

## 1 SENATE BILL NO. 146

2 INTRODUCED BY D. MCGEE

3 BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA PUBLIC DEFENDER ACT;  
6 PROVIDING PURPOSES AND DEFINITIONS; ESTABLISHING A STATEWIDE PUBLIC DEFENDER SYSTEM  
7 TO DELIVER ASSIGNED COUNSEL SERVICES IN STATE, COUNTY, MUNICIPAL, AND CITY COURTS;  
8 SPECIFYING THE SCOPE OF PUBLIC DEFENDER SERVICES IN CRIMINAL AND CIVIL PROCEEDINGS TO  
9 BE DELIVERED BY THE SYSTEM; REPLACING THE APPELLATE DEFENDER COMMISSION WITH A  
10 PUBLIC DEFENDER COMMISSION; ESTABLISHING AN OFFICE OF STATE PUBLIC DEFENDER;  
11 ESTABLISHING AN OFFICE OF APPELLATE DEFENDER AND PROVIDING FOR A CHIEF APPELLATE  
12 DEFENDER; SPECIFYING DUTIES AND RESPONSIBILITIES; PROVIDING RULEMAKING AUTHORITY;  
13 PROVIDING FOR REGIONAL OFFICES; PROVIDING FOR A CONTRACTED SERVICES PROGRAM;  
14 PROVIDING CERTAIN EXEMPTIONS FROM THE MONTANA PROCUREMENT ACT; PROVIDING FOR  
15 DETERMINATIONS OF ELIGIBILITY AND INDIGENCE; REALLOCATING PAYMENT RESPONSIBILITIES FOR  
16 CERTAIN COSTS PAYABLE BY THE OFFICE OF COURT ADMINISTRATOR AND THE NEW OFFICE OF  
17 STATE PUBLIC DEFENDER; ESTABLISHING A SPECIAL REVENUE ACCOUNT; ~~PROVIDING A~~  
18 ~~COST-SHARING FORMULA FOR STATE, COUNTY, AND CITY FUNDING~~; CHANGING THE LOCAL  
19 GOVERNMENT ENTITLEMENT SHARE PAYMENT LAW TO COMPENSATE THE STATE FOR LOCAL  
20 GOVERNMENT'S SHARE OF THE COSTS OF THE STATEWIDE PUBLIC DEFENDER SYSTEM; CLARIFYING  
21 PROVISIONS RELATED TO WITNESS FEES, TRANSCRIPT FEES, AND PSYCHIATRIC EVALUATION AND  
22 EXAMINATION COSTS; PROVIDING THAT A PUBLIC DEFENDER BE ASSIGNED AT THE BEGINNING OF  
23 ANY CHILD ABUSE AND NEGLECT PROCEEDING; PROVIDING FOR THE TRANSFER OF EMPLOYEES  
24 IN COUNTY AND CITY PUBLIC DEFENDER OFFICES TO STATE EMPLOYMENT; PROVIDING FOR AN  
25 IMPLEMENTATION AND TRANSITION PERIOD; REQUIRING A LEGISLATIVE AUDIT SO THAT FUNDING  
26 RESPONSIBILITIES FOR CERTAIN COUNTIES CAN BE CALCULATED BASED ON ACTUAL COSTS;  
27 AMENDING SECTIONS 2-18-103, 3-5-511, 3-5-604, 3-5-901, 7-6-2426, 15-1-121, 18-4-132, 26-2-501,  
28 ~~26-2-505~~, 26-2-506, 26-2-508, 26-2-510, 40-5-236, 40-6-119, 41-3-205, 41-3-422, 41-3-423, 41-3-432, 41-3-607,  
29 41-3-1010, 41-3-1012, 41-5-111, ~~41-5-112~~, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-8-113,  
30 46-8-114, 46-8-115, 46-12-210, 46-14-202, 46-14-221, 46-15-115, 46-15-116, 46-17-203, 46-18-101, 46-18-201,

1 appointed by the governor to simultaneously serve on the public defender commission and the appellate  
 2 defender commission until the appellate defender commission terminates pursuant to this section. A member  
 3 serving on both commissions simultaneously is entitled to the compensation provided for the public defender  
 4 commission in [section ~~67(5)~~ ~~70(5)~~ 68(5)] when engaged in the official duties of the public defender commission,  
 5 provided that expenses paid pursuant to 2-18-501 through 2-18-503 may not be paid twice for the same period  
 6 of time.

7  
 8 **NEW SECTION. Section 71. Rights to property.** (1) Subject to subsection (2), office equipment,  
 9 computer equipment, furniture, and fixtures that are owned by a county or city and used by employees of a public  
 10 defender office on June 30, 2006, remain the property of the county or city unless otherwise agreed upon by the  
 11 county or city and the state.

12 (2) (a) An employee of a county or city public defender office who becomes a state employee under  
 13 [section 66 ~~69~~] retains the right to use all property relating to the functions of the office and being used by the  
 14 employee on June 30, 2006. The property includes records, office equipment, computer equipment, supplies,  
 15 contracts, books, papers, documents, maps, grant and earmarked account balances, vehicles, and all other  
 16 similar property. However, the employee may not use or divert money in a fund or account for a purpose other  
 17 than as provided by law.

18 (b) Whenever the state replaces office equipment, computer equipment, furniture, or fixtures used as  
 19 provided in subsection (2)(a) and still owned by a county or city, the right to use the replaced property reverts  
 20 to the county or city.

21 (3) This section does not apply to property owned by the federal government.

22  
 23 **NEW SECTION. SECTION 72. IMPLEMENTATION -- DETERMINATION OF ACTUAL COSTS -- LEGISLATIVE AUDIT**

24 **-- REPORT.** (1) THE LEGISLATURE'S INTENT IS TO PROVIDE THAT:

25 (A) FUNDING RESPONSIBILITIES FOR PUBLIC DEFENDER SERVICES PURSUANT TO [SECTIONS 1 THROUGH 4 AND  
 26 6 THROUGH 14] WILL BE SHARED BY STATE AND LOCAL GOVERNMENT; AND

27 (B) THE COUNTIES, CONSOLIDATED GOVERNMENTS, AND CITIES WILL PAY THEIR SHARE OF COSTS THROUGH A  
 28 REDUCTION IN THE COUNTY'S, CONSOLIDATED GOVERNMENT'S, OR CITY'S BASE ENTITLEMENT SHARE UNDER 15-1-121.

29 (2) TO FULFILL THE INTENT OF SUBSECTION (1) FOR CASCADE COUNTY, GALLATIN COUNTY, LEWIS AND CLARK  
 30 COUNTY, MISSOULA COUNTY, FLATHEAD COUNTY, AND YELLOWSTONE COUNTY, AN AUDIT, BY OR AT THE DIRECTION OF

1 THE LEGISLATIVE AUDITOR, MUST BE CONDUCTED AS FOLLOWS:

2 —— (A) FOR FISCAL YEARS 2003 AND 2004, THE AUDIT MUST BE OF ACTUAL COSTS FOR PUBLIC DEFENDER SERVICES  
3 IN DISTRICT COURT AND JUSTICE COURT PROCEEDINGS IN:

4 —— (i) FLATHEAD COUNTY;

5 —— (ii) CASCADE COUNTY;

6 —— (iii) MISSOULA COUNTY;

7 —— (iv) LEWIS & CLARK COUNTY; AND

8 —— (v) YELLOWSTONE COUNTY; AND

9 —— (B) FOR CALENDAR YEAR 2004, THE AUDIT MUST BE OF ACTUAL COSTS IN GALLATIN COUNTY FOR PUBLIC  
10 DEFENDER SERVICES IN DISTRICT COURT AND JUSTICE COURT PROCEEDINGS. ON ALL ACTUAL COSTS FOR PUBLIC  
11 DEFENDER SERVICES IN DISTRICT COURT AND JUSTICE'S COURT PROCEEDINGS INCURRED FROM JULY 1, 1998, THROUGH  
12 JUNE 30, 2004, FOR WHICH RECORDS EXIST. THE AUDIT MUST SEPARATE THE COSTS BY EXPENDITURE CATEGORY AND  
13 DISTINGUISH BETWEEN COSTS PAID BY A COUNTY AND COSTS PAID OR REIMBURSED BY THE STATE.

14 (3) EACH COUNTY AUDITED UNDER SUBSECTION (2) SHALL REIMBURSE THE LEGISLATIVE AUDITOR FOR 50% OF  
15 THE COST OF THE AUDIT FOR THAT COUNTY.

16 (4) THE BY APRIL 30, 2006, THE RESULTS OF THE AUDIT MUST BE REPORTED TO THE GOVERNOR'S BUDGET  
17 OFFICE, THE LEGISLATIVE AUDIT COMMITTEE, THE LEGISLATIVE FINANCE COMMITTEE, AND THE LAW AND JUSTICE INTERIM  
18 COMMITTEE.

19 —— (5) PURSUANT TO 15-1-121(3)(A)(i)(B):

20 —— (A) THE ENTITLEMENT SHARE FOR EACH OF THE FIVE COUNTIES LISTED IN SUBSECTION (2)(A) MUST BE REDUCED  
21 BY THE AMOUNT DETERMINED BY THE FOLLOWING CALCULATION:

22 —— (i) THE ACTUAL COSTS FOR PUBLIC DEFENDER SERVICES IN FISCAL YEAR 2003 MUST BE ADDED TO THE ACTUAL  
23 COSTS FOR PUBLIC DEFENDER SERVICES IN FISCAL YEAR 2004 TO ARRIVE AT A TOTAL ACTUAL COST;

24 —— (ii) THE TOTAL ACTUAL COST MUST BE DIVIDED BY 2 TO DETERMINE AN AVERAGE ACTUAL COST; AND

25 —— (iii) THE AVERAGE ACTUAL COST MUST BE MULTIPLIED BY 1.06526.

26 —— (B) THE ENTITLEMENT SHARE FOR GALLATIN COUNTY MUST BE REDUCED BY THE AMOUNT DETERMINED BY  
27 MULTIPLYING THE COUNTY'S ACTUAL COST FOR PUBLIC DEFENDER SERVICES IN CALENDAR YEAR 2004 BY 1.03863.

28 (5) THE LAW AND JUSTICE INTERIM COMMITTEE SHALL PREPARE LEGISLATION TO BE INTRODUCED IN THE 2007  
29 LEGISLATIVE SESSION THAT WILL AMEND 15-1-121 TO PROVIDE THAT THE BASE ENTITLEMENT SHARE FOR CASCADE  
30 COUNTY, GALLATIN COUNTY, LEWIS AND CLARK COUNTY, MISSOULA COUNTY, FLATHEAD COUNTY, AND YELLOWSTONE

1 COUNTY IS ADJUSTED BY AN APPROPRIATE AMOUNT ARRIVED AT BASED ON THE AUDIT AND IN CONSULTATION WITH THE  
 2 LEGISLATIVE FINANCE COMMITTEE, THE LEGISLATIVE AUDIT COMMITTEE, REPRESENTATIVES OF THE COUNTIES, THE  
 3 GOVERNOR'S OFFICE, THE AMERICAN CIVIL LIBERTIES UNION, THE ATTORNEY GENERAL'S OFFICE, AND ALL OTHER  
 4 INTERESTED AND PARTICIPATING PARTIES.

5 (6) (A) FOR THE FISCAL YEAR BEGINNING JULY 1, 2011, AND EVERY 5 YEARS THEREAFTER, THE LEGISLATIVE  
 6 FISCAL ANALYST SHALL COMPARE THE PERCENTAGE CHANGE IN GENERAL FUND REVENUE FOR THE PREVIOUS 5 YEARS  
 7 TO THE PERCENTAGE CHANGE IN THE AMOUNTS ALLOCATED TO LOCAL GOVERNMENTS UNDER THE PROVISIONS OF  
 8 15-1-121, AS AMENDED IN 2005, AND THE ACTUAL COSTS FOR PUBLIC DEFENDER SERVICES IN [THIS ACT] FOR THE SAME  
 9 TIME PERIOD.

10 (B) THE RESULTS OF THE COMPARISON MUST BE PRESENTED TO THE GOVERNOR, LEGISLATIVE FINANCE  
 11 COMMITTEE, LAW AND JUSTICE INTERIM COMMITTEE, AND SUPREME COURT BY SEPTEMBER 1 OF THE FOLLOWING FISCAL  
 12 YEAR.

13 (6)(7) AS USED IN THIS SECTION:

14 (A) "ACTUAL COSTS" MEANS ALL EXPENDITURES BY A COUNTY FOR PUBLIC DEFENDER SERVICES IN JUSTICE  
 15 COURT AND ALL EXPENDITURES BY A COUNTY FOR PUBLIC DEFENDER SERVICES IN DISTRICT COURT THAT WERE NOT  
 16 REIMBURSED BY THE OFFICE OF COURT ADMINISTRATOR PURSUANT TO 3-5-901; AND

17 (B) "PUBLIC DEFENDER SERVICES" MEANS ALL SERVICES AND SUPPORT ASSOCIATED WITH PROVIDING  
 18 DEFENDANTS IN DISTRICT COURT OR JUSTICE COURT PROCEEDINGS WITH ASSIGNED, APPOINTED, OR CONTRACTED  
 19 ATTORNEYS, INCLUDING:

20 (I) COMPENSATION;

21 (II) PERSONAL EXPENSES, INCLUDING TRAVEL, MEALS, AND LODGING;

22 (III) OFFICE OPERATING COSTS, INCLUDING RENT, UTILITIES, SUPPLIES, POSTAGE, COPYING, COMPUTER SYSTEMS,  
 23 AND OTHER OFFICE OPERATING COSTS;

24 (IV) PROFESSIONAL AND PARAPROFESSIONAL SUPPORT SERVICES, INCLUDING SERVICES PROVIDED BY  
 25 INVESTIGATORS, PARALEGALS, RESEARCHERS, AND SECRETARIES;

26 (V) SERVICES REQUIRED TO SUPPORT A DEFENSE, INCLUDING TRANSCRIPTS, WITNESSES, AND OTHER SUPPORT;

27 (VI) PROFESSIONAL SUPPORT, INCLUDING PROFESSIONAL EDUCATION AND TRAINING; AND

28 (VII) COSTS OF PSYCHIATRIC EVALUATIONS UNDER 46-14-202 AND 46-14-221, INCLUDING THE COST OF  
 29 EXAMINATIONS AND OTHER ASSOCIATED EXPENSES; AND

30 ~~(VII)~~(VIII) OTHER SERVICES OR SUPPORT PROVIDED BY THE COUNTY TO PROVIDE ASSIGNED, APPOINTED, OR

1 CONTRACTED DEFENSE COUNSEL IN JUSTICE COURT AND DISTRICT COURT PROCEEDINGS.

2  
3 NEW SECTION. Section 73. Interim report. During fiscal year 2007, the public defender commission  
4 established in [section 5] shall make regular progress reports to the governor, legislative finance committee, law  
5 and justice interim committee, LEGISLATIVE AUDIT COMMITTEE, and supreme court regarding the operation and  
6 administration of the statewide public defender system.

7  
8 NEW SECTION. Section 74. Repealer. Sections 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202,  
9 46-8-210, 46-8-211, 46-8-212, and 46-8-213, MCA, are repealed.

10  
11 NEW SECTION. Section 75. Codification instruction. (1) [Sections 1 through 4 and 6 through 14]  
12 are intended to be codified as a new title in the Montana Code Annotated.

13 (2) [Section 5] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the  
14 provisions of Title 2, chapter 15, part 10, apply to [section 5].

15 (3) [Section 15] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the  
16 provisions of Title 41, chapter 3, part 4, apply to [section 15].

17  
18 NEW SECTION. SECTION 76. DIRECTIONS TO CODE COMMISSIONER. WHENEVER REFERENCES TO  
19 COURT-APPOINTED COUNSEL, COURT-APPOINTED ATTORNEY, APPOINTED COUNSEL, OR APPOINTED ATTORNEY APPEAR  
20 IN LEGISLATION ENACTED BY THE 2005 LEGISLATURE, THE CODE COMMISSIONER IS DIRECTED TO CHANGE THE  
21 REFERENCES TO THE APPROPRIATE REFERENCES TO ASSIGNED COUNSEL OR ASSIGNED ATTORNEY.

22  
23 COORDINATION SECTION. SECTION 77. COORDINATION INSTRUCTION. IF [THIS ACT] IS PASSED AND  
24 APPROVED AND IT INCLUDES A SECTION THAT AMENDS 15-1-121(3)(A)(I) AND:

25 (1) IF HOUSE BILL NO. 223 IS PASSED AND APPROVED AND IT INCLUDES A SECTION THAT AMENDS  
26 15-1-121(3)(A)(I), THEN THE AMENDMENT TO 15-1-121(3)(A)(I) IN HOUSE BILL NO. 223 IS VOID;

27 (2) IF HOUSE BILL NO. 334 IS PASSED AND APPROVED AND IT INCLUDES A SECTION THAT AMENDS  
28 15-1-121(3)(A)(I), THEN THE AMENDMENT TO 15-1-121(3)(A)(I) IN HOUSE BILL NO. 334 IS VOID;

29 (3) IF HOUSE BILL NO. 671 IS PASSED AND APPROVED AND IT INCLUDES A SECTION THAT AMENDS  
30 15-1-121(3)(A)(I), THEN THE AMENDMENT TO 15-1-121(3)(A)(I) IN HOUSE BILL NO. 671 IS VOID; AND