

## 1 SENATE BILL NO. 12

2 INTRODUCED BY R. LYNCH

3 BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS ON PUBLIC DEFENDER  
6 REPRESENTATION RELATED TO LOCAL GOVERNMENT ORDINANCES; REQUIRING A LOCAL  
7 GOVERNMENT TO REIMBURSE THE OFFICE OF STATE PUBLIC DEFENDER FOR PROVIDING  
8 REPRESENTATION TO CERTAIN DEFENDANTS CHARGED WITH AN ALLEGED VIOLATION OF A LOCAL  
9 GOVERNMENT ORDINANCE; REQUIRING A LOCAL GOVERNMENT TO PROVIDE ASSISTANCE OF  
10 COUNSEL TO CERTAIN DEFENDANTS CHARGED WITH AN ALLEGED VIOLATION OF A LOCAL  
11 GOVERNMENT ORDINANCE; REVISING THE PAYMENT OF CERTAIN INVESTIGATION AND TRIAL-  
12 RELATED COSTS AND FEES; SUPERSEDING THE UNFUNDED MANDATE LAWS; AND AMENDING  
13 SECTIONS 26-2-506, 26-2-508, 26-2-510, 46-1-507, 46-4-304, 46-8-101, 46-8-113, 46-8-114, 46-12-210, 46-  
14 14-202, 46-15-115, 47-1-104, AND 47-1-119, MCA."

15

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

17

18 **NEW SECTION. Section 1. Public defender reimbursement.** (1) Except as provided in subsection  
19 (2), if an individual is charged solely with an alleged violation of an ordinance adopted by a local government,  
20 the text of the ordinance specifies that the penalty for a violation includes the possibility of incarceration, THE  
21 PROSECUTOR AFFIRMATIVELY ASSERTS THAT INCARCERATION WILL BE SOUGHT, and the office of state public  
22 defender is appointed to represent the individual pursuant to 47-1-104, then the local government that adopted  
23 the ordinance shall reimburse the office of state public defender for the following costs associated with  
24 providing representation:

- 25 (a) hourly costs of appointed counsel as set by the office of state public defender in administrative  
26 rule for the actual number of hours spent providing public defense services;
- 27 (b) the actual client costs paid by the office of state public defender, including costs related to case  
28 investigation, client evaluations, expert witnesses, discovery, exhibits, and other costs directly related to the

1 defense of the individual; and

2 (c) other costs paid by the office of state public defender as provided in 47-1-119(4).

3 (2) If an individual is charged solely with an alleged violation of an ordinance adopted by a local  
4 government and the text of that ordinance does not specify a penalty, but another local ordinance that sets the  
5 penalty for a violation includes the possibility of incarceration, the local government shall immediately provide  
6 counsel to the defendant.

7  
8 **NEW SECTION. Section 2. Exceptions to assignment of counsel at public expense.** (1) A court  
9 may not order the assignment of counsel of a public defender from the office of state public defender under this  
10 chapter for a person charged solely with an alleged violation of an ordinance adopted by a local government  
11 when the text of that ordinance does not specify a penalty, but another local ordinance that sets the penalty for  
12 a violation includes the possibility of incarceration. If the defendant is not charged with any violation of state law  
13 for which incarceration is a sentencing option, it is the responsibility of the local government to provide counsel  
14 as required in [section 1(2)].

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

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

22

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

24 **"26-2-506. Fees paid by party subpoenaing -- exceptions.** (1) Except as provided in subsection  
25 (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused  
26 the witness to be subpoenaed.

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

1 (b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a  
 2 county attorney, the witness fees and expenses must be paid by the county except as provided in subsection  
 3 (2)(c).

4 (c) The attorney general may reimburse a county for fees and compensation of a witness up to the  
 5 amount appropriated for witness expenses. If money appropriated for the expenses listed in subsection (2)(b) is  
 6 insufficient to fully fund those expenses, the county is responsible for payment of the balance.

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

10 (e) In any proceeding in which a local government is required by [section 1(2)] to provide  
 11 assistance of counsel, the witness fees and expenses must be paid by the local government required to provide  
 12 counsel."

13

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

15 **"26-2-508. Witnesses for state, county, local government, or public defender -- advance**  
 16 **payment not required.** The attorney general, any county attorney, an attorney assigned pursuant to [section  
 17 1(2)], or any public defender, as defined in 47-1-103, is authorized to cause subpoenas to be issued and  
 18 compel the attendance of witnesses without paying or tendering fees in advance to either officers or witnesses.  
 19 A witness refusing to or failing to attend, after being served with a subpoena, may be proceeded against and is  
 20 liable in the same manner as is provided by law in other cases where fees have been tendered or paid."

21

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

23 **"26-2-510. Application of sections exempting from advance payment.** The provisions of 26-2-508  
 24 and 26-2-509 extend to all actions and proceedings brought in the name of the attorney general, any other  
 25 person or persons for the benefit of the state, ~~or~~ county, or local government, or any other person or persons for  
 26 the benefit of a public defender, as defined in 47-1-103."

27

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

1           **"46-1-507. Costs.** The mediation costs must be paid equally by the defendant and the prosecution,  
2 except that if a defendant is eligible for a public defender or an attorney assigned pursuant to [section 1(2)], the  
3 public defender or local government shall pay the mediation costs."  
4

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

6           **"46-4-304. Conduct of investigative inquiry.** (1) (a) The prosecutor may examine under oath all  
7 witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have  
8 counsel present at all times. ~~¶ Except as provided in subsection (1)(b), if~~ the witness does not have funds to  
9 obtain counsel, the judge or justice shall order the office of state public defender, provided for in 2-15-1029, to  
10 assign counsel.

11           (b) If the witness is subpoenaed in a proceeding in which the offense charged is an alleged  
12 violation of an ordinance adopted by a local government and the text of that ordinance does not specify a  
13 penalty, but another local ordinance that sets the penalty for a violation includes the possibility of incarceration,  
14 the defendant is not charged with any violation of state law for which incarceration is a sentencing option, and  
15 the witness does not have the funds to obtain counsel, the judge or justice shall order the local government that  
16 adopted the ordinance to provide assistance of counsel for the witness.

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

20           (3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings  
21 conducted under this part."  
22

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

24           **"46-8-101. Right to counsel.** (1) During the initial appearance before the court, every defendant must  
25 be informed of the right to have counsel and must be asked if the aid of counsel is desired.

26           (2) Except as provided in subsection (3), if the defendant desires assigned counsel because of  
27 financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor  
28 and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state

1 public defender, provided for in 2-15-1029, to assign counsel to represent the defendant without unnecessary  
 2 delay pending a determination of eligibility under the provisions of 47-1-111.

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

10 (b) If the defendant desires assigned counsel because of the defendant's financial inability to retain  
 11 private counsel and the offense charged is an alleged violation of an ordinance adopted by a local government  
 12 when the text of the ordinance does not specify a penalty, but another local ordinance that sets the penalty for a  
 13 violation includes the possibility of incarceration, the court shall order the local government that adopted the  
 14 ordinance to provide assistance of counsel to the defendant without unnecessary delay pending a  
 15 determination of eligibility under [section 1(2)]. If the defendant is also charged with an offense that is an  
 16 alleged violation of state law for which incarceration is a sentencing option, the obligation of the local  
 17 government to provide assistance of counsel pursuant to this subsection (3)(b) does not apply."

18

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

20 **"46-8-113. Payment by defendant for assigned counsel -- costs to be filed with court --**

21 **collection of unpaid costs.** (1) Subject to the provisions of subsections (2) and (3), as part of or as a condition  
 22 of a sentence that is imposed under the provisions of this title, the court shall determine whether a convicted  
 23 defendant should pay the costs of counsel assigned to represent the defendant as follows:

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

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

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

27 (b) If the case goes to trial, the defendant shall pay the costs incurred by the office of state public  
 28 defender or by the counsel assigned pursuant to [section 1(2)] for providing the defendant with counsel in the

1 criminal trial. Upon request, the office of state public defender or the assigned counsel shall file with the court a  
2 statement of the hours spent on the case and the costs and expenses incurred for the trial.

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

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

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

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

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

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

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

23 (4) The court may not sentence a defendant to pay the costs for assigned counsel unless the  
24 defendant is or will be able to pay the costs imposed by subsection (1). The court may find that the defendant is  
25 able to pay only a portion of the costs assessed. In determining the amount and method of payment of costs,  
26 the court shall take into account the financial resources of the defendant and the nature of the burden that  
27 payment of costs will impose.

28 (5) A defendant who has been sentenced to pay costs may at any time petition the court that

1 sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it  
 2 appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the  
 3 defendant or the defendant's immediate family, the court may reduce all or part of the amount due in costs or  
 4 modify the method of payment. The court shall notify the office of state public defender or the local government  
 5 responsible for providing assistance of counsel of any reduction to the amount due.

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

8 (7) Any costs imposed under this section must be included in the court's judgment."  
 9

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

11 **"46-8-114. Time and method of payment.** (1) Except as provided in subsection (2), when a  
 12 defendant is sentenced to pay the costs of assigned counsel pursuant to 46-8-113, the court may order  
 13 payment to be made within a specified period of time or in specified installments.

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

16 (3) For public defender fees assessed prior to July 1, 2017, payments must be made to the clerk of  
 17 the sentencing court for allocation as provided in 46-18-201, 46-18-232, and 46-18-251 and deposited in the  
 18 general fund.

19 (4) For public defender fees assessed on or after July 1, 2017, payments must be made directly to:  
 20 (a) \_\_\_the office of state public defender and deposited in the general fund; or  
 21 (b) the account of the local government responsible for providing assistance of counsel."  
 22

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

24 **"46-12-210. Advice to defendant.** (1) Before accepting a plea of guilty or nolo contendere, the court  
 25 shall determine that the defendant understands the following:

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

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

28 (iii) the maximum penalty provided by law, including the effect of any penalty enhancement

1 provision or special parole restriction; and

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

4 (b) if the defendant is not represented by an attorney, the fact that the defendant has the right to  
5 be represented by an attorney at every stage of the proceeding and that, if necessary, an attorney will be  
6 assigned pursuant to the Montana Public Defender Act, Title 47, chapter 1, or pursuant to [section 1(2)] to  
7 represent the defendant;

8 (c) that the defendant has the right:

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

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

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

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

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

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

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



1 psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana state  
2 hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice  
3 registered nurse, who may be or include the superintendent, to examine and report upon the defendant's  
4 mental condition.

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

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

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

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

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

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

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

1           (B) if the defendant was represented by counsel assigned pursuant to [section 1(2)] by the local  
2 government that adopted the ordinance under which the defendant is charged; or

3           (iv) any costs for an examination performed by an employee of the department of public health and  
4 human services, any other associated expenses at a facility of the department of public health and human  
5 services, and any other associated expenses for which the legislature has made a general fund appropriation to  
6 the department of public health and human services may not be charged to the office of court administrator or  
7 the office of state public defender.

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

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

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

15           (iii) medical costs, including medical and dental care, including costs of medication."  
16

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

18           **"46-15-115. Subpoena for witness when defendant unable to pay.** (1) The court shall order at any  
19 time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant  
20 acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred  
21 for the witness and that the presence of the witness is necessary to an adequate defense.

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

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

27           (4) If the defendant is represented by counsel assigned pursuant to [section 1(2)], witness costs  
28 must be paid by the local government that adopted the ordinance under which the defendant is charged."

1

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

3           **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at**  
4 **public expense.** (1) There is a statewide public defender system, which is required to deliver public defender  
5 services in all courts in this state unless counsel is otherwise assigned pursuant to [section 1(2)]. The system is  
6 supervised by the director.

7           (2) The director shall approve a strategic plan for service delivery and divide the state into not  
8 more than 11 public defender regions. The director may establish a regional office to provide public defender  
9 services in each region, as provided in 47-1-215, establish a contracted services program to provide services in  
10 the region, or utilize other service delivery methods as appropriate and consistent with the purposes described  
11 in 47-1-102.

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

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

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

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

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

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

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

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

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

- 1 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally  
 2 disabled person to a residential facility, as provided in 53-20-112;
- 3 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided  
 4 in 53-21-116;
- 5 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as  
 6 provided in 53-24-302; and
- 7 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304. ;
- 8 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense  
 9 regardless of the person's financial ability to retain private counsel, as follows:
- 10 (i) as provided for in 41-3-425;
- 11 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent  
 12 or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction  
 13 Prosecution Act, as provided in 41-5-1607;
- 14 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on  
 15 Juveniles, as provided in 41-6-101;
- 16 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental  
 17 Consent for Abortion Act of 2013, as provided in 50-20-509;
- 18 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled  
 19 person to a residential facility, as provided in 53-20-112;
- 20 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
- 21 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in  
 22 a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;
- 23 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a  
 24 mental disorder of the ward, as provided in 72-5-322; and
- 25 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).
- 26 ~~(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a~~  
 27 ~~court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title~~  
 28 ~~41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.~~

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

5

6           **Section 15.** Section 47-1-119, MCA, is amended to read:

7           **"47-1-119. Central services division -- responsibilities -- department of administration to**

8 **support.** (1) There is a central services division in the office of state public defender. The division must be  
 9 located in Butte, Montana. The central services division is supervised by an administrator hired by the director.

10           (2) The central services division shall:

11           (a) manage eligibility determination under 47-1-111;

12           (b) manage contracting under 47-1-121;

13           (c) manage training pursuant to 47-1-120;

14           (d) set and update on a biennial basis the local government reimbursement rate charged pursuant  
 15 to [section 1(1)];

16           (e) establish and manage the local government public reimbursement process required to  
 17 implement the provisions of [section 1(1)];

18           ~~(d)~~(f) provide administrative support to the director; and

19           ~~(e)~~(g) actively seek gifts, grants, and donations that may be available through the federal government  
 20 or other sources to help fund the system.

21           (3) The central services division shall establish for the office of state public defender:

22           (a) standard procedures to handle complaints about public defender performance and work with  
 23 the public defender division administrator, appellate defender division administrator, and conflict defender  
 24 division administrator to ensure that public defenders, office personnel, and clients are aware of avenues  
 25 available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of  
 26 the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and  
 27 the applicable provisions of Title 37, chapter 61;

28           (b) processes and procedures to ensure that employees and contract personnel use information

1 technology and caseload management systems so that detailed expenditure and caseload data is accurately  
2 collected, recorded, and reported; and  
3 (c) budgeting, reporting, and related administrative requirements for the office of state public  
4 defender, including procedures for the approval, payment, recording, reporting, and management of all defense  
5 expenses.

6 (4) The following expenses are payable by the central services division if the expense is incurred  
7 at the request of a public defender and is authorized by the director:

8 (a) witness and interpreter fees and expenses as provided for in Title 26, chapter 2, part 5, and 46-  
9 15-116; and

10 (b) transcript fees, as provided in 3-5-604.

11 (5) If the costs to be paid pursuant to subsection (4) are not paid directly, reimbursement must be  
12 made within 30 days of the receipt of a claim.

13 (6) The department of administration established in 2-15-1001 shall provide central services  
14 support to the extent feasible and efficient."  
15

16 **NEW SECTION. Section 16. Unfunded mandate laws superseded.** The provisions of [this act]  
17 expressly supersede and modify the requirements of 1-2-112 through 1-2-116.  
18

19 **NEW SECTION. Section 17. Codification instruction.** (1) [Section 1] is intended to be codified as  
20 an integral part of Title 46, chapter 8, part 1, and the provisions of Title 46, chapter 8, part 1, apply to [section  
21 1].

22 (2) [Section 2] is intended to be codified as an integral part of Title 47, chapter 1, part 1, and the  
23 provisions of Title 47, chapter 1, part 1, apply to [section 2].  
24

- END -