ADOPTED BY THE LOCAL  
7 GOVERNMENT IF THE ORDINANCE INCLUDES THE POSSIBILITY OF INCARCERATION UPON  
8 CONVICTION FOR THE VIOLATION; PROHIBITING THE OFFICE OF STATE PUBLIC DEFENDER FROM  
9 PROVIDING ASSISTANCE OF COUNSEL TO A DEFENDANT CHARGED WITH A VIOLATION OF A LOCAL  
10 ORDINANCE; REVISING PAYMENT OF CERTAIN INVESTIGATION AND TRIAL-RELATED COSTS AND  
11 FEES; SUPERSEDING THE UNFUNDED MANDATE LAWS; AND AMENDING SECTIONS 26-2-506, 26-2-508,  
12 26-2-510, 46-1-507, 46-4-304, 46-8-101, 46-8-113, 46-8-114, 46-12-210, 46-14-202, 46-15-115, AND 47-1-104,  
13 MCA."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16  
17 NEW SECTION. **Section 1. Local government to assign counsel.** (1) When ordered by a court as  
18 provided in 46-8-101(3)(b), a local government shall immediately provide counsel to a defendant. If the local  
19 government later determines the defendant is ineligible for assigned counsel by using the eligibility standards  
20 contained in 47-1-111(3) through (5) or if the prosecutor determines the local government will not seek  
21 incarceration as a sentencing option, the local government shall immediately file a motion to rescind appointment  
22 so that the court's order may be rescinded.

23 (2) The defendant may request that the court conduct a hearing on the motion to rescind appointment.  
24 If the defendant requests a hearing on the motion to rescind appointment, the court shall hold the hearing using  
25 the provisions of 47-1-111(1)(c).

26 (3) The defendant is entitled to the full benefit of public defender services until the court grants the motion  
27 to rescind appointment and orders the assignment of counsel to be rescinded.

28  
29 NEW SECTION. **Section 2. Exceptions to assignment of counsel at public expense.** (1) A court  
30 may not order assignment of a public defender from the office of state public defender under this chapter for a

1 person charged SOLELY with a violation of an ordinance adopted by a local government. If the violation of the  
 2 ordinance carries the possibility of incarceration AND THE DEFENDANT IS NOT CHARGED WITH ANY VIOLATION OF STATE  
 3 LAW FOR WHICH INCARCERATION IS A SENTENCING OPTION, it is the responsibility of the local government to provide  
 4 counsel as required in [section 1].

5 (2) (a) Except as provided in subsection (2)(b), a public defender may not be assigned to act as a  
 6 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title  
 7 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

8 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender  
 9 services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a  
 10 proceeding described in subsection (2)(a) if the appointment is separate from the attorney's service for the  
 11 statewide public defender system and does not result in a conflict of interest.

12

13 **Section 3.** Section 26-2-506, MCA, is amended to read:

14 **"26-2-506. Fees paid by party subpoenaing -- exceptions.** (1) Except as provided in subsection (2),  
 15 fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the  
 16 witness to be subpoenaed.

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

19 (b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county  
 20 attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901.

21 (c) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in  
 22 47-1-103, but is acting pro se, the witness fees and expenses must be paid by the office of court administrator,  
 23 as provided in 3-5-901.

24 (d) In any proceeding in which a defendant is charged with a violation of a local government ordinance  
 25 and is provided counsel by the local government as required in [section 1], the witness fees and expenses must  
 26 be paid by the local government that adopted the ordinance."

27

28 **Section 4.** Section 26-2-508, MCA, is amended to read:

29 **"26-2-508. Witnesses for state, county, local government, or public defender -- advance payment**  
 30 **not required.** The attorney general, any county attorney, an attorney assigned as required in [section 1], or any

1 public defender, as defined in 47-1-103, is authorized to cause subpoenas to be issued and compel the  
 2 attendance of witnesses without paying or tendering fees in advance to either officers or witnesses. A witness  
 3 refusing to or failing to attend, after being served with a subpoena, may be proceeded against and is liable in the  
 4 same manner as is provided by law in other cases where fees have been tendered or paid."

5

6 **Section 5.** Section 26-2-510, MCA, is amended to read:

7 **"26-2-510. Application of sections exempting from advance payment.** The provisions of 26-2-508  
 8 and 26-2-509 extend to all actions and proceedings brought in the name of the attorney general, any other person  
 9 or persons for the benefit of the state, ~~or county,~~ or local government, or any other person or persons for the  
 10 benefit of a public defender, as defined in 47-1-103."

11

12 **Section 6.** Section 46-1-507, MCA, is amended to read:

13 **"46-1-507. Costs.** The mediation costs must be paid equally by the defendant and the prosecution,  
 14 except that if a defendant is eligible for a public defender or an attorney assigned pursuant to [section 1], the  
 15 public defender or local government shall pay the mediation costs."

16

17 **Section 7.** Section 46-4-304, MCA, is amended to read:

18 **"46-4-304. Conduct of investigative inquiry.** (1) (a) The prosecutor may examine under oath all  
 19 witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have  
 20 counsel present at all times. ~~If~~ Except as provided in subsection (1)(b), if the witness does not have funds to  
 21 obtain counsel, the judge or justice shall order the office of state public defender, provided for in 2-15-1029, to  
 22 assign counsel.

23 (b) If the witness is subpoenaed in a proceeding in which the offense charged is a violation of an  
 24 ordinance adopted by a local government, incarceration is a sentencing option if the defendant is convicted, THE  
 25 DEFENDANT IS NOT CHARGED WITH ANY VIOLATION OF STATE LAW FOR WHICH INCARCERATION IS A SENTENCING OPTION,  
 26 and the witness does not have funds to obtain counsel, the judge or justice shall order the local government that  
 27 adopted the ordinance to provide counsel for the witness.

28 (2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings  
 29 conducted under subsection (1). A person who divulges the contents of the application or the proceedings without  
 30 legal privilege to do so is punishable for contempt of court.

1 (3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings  
2 conducted under this part."

3

4 **Section 8.** Section 46-8-101, MCA, is amended to read:

5 **"46-8-101. Right to counsel -- exceptions.** (1) During the initial appearance before the court, every  
6 defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

7 (2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial  
8 inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and  
9 incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public  
10 defender, provided for in 2-15-1029, to assign counsel to represent the defendant without unnecessary delay  
11 pending a determination of eligibility under the provisions of 47-1-111.

12 (3) (a) If the defendant desires assigned counsel because of financial inability to retain private counsel  
13 and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted,  
14 during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the  
15 defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel  
16 at public expense through the office of state public defender is not available and that time will be given to consult  
17 with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may  
18 not be assigned.

19 (b) If the defendant desires assigned counsel because of financial inability to retain private counsel and  
20 the offense charged is a violation of an ordinance adopted by a local government and incarceration is a  
21 sentencing option if the defendant is convicted, the court shall order the local government that adopted the  
22 ordinance to provide counsel to the defendant without unnecessary delay pending a determination of eligibility  
23 under the provisions of [section 1]. IF THE DEFENDANT IS ALSO CHARGED WITH AN OFFENSE THAT IS A VIOLATION OF  
24 STATE LAW FOR WHICH INCARCERATION IS A SENTENCING OPTION, THE OBLIGATION OF THE LOCAL GOVERNMENT TO  
25 PROVIDE COUNSEL PURSUANT TO THIS SUBSECTION (3)(B) DOES NOT APPLY."

26

27 **Section 9.** Section 46-8-113, MCA, is amended to read:

28 **"46-8-113. Payment by defendant for assigned counsel -- costs to be filed with court -- collection**  
29 **of unpaid costs.** (1) Subject to the provisions of subsections (2) and (3), as part of or as a condition of a  
30 sentence that is imposed under the provisions of this title, the court shall determine whether a convicted

1 defendant should pay the costs of counsel assigned to represent the defendant as follows:

2 (a) If the defendant pleads guilty prior to trial:

3 (i) to one or more misdemeanor charges and no felony charges, the cost of counsel is \$250; or

4 (ii) to one or more felony charges, the cost of counsel is \$800.

5 (b) If the case goes to trial, the defendant shall pay the costs incurred by the office of state public  
6 defender or by counsel provided as required in [section 1] for providing the defendant with counsel in the criminal  
7 trial. Upon request, the office of state public defender or assigned counsel shall file with the court a statement  
8 of the hours spent on the case and the costs and expenses incurred for the trial.

9 (2) (a) The office of the court administrator shall prepare a single combined report for each court  
10 assessing costs under this section by individual defendant and provide a copy of the report to the office of state  
11 public defender on a monthly basis. The report must include available information to personally identify the  
12 defendant.

13 (b) The office of state public defender shall:

14 (i) notify the department of revenue of the defendant's unpaid costs and provide the department of  
15 revenue with the defendant's full name, social security number, and address and the amount of the defendant's  
16 unpaid costs; and

17 (ii) work cooperatively with the department of revenue to collect the defendant's unpaid costs.

18 (c) The department of revenue shall collect the defendant's unpaid costs assessed under this section.  
19 All costs collected by the department of revenue or the office of state public defender if the office receives or  
20 collects any costs owed under this section must be deposited in the state general fund and clearly credited  
21 against any balance owed by a defendant.

22 (d) The office of the court administrator, office of state public defender, and department of revenue shall  
23 develop a mutually agreed-upon report format and procedures for ensuring the timely and accurate transfer of  
24 information to collect unpaid costs assessed under this section.

25 (3) In any proceeding for the determination of whether a defendant is or will be able to pay the costs of  
26 counsel, the court shall question the defendant as to the defendant's ability to pay those costs and shall inform  
27 the defendant that purposely false or misleading statements by the defendant may result in criminal charges  
28 against the defendant.

29 (4) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant  
30 is or will be able to pay the costs imposed by subsection (1). The court may find that the defendant is able to pay

1 only a portion of the costs assessed. In determining the amount and method of payment of costs, the court shall  
2 take into account the financial resources of the defendant and the nature of the burden that payment of costs will  
3 impose.

4 (5) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced  
5 the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the  
6 satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the  
7 defendant's immediate family, the court may reduce all or part of the amount due in costs or modify the method  
8 of payment. The court shall notify the office of state public defender or the local government responsible for  
9 providing counsel of any reduction to the amount due.

10 (6) A defendant's obligation to make payments for the cost of counsel is suspended during periods of  
11 incarceration.

12 (7) Any costs imposed under this section must be included in the court's judgment."  
13

14 **Section 10.** Section 46-8-114, MCA, is amended to read:

15 **"46-8-114. Time and method of payment.** (1) Except as provided in subsection (2), when a defendant  
16 is sentenced to pay the costs of assigned counsel pursuant to 46-8-113, the court may order payment to be made  
17 within a specified period of time or in specified installments.

18 (2) A defendant's obligation to make payments for the cost of counsel is suspended during periods of  
19 incarceration.

20 (3) Payments must be made to the clerk of the sentencing court for allocation as provided in 46-18-201,  
21 46-18-232, and 46-18-251 and deposited;

22 (a) in the account established in 47-1-110 for defendants represented by the office of state public  
23 defender; or

24 (b) in the account of a local government responsible for providing assistance of counsel."  
25

26 **Section 11.** Section 46-12-210, MCA, is amended to read:

27 **"46-12-210. Advice to defendant.** (1) Before accepting a plea of guilty or nolo contendere, the court  
28 shall determine that the defendant understands the following:

29 (a) (i) the nature of the charge for which the plea is offered;

30 (ii) the mandatory minimum penalty provided by law, if any;

1 (iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision or  
2 special parole restriction; and

3 (iv) when applicable, the requirement that the court may also order the defendant to make restitution of  
4 the costs and assessments provided by law;

5 (b) if the defendant is not represented by an attorney, the fact that the defendant has the right to be  
6 represented by an attorney at every stage of the proceeding and that, if necessary, an attorney will be assigned  
7 pursuant to the Montana Public Defender Act, Title 47, chapter 1, or pursuant to [section 1] to represent the  
8 defendant;

9 (c) that the defendant has the right:

10 (i) to plead not guilty or to persist in that plea if it has already been made;

11 (ii) to be tried by a jury and at the trial has the right to the assistance of counsel;

12 (iii) to confront and cross-examine witnesses against the defendant; and

13 (iv) not to be compelled to reveal personally incriminating information;

14 (d) that if the defendant pleads guilty or nolo contendere in fulfillment of a plea agreement, the court is  
15 not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea  
16 if the agreement is not accepted pursuant to 46-12-211;

17 (e) that if the defendant's plea of guilty or nolo contendere is accepted by the courts, there will not be  
18 a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial;  
19 and

20 (f) that if the defendant is not a United States citizen, a guilty or nolo contendere plea might result in  
21 deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

22 (2) The requirements of subsection (1) may be accomplished by the defendant filing a written  
23 acknowledgment of the information contained in subsection (1)."  
24

25 **Section 12.** Section 46-14-202, MCA, is amended to read:

26 **"46-14-202. Examination of defendant.** (1) If the defendant or the defendant's counsel files a written  
27 motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the court,  
28 prosecution, or defense counsel, the court shall appoint at least one qualified psychiatrist, licensed clinical  
29 psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana state  
30 hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice

1 registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental  
2 condition.

3 (2) The court may order the defendant to be committed to a hospital or other suitable facility for the  
4 purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to  
5 be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or  
6 advanced practice registered nurse retained by the defendant be permitted to witness and participate in the  
7 examination.

8 (3) In the examination, any method may be employed that is accepted by the medical or psychological  
9 profession for the examination of those alleged to be suffering from mental disease or disorder.

10 (4) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows:

11 (i) if the issue of the defendant's fitness to proceed was raised by the court or the examination was  
12 requested by the prosecution, the cost of the examination and other associated expenses must be paid by the  
13 court or, in district court proceedings, by the office of court administrator, except as provided in subsection  
14 (4)(a)(iv);

15 (ii) if the examination was requested by the defendant or the defendant's counsel, the cost of the  
16 examination and other associated expenses must be paid by the defendant or, if the defendant was represented  
17 by an attorney pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public  
18 defender, except as provided by subsection (4)(a)(iv);

19 (iii) if the examination was jointly requested by the prosecution and defense counsel or the need for the  
20 examination was jointly agreed to by the prosecution and defense, the cost of the examination and other  
21 associated expenses must be divided and paid equally by the court or, in district court proceedings, by the office  
22 of court administrator, and the defendant or;

23 (A) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender  
24 Act, Title 47, chapter 1, by the office of state public defender, except as provided in subsection (4)(a)(iv); or

25 (B) if the defendant was represented by counsel provided pursuant to [section 1], by the local  
26 government that adopted the ordinance under which the defendant has been charged;

27 (iv) any costs for an examination performed by an employee of the department of public health and  
28 human services, any other associated expenses at a facility of the department of public health and human  
29 services, and any other associated expenses for which the legislature has made a general fund appropriation to  
30 the department of public health and human services may not be charged to the office of court administrator or



1 the office of state public defender.

2 (b) For purposes of this subsection (4), "other associated expenses" means the following costs incurred  
3 in association with the commitment to a hospital or other suitable facility for the purpose of examination,  
4 regardless of whether the examination is done at the Montana state hospital or any other facility:

5 (i) the expenses of transporting the defendant from the place of detention to the place where the  
6 examination is performed and returning the defendant to detention, including personnel costs of the law  
7 enforcement agency by whom the defendant is detained;

8 (ii) housing expenses of the facility where the examination is performed; and

9 (iii) medical costs, including medical and dental care, including costs of medication."  
10

11 **Section 13.** Section 46-15-115, MCA, is amended to read:

12 **"46-15-115. Subpoena for witness when defendant unable to pay.** (1) The court shall order at any  
13 time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant  
14 acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred  
15 for the witness and that the presence of the witness is necessary to an adequate defense.

16 (2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined  
17 in 47-1-103, or by counsel assigned pursuant to [section 1], a court order must be obtained if more than six  
18 witnesses are to be subpoenaed.

19 (3) If the defendant is represented by a public defender, as defined in 47-1-103, witness costs must be  
20 paid by the office of state public defender as provided for in 47-1-119.

21 (4) If the defendant is represented by counsel assigned pursuant to [section 1], witness costs must be  
22 paid by the local government that adopted the ordinance under which the defendant is charged."  
23

24 **Section 14.** Section 47-1-104, MCA, is amended to read:

25 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public**  
26 **expense.** (1) There is a statewide public defender system, which is required to deliver public defender services  
27 in all courts in this state unless counsel is otherwise assigned pursuant to [section 1]. The system is supervised  
28 by the director.

29 (2) The director shall approve a strategic plan for service delivery and divide the state into not more than  
30 11 public defender regions. The director may establish a regional office to provide public defender services in

1 each region, as provided in 47-1-215, establish a contracted services program to provide services in the region,  
2 or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

3 (3) When a court orders the assignment of a public defender, the appropriate office shall immediately  
4 assign a public defender qualified to provide the required services. The director shall establish protocols to ensure  
5 that the offices make appropriate assignments in a timely manner.

6 (4) A court may order assignment of a public defender under this chapter in the following cases:

7 (a) in cases in which a person is entitled to assistance of counsel at public expense because of financial  
8 inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

9 (i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of  
10 incarceration, as provided in 46-8-101;

11 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in  
12 40-6-119;

13 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any  
14 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child  
15 Welfare Act, as provided in 41-3-425;

16 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

17 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

18 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

19 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally  
20 disabled person to a residential facility, as provided in 53-20-112;

21 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in  
22 53-21-116;

23 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as  
24 provided in 53-24-302; and

25 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

26 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless  
27 of the person's financial ability to retain private counsel, as follows:

28 (i) as provided for in 41-3-425;

29 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in  
30 need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution

1 Act, as provided in 41-5-1607;

2 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles,  
3 as provided in 41-6-101;

4 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent  
5 for Abortion Act of 2013, as provided in 50-20-509;

6 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled  
7 person to a residential facility, as provided in 53-20-112;

8 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

9 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a  
10 proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

11 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental  
12 disorder of the ward, as provided in 72-5-322; and

13 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

14 ~~(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a  
15 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title  
16 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.~~

17 ~~—— (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender  
18 services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a  
19 proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the  
20 statewide public defender system and does not result in a conflict of interest."~~

21  
22 **NEW SECTION. Section 15. Unfunded mandate laws superseded.** The provisions of [this act]  
23 expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

24  
25 **NEW SECTION. Section 16. Codification instruction.** (1) [Section 1] is intended to be codified as  
26 an integral part of Title 46, chapter 8, part 1, and the provisions of Title 46, chapter 8, part 1, apply to [section 1].

27 (2) [Section 2] is intended to be codified as an integral part of Title 47, chapter 1, part 1, and the  
28 provisions of Title 47, chapter 1, part 1, apply to [section 2].

29 - END -