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*** Bill No. ***

Introduced By *****

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act defining household and gross household income in the eligibility determination process for assigning counsel at public expense; amending sections 47-1-103 and 47-1-111, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 47-1-103, MCA, is amended to read:

"47-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Commission" means the public defender commission established in 2-15-1028.

(2) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

(3) "Gross household income" means all income received by all individuals of a household while they are members of the household.

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~~(3)~~ (4) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

(5) "Household" is defined as an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.

(a) The term does not include bona fide lessees, tenants, roommates, or roomers and boarders on contract.

(b) The financial status of a household member who is an alleged victim of the charged offense shall not be considered.

~~(4)~~ (6) "Office" means the office of state public defender established in 47-1-201.

~~(5)~~ (7) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, including attorneys employed by or under contract with the office of appellate defender.

~~(6)~~ (8) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to this chapter."

{*Internal References to 47-1-103:*
3-5-511 3-5-604 26-2-506 26-2-506
26-2-508 26-2-510 46-15-115 46-15-115

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46-15-116 46-21-201 46-21-201 }

Section 2. Section 47-1-111, MCA, is amended to read:

"47-1-111. Eligibility -- determination of indigence -- rules. (1) (a) When a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

(d) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an

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affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, ~~as defined in 15-30-2337,~~ is at or less than 133% of the

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poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The commission shall establish procedures and adopt rules to implement this section. Commission procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not

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constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit individual public defenders from performing eligibility screening pursuant to this section."

{*Internal References to 47-1-111:*
41-3-425 46-8-101 47-1-103 47-1-104
47-1-110 53-20-112 61-5-218 }

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