



MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

Room 110 Capitol Building * P.O. Box 201711 * Helena, MT 59620-1711 * (406) 444-2986 * FAX (406) 444-3036

Director
AMY CARLSON

DATE: September 30, 2010
TO: Legislative Finance Committee
FROM: Pat Gervais, Senior Fiscal Analyst
RE: Bill draft requests related to OPD

At its June 2010 meeting the Legislative Finance Committee (LFC) voted to request two bill drafts related to the Office of Public Defender (OPD).

- (1) To remove the potential for jail time as a penalty for certain misdemeanor offenses
- (2) To return financial responsibility for public defense services to the local entity in cases where the need was driven by local ordinances carrying the potential for jail time

At the time the committee requested the drafts it did not determine the specific provisions to be included in the draft legislation, but instead asked the law and justice reference book subcommittee to include these items in its hearings. While the reference book subcommittee discussed the various reference book items, including the two above, it did not include formal action or recommendation from the subcommittee to the LFC regarding these two bill draft requests.

Removal of Jail Time

The issue of jail time associated with some misdemeanor offenses as a contributor to agency caseload and costs has been a topic of interest to the agency and Public Defender Commission. The agency submitted an agency request for proposed legislation to the Law and Justice Interim Committee at its final meeting in September. A copy of the handout detailing OPD proposed legislation is attached to this memo. Additionally, a list of the 16 offenses included in the staff report, Public Defender System: Follow up Report, for LFC consideration is attached to this memo.

The agency proposed legislation includes a number of the offenses that were included on the list provided to the LFC for its consideration, such as: first and second offenses for failure to carry proof of insurance, driving with suspended license if not related to a driving under the influence offense, and issuing a bad check. Also included on the OPD list for proposed legislation are: first offense theft, disorderly conduct (reduce jail time from ten days to one day), and public nuisance.

Return Financial Responsibility for Certain Offenses

The possibility of jail time as a penalty for locally adopted misdemeanor offenses has the potential to increase the costs of public defender services. However, the magnitude of this cost

increase has not been quantified. The OPD is gathering data regarding increases in representation and related costs due to local ordinances since creation of the system in 2006ⁱ. It is anticipated that this data will be forwarded to the Legislative Fiscal Division in October 2010.

LFC Action:

In order to continue movement of these bill draft requests through the drafting process it is necessary for the LFC to take action to further define the provisions that should be included in the bill draft. The following options are provided for LFC consideration and action.

Removal of Jail Time

With regard to the bill draft to remove potential jail time penalties from certain misdemeanor offenses the LFC has the following options:

- a. Do not proceed with a committee bill and endorse the elements in the agency bill draft request
- b. Proceed with a committee bill that uses the list of offenses included in the agency proposed legislation as the basis for drafting the committee bill
- c. Proceed with a committee bill that uses the information provided in the June 1, 2010 report titled Public Defender System Follow Up Report to develop a list of offenses to be included in a committee bill
- d. Do not proceed with a committee bill and do not endorse the elements in the agency bill draft request

Financial Responsibility - Local Ordinances with Jail Time

With regard to the bill draft request to place financial responsibility for public defender services on local entities when local ordinances drive the need for representation, the LFC has the following options:

- a. Proceed with the bill draft providing that local government entities are responsible for the costs of public defender services in cases where provisions of locally adopted ordinances drive the need for public defense services
- b. Take no action – the committee bill draft request would be put on hold. An individual committee member could request the bill draft when more information is available.

ⁱ The reference book subcommittee did hear testimony about the entitlement share adjustment for cities and towns that was made at the time the Montana Public Defender Act was adopted.



Brian Schweitzer
Governor

OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

Chief Public Defender
Randi Hood

Proposed Legislation Changes for 2011 Legislative Session

Title 47 Changes

- 47-1-104 Access to jails – allows public defenders access to jailed persons prior to appointment to advise persons of their rights and gather bond information
- 47-1-110 Public defender account – allows recovery of public defender costs from guardianship cases and commitment of developmentally disabled cases where the respondent has sufficient funds
- 47-1-216 Contracted services – allows for flat fee contracts for specialty courts and consortiums with the approval of the Public Defender Commission and effective representation safeguards
- 47-1-205 Office of appellate defender – remove supervision by the Chief Public Defender with budgetary responsibilities remaining with the Chief Public Defender

Changes to Eliminate or Reduce Jail Time

- 61-6-304 No Insurance – remove the jail time for first and second convictions for not carrying proof of insurance and having no insurance
- 61-5-212 Driving while license suspended – remove jail time for a suspensions not related to DUI offenses
- 45-6-301 Theft – remove jail time for a first offense
- 45-6-316 Issuing a bad check – remove jail time
- 45-8-101 Disorderly conduct – reduce jail time from 10 days to 1 day
- 45-8-111 Public Nuisance – remove jail time

Office of Court Administrator Information								
For Office of Public Defender Report to the Legislative Finance Committee								
Misdemeanour Offenses Frequency of Jail Time Ordered - State Statutes								
Offenses Charged More Than 500 Times in Calendar Year 2009								
Statute	Statute_Literal	Jail_Min	Jail_Max	CY2009 Charges Filed	Convictions to Date	Jail Time Ordered as Condition of Sentence	Jail or Portion of Jail Time Suspended	Jail as % of charged
61-6-302(2) [1st]	Fail To Carry Proof Or Exhibit/Insurance In Vehicle - 1st Offense	0	10 Days	11,698	2,723	478	461	4%
45-6-316	Issuing A Bad Check - Misd	0	6 Mo	1,024	380	63	57	6%
61-6-301(4) [1st]	Operating Without Liability Insurance In Effect - 1st Offense	0	10 Days	11,263	4,286	706	679	6%
61-7-108	Fail To Give Notice Of Accident By Quickest Means/Apparent Damage Over \$500	0	20 Days	913	471	83	78	9%
61-5-102(1) [1]	Driving Without a Valid Drivers License - Expired Less Than 180 Days	0	6 Mo	3,508	2,580	407	386	12%
45-9-102(1)	Criminal Possession Of Dangerous Drugs	0	5 Yrs	1,348	601	182	167	14%
61-5-102(1) [2]	Driving Without a Valid Drivers License - Expired More Than 180 Days	0	6 Mo	941	708	149	140	16%
45-10-103	Criminal Possession Of Drug Paraphernalia	0	6 Mo	1,805	928	336	309	19%
61-6-302(2) [2nd]	Fail To Carry Proof Or Exhibit/Insurance In Vehicle - 2nd Offense	0	10 Days	912	474	174	157	19%
61-6-302(2) [3rd+]	Fail To Carry Proof Or Exhibit/Insurance In Vehicle - 3rd Or Subsequent Offense	0	6 Mo	575	290	141	135	25%
45-5-206 [1st]	Partner Or Family Member Assault - 1st Offense	24 Hrs	1 Yr	2,075	778	533	493	26%
45-7-301	Resisting Arrest	0	6 Mo	602	261	169	145	28%
45-6-101(3) [1]	Criminal Mischief - Misdemeanor	0	6 Mo	1,237	605	356	336	29%
61-6-301(4) [2nd]	Operating Without Liability Insurance In Effect - 2nd Offense	0	10 Days	2,088	1,269	639	585	31%
45-5-201	Assault - Misdemeanor	0	6 Mo	1,590	858	496	467	31%
61-8-301(1)(a)	Reckless Driving	0	90 Days	1,285	910	423	401	33%
	Shaded items are included in OPD proposed legislation.							