

Complete Shaded Areas

Form last update 1/18/2012

Proposed 2013 Session Legislation

Agency Name & No: Office of the State Public Defender - 61080

Priority Number: **Filename:**

Short Title: Prohibit Case Dumping

Agency Contact Person/Phone: Harry Freebourn, 496-6084

1. Purpose:

Defines applicants who have previously retained private counsel and whose financial resources have been exhausted as "not indigent" for purposes of obtaining a public defender. Amends 47-1-111.

2. Background:

3. Fiscal Impact by Fund Type: *This impact should be as specific as possible.*

Unknown level of cost savings

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only Federal Requirement Audit Recommendation (Audit No.) Major Legislation
- Anticipated to be Controversial Legislation Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item Number: Local Government Fiscal Impact
- Increases FTE, or Decreases FTE by List FTE amount and program
- Increases Existing Revenue Tax Fee Penalty [amount in #3]
- Decreases Existing Revenue Tax Fee Penalty [amount in #3]
- Establishes New Revenue Tax Fee Penalty [amount in #3]
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

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ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.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is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.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 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 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) An applicant is not indigent if that applicant previously retained private counsel to handle any matter of that applicant's case including, but not limited to, any pretrial hearings, trial, or sentencing.

(a) Private counsel is defined as a licensed attorney who has agreed to represent the applicant for monetary gain.

(b) An applicant is not indigent for purposes of obtaining a public defender under this title if private counsel has not received payment from the applicant for the contracted services with the private attorney.

(c) An applicant is not indigent for purposes of obtaining a public defender under this title if private counsel handles the applicant's case before any district court and, after conviction and sentencing, the applicant no longer has funds to appeal to the Montana Supreme Court.

~~(45)~~ 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.

~~(56)~~ A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

~~(67)~~ 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 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.

History: En. Sec. 14, Ch. 449, L. 2005; amd. Sec. 2, Ch. 467, L. 2009; amd. Sec. 7, Ch. 344, L. 2011.