

1 HOUSE BILL NO. 116

2 INTRODUCED BY K. HOLMLUND

3 BY REQUEST OF THE STATE PUBLIC DEFENDER

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PUBLIC DEFENDER FEES TO PROVIDE THAT
6 PAYMENT OF THE COSTS OF ASSIGNED COUNSEL IS NOT SUSPENDED DURING INCARCERATION;
7 AMENDING SECTIONS 46-8-113 AND 46-8-114, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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11 **Section 1.** Section 46-8-113, MCA, is amended to read:

12 **"46-8-113. Payment by defendant for assigned counsel -- costs to be filed with court -- collection**
13 **of unpaid costs.** (1) Subject to the provisions of subsections (2) and (3), as part of or as a condition of a
14 sentence that is imposed under the provisions of this title, the court shall determine whether a convicted
15 defendant should pay the costs of counsel assigned to represent the defendant as follows:

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

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

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

19 (b) If the case goes to trial, the defendant shall pay the costs incurred by the office of state public
20 defender for providing the defendant with counsel in the criminal trial. Upon request, the office of state public
21 defender shall file with the court a statement of the hours spent on the case and the costs and expenses incurred
22 for the trial.

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

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

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

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

2 (c) The department of revenue shall collect the defendant's unpaid costs assessed under this section.

3 All costs collected by the department of revenue or the office of state public defender if the office receives or
4 collects any costs owed under this section must be deposited in the state general fund and clearly credited
5 against any balance owed by a defendant.

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

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

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

18 (5) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced
19 the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the
20 satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the
21 defendant's immediate family, the court may reduce all or part of the amount due in costs or modify the method
22 of payment. The court shall notify the office of state public defender of any reduction to the amount due.

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

25 ~~(7)~~(6) Any costs imposed under this section must be included in the court's judgment."
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27 **Section 2.** Section 46-8-114, MCA, is amended to read:

28 **"46-8-114. Time and method of payment.** (1) ~~Except as provided in subsection (2), when~~ When a
29 defendant is sentenced to pay the costs of assigned counsel pursuant to 46-8-113, the court may order payment
30 to be made within a specified period of time or in specified installments.

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

3 ~~(2)~~ Payments must be made to the clerk of the sentencing court for allocation as provided in
4 46-18-201, 46-18-232, and 46-18-251 and deposited in the account established in 47-1-110."

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6 NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 2019.

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