

PUBLIC DEFENDER SYSTEM

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting. (5-4-105, MCA; [Chapter 309, Laws of 2017](#)) The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The legislation links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary: Montana provides assistance of counsel to indigent defendants in criminal cases through a statewide public defender system. Prior to the creation of the statewide system in 2005, the counties were responsible for providing public defenders to indigent defendants. The Office of State Public Defender is led by a director who is appointed by the Director of the Department of Administration. The statutes creating and governing the office are located in [Title 47: Access to Legal Services](#).

In addition to providing representation to clients in criminal cases, including appeals, the office's attorneys also provide counsel to clients in certain civil cases that involve a potential loss of liberty, including involuntary commitment proceedings and child abuse and neglect proceedings that could result in the loss of parental rights. The office also represents children involved in abuse and neglect cases.

Legislative Services Division Materials:

[Examining Public Defender Operations](#), Final Report of the 2015-2016 Task Force on State Public Defender Operations For the Defense: Enacting a Statewide Public Defender System in Montana, Law and Justice Interim Committee, Dec. 2004

Other Materials:

[Public Defender Workforce Management](#), Legislative Audit Division, September 2020, (19P-04)

[Comparison of General Fund, Entitlement Share Payments, and the Costs to Operate the Office of the Public Defender](#), Legislative Finance Committee, September 2019

[Improving Statewide Consistency of Key Processes for the Office of the State Public Defender](#), Legislative Audit Division, May 2012 (11P-03)

[Performance Audit Follow-Up \(13SP-15\): Improving Statewide Consistency of Key Processes for the Office of the State Public Defender](#) (orig. 11P-03), Legislative Audit Division, Nov. 2013
[FY 2019-20 Report to the Governor, Supreme Court, and Legislature](#), Montana Office of State Public Defender, Sept. 2020

Introduced Legislation

2019

[House Bill No. 89](#) -- Chapter Number Assigned -- AN ACT REVISING PUBLIC DEFENDER FEES; PROVIDING THAT PUBLIC DEFENDER FEES MUST BE PAID TO THE OFFICE OF STATE PUBLIC DEFENDER FOR DEPOSIT IN THE GENERAL FUND; AMENDING SECTION 46-8-114, MCA; REPEALING SECTION 47-1-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

[House Bill No. 117](#) -- Chapter Number Assigned -- 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.

[Senate Bill No. 3](#) -- Chapter Number Assigned -- AN ACT CLARIFYING THAT THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE DOES NOT HAVE OVERSIGHT OF THE OFFICE OF STATE PUBLIC DEFENDER; AMENDING SECTION 5-5-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

2017

[House Bill No. 57](#) -- (H) Died in Standing Committee -- AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO MAKE DETERMINATIONS OF INDIGENCE; REQUIRING THE COURT TO SCHEDULE A HEARING ON RESCISSION OF THE APPOINTMENT OF A PUBLIC DEFENDER PRIOR TO ORDERING RESCISSION; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ESTABLISH POLICIES FOR THE DETERMINATION OF INDIGENCE; TRANSFERRING RULEMAKING AUTHORITY FROM THE OFFICE OF STATE PUBLIC DEFENDER TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AMENDING SECTION 47-1-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

[House Bill No. 58](#) -- (H) Died in Standing Committee -- AN ACT APPROPRIATING FUNDS FOR A STUDY OF THE OFFICE OF STATE PUBLIC DEFENDER AND ATTORNEY WORKLOADS; REQUIRING THE STUDY TO BE PERFORMED BY AN INDEPENDENT ACCREDITED THIRD PARTY; SETTING PARAMETERS OF THE STUDY; REQUIRING REPORTING OF THE STUDY'S FINDINGS TO THE LAW AND JUSTICE INTERIM COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

[House Bill No. 59](#) -- Chapter Number Assigned -- AN ACT LIMITING THE APPOINTMENT OF COUNSEL TO A PUTATIVE FATHER WHERE CHILD IS SUBJECT TO AN ABUSE AND NEGLECT PETITION; AMENDING SECTIONS 41-3-422 AND 41-3-425, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

[House Bill No. 62](#) -- Chapter Number Assigned -- AN ACT REQUIRING THE DEPARTMENT OF REVENUE TO WORK COOPERATIVELY WITH THE OFFICE OF STATE PUBLIC DEFENDER TO COLLECT COURT-IMPOSED COSTS FOR PUBLIC DEFENDER SERVICES; REQUIRING THE OFFICE OF COURT ADMINISTRATOR TO PREPARE AND PROVIDE A REPORT CONCERNING ASSESSED COSTS; REQUIRING THE DEPARTMENT OF REVENUE TO DEPOSIT COLLECTIONS IN THE GENERAL FUND; REQUIRING A COURT TO NOTIFY THE OFFICE OF STATE PUBLIC DEFENDER OF ANY MODIFICATION TO ASSESSED COSTS; AMENDING SECTION 46-8-113, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

[House Bill No. 65](#) -- Chapter Number Assigned -- AN ACT CLARIFYING THE DUTIES OF THE OFFICE OF APPELLATE DEFENDER AND THE CHIEF APPELLATE DEFENDER; AMENDING SECTION 47-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE.

[House Bill No. 77](#) -- Chapter Number Assigned -- AN ACT GENERALLY REVISING THE STATE PUBLIC DEFENDER SYSTEM; PROVIDING FOR A DIRECTOR HIRED BY THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION TO BE THE HEAD OF THE OFFICE OF STATE PUBLIC DEFENDER; MAKING THE PUBLIC DEFENDER COMMISSION ADVISORY AND TEMPORARY; RENAMING CERTAIN POSITIONS; REVISING OR CLARIFYING CERTAIN FUNCTIONS AND SUPERVISORY DUTIES; REVISING EXEMPTIONS FROM THE STATE CLASSIFICATION AND PAY PLAN; ESTABLISHING A CENTRAL SERVICES DIVISION UNDER AN ADMINISTRATOR HIRED BY THE DIRECTOR; CONSOLIDATING ADMINISTRATIVE FUNCTIONS INTO THE CENTRAL SERVICES DIVISION; REQUIRING THAT THE DEPARTMENT OF ADMINISTRATION CONTINUE TO PROVIDE ADMINISTRATIVE SUPPORT; PROVIDING RULEMAKING AUTHORITY; REVISING THE ORDER OF STATUTES IN THE MONTANA PUBLIC DEFENDER ACT; AMENDING SECTIONS 2-15-1028, 2-18-103, 3-5-511, 3-5-604, 3-5-901, 5-5-228, 17-7-154, 26-2-506, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-15-115, 46-17-203, 46-21-111, 46-21-201, 47-1-103, 47-1-104, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, 47-1-216, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, 72-5-315, AND 72-5-408, MCA; REPEALING SECTION 2-15-1028, MCA; AND PROVIDING EFFECTIVE DATES.

[House Bill No 89](#) -- Chapter Number Assigned -- AN ACT REQUIRING THAT THE OFFICE OF STATE PUBLIC DEFENDER ESTABLISH A HOLISTIC DEFENSE PILOT PROJECT; EXTENDING EXISTING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

[House Bill No. 665](#) -- (H) Died in Standing Committee -- AN ACT GENERALLY REVISING LAWS RELATED TO PUBLIC DEFENDER SERVICES; REPEALING THE STATEWIDE PUBLIC DEFENDER SYSTEM; REQUIRING COUNTIES TO ESTABLISH COUNTY PUBLIC DEFENDERS; PROVIDING FOR DEPUTY COUNTY PUBLIC DEFENDERS; PROVIDING QUALIFICATIONS AND LIMITATIONS; PROVIDING STATE FUNDING FOR CERTAIN COUNTY PUBLIC DEFENDER COSTS; AUTHORIZING COUNTIES TO LEVY A TAX TO SUPPORT COUNTY PUBLIC DEFENDER SERVICES; ESTABLISHING A STATE OFFICE OF DEFENDER SERVICES FOR APPELLATE DEFENSE, CONFLICT OF INTEREST CASES, AND MAJOR CRIMES; PROVIDING FOR ELIGIBILITY DETERMINATION FOR PUBLIC DEFENDER SERVICES; ESTABLISHING A SPECIAL REVENUE ACCOUNT FOR THE DEPOSIT OF COURT-ORDERED REPAYMENTS FOR PUBLIC DEFENDER SERVICES; PROVIDING FOR A PUBLIC DEFENDER LAW CLINIC; PROVIDING FOR A TRANSITION OF EMPLOYEES; PROVIDING APPROPRIATIONS AND A STATUTORY APPROPRIATION; AMENDING SECTIONS 2-18-103, 3-5-511, 3-5-604, 3-5-901, 15-10-420, 17-7-502, 18-4-132, 26-2-506, 26-2-508, 26-2-510, 40-6-119, 41-3-425, 41-5-111, 41-

5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-8-113, 46-8-114, 46-12-210, 46-14-202, 46-15-115, 46-15-116, 46-17-203, 46-21-201, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 53-30-110, 61-5-218, 72-5-225, 72-5-234, 72-5-315, 72-5-322, AND 72-5-408, MCA; REPEALING SECTIONS 2-15-1028, 47-1-101, 47-1-102, 47-1-103, 47-1-104, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, AND 47-1-216, MCA; AND PROVIDING EFFECTIVE DATES.

2015

[House Bill No. 71](#) -- (H) Tabled in Committee -- AN ACT DEFINING "GROSS HOUSEHOLD INCOME" AND "HOUSEHOLD" FOR THE PURPOSES OF ELIGIBILITY DETERMINATIONS FOR ASSIGNING COUNSEL AT PUBLIC EXPENSE; AND AMENDING SECTIONS 47-1-103 AND 47-1-111, MCA.

[House Bill No. 72](#) -- (H) Bill Withdrawn per House Rule H30-50(3)(b) -- AN ACT REVISING LAWS RELATED TO COSTS OF ASSIGNED COUNSEL; REQUIRING THAT COSTS OF ASSIGNED COUNSEL PAID BY A DEFENDANT BE DEPOSITED IN THE STATE GENERAL FUND; REVISING WHEN NEW STAFF POSITIONS FOR THE PUBLIC DEFENDER COMMISSION MAY BE ADDED; ELIMINATING A REPORT TO THE LEGISLATIVE FISCAL ANALYST RELATED TO FEE ASSESSMENTS; AMENDING SECTIONS 2-15-1028, 46-8-114, 47-1-110, 47-1-201, AND 47-1-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

[House Bill No. 139](#) -- Chapter Number Assigned -- AN ACT ALLOWING A DEPUTY PUBLIC DEFENDER TO PARTICIPATE IN CERTAIN ELIGIBILITY DETERMINATIONS; AND AMENDING SECTION 47-1-111, MCA.

[House Bill No. 133](#) -- Chapter Number Assigned -- AN ACT AUTHORIZING THE PUBLIC DEFENDER COMMISSION TO AWARD FIXED FEE CONTRACTS IN CERTAIN CASES; AND AMENDING SECTION 47-1-216, MCA.

[House Bill No. 143](#) -- Chapter Number Assigned -- AN ACT SUSPENDING PAYMENT OF PUBLIC DEFENDER FEES DURING PERIODS OF INCARCERATION; AND AMENDING SECTIONS 46-8-113 AND 46-8-114, MCA.

[House Bill No. 218](#) -- (H) Bill Withdrawn per House Rule H30-50(3)(b) -- AN ACT REQUIRING AN INVESTIGATOR EMPLOYED BY THE OFFICE OF STATE PUBLIC DEFENDER TO BE LICENSED AS A PRIVATE INVESTIGATOR; EXEMPTING THESE INVESTIGATORS FROM CERTAIN FEES AND INSURANCE REQUIREMENTS; PROVIDING A TRANSITION SCHEDULE FOR INVESTIGATORS CURRENTLY EMPLOYED BY THE OFFICE OF STATE PUBLIC DEFENDER TO BECOME LICENSED; AMENDING SECTIONS 37-60-101, 37-60-105, AND 37-60-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

[House Bill No. 627](#) -- Chapter Number Assigned -- AN ACT CREATING AN INTERIM TASK FORCE TO STUDY THE OPERATIONS OF THE OFFICE OF STATE PUBLIC DEFENDER TO DEVELOP A LONG-TERM ORGANIZATIONAL PLAN THAT WILL ALLOW THE OPD TO PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL TO THOSE THAT QUALIFY; SPECIFYING MEMBERS AND DUTIES; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE

[Senate Bill No. 59](#) -- Chapter Number Assigned -- AN ACT CLARIFYING THE COURT'S ROLE IN THE ELIGIBILITY DETERMINATION PROCESS FOR ASSIGNING COUNSEL AT PUBLIC EXPENSE; AND AMENDING SECTION 47-1-111, MCA.

[Senate Bill No. 61](#) -- (H) Died in Standing Committee -- "AN ACT CLARIFYING A COURT'S PUNITIVE AUTHORITY RELATING TO THE NONPAYMENT OF FINES, COSTS, OR OTHER AMOUNTS; PROVIDING FOR CIVIL CONTEMPT WITH THE POSSIBILITY OF INCARCERATION FOR NONPAYMENT; PROVIDING FOR THE RIGHT TO COUNSEL; AMENDING SECTIONS 46-8-101 AND 47-1-104, MCA; AND PROVIDING AN APPLICABILITY DATE."

2013

[House Bill No. 92](#) -- Chapter Number Assigned -- AN ACT REMOVING THE TERM "PUBLIC DEFENDER" FROM THE LIST OF MEMBERS OF THE DRUG TREATMENT COURT TEAM AND THE MENTAL HEALTH TREATMENT COURT TEAM; AND AMENDING SECTIONS 46-1-1103 AND 46-1-1203, MCA.

[House Bill No. 93](#) -- (S) Died in Standing Committee -- AN ACT AUTHORIZING THE PUBLIC DEFENDER COMMISSION TO AWARD FIXED FEE CONTRACTS IN CERTAIN CASES; AND AMENDING SECTION 47-1-216, MCA.

[House Bill No. 103](#) -- (H) Died in Standing Committee -- AN ACT AUTHORIZING THE PUBLIC DEFENDER CONFLICTS MANAGER TO HIRE AN ASSISTANT PUBLIC DEFENDER TO HANDLE POSTCONVICTION CASES; AND AMENDING SECTION 47-1-118, MCA.

[House Bill No. 107](#) -- Chapter Number Assigned -- AN ACT REVISING LAWS REGARDING COUNSEL ASSIGNMENTS IN ABUSE OR NEGLECT PROCEEDINGS; REQUIRING A DETERMINATION OF ELIGIBILITY FOR COUNSEL ASSIGNMENTS; PROVIDING FOR COUNSEL ASSIGNMENTS AT THE COURT'S EXPENSE IN CERTAIN CASES; PROVIDING A COORDINATION INSTRUCTION REGARDING APPROPRIATIONS FOR COUNSEL ASSIGNMENTS BY THE JUDICIARY; AMENDING SECTION 41-3-425, MCA; AND PROVIDING AN EFFECTIVE DATE.

[House Joint Resolution No. 20](#) -- (S) Died in Standing Committee -- A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO STUDY THE OPERATIONS OF THE OFFICE OF THE PUBLIC DEFENDER TO DETERMINE THE APPROPRIATE LEVEL OF RESOURCES TO ALLOW THE OFFICE TO PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL TO THOSE THAT QUALIFY.

2011

[House Bill No. 96](#) -- Chapter Number Assigned -- AN ACT ALLOWING THE OFFICE OF STATE PUBLIC DEFENDER TO RECOVER ITS COSTS OF REPRESENTATION FROM A RESPONDENT IN CERTAIN CASES; AND AMENDING SECTION 47-1-110, MCA.

[House Bill No. 97](#) -- Chapter Number Assigned -- AN ACT TRANSFERRING THE RESPONSIBILITY FOR THE SUPERVISION OF THE OFFICE OF APPELLATE DEFENDER FROM THE CHIEF PUBLIC DEFENDER TO THE PUBLIC DEFENDER COMMISSION; AMENDING SECTIONS 2-18-103, 47-1-103, 47-1-104, 47-1-105, 47-1-201, 47-1-205, AND 47-1-216, MCA; AND PROVIDING AN EFFECTIVE DATE.

[Senate Bill No. 147](#) -- (S) Died in Standing Committee -- AN ACT ALLOWING ATTORNEYS FOR THE OFFICE OF STATE PUBLIC DEFENDER UNHINDERED ACCESS TO CONSULT WITH AND ADVISE DETAINEES; AND AMENDING SECTION 47-1-104, MCA.

[Senate Bill No. 187](#) -- Chapter Number Assigned -- AN ACT GENERALLY REVISING THE MONTANA PUBLIC DEFENDER ACT AND RELATED STATUTES; RESTRICTING AND LIMITING CASELOAD LEVELS FOR THE CHIEF PUBLIC DEFENDER AND DEPUTY PUBLIC DEFENDERS; REQUIRING NOTARIZED AFFIDAVITS OF INDIGENCY; REVISING THE PROVISION FOR PAYMENT BY DEFENDANTS OF PUBLIC DEFENDER SERVICES; AMENDING SECTIONS 2-15-1028, 46-8-101, 46-8-113, 46-8-114, 47-1-102, 47-1-105, 47-1-111, 47-1-202, 47-1-205, 47-1-215, AND 47-1-216, MCA; AND PROVIDING AN EFFECTIVE DATE.

2009

[Senate Bill No. 45](#) -- (H) Died in Standing Committee -- AN ACT REQUIRING CERTAIN EVIDENCE TO BE DISCLOSED TO AN INDIGENT CRIMINAL DEFENDANT WITHOUT COST TO THE DEFENDANT; AND AMENDING SECTION 46-15-322, MCA.

[Senate Bill No. 263](#) -- Chapter Number Assigned -- AN ACT REVISING LAWS GOVERNING THE OFFICE OF STATE PUBLIC DEFENDER; REQUIRING ASSIGNED COUNSEL TO FILE CERTAIN COSTS WITH THE DISTRICT COURT; CLARIFYING THAT AN ASSIGNMENT OF COUNSEL BY THE OFFICE OF STATE PUBLIC DEFENDER IS SUBJECT TO INQUIRY AND DENIAL BY A COURT; AMENDING SECTIONS 46-8-113 AND 47-1-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

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