



**OFFICE OF THE STATE PUBLIC DEFENDER
STATE OF MONTANA**

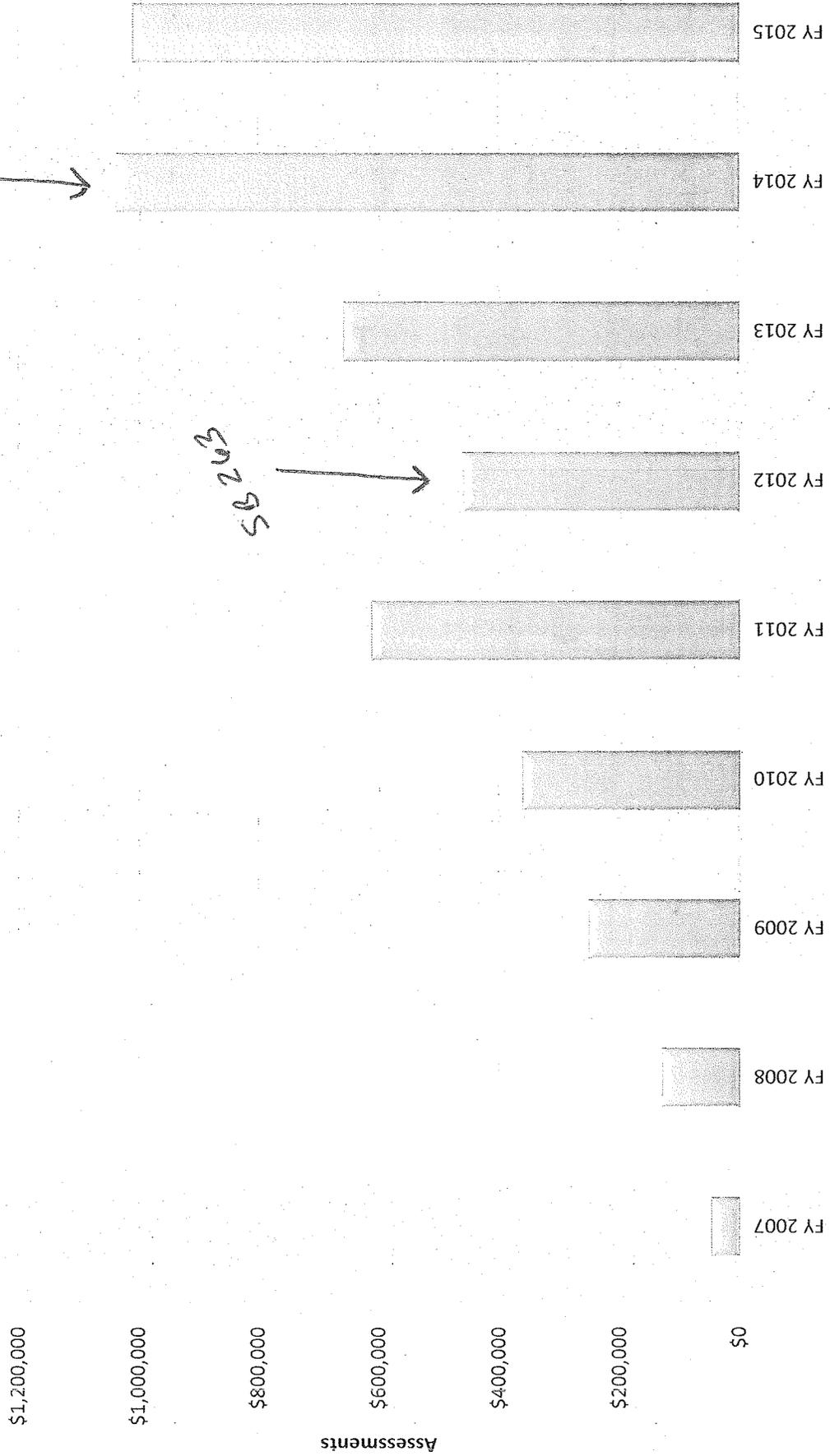
**STATE SPECIAL REVENUE PRESENTATION
TO
THE MONTANA PUBLIC DEFENDER COMMISSION
OCTOBER 2, 2015**

OFFICE OF THE STATE PUBLIC DEFENDER
ACTUALS THROUGH
06/30/2015

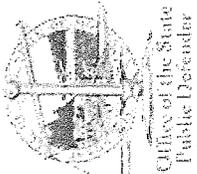


Office of the State
Public Defender

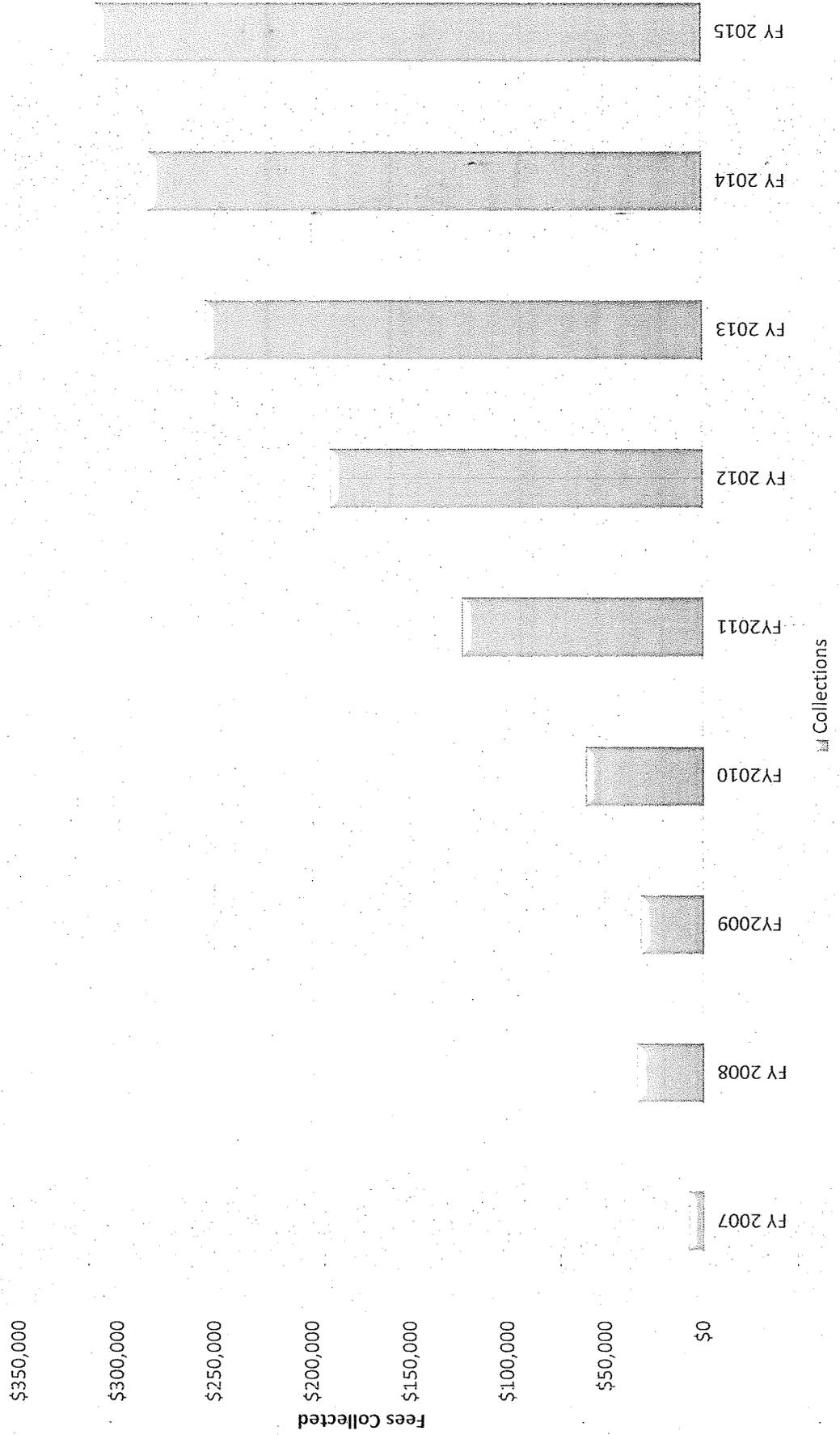
Public Defender Assessments

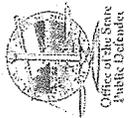


OFFICE OF THE STATE PUBLIC DEFENDER
ACTUALS THROUGH 6/30/2015



Public Defender Collections





OFFICE OF THE STATE PUBLIC DEFENDER
 Assessments and
 Collections of Legal Fees
 M.C.A. 47-1-201 (10) (b)

56263 56187

| | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 |
|---|-----------|------------|------------|------------|--------------|--------------|--------------|--------------|--------------|
| Balance of A/R @ Beg of Year | \$ - | \$ 41,211 | \$ 138,570 | \$ 360,588 | \$ 664,384 | \$ 1,155,652 | \$ 1,425,981 | \$ 1,831,060 | \$ 2,586,871 |
| Assessments by Year | 49,229 | 132,178 | 254,592 | 364,463 | 615,262 | 462,219 | 660,811 | 1,041,006 | 1,014,134 |
| Total Collections by Year | (8,018) | (34,818) | (32,574) | (60,667) | (123,994) | (191,890) | (255,732) | (285,194) | (312,603) |
| # of Clients represented by Collections Total* | 30 | 103 | 327 | 627 | 1,325 | 1,351 | 1,470 | N/A | N/A |
| Total Balance of A/R for Reporting Year ** | \$ 41,211 | \$ 138,570 | \$ 360,588 | \$ 664,384 | \$ 1,155,652 | \$ 1,425,981 | \$ 1,831,060 | \$ 2,586,871 | \$ 3,288,402 |
| Total # of Clients with open A/R @ Beg of Year* | - | 73 | 318 | 750 | 1,833 | 3,130 | 4,157 | 5,639 | N/A |
| # of Clients Assessments by Year* | 81 | 285 | 494 | 1,246 | 1,743 | 1,493 | 1,754 | N/A | N/A |
| Total # of Clients paid in full during fiscal year* | (8) | (40) | (62) | (163) | (446) | (466) | (272) | N/A | N/A |
| Total # of Clients with open A/R @ End of Year* | 73 | 318 | 750 | 1,833 | 3,130 | 4,157 | 5,639 | N/A | N/A |

| FY 2015 | |
|---------|---------------|
| Total | \$ 4,350.42 |
| DOC | 272,228.31 |
| DOR | 36,024.20 |
| CASH | \$ 312,602.93 |



AN ACT REVISING LAWS GOVERNING THE OFFICE OF STATE PUBLIC DEFENDER; REQUIRING ASSIGNED COUNSEL TO FILE CERTAIN COSTS WITH THE DISTRICT COURT; CLARIFYING THAT AN ASSIGNMENT OF COUNSEL BY THE OFFICE OF STATE PUBLIC DEFENDER IS SUBJECT TO INQUIRY AND DENIAL BY A COURT; AMENDING SECTIONS 46-8-113 AND 47-1-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

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

"46-8-113. Payment by defendant for assigned counsel -- costs to be filed with court. (1) As part of or as a condition under a sentence imposed under the provisions of this title, the court ~~may~~ shall require a convicted defendant to pay the costs of counsel assigned to represent the defendant as follows, except as provided in subsections (2); and (3):

(a) in every misdemeanor case, \$150; and

(b) in every felony case, \$500.

(2) Costs must be limited to costs incurred by the office of state public defender, provided for in 47-1-201, for providing the defendant with counsel in the criminal proceeding; if the criminal proceeding includes a jury trial, counsel assigned by the office of state public defender shall file with the court a statement of the hours spent on the case and the costs and expenses incurred and, except as provided in subsection (3), the court shall require the defendant to pay the costs of counsel and other costs and expenses as reflected in the statement.

(3) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill # SB0263

Title: Revise public defender laws

Primary Sponsor: Shockley, Jim

Status: As Amended in House Committee

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

| | <u>FY 2010 Difference</u> | <u>FY 2011 Difference</u> | <u>FY 2012 Difference</u> | <u>FY 2013 Difference</u> |
|---|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Expenditures: | | | | |
| General Fund | \$144,963 | \$142,363 | \$142,363 | \$142,363 |
| Revenue: | | | | |
| General Fund | | Unable to be Determined | | |
| Net Impact-General Fund Balance: | <u>(\$144,963)</u> | <u>(\$142,363)</u> | <u>(\$142,363)</u> | <u>(\$142,363)</u> |

Description of fiscal impact:

This bill would create additional workload for the Office of the State Public Defender's (OPD) attorneys and administrative staff. Staff would meet with clients to advise them of their rights as they prepare to undergo a process whereby a judge makes a determination as to a client's ability to reimburse the state for providing them with legal defense services. Also, the amount of time spent by attorneys in hearings would increase as judges undergo a process to determine if a client convicted of a crime in fact has the ability to reimburse the state and by what amount.

There will be revenue associated with this bill but there is no way to determine either how much this would be or the timing of its collection.

The amended bill contains the following language: "NEWSECTION. SECTION 3. CONTINGENT VOIDNESS. IF HOUSE BILL NO. 2 IS PASSED AND APPROVED AND DOES NOT INCLUDE THE RESTORATION OF THE \$250,000 PER YEAR GENERAL FUND REDUCTION IN THE OFFICE OF STATE PUBLIC DEFENDER RELATED TO THE PASSAGE AND APPROVAL OF [THIS ACT], THEN [THIS ACT] IS VOID." At this time, the general fund has not been restored in HB 2.

FISCAL ANALYSIS

Assumptions:

Office of the State Public Defender (OPD)

ATTORNEY PROCESS: The agency assumes that this bill affects criminal cases in both district courts and courts of limited jurisdiction assigned to the agency.

1. District Court: The number of new district court criminal cases worked by the agency's attorneys during FY 2008 was 5,523. Of these cases, the OPD assumes that 941 cases were in jurisdictions that already hold a hearing to determine ability to pay. Therefore, the net number of new cases would be reduced by 941 to 4,582. Of the 4,582 cases the agency assumes that about 80 percent or 3,666 cases would go through a process whereby judges determine ability to pay. The agency assumes that it would take approximately 15 minutes per case or one-quarter of \$60 per hour to provide advice to clients of their rights which results in a fiscal impact of \$54,990.
2. Courts of Limited Jurisdiction: The number of new cases in courts of limited jurisdiction worked by the agency's attorneys during FY 2008 was 16,910. Of these cases, the OPD assumes that 75 percent would be too small to provide additional services and/or to attend hearings on the person's ability to pay. Also about 70 percent of this number would go through a process whereby a judge determines ability to pay. This calculation results in 2,959 cases that would require additional attorney services. The agency assumes that it would take approximately 15 minutes per case or one-quarter of \$60 per hour that would result in a fiscal impact of \$44,383.
3. This section totals \$99,373.

ADMINISTRATIVE PROCESS:

1. Currently OPD has received and recorded in its books and records several hundred judgments between July 1, 2006 and March 31, 2009. The agency assumes that this bill will create more judgments that will require more accounting, tracking, reporting, and collection. The agency must set up a receivable for each person assessed a fee and track the cash collected against this receivable. Also the person that pays the fee often requests a receipt and/or statement that reflect the balance due. The agency assumes that judges will ask the agency to report attorney time as well as non-attorney third party costs for jury trials as per the bill. This information will need to be provided in an expedited time frame to meet the needs of the court. The agency estimates that it will need 1.00 FTE accounting technician to do this work. The amount for this FTE is \$42,990. An additional \$2,600 would be incurred the first year for basic setup costs. This section totals \$45,590 for the first year and \$42,990 for the remaining three years.



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2013 Biennium

Bill # SB0187

Title: Generally revise public defender laws

Primary Sponsor: Shockley, Jim

Status: As Amended in House Committee

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

| | <u>FY 2012 Difference</u> | <u>FY 2013 Difference</u> | <u>FY 2014 Difference</u> | <u>FY 2015 Difference</u> |
|---|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Expenditures: | | | | |
| General Fund | \$0 | \$0 | \$0 | \$0 |
| State Special Revenue | \$0 | \$111,144 | \$161,678 | \$164,912 |
| Revenue: | | | | |
| General Fund | \$0 | \$0 | \$0 | \$0 |
| State Special Revenue | \$61,516 | \$123,155 | \$172,466 | \$203,285 |
| Net Impact-General Fund Balance: | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> |

Description of fiscal impact: This bill requires the Montana Public Defender Commission (PDC) to add its own staff when the public defender state special revenue account has sufficient revenue to sustain any staff position for at least one fiscal year. To pay for these positions the bill increases the fees that clients of the OPD are charged when they have been determined by a judge to have the ability to pay it from \$150 to \$250 for a misdemeanor and from \$500 to \$800 for a felony. The increase in the fees would be used to pay for the two positions. There are two positions in this fiscal note. One is for an auditor and one is for a support staff position, both of which would report directly to the PDC.

FISCAL ANALYSIS

Assumptions:

Office of the Public Defender

- Section 1 (6) (a) of this legislation requires that the PDC hire separate staff apart from the Chief Public Defender. To adhere to this change, the PDC has estimated the need for 2.00 FTE in the following positions: One auditor who would audit operations of the programs as directed by the PDC and report

directly to the PDC the results of those audits. One administrative support staff to support both the commission and the auditor position. The cost estimates are as follows:

- a. The commission auditor's annual salary, benefits, and insurance is \$90,171.
- b. The administrative support staff's annual salary, benefits, and insurance is \$59,737.
- c. A position would only be hired when the increase in revenues received from the change in the fixed fees charged to OPD's clients is sufficient to support it for at least one fiscal year. The fiscal note assumes that 2.00 FTE positions may be hired January 1, 2013. The total annual salary and benefits for these positions for one half of the 2013 fiscal year would be \$96,864. In FY 2014 the total would be \$149,908 and FY 2015 would be \$152,906.
- d. OPD estimates there would be a cost of approximately \$9,380 in FY 2013 for office setup, computer, office supplies, and case management system and Lexis licenses for both positions. In subsequent years the total cost would be approximately \$2,100 per year.
- e. OPD estimates the cost of office rent to be approximately \$3,600 for one half of FY 2013 and approximately \$7,200 in FY 2014 and \$7,344 in FY 2015.
- f. OPD estimates the cost of travel for the commission auditor to be approximately \$1,300 for one half of FY 2013 and approximately \$2,500 per year in subsequent years.

Court's Sentencing Option

2. Section 2 (3) of this legislation requires that the court may order that incarceration not be exercised as a sentencing option in certain misdemeanor cases and if incarceration is not an option, a public defender cannot be assigned. OPD is unable to quantify a financial impact because it cannot determine the number of cases that a court may exercise this option.

Assessments and Collections

3. Section 3 (1) (a) & (b) of this legislation requires that the flat fees be increased from \$150 to \$250 for a misdemeanor and from \$500 to \$800 for a felony case. OPD conducted a random survey of 100 misdemeanor assessments (\$150 each) and 100 felony assessments (\$500 each) and found the total of the assessments to be \$65,000. OPD calculated what the total assessments would be if the fee for misdemeanors was increased to \$250 and felony cases to \$800 and found that the total would come to \$105,000. This produced a 62% increase in the amount assessed. OPD estimates that during FY 2011, courts will assess \$381,572 for payment of the costs of counsel. If this amount is increased by 62% the total assessments for costs of counsel would be \$616,386 in FY 2012. During FY 2011, OPD estimates cash paid by clients that are assessed fees to be \$99,964 which is 26% of the original assessments. Applying the 26% rate to the new assessment amount equals \$161,480 in payments. This amount is reduced by the amount collected under current law of \$99,964 that is used to support current operations.
4. The new cash is \$61,516 for FY 2012. The amount of new cash for FY 2013 is \$123,155; FY 2014 is \$173,466 and FY 2015 is \$203,285.

Chief Public Defender Caseload

5. Section 7 (2) of this legislation prohibits the Chief Public Defender from maintaining a caseload. OPD currently estimates that this change would have no material fiscal impact.
6. There is a 2% per year inflation factor applied to personal services and operating expenses in FY 2014 and FY 2015 in all of the above assumptions.

Judicial Branch

7. The workload of district courts may increase as a result of this legislation; however, the Judicial Branch is unable to estimate the impact on judicial workload or the fiscal impact.

| | <u>Difference</u> | <u>Difference</u> | <u>Difference</u> | <u>Difference</u> |
|---|-------------------|-------------------|-------------------|-------------------|
| Fiscal Impact: Office of the Public Defender | | | | |
| FTE | 0.00 | 1.00 | 2.00 | 2.00 |
| Expenditures: | | | | |
| Personal Services | \$0 | \$96,864 | \$149,908 | \$152,906 |
| Operating Expenses | \$0 | \$14,280 | \$11,770 | \$12,006 |
| TOTAL Expenditures | \$0 | \$111,144 | \$161,678 | \$164,912 |
| Funding of Expenditures: | | | | |
| General Fund (01) | \$0 | \$0 | \$0 | \$0 |
| State Special Revenue (02) | \$0 | \$111,144 | \$161,678 | \$164,912 |
| TOTAL Funding of Exp. | \$0 | \$111,144 | \$161,678 | \$164,912 |
| Revenues: | | | | |
| General Fund (01) | \$0 | \$0 | \$0 | \$0 |
| State Special Revenue (02) | \$61,516 | \$123,155 | \$172,466 | \$203,285 |
| TOTAL Revenues | \$61,516 | \$123,155 | \$172,466 | \$203,285 |

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

| | | | | |
|----------------------------|----------|----------|----------|----------|
| General Fund (01) | \$0 | \$0 | \$0 | \$0 |
| State Special Revenue (02) | \$61,516 | \$12,011 | \$10,788 | \$38,373 |

Technical Notes:

- Section 4 of this legislation requires the clerk of the sentencing court to collect fees from OPD clients and forward the funds to the Department of Revenue for deposit in OPD state special revenue fund. OPD will need information from each clerk for each fee assessed to its clients as well as any cash paid by a client so that it may do proper accounting and reporting. If this information is not provided to OPD, it will not be able to comply with required legislative reporting.
- Section 11 of this legislation pertains to conflicts of interest. It is unclear whether FTE in other regions could continue to take conflict cases. If all conflict cases are required to be assigned to contract attorneys, this could result in additional costs to OPD.

X Audit Issue

Sponsor's Initials

Date

Budget Director's Initials

Date



AN ACT GENERALLY REVISING THE MONTANA PUBLIC DEFENDER ACT AND RELATED STATUTES; RESTRICTING AND LIMITING CASELOAD LEVELS FOR THE CHIEF PUBLIC DEFENDER AND DEPUTY PUBLIC DEFENDERS; REQUIRING NOTARIZED AFFIDAVITS OF INDIGENCY; REVISING THE PROVISION FOR PAYMENT BY DEFENDANTS OF PUBLIC DEFENDER SERVICES; AMENDING SECTIONS 2-15-1028, 46-8-101, 46-8-113, 46-8-114, 47-1-102, 47-1-105, 47-1-111, 47-1-202, 47-1-205, 47-1-215, AND 47-1-216, 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 ~~44~~ 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; 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;~~

(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;~~

at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

Section 3. Section 46-8-113, MCA, is amended to read:

"46-8-113. Payment by defendant for assigned counsel -- costs to be filed with court. (1) As Subject to the provisions of subsections (2) and (3), as part of or as a condition under of a sentence that is imposed under the provisions of this title, the court shall require determine whether a convicted defendant to should pay the costs of counsel assigned to represent the defendant as follows; except as provided in subsections (2) and (3):

(a) in every misdemeanor case, \$150; and

~~_____ (b) in every felony case, \$500.~~

~~_____ (2) Costs must be limited to costs incurred by the office of state public defender, provided for in 47-1-201;~~

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

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

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

(b) If the case goes to trial, the defendant shall pay the costs incurred by the office of state public defender for providing the defendant with counsel in the criminal proceeding trial. If the criminal proceeding includes a jury trial, counsel assigned by the The office of state public defender shall file with the court a statement of the hours spent on the case and the costs and expenses incurred and, except as provided in subsection (3), the court shall require the defendant to pay the costs of counsel and other costs and expenses as reflected in the statement for the trial.

(2) Any costs imposed pursuant to this section must be paid in accordance with 46-18-251(2)(e).

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

(3)(4) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay them the costs imposed by subsection (1). The court may find that the

defendant is able to pay only a portion of the costs assessed. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4)(5) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

(6) Any costs imposed under this section must be included in the court's judgment."

Section 4. Section 46-8-114, MCA, is amended to read:

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

Section 5. Section 47-1-102, MCA, is amended to read:

"47-1-102. Purpose. The purposes of this chapter are to:

- (1) establish a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense;
- (2) ensure that the system is free from undue political interference and conflicts of interest;
- (3) provide that public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state;
- (4) establish a system that utilizes state employees, contracted services, or other methods of providing services in a manner that is responsive to and respective of regional and community needs and interests; ~~and~~
- (5) ensure that adequate public funding of the statewide public defender system is provided and managed in a fiscally responsible manner; and

(6) ensure that clients of the statewide public defender system pay reasonable costs for services provided by the system based on the clients' financial ability to pay."

Section 6. Section 47-1-105, MCA, is amended to read:

"47-1-105. Commission -- duties -- report -- rules. The commission shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the commission shall:

(1) establish the qualifications, duties, and compensation of the chief public defender, as provided in 47-1-201, appoint a chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender;

(2) establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) review and approve the strategic plan and budget proposals submitted by the chief public defender and the administrative director;

(4) review and approve any proposal to create permanent staff positions;

~~(5) establish policies and procedures for identifying cases in which public defenders may have a conflict of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

**OFFICE OF THE STATE PUBLIC DEFENDER
FEE ASSESSMENTS BY COURT - FY 2015**

| <u>COURT</u> | <u>Dollars</u> |
|---------------------------------------|----------------|
| Alberton City Court | \$ 72 |
| Baker City Court | 2,000 |
| Belgrade City Court | 1,210 |
| Billings Municipal Court | 850 |
| Bozeman Municipal Court | 11,331 |
| Carbon County Justice Court | 1,750 |
| Columbia Falls City Court | 11,200 |
| Columbus City Court | 1,125 |
| Dawson County Justice Court | 850 |
| Fallon County Justice Court | 625 |
| Fergus County Justice Court | 250 |
| Forsyth City Court | 250 |
| Gallatin County Justice Court | 3,100 |
| Glendive City Court | 2,250 |
| Great Falls Municipal Court | 2,520 |
| Hamilton City Court | 650 |
| Havre City Court | 750 |
| Hill County Justice Court | 1,083 |
| Jefferson County Justice Court | 1,000 |
| Kalispell Municipal Court | 100 |
| Laurel City Court | 7,600 |
| Lewistown City Court | 500 |
| Libby City Court | 6,000 |
| Lincoln County Justice Court, Eureka | 250 |
| Lincoln County Justice Court, Libby | 14,375 |
| Livingston City Court | 3,300 |
| Manhattan City Court | 250 |
| McCone County District Court | 200 |
| Miles City Court | 5,071 |
| Mineral County Justice Court | 1,148 |
| Missoula County Justice Court | 56,285 |
| Missoula Municipal Court | 1,442 |
| Park County Justice Court | 500 |
| Ravalli County Justice Court | 5,650 |
| Red Lodge City Court | 1,750 |
| Rosebud County Justice Court, Forsyth | 1,830 |
| Sheridan County Justice Court | 250 |
| Sidney City Court | 300 |
| Superior City Court | 66 |
| Treasure County Justice Court | 750 |
| Troy City Court | 500 |
| West Yellowstone City Court | 421 |
| White Sulphur Springs City Court | 875 |
| Whitefish City Court | 700 |
| Wibaux County District Court | 800 |
| Yellowstone County Justice Court | 4,000 |
| Big Horn County District Court | 8,800 |
| Blaine County District Court | 3,200 |
| Broadwater County District Court | 8,526 |
| Carbon County District Court | 18,850 |
| Cascade County District Court | 17,600 |
| Chouteau County District Court | 2,750 |
| Custer County District Court | 17,650 |
| Dawson County District Court | 34,700 |
| Fallon County District Court | 800 |

**OFFICE OF THE STATE PUBLIC DEFENDER
FEE ASSESSMENTS BY COURT - FY 2015**

| <u>COURT</u> | <u>Dollars</u> |
|------------------------------------|---------------------|
| Flathead County District Court | 124,050 |
| Gallatin County District Court | 50 |
| Glacier County District Court | 1,000 |
| Hill County District Court | 28,875 |
| Judith Basin County District Court | 800 |
| Lake County District Court | 200 |
| Lincoln County District Court | 4,500 |
| Mineral County District Court | 9,600 |
| Missoula County District Court | 161,209 |
| Musselshell County District Court | 2,400 |
| Park County District Court | 2,800 |
| Phillips County District Court | 300 |
| Powder River County District Court | 800 |
| Ravalli County District Court | 65,709 |
| Richland County District Court | 44,231 |
| Roosevelt County District Court | 6,400 |
| Rosebud County District Court | 650 |
| Sanders County District Court | 13,350 |
| Sheridan County District Court | 6,400 |
| Sweetgrass County District Court | 300 |
| Treasure County District Court | 800 |
| Valley County District Court | 1,986 |
| Wheatland County District Court | 800 |
| Yellowstone County District Court | 266,270 |
| TOTAL | \$ 1,014,134 |

| SUMMARY | | |
|--|-------|-----------|
| Lower Courts: Number assessed and Value | 46 \$ | 157,779 |
| Percentage of total that assessed | 30% | |
| District Courts: Number assessed and Value | 33 \$ | 856,355 |
| Percentage of total that assessed | 51% | |
| All Courts: Number assessed and Value | 79 \$ | 1,014,134 |
| Percentage of total that assessed | 38% | |

Office of the State Public Defender
County Collection Report Summary - FY 2015

| <u>Court</u> | <u>Dollars</u> |
|---------------------------------------|----------------|
| Alberton City Court | \$ 72 |
| Baker City Court | 1,005 |
| Belgrade City Court | 1,080 |
| Billings Municipal Court | 755 |
| Bozeman Municipal Court | 11,190 |
| Carbon County Justice Court | 1,772 |
| Columbia Falls City Court | 7,318 |
| Columbus City Court | 1,360 |
| Dawson County Justice Court | 1,480 |
| Fallon County Justice Court | 625 |
| Fergus County Justice Court | 250 |
| Flathead County Justice Court | 1,010 |
| Forsyth City Court | 170 |
| Gallatin County Justice Court | 2,993 |
| Glendive City Court | 2,280 |
| Great Falls Municipal Court | 12,879 |
| Hamilton City Court | 2,184 |
| Havre City Court | 280 |
| Hill County Justice Court | 530 |
| Jefferson County Justice Court | 940 |
| Kalispell Municipal Court | 2,087 |
| Laurel City Court | 7,444 |
| Lewis & Clark County Justice Court | 100 |
| Lewistown City Court | 700 |
| Libby City Court | 3,737 |
| Lincoln County Justice Court, Libby | 11,219 |
| Livingston City Court | 2,406 |
| Madison County Justice Court | 400 |
| Miles City City Court | 1,910 |
| Mineral County Justice Court | 917 |
| Missoula County Justice Court | 44,451 |
| Missoula Municipal Court | 4,165 |
| Park County Justice Court | 820 |
| Ravalli County Justice Court | 1,620 |
| Red Lodge City Court | 2,610 |
| Richland County Justice Court | 707 |
| Rosebud County Justice Court, Forsyth | 1,105 |
| Sidney City Court | 350 |
| Stillwater Justice Court | 365 |
| Superior City Court | 102 |
| West Yellowstone City Court | 281 |

| | |
|------------------------------------|-------------------|
| White Sulphur Springs City Court | 15 |
| Whitefish City Court | 735 |
| Yellowstone County Justice Court | 3,813 |
| Beaverhead County District Court | 127 |
| Big Horn County District Court | 1,097 |
| Blaine County District Court | 1,295 |
| Broadwater County District Court | 2,500 |
| Carbon County District Court | 1,449 |
| Cascade County District Court | 3,000 |
| Choteau County District Court | 150 |
| Custer County District Court | 6,130 |
| Daniels County District Court | 130 |
| Dawson County District Court | 7,293 |
| Fallon County District Court | 1,015 |
| Flathead County District Court | 19,170 |
| Gallatin County District Court | 50 |
| Glacier County District Court | 900 |
| Hill County District Court | 6,068 |
| Judith Basin County District Court | 60 |
| Lake County District Court | 1 |
| Lincoln County District Court | 1,422 |
| Meagher County District Court | 800 |
| Mineral County District Court | 2,163 |
| Missoula County District Court | 41,484 |
| Musselshell County District Court | 2,108 |
| Park County District Court | 1,288 |
| Phillips County District Court | 300 |
| Ravalli County District Court | 13,871 |
| Richland County District Court | 7,104 |
| Roosevelt County District Court | 891 |
| Rosebud County District Court | 3,590 |
| Sanders County District Court | 4,113 |
| Sheridan County District Court | 1,300 |
| Treasure County District Court | 10 |
| Valley County District Court | 1,971 |
| Wheatland County District Court | 73 |
| Yellowstone County District Court | 44,336 |
| Total | \$ 319,488 |

| SUMMARY | | |
|---|------------|-------------------|
| Lower Courts: Number assessed and Value | 44 | \$ 142,230 |
| Percentage of total that assesse | 29% | |
| District Courts: Number assessed and Value | 34 | 177,258 |
| Percentage of total that assesse | 61% | |
| All Courts: Number assessed and Value | 78 | 319,488 |
| Percentage of total that assesse | 38% | |

PUBLIC DEFENDER COMMISSION RESOLUTION

Whereas, the 2005 Montana Legislature passed the Montana Public Defender Act, codified under Title 47 creating a statewide public defender system to deliver public defender services in all courts in the state; and

Whereas, the system is supervised by the Public Defender Commission (Commission) and administered by the Office of the State Public Defender (OPD); and

Whereas, 47-1-110, MCA, establishes a state special revenue public defender account for deposit of payments for the cost of a public defender ordered by the court pursuant to 46-8-113, MCA, as part of a sentence in a criminal case; and

Whereas, according to state and accounting rules, OPD is to account for assessments of costs by a judge as receivables and for the receipt of cash as a reduction of the receivable and as revenues; and

Whereas, in order to comply with state and accounting rules the agency needs information in sufficient detail from the courts; and

Whereas, OPD is required by 47-1-201 (10) (b), MCA, "to report to the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid"; and

Whereas, OPD is not receiving information from the courts in the level of detail needed to perform the accounting and required reporting noted above; and

Whereas, public defender costs are assessed by individual judges in the various courts and made part of a legal sentencing that is up to the court to enforce, and therefore OPD does not have the legal authority to enforce payment of these fees; and

Whereas, OPD does not have the authority to refer its clients to the Department of Revenue (DOR) or any other collection agency to enforce collection of the court-ordered debts, which is a requirement of state agencies pursuant to the Montana Operations Manual Policy 320, Section XII; and

Whereas, OPD does not have the personnel or funds to commit toward collecting the detailed information it is not getting from 207 courts;

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC DEFENDER COMMISSION OF THE STATE OF MONTANA:

1. The Commission understands that OPD can only record cash collected in summary until a resolution is found, because the agency does not receive detailed information from the courts and therefore will be out of compliance with state and accounting policy.
2. The Commission further understands that OPD will refrain from referring any open client account to the DOR or any other collection agency due to the facts noted above.

Adopted October 18, 2013

Richard E. "Fritz" Gillespie, Chair
Montana Public Defender Commission

OFFICE OF THE STATE PUBLIC DEFENDER
COLLECTION AND ASSESSMENT PROJECT

PROPOSED ASSESSMENT, CASH RECEIPT, ACCOUNTING AND REPORTING, AND COLLECTION PROCESS

A Assessment Process

- 1 Courts assesses fees to clients
- 2 Notice of the amount assessed is placed on the county collection report (Line 8)
- 3 Notice of any change in assessment is placed on the report (They change line 8)
- 4 Notice that all other amounts due have been received is placed on the report (Line 10)

B Cash Receipt Process

- 1 Client gives all cash to the clerk of court (Line 2)
- 2 Clerk of court fills out all information as required on the form
- 3 The form is both emailed & a copy delivered the County Treasurer - email for automation
- 4 Clerk of court gives the cash and the form to the County Treasurer - Line 2 ties to cash given
- 5 County Treasure assures that the form is complete before accepting the cash - Line 2 = cash
- 6 County Treasure transfers the cash and the backup (the forms) to DOR
- 7 DOR assures that the cash transmitted ties to the forms delivered
- 8 DOR deposits the cash into OPD's state special revenue account
- 9 DOR uploads the report information directly into the accounts payable system

C Accounting and Reporting

- 1 OPD reports assessments, cash, allowance, etc. directly from the receivable system
- 2 OPD uses this information to do accounting entries in the general ledger system
- 3 DOR updates accounts receivable system for any amounts collected under per section D.

D Collections Process

- 1 OPD develops a collection policy - when collection process is triggered, no of notices, etc.
- 2 DOR implements policy
- 3 The accounts receivable clock starts when OPD is notified that all other amounts are received
- 4 The 1st (and only) dunning letter is sent after OPD's target date is past - automated in AR
- 5 If amounts are not received by X date after that letter then DOR begins collection process
- 6 After collection process is complete - account is either fully collected or
- 7 Amounts are removed from OPD's books after notice from DOR (Legal assessment is not touched)

OFFICE OF THE STATE PUBLIC DEFENDER
 COLLECTION AND ASSESSMENT PROJECT

ANY MONTANA COUNTY
 COUNTY TREASURER COLLECTION REPORT

| | | |
|-----------------|-------------------------------------|-------------|
| ASSESSING COURT | ANY MONTANA COURT | |
| Depositor | Jane Smith | |
| 1 | DATE OF DEPOSIT | 02/15/2015 |
| 2 | DOLLAR AMOUNT DEPOSITED | \$ 50.00 |
| 3 | NAME | |
| | FIRST | John |
| | LAST | Doe |
| | MI | J |
| | (JR/SR/III, ETC) | Jr. |
| 4 | ADDRESS | |
| | STREET | 2222 |
| | PO BOX | |
| | CITY | Helena |
| | STATE | MT |
| 5 | SSN | 5xx-xx-xxxx |
| 6 | CASE ID | DC2015012 |
| 7 | DATE OF CASE | 01/15/2015 |
| 8 | TOTAL AMOUNT DUE | \$ 250.00 |
| 9 | BALANCE DUE | \$ 200.00 |
| 10 | All other amounts due are received? | Yes |



OFFICE OF THE STATE PUBLIC DEFENDER
2017 Biennium
HB 72

Revenue Department

| | Pay Band | Salary | 17.40% | Health Ins. | TOTAL SALARY & BENEFITS | Office Setup (1st year only) | Computer (1st year only) | JW & Adobe License (1st year only) | Network/E mail Maint. | JW Maint./year | Long Distance | Office Supplies/year | TOTAL SETUP | Postage | Rent | Travel | GRAND TOTAL |
|---------------------------------|----------|----------------|---------------|---------------|-------------------------|------------------------------|--------------------------|------------------------------------|-----------------------|----------------|---------------|----------------------|---------------|------------------|------------------|-----------------|-------------------|
| | | | | | | | | | | | | | | | | | |
| Revenue Dept. Manager | 7 | 76,462 | 13,304 | 10,158 | 99,925 | 1,600 | 1,500 | 1,225 | 470 | 278 | 200 | 300 | 5,573 | - | - | 5,000 | \$ 110,498 |
| Accountant | 6 | 51,100 | 8,891 | 10,158 | 70,149 | 1,600 | 1,500 | 1,225 | 470 | 278 | 200 | 300 | 5,573 | - | - | 500 | \$ 76,223 |
| Collection Specialist | 5 | 44,625 | 7,765 | 10,158 | 62,548 | 1,600 | 1,500 | 1,225 | 470 | 278 | 200 | 300 | 5,573 | - | - | 500 | \$ 68,621 |
| Collection Technician | 4 | 37,159 | 6,466 | 10,158 | 53,783 | 1,600 | 1,500 | 1,225 | 470 | 278 | 200 | 300 | 5,573 | - | - | 500 | \$ 59,856 |
| Accounting Technician | 4 | 37,159 | 6,466 | 10,158 | 53,783 | 1,600 | 1,500 | 1,225 | 470 | 278 | 200 | 300 | 5,573 | - | - | 500 | \$ 59,856 |
| Accounting Technician | 4 | 42,965 | 7,476 | 10,158 | 60,599 | 1,600 | 1,500 | 1,225 | 470 | 278 | 200 | 300 | 5,573 | - | - | 500 | \$ 66,672 |
| Printer/Copier Fax | - | - | - | - | - | 7,000 | - | - | - | - | - | - | 7,000 | - | - | - | \$ 7,000 |
| Telephone System | - | - | - | - | - | 10,000 | - | - | - | - | - | - | 10,000 | - | - | - | \$ 10,000 |
| Network Hardware/Cable & Wiring | - | - | - | - | - | 6,300 | - | - | - | - | - | - | 6,300 | - | - | - | \$ 6,300 |
| Network Installation | - | - | - | - | - | 2,400 | - | - | - | - | - | - | 2,400 | - | - | - | \$ 2,400 |
| FY 2016 TOTAL | | 289,470 | 50,368 | 60,948 | \$ 400,786 | 35,300 | 9,000 | 7,350 | 2,820 | 1,671 | 1,200 | 1,800 | 59,141 | \$ 17,900 | \$ 15,000 | \$ 7,500 | \$ 500,327 |
| FY 2017 TOTAL | | 289,470 | 50,368 | 60,948 | \$ 400,786 | - | - | - | - | - | - | - | 7,491 | \$ 17,900 | \$ 15,000 | \$ 7,500 | \$ 448,677 |

| | FY 16 | FY 17 |
|---------------|-------------------|-------------------|
| Payroll | 400,786 | 400,786 |
| Ongoing Costs | 47,891 | 47,891 |
| OTOs | 51,650 | - |
| TOTAL | \$ 500,327 | \$ 448,677 |

21

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



These changes can be completed as part of routine maintenance. This work does not account for the detailed tracking of individual payers, but only collection of the monthly revenue as a whole.

Office of Public Defender (OPD)

3. The Executive Budget currently includes \$261,790 from the state special revenue. Since this bill redirects the revenue to the general fund, this fiscal note assumes that the expenditures currently funded from these revenues would be funded from the general fund.
1. Montana judges from both the district courts and courts of limited jurisdictions have the ability to assess those convicted of a crime to pay certain fees that include all or part of their public defender costs if they use this service. There are 207 courts in the state of Montana. If convicted of a felony a judge could assess this individual either the actual cost of the service or \$800. If convicted of a misdemeanor a judge could assess actual costs or \$250. The amount of the public defender fee and/or the time for payment is subject to change. By statute, the clerks of court collect the public defender fee assessments.
4. As per state law and policy, as interpreted by the Legislative Audit Division, the agency is to track by individual all assessments made by judges and cash collected by the clerks of court. The auditor has noted that the agency must also have a collection process to deal with those that do not pay.
5. During the past four legislative audits, the agency has received seven recommendations to adhere to state law or policy that were related to these fees. The agency has not been able to comply, because it does not have the resources to contact the 207 courts, account for new assessments and collections on all new and past assessments, report on activity as required by law, and have an active collection process to address those that do not pay.
6. The agency estimates that it receives about 2,000 new assessments per year. The agency also estimates that it has about 2,000 individual collections per year. To actively collect an account the agency would need reliable contact information and a social security number. The agency would also need to know if the value of an assessment has been changed by a judge and when other amounts assessed that have a greater priority in law than the public defender fee were collected.
7. The agency estimates that in order to adhere to state law and policy it would need to develop a revenue and collection function. The estimated cost of implementing such a collection infrastructure would take 6.00 FTE and approximately \$500,000 per year from the general fund, whether this infrastructure were established in the Office of the Public Defender or another state agency.
8. If after an attempt at collection has been made, bad debts can be sent to the Department of Revenue. If there is sufficient identifiable information for each individual (including social security number), the Office of Public Defender could enter into a memorandum of understanding with the Department of Revenue where the Department of Revenue would attempt to collect the bad debt for a percentage of the collections.