

HOUSE BILL NO. 268

INTRODUCED BY MEASURE, HALLIGAN

IN THE HOUSE

JANUARY 19, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

 FIRST READING.

FEBRUARY 5, 1991 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

FEBRUARY 6, 1991 PRINTING REPORT.

FEBRUARY 7, 1991 SECOND READING, DO PASS.

FEBRUARY 8, 1991 ENGROSSING REPORT.

FEBRUARY 9, 1991 THIRD READING, PASSED.
AYES, 72; NOES, 22.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 11, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

 FIRST READING.

MARCH 20, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 22, 1991 SECOND READING, CONCURRED IN.

MARCH 23, 1991 THIRD READING, CONCURRED IN.
AYES, 46; NOES, 1.

 RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1991 RECEIVED FROM SENATE.

 SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 9, 1991 THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

APRIL 12, 1991

SIGNED BY SPEAKER.

IN THE SENATE

APRIL 13, 1991

SIGNED BY PRESIDENT.

IN THE HOUSE

APRIL 15, 1991

DELIVERED TO GOVERNOR.

APRIL 20, 1991

RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

APRIL 22, 1991

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

TRANSMITTED TO SENATE.

IN THE SENATE

APRIL 23, 1991

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

APRIL 24, 1991

THIRD READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 24, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 268
 2 INTRODUCED BY Messrs. M. Holley
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN APPELLATE
 5 DEFENDER SYSTEM; CREATING AN APPELLATE DEFENDER COMMISSION
 6 AND THE OFFICE OF APPELLATE DEFENDER; ESTABLISHING DUTIES OF
 7 THE COMMISSION; ESTABLISHING DUTIES OF AND QUALIFICATIONS
 8 FOR THE APPELLATE DEFENDER; PROVIDING AN APPROPRIATION TO
 9 FUND THE COMMISSION AND THE OFFICE OF APPELLATE DEFENDER FOR
 10 THE BIENNIUM; AMENDING SECTION 3-5-901, MCA; AND PROVIDING
 11 AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
 12 DATE."
 13

14 STATEMENT OF INTENT

15 A statement of intent is required for this bill because
 16 [section 2] grants the appellate defender commission
 17 rulemaking authority for the conduct of the commission's
 18 affairs. It is the intent that the commission adopt rules of
 19 procedure necessary to implement and carry out the duties of
 20 the commission.
 21

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

23 NEW SECTION. **Section 1.** Short title. [Sections 1 and 3
 24 through 5] may be cited as the "Appellate Defender Act".

25 NEW SECTION. **Section 2.** Appellate defender commission

1 -- duties -- rules. (1) There is an appellate defender
 2 commission.

3 (2) The commission consists of five members, as
 4 follows:

5 (a) one district judge elected by the district judges
 6 under an elective procedure initiated and conducted by the
 7 supreme court and certified by the chief justice of the
 8 supreme court. The election is considered an appointment for
 9 the purposes of this part.

10 (b) three attorneys appointed by the president of the
 11 Montana state bar association, as follows:

12 (i) at least two attorneys who are experienced in the
 13 defense of felonies, at least one of whom has served a
 14 minimum of 1 year as a full-time public defender for a
 15 governmental agency or a public corporation; and

16 (ii) at least one attorney who has been licensed to
 17 practice law in this state for a minimum of 10 years; and

18 (c) one member of the general public who is not an
 19 attorney or a judge, active or retired, appointed by the
 20 governor.

21 (3) The members shall serve staggered 3-year terms.

22 (4) The commission is allocated to the department of
 23 administration for administrative purposes only pursuant to
 24 2-15-121.

25 (5) A member of the commission may not during a term on

-2- INTRODUCED BILL
 HB 268

1 the commission serve as a county attorney or a deputy county
2 attorney, the attorney general or an assistant attorney
3 general, the United States district attorney or an assistant
4 United States district attorney, or a law enforcement
5 official.

6 (6) Members of the commission may not receive a salary
7 for service on the commission but must be reimbursed for
8 expenses, as provided in 2-18-501 through 2-18-503, while
9 actually engaged in the discharge of official duties.

10 (7) The commission shall make rules for the conduct of
11 its affairs.

12 (8) The commission shall develop a system of indigent
13 appellate defense services.

14 (9) The commission shall propose to the supreme court
15 minimum standards to which all trial and appellate public
16 defenders, including locally appointed private counsel,
17 shall conform.

18 (10) The commission shall compile and keep current a
19 statewide roster of attorneys eligible for appointment by an
20 appropriate court as trial and appellate defense counsel for
21 indigent defendants. The roster must be supplied to all
22 justices and judges in the state.

23 (11) The commission shall establish qualifications,
24 duties, and priorities for the appellate defender, provided
25 for in [section 3], not inconsistent with those established

1 in [section 4].

2 NEW SECTION. Section 3. Office of appellate defender
3 -- appellate defender -- hiring -- dismissal -- staff. (1)
4 There is an office of appellate defender.

5 (2) The appellate defender must be hired by and shall
6 serve at the pleasure of the appellate defender commission.

7 (3) The appellate defender shall hire and supervise the
8 work of supporting personnel authorized by the commission.

9 NEW SECTION. Section 4. Appellate defender --
10 qualifications -- duties. (1) The appellate defender and any
11 deputy or assistant appellate defender:

12 (a) must be an attorney licensed to practice law in
13 this state;

14 (b) shall perform duties as may be provided by law or
15 established by the appellate defender commission; and

16 (c) must have those qualifications otherwise required
17 by the commission.

18 (2) The duties of the appellate defender are to:

19 (a) assume responsibility for appeals from district
20 court and petitions for postconviction relief from
21 proceedings in district court on behalf of indigent
22 defendants only after conviction, as defined by 46-1-201(2),
23 when:

24 (i) the defendant alleges that ineffective assistance
25 of counsel resulted in conviction;

1 (ii) a district judge or the chief justice or an
2 associate justice of the supreme court finds further
3 representation by previously appointed counsel would not
4 serve the interests of justice; or

5 (iii) the appellate defender agrees to assist in or
6 assume responsibility for appeal;

7 (b) aid the commission in compiling and keeping current
8 a statewide roster of attorneys eligible for appointment by
9 an appropriate court as trial and appellate defense counsel
10 for the indigent;

11 (c) keep a record of those services and expenses for
12 the commission; and

13 (d) perform the duties otherwise established by the
14 commission.

15 NEW SECTION. Section 5. Appellate defender --
16 classification -- salary -- expenses. The appellate defender
17 and staff must be classified according to the state
18 classification pay plan and are entitled to salaries, wages,
19 benefits, and expenses as provided in Title 2, chapter 18.

20 **Section 6.** Section 3-5-901, MCA, is amended to read:

21 ***3-5-901.** State assumption of certain district court
22 expenses. (1) Effective July 1, 1985, the state shall, to
23 the extent that money is appropriated, fund the following
24 district court expenses in criminal cases only:

25 (a) salaries of court reporters;

1 (b) transcripts of proceedings;

2 (c) witness fees and necessary expenses;

3 (d) juror fees;

4 (e) indigent defense; and

5 (f) expenses of the appellate defender commission and
6 the office of appellate defender; and
7 (f)(g) psychiatric examinations.

8 (2) The department of commerce, in consultation with
9 the district judges for each judicial district and the
10 appellate defender commission, shall include within the
11 department's biennial budget request to the legislature a
12 request for funding the expenses listed in subsection (1).

13 (3) (a) If money appropriated for the expenses listed
14 in subsection (1):

15 (i) exceeds the amount necessary to fully fund those
16 expenses, the excess amount must be used for district court
17 grants as provided in 7-6-2352; or

18 (ii) is insufficient to fully fund those expenses, the
19 appellate defender commission and the office of appellate
20 defender must be funded first and the county is responsible
21 for payment of the balance.

22 (b) If no money is appropriated, the county is
23 responsible for payment of all expenses."

24 NEW SECTION. Section 7. Implementation of staggered
25 terms. (1) To implement the staggered-term system provided

1 for in [section 2(3)], beginning January 1, 1991, the first
2 terms of the members are as follows:

3 (a) the member of the general public shall serve a
4 1-year term;

5 (b) two of the attorney members shall serve 2-year
6 terms, as designated by the president of the Montana state
7 bar association at the time of appointment; and

8 (c) the other members shall serve 3-year terms.

9 (2) Upon expiration of the terms provided in subsection
10 (1), each member shall serve a 3-year term.

11 NEW SECTION. Section 8. Initial report to legislature.

12 At the end of the first biennium following the selection of
13 the first appellate defender, the appellate defender
14 commission shall submit a report to the legislature
15 evaluating the performance and needs of the office of
16 appellate defender.

17 NEW SECTION. Section 9. Appellate defender --

18 appropriation. The following money is appropriated from
19 funds available as provided in 3-5-901(2) to the appellate
20 defender commission for the operation of the commission and
21 the office of appellate defender:

22	Fiscal year 1992	\$100,000
23	Fiscal year 1993	100,000

24 NEW SECTION. Section 10. Codification instruction. (1)

25 [Sections 1 and 3 through 5] are intended to be codified as

1 an integral part of Title 46, chapter 8, part 2, and the
2 provisions of Title 46, chapter 8, part 2, apply to
3 [sections 1 and 3 through 5].

4 (2) [Section 2] is intended to be codified as an
5 integral part of Title 2, chapter 15, part 10, and the
6 provisions of Title 2, chapter 15, part 10, apply to
7 [section 2].

8 NEW SECTION. Section 11. Retroactive applicability.

9 [This act] applies retroactively, within the meaning of
10 1-2-109, to January 1, 1991.

11 NEW SECTION. Section 12. Effective date. [This act] is

12 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0268, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating an appellate defender system; creating an appellate defender commission and the office of appellate defender; establishing duties of the commission; establishing duties of and qualifications for the appellate defender; providing an appropriation to fund the commission and the office of appellate defender for the biennium; amending section 3-5-901, MCA; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. Staff at the Department of Administration would include a 1.00 FTE attorney, grade 18/step 2 and an administrative secretary II, grade 11/step 2.
2. There is a commission of five individuals which meets six times per year. Commission costs include mileage for 400 roundtrip miles, lodging for one night, and meals for two days.
3. The appellate defender would make at least 10 trips to Deer Lodge for 112 roundtrip miles to consult with indigent prisoners who are appealing convictions.
4. State rental space of 400 square feet would be available to house the proposed office of the appellate defender.
5. The Department of Commerce will include within its biennial budget a request for the proposed office, which will be paid for from the district court reimbursement appropriation.
6. The Department of Administration will bill the Department of Commerce monthly for its expenses.

FISCAL IMPACT:

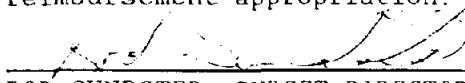
	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Department of Administration:</u>						
<u>Expenditures:</u>						
FTE	0.00	2.00	2.00	0.00	2.00	2.00
Personal Services	0	62,186	62,186	0	62,093	62,093
Operating Costs	0	11,806	11,806	0	11,010	11,010
Equipment	0	10,898	10,898	0	0	0
Total	0	84,890	84,890	0	73,103	73,103
<u>Funding:</u>						
General Fund for District Courts	2,828,421	2,828,421	0	2,826,608	2,826,608	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

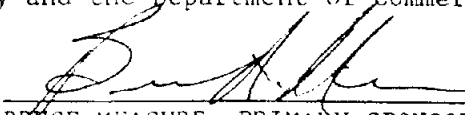
The office will be funded from district court reimbursements. Section 6 amends 3-5-901, MCA, to fully fund the expenses of the office of appellate defender prior to reimbursing district court costs.

TECHNICAL NOTES:

The Department of Administration will require expenditure authority and the Department of Commerce will have the district court reimbursement appropriation.



 ROD SUNDSTED, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning



 BRUCE MEASURE, PRIMARY SPONSOR DATE

Fiscal Note for HB0268, as introduced.

2-4-91
HB 268

APPROVED BY COMMITTEE ON JUDICIARY

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10 AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
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13 defense of felonies, at least one of whom has served a
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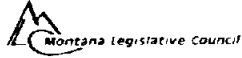
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19 attorney or a judge, active or retired, appointed by the
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21 (3) The members shall serve staggered 3-year terms.

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23 administration for administrative purposes only pursuant to
24 2-15-121.

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-2- SECOND READING
HB 268



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2 attorney, the attorney general or an assistant attorney
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3 -- appellate defender -- hiring -- dismissal -- staff. (1)

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8 (2) The department of commerce, in consultation with
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12 request for funding the expenses listed in subsection (1).

13 (3) (a) If money appropriated for the expenses listed
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25 [Sections 1 and 3 through 5] are intended to be codified as

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3 [sections 1 and 3 through 5].

4 (2) [Section 2] is intended to be codified as an
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6 provisions of Title 2, chapter 15, part 10, apply to
7 [section 2].

8 NEW SECTION. Section 11. Retroactive applicability.

9 [This act] applies retroactively, within the meaning of
10 1-2-109, to January 1, 1991.

11 NEW SECTION. Section 12. Effective date. [This act] is

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-End-

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21 "3-5-901. State assumption of certain district court
22 expenses. (1) Effective July 1, 1985, the state shall, to
23 the extent that money is appropriated, fund the following
24 district court expenses in criminal cases only:

25 (a) salaries of court reporters;

1 (b) transcripts of proceedings;

2 (c) witness fees and necessary expenses;

3 (d) juror fees;

4 (e) indigent defense; and

5 (f) expenses of the appellate defender commission and
6 the office of appellate defender; and
7 {f}{g} psychiatric examinations.

8 (2) The department of commerce, in consultation with
9 the district judges for each judicial district and the
10 appellate defender commission, shall include within the
11 department's biennial budget request to the legislature a
12 request for funding the expenses listed in subsection (1).

13 (3) (a) If money appropriated for the expenses listed
14 in subsection (1):

15 (i) exceeds the amount necessary to fully fund those
16 expenses, the excess amount must be used for district court
17 grants as provided in 7-6-2352; or

18 (ii) is insufficient to fully fund those expenses, the
19 appellate defender commission and the office of appellate
20 defender must be funded first and the county is responsible
21 for payment of the balance.

22 (b) If no money is appropriated, the county is
23 responsible for payment of all expenses."

24 NEW SECTION. Section 7. Implementation of staggered
25 terms. (1) To implement the staggered-term system provided

1 for in [section 2(3)], beginning January 1, 1991, the first
2 terms of the members are as follows:

3 (a) the member of the general public shall serve a
4 1-year term;

5 (b) two of the attorney members shall serve 2-year
6 terms, as designated by the president of the Montana state
7 bar association at the time of appointment; and

8 (c) the other members shall serve 3-year terms.

9 (2) Upon expiration of the terms provided in subsection
10 (1), each member shall serve a 3-year term.

11 NEW SECTION. Section 8. Initial report to legislature.

12 At the end of the first biennium following the selection of
13 the first appellate defender, the appellate defender
14 commission shall submit a report to the legislature
15 evaluating the performance and needs of the office of
16 appellate defender.

17 NEW SECTION. Section 9. Appellate defender --

18 appropriation. The following money is appropriated from
19 funds available as provided in 3-5-901(2) to the appellate
20 defender commission for the operation of the commission and
21 the office of appellate defender:

22	Fiscal year 1992	\$100,000
23	Fiscal year 1993	100,000

24 NEW SECTION. Section 10. Codification instruction. (1)

25 [Sections 1 and 3 through 5] are intended to be codified as

1 an integral part of Title 46, chapter 8, part 2, and the
2 provisions of Title 46, chapter 8, part 2, apply to
3 [sections 1 and 3 through 5].

4 (2) [Section 2] is intended to be codified as an
5 integral part of Title 2, chapter 15, part 10, and the
6 provisions of Title 2, chapter 15, part 10, apply to
7 [section 2].

8 NEW SECTION. Section 11. Retroactive applicability.

9 [This act] applies retroactively, within the meaning of
10 1-2-109, to January 1, 1991.

11 NEW SECTION. Section 12. Effective date. [This act] is

12 effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 20, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 268 (third reading copy -- blue), respectfully report that House Bill No. 268 be amended and as so amended be concurred in.

1. Page 2, line 25.
Strike: "during"
Insert: "while serving"

Signed: 
Richard Pinsonneault, Chairman

~~102~~ 3-20-91
Ard. Coord.

SB 3/20 1:45
Sec. of Senate

SENATE
HB 268

1 HOUSE BILL NO. 268
 2 INTRODUCED BY MEASURE, HALLIGAN
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN APPELLATE
 5 DEFENDER SYSTEM; CREATING AN APPELLATE DEFENDER COMMISSION
 6 AND THE OFFICE OF APPELLATE DEFENDER; ESTABLISHING DUTIES OF
 7 THE COMMISSION; ESTABLISHING DUTIES OF AND QUALIFICATIONS
 8 FOR THE APPELLATE DEFENDER; PROVIDING AN APPROPRIATION TO
 9 FUND THE COMMISSION AND THE OFFICE OF APPELLATE DEFENDER FOR
 10 THE BIENNIUM; AMENDING SECTION 3-5-901, MCA; AND PROVIDING
 11 AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
 12 DATE."
 13

14 STATEMENT OF INTENT
 15 A statement of intent is required for this bill because
 16 [section 2] grants the appellate defender commission
 17 rulemaking authority for the conduct of the commission's
 18 affairs. It is the intent that the commission adopt rules of
 19 procedure necessary to implement and carry out the duties of
 20 the commission.
 21

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 23 NEW SECTION. **Section 1.** Short title. [Sections 1 and 3
 24 through 5] may be cited as the "Appellate Defender Act".
 25 NEW SECTION. **Section 2.** Appellate defender commission

1 -- duties -- rules. (1) There is an appellate defender
 2 commission.
 3 (2) The commission consists of five members, as
 4 follows:
 5 (a) one district judge elected by the district judges
 6 under an elective procedure initiated and conducted by the
 7 supreme court and certified by the chief justice of the
 8 supreme court. The election is considered an appointment for
 9 the purposes of this part.
 10 (b) three attorneys appointed by the president of the
 11 Montana state bar association, as follows:
 12 (i) at least two attorneys who are experienced in the
 13 defense of felonies, at least one of whom has served a
 14 minimum of 1 year as a full-time public defender for a
 15 governmental agency or a public corporation; and
 16 (ii) at least one attorney who has been licensed to
 17 practice law in this state for a minimum of 10 years; and
 18 (c) one member of the general public who is not an
 19 attorney or a judge, active or retired, appointed by the
 20 governor.
 21 (3) The members shall serve staggered 3-year terms.
 22 (4) The commission is allocated to the department of
 23 administration for administrative purposes only pursuant to
 24 2-15-121.
 25 (5) A member of the commission may not during WHILE



1 SERVING a term on the commission serve as a county attorney
2 or a deputy county attorney, the attorney general or an
3 assistant attorney general, the United States district
4 attorney or an assistant United States district attorney, or
5 a law enforcement official.

6 (6) Members of the commission may not receive a salary
7 for service on the commission but must be reimbursed for
8 expenses, as provided in 2-18-501 through 2-18-503, while
9 actually engaged in the discharge of official duties.

10 (7) The commission shall make rules for the conduct of
11 its affairs.

12 (8) The commission shall develop a system of indigent
13 appellate defense services.

14 (9) The commission shall propose to the supreme court
15 minimum standards to which all trial and appellate public
16 defenders, including locally appointed private counsel,
17 shall conform.

18 (10) The commission shall compile and keep current a
19 statewide roster of attorneys eligible for appointment by an
20 appropriate court as trial and appellate defense counsel for
21 indigent defendants. The roster must be supplied to all
22 justices and judges in the state.

23 (11) The commission shall establish qualifications,
24 duties, and priorities for the appellate defender, provided
25 for in [section 3], not inconsistent with those established

1 in [section 4].

2 NEW SECTION. Section 3. Office of appellate defender
3 -- appellate defender -- hiring -- dismissal -- staff. (1)
4 There is an office of appellate defender.

5 (2) The appellate defender must be hired by and shall
6 serve at the pleasure of the appellate defender commission.

7 (3) The appellate defender shall hire and supervise the
8 work of supporting personnel authorized by the commission.

9 NEW SECTION. Section 4. Appellate defender --
10 qualifications -- duties. (1) The appellate defender and any
11 deputy or assistant appellate defender:

12 (a) must be an attorney licensed to practice law in
13 this state;

14 (b) shall perform duties as may be provided by law or
15 established by the appellate defender commission; and

16 (c) must have those qualifications otherwise required
17 by the commission.

18 (2) The duties of the appellate defender are to:

19 (a) assume responsibility for appeals from district
20 court and petitions for postconviction relief from
21 proceedings in district court on behalf of indigent
22 defendants only after conviction, as defined by 46-1-201(2),
23 when:

24 (i) the defendant alleges that ineffective assistance
25 of counsel resulted in conviction;

1 (ii) a district judge or the chief justice or an
 2 associate justice of the supreme court finds further
 3 representation by previously appointed counsel would not
 4 serve the interests of justice; or

5 (iii) the appellate defender agrees to assist in or
 6 assume responsibility for appeal;

7 (b) aid the commission in compiling and keeping current
 8 a statewide roster of attorneys eligible for appointment by
 9 an appropriate court as trial and appellate defense counsel
 10 for the indigent;

11 (c) keep a record of those services and expenses for
 12 the commission; and

13 (d) perform the duties otherwise established by the
 14 commission.

15 NEW SECTION. Section 5. Appellate defender --
 16 classification -- salary -- expenses. The appellate defender
 17 and staff must be classified according to the state
 18 classification pay plan and are entitled to salaries, wages,
 19 benefits, and expenses as provided in Title 2, chapter 18.

20 **Section 6.** Section 3-5-901, MCA, is amended to read:

21 **"3-5-901. State assumption of certain district court**
 22 **expenses.** (1) Effective July 1, 1985, the state shall, to
 23 the extent that money is appropriated, fund the following
 24 district court expenses in criminal cases only:

25 (a) salaries of court reporters;

1 (b) transcripts of proceedings;

2 (c) witness fees and necessary expenses;

3 (d) juror fees;

4 (e) indigent defense; and

5 (f) expenses of the appellate defender commission and
 6 the office of appellate defender; and

7 ††(g) psychiatric examinations.

8 (2) The department of commerce, in consultation with
 9 the district judges for each judicial district and the
 10 appellate defender commission, shall include within the
 11 department's biennial budget request to the legislature a
 12 request for funding the expenses listed in subsection (1).

13 (3) (a) If money appropriated for the expenses listed
 14 in subsection (1):

15 (i) exceeds the amount necessary to fully fund those
 16 expenses, the excess amount must be used for district court
 17 grants as provided in 7-6-2352; or

18 (ii) is insufficient to fully fund those expenses, the
 19 appellate defender commission and the office of appellate
 20 defender must be funded first and the county is responsible
 21 for payment of the balance.

22 (b) If no money is appropriated, the county is
 23 responsible for payment of all expenses."

24 NEW SECTION. Section 7. Implementation of staggered
 25 terms. (1) To implement the staggered-term system provided

1 for in [section 2(3)], beginning January 1, 1991, the first
 2 terms of the members are as follows:

3 (a) the member of the general public shall serve a
 4 1-year term;

5 (b) two of the attorney members shall serve 2-year
 6 terms, as designated by the president of the Montana state
 7 bar association at the time of appointment; and

8 (c) the other members shall serve 3-year terms.

9 (2) Upon expiration of the terms provided in subsection
 10 (1), each member shall serve a 3-year term.

11 NEW SECTION. Section 8. Initial report to legislature.

12 At the end of the first biennium following the selection of
 13 the first appellate defender, the appellate defender
 14 commission shall submit a report to the legislature
 15 evaluating the performance and needs of the office of
 16 appellate defender.

17 NEW SECTION. Section 9. Appellate defender --

18 appropriation. The following money is appropriated from
 19 funds available as provided in 3-5-901(2) to the appellate
 20 defender commission for the operation of the commission and
 21 the office of appellate defender:

22	Fiscal year 1992	\$100,000
23	Fiscal year 1993	100,000

24 NEW SECTION. Section 10. Codification instruction. (1)

25 [Sections 1 and 3 through 5] are intended to be codified as

1 an integral part of Title 46, chapter 8, part 2, and the
 2 provisions of Title 46, chapter 8, part 2, apply to
 3 [sections 1 and 3 through 5].

4 (2) [Section 2] is intended to be codified as an
 5 integral part of Title 2, chapter 15, part 10, and the
 6 provisions of Title 2, chapter 15, part 10, apply to
 7 [section 2].

8 NEW SECTION. Section 11. Retroactive applicability.

9 [This act] applies retroactively, within the meaning of
 10 1-2-109, to January 1, 1991.

11 NEW SECTION. Section 12. Effective date. [This act] is

12 effective on passage and approval.

-End-

GOVERNOR'S AMENDMENTS TO
HOUSE BILL 268
(REFERENCE COPY, AS AMENDED)
April 20, 1991

1. Title, line 12.
Following: "DATE"
Insert: ", AND A TERMINATION DATE"
2. Page 2, line 3.
Following: "members"
Strike: ", "
Insert: "appointed by the governor"
3. Page 2, line 5.
Following: "judge"
Strike: "elected"
Insert: "nominated"
4. Page 2, line 6.
Following: "under"
Strike: "an elective"
Insert: "a nominating"
5. Page 2, lines 8 and 9.
Following: "court."
Strike: "The election is considered an appointment for the purposes of this part."
6. Page 2, lines 10.
Following: "attorneys"
Strike: "appointed by the president of the Montana state bar association,"
7. Page 2, line 11.
Following: "follows"
Strike: ":"
Insert: ". In selecting the attorney appointees the governor shall consider recommendations submitted by the president of the State Bar of Montana."
8. Page 2, lines 19 and 20.
Following: "retired"
Strike: ", appointed by the governor"
9. Page 8, line 13.
Following: line 12
Insert: "NEW SECTION. Section 13. Termination. [This act] terminates July 1, 1993."

*Gov. Amend.
HB 268*

HOUSE BILL NO. 268

INTRODUCED BY MEASURE, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN APPELLATE DEFENDER SYSTEM; CREATING AN APPELLATE DEFENDER COMMISSION AND THE OFFICE OF APPELLATE DEFENDER; ESTABLISHING DUTIES OF THE COMMISSION; ESTABLISHING DUTIES OF AND QUALIFICATIONS FOR THE APPELLATE DEFENDER; PROVIDING AN APPROPRIATION TO FUND THE COMMISSION AND THE OFFICE OF APPELLATE DEFENDER FOR THE BIENNIUM; AMENDING SECTION 3-5-901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AND A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] grants the appellate defender commission rulemaking authority for the conduct of the commission's affairs. It is the intent that the commission adopt rules of procedure necessary to implement and carry out the duties of the commission.

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

NEW SECTION. Section 1. Short title. [Sections 1 and 3 through 5] may be cited as the "Appellate Defender Act".

NEW SECTION. Section 2. Appellate defender commission

-- duties -- rules. (1) There is an appellate defender commission.

(2) The commission consists of five members, APPOINTED BY THE GOVERNOR as follows:

(a) one district judge elected NOMINATED by the district judges under an--elective A NOMINATING procedure initiated and conducted by the supreme court and certified by the chief justice of the supreme court; ~~The election--is considered an appointment for the purposes of this part.~~

(b) three attorneys appointed-by-the-president-of-the Montana-state-bar-association. IN SELECTING THE ATTORNEY APPOINTEES, THE GOVERNOR SHALL CONSIDER RECOMMENDATIONS SUBMITTED BY THE PRESIDENT OF THE STATE BAR OF MONTANA, as follows:

(i) at least two attorneys who are experienced in the defense of felonies, at least one of whom has served a minimum of 1 year as a full-time public defender for a governmental agency or a public corporation; and

(ii) at least one attorney who has been licensed to practice law in this state for a minimum of 10 years; and.

(c) one member of the general public who is not an attorney or a judge, active or retired; appointed-by-the governor.

(3) The members shall serve staggered 3-year terms.

(4) The commission is allocated to the department of



1 administration for administrative purposes only pursuant to
2 2-15-121.

3 (5) A member of the commission may not during WHILE
4 SERVING a term on the commission serve as a county attorney
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7 attorney or an assistant United States district attorney, or
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12 [This act] applies retroactively, within the meaning of
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14 NEW SECTION. Section 12. Effective date. [This act] is

15 effective on passage and approval.

16 NEW SECTION. SECTION 13. TERMINATION. [THIS ACT]

17 TERMINATES JULY 1, 1993.

-End-