

SENATE BILL NO. 12

INTRODUCED BY R. LYNCH

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS ON PUBLIC DEFENDER REPRESENTATION RELATED TO LOCAL GOVERNMENT ORDINANCES; REQUIRING A LOCAL GOVERNMENT TO REIMBURSE THE OFFICE OF STATE PUBLIC DEFENDER FOR PROVIDING REPRESENTATION TO CERTAIN DEFENDANTS CHARGED WITH AN ALLEGED VIOLATION OF A LOCAL GOVERNMENT ORDINANCE; REQUIRING A LOCAL GOVERNMENT TO PROVIDE ASSISTANCE OF COUNSEL TO CERTAIN DEFENDANTS CHARGED WITH AN ALLEGED VIOLATION OF A LOCAL GOVERNMENT ORDINANCE; REVISING THE PAYMENT OF CERTAIN INVESTIGATION AND TRIAL-RELATED COSTS AND FEES; SUPERSEDING THE UNFUNDED MANDATE LAWS; AND AMENDING SECTIONS 26-2-506, 26-2-508, 26-2-510, 46-1-507, 46-4-304, 46-8-101, 46-8-113, 46-8-114, 46-12-210, 46-14-202, 46-15-115, 47-1-104, AND 47-1-119, MCA."

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

NEW SECTION. Section 1. Public defender reimbursement. (1) Except as provided in subsection (2), if an individual is charged solely with an alleged violation of an ordinance adopted by a local government, the text of the ordinance specifies that the penalty for a violation includes the possibility of incarceration, the prosecutor affirmatively asserts that incarceration will be sought, and the office of state public defender is appointed to represent the individual pursuant to 47-1-104, then the local government that adopted the ordinance shall reimburse the office of state public defender for the following costs associated with providing representation:

(a) hourly costs of appointed counsel as set by the office of state public defender in administrative rule for the actual number of hours spent providing public defense services;

(b) the actual client costs paid by the office of state public defender, including costs related to case investigation, client evaluations, expert witnesses, discovery, exhibits, and other costs directly related to the

1 defense of the individual; and

2 (c) other costs paid by the office of state public defender as provided in 47-1-119(4).

3 (2) If an individual is charged solely with an alleged violation of an ordinance adopted by a local
4 government and the text of that ordinance does not specify a penalty, but another local ordinance that sets the
5 penalty for a violation includes the possibility of incarceration, the local government shall immediately provide
6 counsel to the defendant.

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8 **NEW SECTION. Section 2. Exceptions to assignment of counsel at public expense.** (1) A court
9 may not order the assignment of counsel of a public defender from the office of state public defender under this
10 chapter for a person charged solely with an alleged violation of an ordinance adopted by a local government
11 when the text of that ordinance does not specify a penalty, but another local ordinance that sets the penalty for
12 a violation includes the possibility of incarceration. If the defendant is not charged with any violation of state law
13 for which incarceration is a sentencing option, it is the responsibility of the local government to provide counsel
14 as required in [section 1(2)].

15 (2) (a) Except as provided in subsection (2)(b), a public defender may not be assigned to act as a
16 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act as
17 provided in Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

18 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public
19 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad
20 litem in a proceeding described in subsection (2)(a) if the appointment is separate from the attorney's service
21 for the statewide public defender system and does not result in a conflict of interest.

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23 **Section 3.** Section 26-2-506, MCA, is amended to read:

24 **"26-2-506. Fees paid by party subpoenaing -- exceptions.** (1) Except as provided in subsection
25 (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused
26 the witness to be subpoenaed.

27 (2) (a) When a witness is subpoenaed by a public defender, as defined in 47-1-103, the fees and
28 expenses must be paid by the office of state public defender as provided in 47-1-119.