

BILL SUMMARY: SB 146

MONTANA PUBLIC DEFENDER ACT

By Request of Senator Dan McGee, Bill Sponsor

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The meat of the bill is in NEW SECTIONS 1 through 15:

Section 1. Short Title.

Section 2. Definitions.

Section 3. Purpose.

Section 4. Scope and structure of the state wide public defender system.

Structure: A public defender commission would supervise the system, develop a strategic plan, divide the state into regions, provide for the delivery of services:

- by contract with a single attorney or law firm or with a consortium of attorneys or law firms; or
- through a regional office with state staff (see section 11)

Scope: Covers all courts (district, justice, municipal, and city courts)

Covers all the cases listed in subsection (4)

- (4)(a) lists cases where a person is entitled to a PD because they are indigent
- (4)(b) lists the cases where a person is entitled to a PD even if not indigent

Section 5. Public defender commission composition and membership.

This section provides that a Public Defender Commission of 11 members would be appointed by the governor as follows:

- 2 attorneys nominated by Supreme Court
- 3 attorneys nominated by President of State Bar
 - 1 experienced in felony defense and was a full-time PD for at least 1 yr
 - 1 experienced in defense of juvenile delinquency and abuse and neglect cases involving the Indian Child Welfare Act
 - 1 who represents criminal defense lawyers
- 2 from general public, not attorneys, judges (active or retired)
- 1 nominated by President of Senate
- 1 nominated by Speaker of the House
- 1 advocate for indigent persons

- 1 advocate for racial minorities
- 1 advocate for people with mental illnesses and dev. disabilities
- 1 employed by an organization providing addictive behavior counseling
- 1 with significant experience in defense of criminal or other cases subject to the public defender act who has a strong commitment to quality representation for indigent defendants

Section 6. Commission duties and responsibilities.

This section provides that the Public Defender Commission would:

- hire and supervise a Chief Public Defender
- set statewide standards and policies covering:
 - education
 - experience
 - caseload and workloads
 - access to support services (paralegals, investigators, etc)
 - continuing education/training
 - performance criteria and evaluation
- develop strategic plan and approve budget proposals
- develop process for handling cases presenting conflicts of interests
- ensure process for recording and reporting detailed expenditure and caseload data
- submit a detailed biennial report to the Governor, Supreme Court, and Legislature

Section 7. Office of state public defender, personnel, compensation, expenses.

This section:

- establishes central office
- establishes the structure of the central office
 - chief public defender
 - administrative director
 - chief appellate defender
 - chief contract manager
 - training coordinator
 - deputy public defenders in each region
 - assistant public defenders (state staff to assist regions if requested)
 - other positions as needed
- lists other types of operational expenses that are paid by the office:
 - witness fees
 - transcript fees

Section 8. Chief public defender -- duties.

This section:

- outlines the duties of the Chief Public Defender to:
 - present to commission a regional strategic plan
 - supervise regional deputy public defenders and state staff of assistant public defenders
 - ensure conflict cases are handled appropriately
 - ensure detailed expenditure and caseload data is kept
 - manage caseloads
 - establish standards for assigning capital cases consistent with Supreme Court guidelines
 - establish and supervise a training program
 - establish performance and evaluation criteria
 - etc.

Section 9. Office of appellate defender -- chief appellate defender.

This section provides that:

- the Chief Public Defender hires and supervises the chief appellate defender
- the Chief Appellate Defender supervises the Office of Appellate Defender (contracted services and state appellate staff in regional offices)
- the Office of Appellate Defender, not the public defender who handled the original case, would handle all appeals in which the defendant is entitled to a public defender

Section 10. Training program -- coordinator.

This section:

- provides that a centralized training coordinator would be appointed by the Chief Public Defender
- training coordinate would
 - coordinate statewide training
 - help establish standards
 - provide consultation and assistance with research for briefs
 - apply for and assists in disbursement of federal funds or other grant money
 - perform other duties as assigned

Section 11. Regional offices -- deputy public defenders -- office space.

This section provides that:

- if a regional office is established by the Commission (rather than having contracted services provided for in the region), then the regional office will be managed by a deputy public defender
 - there are PD offices in Missoula, Yellowstone, Bozeman, Anaconda-Deer Lodge, Cascade, and Lewis & Clark Counties and one FTE in Dawson County

Section 12. Contracted service program.

This section:

- authorizes the Office of State Public Defender and each regional deputy public defender to contract for services.
- contracting must be done fairly and consistently throughout the state and within each region.
- places specific parameters on the contracting to ensure:
 - that contracts consider attorney qualifications and caseloads
 - adequate contract oversight
 - contracts aren't awarded based solely on the lowest bid
 - that there will be no fixed rate contract (i.e. a set fee no matter the caseload handled).

Section 13. Public defender account.

This section provides that:

- all gifts, grants, or donations to the Office of State Public Defender would be deposited to a special revenue account
- all payments ordered by a court to pay for the cost of defense provided by a public defender would be deposited to the special revenue account

Section 14. Eligibility and determination of indigence.

This section describes the process to be used to determine whether a person is eligible for a public defender.

Under this section:

- the Office of State Public Defender (through the regional offices or through contracted services) will determine whether a person is indigent and eligible for a public defender, or not.
- subsection (3), which begins on page 15, line 4, provides that anyone with a household income at or less than 133% of federal poverty guidelines AND whose disposable income and assets are insufficient to retain competent counsel without substantial hardship will be determined "indigent" and eligible for a public defender.
- NOTE: the partial indigence language of subsection (5), page 15, beginning on line 12 was stricken by an amendment in Senate Judiciary. This raises an issue with the "and" on **page 15, line 8**. Leaving in "and" means that no one with an income higher than 133% of poverty could be determined eligible for a public defender. Changing "and" to "or" would allow for a person with an income higher than 133% of poverty to qualify for a public defender if their income and assets are insufficient to retain private counsel.

Section 15. Right to counsel.

This section concerns child abuse and neglect cases:

- consolidates current law and
- changes current law to provide that whenever a charge of child abuse or neglect is filed against a parent, the parent is immediately entitled to counsel (a court would no longer have to wait until a petition for the termination of parental rights has been filed)

Other key sections in the bill

Section 21. Amending 15-1-121. Entitlement share payment -- appropriation.

This section provides the funding mechanism for the Office of State Public Defender.

County and city share of funding: Beginning on **page 26, line 29 through page 32, line 29**, the amount of each county's and cities' entitlement share for FY 2006 will be reduced by the amount shown before the growth factor and entitlement share amount is calculated and paid out for FY 2007. This will permanently reduce the amount of the entitlement share paid to the county's and cities from the general fund.

Audit of certain counties: In order to base entitlement share reduction amounts for the state's largest counties on **actual costs** rather than on estimates, the bill provides that an audit will be conducted of certain county public defender expenses. **(See page 32, line 30, through page 33, line 3.)** The 6 counties to be audited are:

- Cascade
- Flathead
- Gallatin
- Lewis & Clark
- Missoula
- Yellowstone

The key language discussing how this audit will be conducted and identifying what expenses will be audited is provided in **Section 74, page 87, beginning on line 10.**

Section 48. Examination of defendant.

This section relates to mental examination of a defendant's fitness to proceed. Fitness to proceed may be raised by the prosecution, the defense, or the court. Key language to note is in **subsection (4), beginning on page 61, line 10.**

Section 63. Expense of trial for offenses committed in prison.

Current language:

- Dept. of Corrections pays all costs "incurred by the county"

(page 79, line 9)

Issue:

- who should pay the costs for the prosecution, defense, and court expenses (such as for juries) in cases where the offense is committed in prison?
- NOTE: with the Public Defender Act in place, a county should not incur any public defender costs and therefore would not "invoice" the Department of Corrections. However, currently, the DOC is being billed by the counties for public defender costs in these cases.
- this section needs amending to further clarify the technicalities of who should pay for what

Implementation Sections

Section 70. Implementation

Time line:

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| Public Defender Commission appointed by | July 1, 2005 |
| Chief Public Defender hired by | December 31, 2005 |
| Standards and Procedures in place by | July 1, 2006 |

Section 71. Transition -- transfer of county and city employees to state employment

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| Local public defender staff become state employees | July 1, 2006 |
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Section 72. Transition of appellate defender commission and office

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| Appellate Defender Commission and Public Defender Commission work together beginning | July 1, 2005 |
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| Office of Appellate Defender transferred to Office of State Public Defender and Appellate Defender Commission and old statutes repealed | July 1, 2006 |
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Section 74. Determination of actual costs -- legislative audit

Audit of FY 2003 and FY 2004 "actual costs" for "public defender services" in district court and justice court in the following 5 counties:

- Cascade
- Flathead
- Lewis & Clark
- Missoula
- Yellowstone

Gallatin County just recently started their PD office so the audit will be only of the FY 2004 calendar year

"Actual costs" is defined on pg 88, beginning on line 11

"Public defender services" is defined on pg 88, beginning on line 14

Section 75. Interim report.

The Public Defender Commission and the Office of State Public Defender must provide a progress report in FY 2007 to:

- Governor
- Legislative Audit Committee
- Legislative Finance Committee
- Law and Justice Interim Committee
- Supreme Court

Section 80. Three-fifths vote required.

A three-fifths vote of the members of each house is required because the entitlement share statutes state that any adjustments to the entitlement share may be done only by a three-fifths vote.