

Unofficial Draft Copy

As of: September 2, 2016 (10:21am)

LCpd04

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act requiring the department of public health and human services to make determinations of indigence; requiring the court to schedule a hearing on rescission of the appointment of a public defender prior to ordering rescission; requiring the department of public health and human services to establish policies for the determination of indigence; amending section 47-1-111, MCA; and providing an effective date and an applicability date."

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

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

"47-1-111. Eligibility -- determination of indigence by the department of public health and human services -- rules. (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, 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defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded~~ The department of public health and human services determines the eligibility for public defender services for an

applicant. If the department later determines the applicant may no longer be eligible for public defender services, the department shall notify the court as soon as possible and the court shall schedule a hearing on whether to rescind public defender services for the applicant prior to ordering rescission.

(c) (i) The applicant may ~~request that the court conduct~~ waive ~~a~~ the hearing on the motion to rescind rescission of appointment. If the applicant ~~requests a~~ does not waive the hearing on the ~~motion to rescind~~ rescission of appointment, the court shall hold the hearing and a representative of the department shall attend the hearing.

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

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

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

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

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence

introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

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

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

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

(f) 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~~ department is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services 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~~ department of public health and human services. 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, or for a delay in eligibility determination. 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) 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~~ presiding court if additional information becomes available or if the applicant's financial circumstances change.

(6) The ~~commission~~ department of public health and human services shall establish procedures and adopt rules for presiding courts to implement this section. ~~Commission~~ These procedures and rules:

(a) must ensure that the eligibility determination process is done timely, and 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; and

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

~~(e) must prohibit a public defender from performing~~

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~~eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may perform eligibility screening pursuant to this section."~~

{*Internal References to 47-1-111:*

41-3-425x 46-8-101x 47-1-103x 47-1-104x
47-1-110x 53-20-112x 61-5-218x }

NEW SECTION. **Section 2. {standard} Effective date.** [This act] is effective July 1, 2017.

NEW SECTION. **Section 3. {standard} Applicability.** [This act] applies to all applicants for public defender services who submit an application for services on or after July 1, 2017.

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