

BILL SUMMARY: SB 146 MONTANA PUBLIC DEFENDER ACT

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The Montana Public Defender Act is Chapter 449, Laws of Montana, 2005.

Overview

Scope of system

Under the Montana Public Defender Act (Act), the current locally controlled patchwork of direct judicial appointment of counsel, contracting for counsel, or staffed public defender offices is replaced by a single statewide system of assigned counsel. The system will be supervised by an independent commission and administered by an Office of State Public Defender through regional offices. Under statewide supervision, public defender services may be provided by state-employed public defenders or by private attorneys on contract with regional or state offices of the Office of State Public Defender. This change will encompass all courts and all cases in which a party is entitled by law to counsel at public expense (i.e., all felony and misdemeanor criminal cases as well as civil cases involving child abuse and neglect, juvenile delinquency, involuntary civil commitment, and guardianship cases in which a party is entitled counsel at public expense. *(Section 4 of the Act consolidates current law and identifies who is entitled to a public defender in which types of cases. Section 4 also provides internal references to each Montana Code Annotated statute that provides for the party's right to public defender services.)*

Commission oversight

The Act establishes an 11-member state Public Defender Commission (Commission) to "supervise and direct" the statewide system. The Commission hires a state Chief Public Defender and must "approve a strategic plan" for the delivery of public defender services across the state. The Commission must also "establish statewide standards for the qualification and training of attorneys providing public defender services". The standards must consider the criteria stated in the Act to ensure that attorneys assigned as public defenders (whether

state-employed or private contract attorneys) are qualified and competent to handle the cases they are assigned. The standards must also provide for caseload parameters, performance criteria, and performance evaluation protocols. *(See Sections 3 through 6 of the Act.)*

Flexible delivery model

The Act gives the Commission flexibility to establish up to 11 public defender regions and to determine how best to deliver public defender services within each region. The Act states that public defender services may be delivered by "state employees, contracted services, or other methods ... in a manner that is responsive to and respective of regional and community needs and interests". *(See Section 3(4) of the Act.)* The Office of State Public Defender and its regional offices have the authority to contract for any services required. However, the Act specifies that the contracts must meet certain standards adopted by the Commission and that contracting must be done "fairly and consistently" through a competitive process. The Act further specifies that a contract may not be awarded based solely on the lowest bid or provide compensation based solely on a fixed fee irrespective of the number of cases assigned. *(See Section 12 of the Act.)*

Appellate defense

Under the Act, the current Appellate Defender Commission is dissolved and its functions consolidated under the Public Defender Commission. An Office of Appellate Defender will be established within the Office of State Public Defender. The Chief Public Defender will hire the Chief Appellate Defender, who must supervise the Office of Appellate Defender and "ensure that when a court orders the office to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary". This changes current law by providing that all appellate work will be handled by the Office of Appellate

Defender instead of by the trial-level public defenders. *(See Section 9 of the Act.)*

Indigence determination

The Act provides a uniform process for determining indigence and makes the Public Defender Commission responsible for establishing procedures and rules to "ensure that the eligibility determination process is fair and consistent statewide". Instead of the judiciary determining indigence and eligibility, the Office of State Public Defender (through its regional offices or using contract services) will review a detailed financial statement and an affidavit provided by the party for whom counsel was assigned. If the party is determined to not be eligible, the court order for the assignment of counsel may be rescinded by the court. However, a party is entitled to full public defender services unless or until the order is rescinded. The Act defines indigence by stating that a person is indigent if the person's gross household income is at or less than 133% of federal poverty guidelines or if the disposable income and assets of the person and the person's household are "insufficient to retain competent private counsel without substantial hardship" to the person or the person's household. Any determination by the Office of State Public Defender is subject to judicial review. *(See Section 14 of the Act.)*

Funding

The statewide public defender system created by the Act is funded in the state's budget. The budget for FY 2006 (a partial year of certain startup costs) is \$727,220 and for FY 2007 (a full year of all costs) \$13,870,218. Some of the state's costs will be offset by county and city funding provided for through a one-time reduction of each county's and city's entitlement share payment. The entitlement share payment is the amount that the state "refunds" to local governments from revenue collected by the local governments and forwarded to the state under a law intended to simplify state and local accounting. Under the Act, the entitlement share reductions totaled \$1,560,110 for all counties, \$73,764 for consolidated governments, and \$786,259 for cities (for a grand total of

\$2,420,133). The six largest counties will be audited so that actual costs may be identified. The entitlement share reductions for these counties may be adjusted (increased or decreased) by the next legislature based on the audit findings and after consultations between certain legislative committees and stakeholders. (See Sections 21 and 72.)

Transition timeline

Under the Act, the Governor was to have appointed the Public Defender Commission by July 1, 2005. The Commission has until December 31, 2005, to hire a Chief Public Defender, and the Office of State Public Defender must become fully operational by July 1, 2006. Local public defenders from city- and county-staffed public defender offices may elect to become state employees effective July 1, 2006. The Act directs the Appellate Defender Commission and the Public Defender Commission to work together beginning July 1, 2005, and to manage caseloads so that by July 1, 2006, Office of Appellate Defender functions and caseloads are transferred to the appellate office created under the Office of State Public Defender. The old appellate defender statutes will be repealed effective July 1, 2006.

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