

1 SENATE BILL NO. 59

2 INTRODUCED BY R. DRISCOLL

3 BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE COURT'S ROLE IN THE ELIGIBILITY
6 DETERMINATION PROCESS FOR ASSIGNING COUNSEL AT PUBLIC EXPENSE; AND AMENDING SECTION
7 47-1-111, MCA."

8

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

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

12 **"47-1-111. Eligibility -- determination of indigence -- rules.** (1) (a) When a court orders the office to
13 assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to
14 a determination under this section.

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17 appointment so that the court's order may be rescinded.

18 (c) (i) The applicant may request that the court conduct a hearing on the motion to rescind appointment.
19 If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

20 (ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public
21 defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the
22 hearing is limited to determining the financial eligibility of the applicant for public defender services.

23 (iii) Only evidence related to the applicant's financial eligibility for public defender services may be
24 introduced at the hearing.

25 (iv) The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.

26 (v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial
27 eligibility for public defender services.

28 (vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or
29 evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may
30 be used during any criminal action.

1 (vii) Evidence regarding financial eligibility under this section may not be used in any criminal action,
 2 except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's
 3 claim of entitlement to public defender services.

4 (d) If the applicant does not request a hearing on the motion to rescind appointment, does not appear
 5 at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial
 6 eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to
 7 have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment
 8 of counsel to be rescinded.

9 ~~(e)~~(e) A person for whom counsel is assigned is entitled to the full benefit of public defender services
 10 until the ~~court's order requiring the assignment is rescinded~~ court grants the motion to rescind appointment and
 11 orders the assignment of counsel to be rescinded.

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

15 (2) (a) An applicant for public defender services who is eligible for a public defender because the
 16 applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise
 17 the defendant that the defendant is subject to criminal charges for any false statement made on the financial
 18 statement.

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

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

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

28 (3) An applicant is indigent if:

29 (a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the
 30 poverty level set according to the most current federal poverty guidelines updated periodically in the Federal

1 Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2);
2 or

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

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

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

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

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

13 (b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from
14 the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the
15 members of the applicant's household;

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

18 (d) must avoid unnecessary duplication of processes; and

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

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