

HOUSE BILL NO. 72

INTRODUCED BY R. LYNCH

BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

A BILL FOR AN ACT ENTITLED: "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."

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

**Section 1.** Section 2-15-1028, MCA, is amended to read:

**"2-15-1028. Public defender commission.** (1) There is a public defender commission.

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness

1 and developmental disabilities; and

2 (g) one person who is employed by an organization that provides addictive behavior counseling.

3 (3) A person appointed to the commission must have significant experience in the defense of criminal  
4 or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment  
5 to quality representation of indigent defendants.

6 (4) A vacancy on the commission must be filled in the same manner as the original appointment and in  
7 a timely manner.

8 (5) Members shall serve staggered 3-year terms.

9 (6) ~~(a)~~ The commission is allocated to the department of administration for administrative purposes only,  
10 as provided in 2-15-121, except that:

11 ~~(i)(a)~~ the commission shall hire staff for the commission ~~subject to subsection (6)(b)~~ and the chief public  
12 defender shall hire separate staff for the office, except for any support staff provided by the department of  
13 administration for centralized services, such as payroll, human resources, accounting, information technology,  
14 or other services determined by the commission and the department to be more efficiently provided by the  
15 department; and

16 ~~(ii)(b)~~ commission and office of state public defender budget requests prepared and presented to the  
17 legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the  
18 department of administration. However, nothing in this subsection ~~(6)(a)(ii)~~ (6)(b) prohibits the department from  
19 providing administrative support for the budgeting process and including the budget requests in appropriate  
20 sections of the department's budget requests for administratively attached agencies.

21 ~~(b) New staff positions for the commission may be added only when the public defender account~~  
22 ~~established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-8-113(1)(a) and (1)(b) to~~  
23 ~~maintain a balance in the account that would sustain any staff position approved by the commission for at least~~  
24 ~~1 year.~~

25 (7) While serving a term on the commission, a member of the commission may not serve as a judge, a  
26 public defender employed by or under contract with the office of state public defender established in 47-1-201,  
27 a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United  
28 States district attorney or an assistant United States district attorney, or a law enforcement official.

29 (8) Members of the commission may not receive a salary for service on the commission but must be  
30 reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of

1 official duties.

2 (9) The commission shall establish procedures for the conduct of its affairs and elect a presiding officer  
3 from among its members."

4

5 **Section 2.** Section 46-8-114, MCA, is amended to read:

6 **"46-8-114. Time and method of payment.** When a defendant is sentenced to pay the costs of assigned  
7 counsel pursuant to 46-8-113, the court may order payment to be made within a specified period of time or in  
8 specified installments. Payments must be made to the clerk of the sentencing court for allocation as provided in  
9 46-18-201, 46-18-232, and 46-18-251 and deposited in the ~~account established in 47-1-110~~ state general fund."

10

11 **Section 3.** Section 47-1-110, MCA, is amended to read:

12 **"47-1-110. Public defender account.** ~~(1)~~ There is a public defender account in the state special revenue  
13 fund. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the  
14 account may be used only for the operation of the system.

15 ~~(2) Money to be deposited in the account also includes:~~

16 ~~—— (a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a~~  
17 ~~sentence in a criminal case;~~

18 ~~—— (b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;~~

19 ~~—— (c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as~~  
20 ~~payment for public defender costs pursuant to 53-9-104; and~~

21 ~~—— (d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate~~  
22 ~~Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally~~  
23 ~~disabled person when the respondent is determined to have the financial ability to pay for a public defender and~~  
24 ~~a judge orders payment under 47-1-111."~~

25

26 **Section 4.** Section 47-1-201, MCA, is amended to read:

27 **"47-1-201. Office of state public defender -- personnel -- compensation -- expenses -- reports.** (1)  
28 There is an office of state public defender. The office must be located in Butte, Montana. The head of the office  
29 is the chief public defender, who is supervised by the commission.

30 (2) The chief public defender must be an attorney licensed to practice law in the state. The chief public

1 defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is  
2 exempt from the state classification and pay plan as provided in 2-18-103. The commission shall establish  
3 compensation for the position commensurate with the position's duties and responsibilities, taking into account  
4 the compensation paid to prosecutors with similar responsibilities.

5 (3) The chief public defender shall hire or contract for and supervise other personnel necessary to  
6 perform the function of the office of state public defender and to implement the provisions of this chapter,  
7 including but not limited to:

8 (a) the following personnel who are exempt from the state classification and pay plan as provided in  
9 2-18-103:

10 (i) an administrative director, who must be experienced in business management and contract  
11 management;

12 (ii) a chief contract manager to oversee and enforce the contracting program;

13 (iii) a training coordinator, appointed as provided in 47-1-210;

14 (iv) deputy public defenders, as provided in 47-1-215;

15 (b) assistant public defenders; and

16 (c) other necessary administrative and professional support staff for the office.

17 (4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons  
18 in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

19 (5) The following expenses are payable by the office if the expense is incurred at the request of a public  
20 defender:

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

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

23 (6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made  
24 within 30 days of the receipt of a claim.

25 (7) The office may accept gifts, grants, or donations, which must be deposited in the account provided  
26 for in 47-1-110.

27 (8) The office shall provide assistance with the budgeting, reporting, and related administrative functions  
28 of the office of appellate defender as provided in 47-1-205.

29 (9) The chief public defender shall establish procedures to provide for the approval, payment, recording,  
30 reporting, and management of defense expenses paid pursuant to this section, including defense expenses paid

1 for work performed by or for the office of appellate defender.

2 (10) (a) The office of public defender is required to report data for each fiscal year by September 30 of  
3 the subsequent fiscal year representing the caseload for the entire public defender system to the legislative fiscal  
4 analyst. The report must be provided in an electronic format and include unduplicated count data for all cases  
5 for which representation is paid for by the office of public defender, the number of new cases opened, the number  
6 of cases closed, the number of cases that remain open and active, the number of cases that remain open but are  
7 inactive, and the average number of days between case opening and closure for each case type.

8 ~~(b) The office of public defender is required to report to the legislative fiscal analyst for each fiscal year  
9 by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services  
10 rendered, including the number of cases for which a collection is made, the number of cases for which an amount  
11 is owed, the amount collected, and the amount remaining unpaid. The report must be provided in an electronic  
12 format."~~

13

14 **Section 5.** Section 47-1-202, MCA, is amended to read:

15 **"47-1-202. Chief public defender -- duties.** (1) In addition to the duties provided in 47-1-201, the chief  
16 public defender shall:

17 (a) act as secretary to the commission and provide administrative staff support to the commission ~~until~~  
18 ~~the commission can hire its staff as provided in 2-15-1028(6)(b);~~

19 (b) assist the commission in establishing the state system and establishing the standards, policies, and  
20 procedures required pursuant to this chapter;

21 (c) develop and present for the commission's approval a regional strategic plan for the delivery of public  
22 defender services;

23 (d) establish processes and procedures to ensure that office and contract personnel use information  
24 technology and caseload management systems so that detailed expenditure and caseload data is accurately  
25 collected, recorded, and reported;

26 (e) establish administrative management procedures for regional offices;

27 (f) establish procedures for managing caseloads and assigning cases in a manner that ensures that  
28 public defenders are assigned cases according to experience, training, and manageable caseloads and taking  
29 into account case complexity, the severity of charges and potential punishments, and the legal skills required to  
30 provide effective assistance of counsel;

1 (g) establish policies and procedures for assigning counsel in capital cases that are consistent with  
2 standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

3 (h) establish and supervise a training and performance evaluation program for attorneys and nonattorney  
4 staff members and contractors;

5 (i) establish procedures to handle complaints about public defender performance and to ensure that  
6 public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that  
7 office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated  
8 pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter  
9 61;

10 (j) actively seek gifts, grants, and donations that may be available through the federal government or  
11 other sources to help fund the system; and

12 (k) perform all other duties assigned by the commission pursuant to this chapter.

13 (2) The chief public defender may not maintain a client caseload."  
14

15 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2015.  
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