

1 *House* BILL NO. *777*
 2 INTRODUCED BY *Long Courtney Hard*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A STATE
 5 DEFENDER SYSTEM; AMENDING SECTIONS 10-1218, 38-1309,
 6 80-2718, 95-902, AND 95-1001, R.C.M. 1947; AND REPEALING
 7 SECTIONS 95-1005 AND 95-1006, R.C.M. 1947."
 8

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

10 Section 1. There is a new R.C.M. section that reads as
 11 follows:

12 Purpose. It is the policy of this state to provide for
 13 the realization of the constitutional guarantee of counsel
 14 in the representation of indigent defendants, including
 15 necessary related services and facilities, in criminal,
 16 youth court, and involuntary commitment proceedings within
 17 the state to assure effective assistance and continuity of
 18 counsel to indigent accused taken into custody and indigent
 19 defendants in criminal, youth court, and involuntary
 20 commitment proceedings within this state. The state public
 21 defender commission is authorized to administer and assure
 22 enforcement of the provisions of this act.

23 Section 2. There is a new R.C.M. section that reads as
 24 follows:

25 Office of the state public defender. There is created

1 an office of the state public defender allocated for
 2 administrative purposes only to the department of social and
 3 rehabilitation services pursuant to 82A-108. However, the
 4 office may hire its own personnel, and 82A-108(2)(d) does
 5 not apply.

6 Section 3. There is a new R.C.M. section that reads as
 7 follows:

8 State public defender commission. (1) There is created
 9 a state public defender commission which shall consist of
 10 nine members. The governor shall appoint the members of the
 11 commission for a term of 5 years but shall stagger the terms
 12 of the initial appointments so that one-third of the
 13 commission members are appointed every 2 years.

14 (2) The appointments shall be made as follows:

15 (a) five members who are active members of the state
 16 bar of Montana and who are not prosecuting attorneys, whose
 17 selection shall be based on their experience in the practice
 18 of criminal law;

19 (b) four members of the general public.

20 Section 4. There is a new R.C.M. section that reads as
 21 follows:

22 Meetings of commission. (1) The commission shall meet
 23 on a regular basis. A chairperson elected by the members
 24 shall preside at meetings.

25 (2) A majority of the members constitutes a quorum.

1 and a majority vote of those present is sufficient to
 2 determine any resolution, policy adoption, or motion.
 3 However, selection of the state public defender requires the
 4 vote of each member. There shall be no voting by proxy.

5 Section 5. There is a new R.C.M. section that reads as
 6 follows:

7 Compensation of members. The commission shall serve
 8 without pay but shall be reimbursed for travel expenses, as
 9 provided in 59-538, 59-539, and 59-801, and for other
 10 necessary expenses incurred as a result of commission
 11 membership.

12 Section 6. There is a new R.C.M. section that reads as
 13 follows:

14 Duties of commission regarding state public defender.

15 (1) The state public defender commission shall appoint the
 16 state public defender for a term of 5 years. The state
 17 public defender shall serve until his successor is appointed
 18 and qualified. He may be reappointed for one or more
 19 subsequent 5-year terms. Vacancies in the office shall be
 20 filled by the state public defender commission for the
 21 unexpired term. The first state public defender appointed
 22 pursuant to this section shall be appointed for a term
 23 commencing on January 1, 1978.

24 (2) The commission shall assist the state public
 25 defender in establishing a statewide system of effective

1 representation for all indigent persons, monitor the
 2 performance of the state public defender, and assist the
 3 state public defender in the development of a program to
 4 inform the public of the role of the defense attorney.

5 Section 7. There is a new R.C.M. section that reads as
 6 follows:

7 Qualifications and compensation of the state public
 8 defender. (1) The state public defender shall be:

- 9 (a) 25 years of age or older;
- 10 (b) a citizen of the United States who has resided in
 11 this state 2 years next preceding his appointment; and
- 12 (c) an attorney in good standing admitted to practice
 13 law in Montana who has engaged in the active practice of law
 14 for at least 5 years before his appointment.

15 (2) The state public defender may be removed from
 16 office only for cause by the state public defender
 17 commission.

18 (3) The compensation of the state public defender
 19 shall be fixed by the state public defender commission,
 20 shall not be less than the salary of the attorney general,
 21 and may not be reduced during the term of his appointment.

22 Section 8. There is a new R.C.M. section that reads as
 23 follows:

24 Powers and duties of state public defender. (1) When
 25 representing an indigent person, the state public defender

1 shall:

2 (a) counsel and defend him, whether he is held in
3 custody, is alleged to be a delinquent or to be in need of
4 supervision, is charged with a criminal offense, or is the
5 respondent in an involuntary commitment proceeding, at every
6 stage of the proceedings following arrest, detention, or
7 service of process; and

8 (b) prosecute any appeals or other remedies before or
9 after conviction that the state public defender considers to
10 be in the interest of justice or that are required by law.

11 (2) The state public defender shall devote his full
12 time to the performance of his duties and may not engage in
13 the private practice of law.

14 (3) Subject to the approval of the state public
15 defender commission, the state public defender may decline
16 to accept new cases when the acceptance of additional cases
17 would result in ineffective representation of indigent
18 persons presently represented.

19 Section 9. There is a new R.C.M. section that reads as
20 follows:

21 Personnel -- contracts with attorneys -- regional
22 offices. (1) Subject to the approval of the state public
23 defender commission, the state public defender may employ a
24 chief deputy state public defender, assistant and deputy
25 state public defenders, investigators, and any other

1 necessary employees.

2 (2) The state public defender may contract with
3 attorneys licensed to practice law in Montana to provide
4 services required by this act if, for any reason, it is
5 impracticable for him or his deputies to provide such
6 services. All such contract services shall be performed
7 under the supervisory control of the state public defender.

8 (3) The chief deputy public defender and the assistant
9 and deputy public defenders shall serve at the pleasure of
10 the state public defender. They shall be employed on a
11 full-time basis and may not engage in the private practice
12 of law.

13 (4) The compensation of persons employed under
14 subsection (1) shall be fixed by the state public defender
15 subject to the approval of the state public defender
16 commission.

17 (5) Subject to the approval of the state public
18 defender commission, the state public defender shall
19 establish such regional offices as he considers necessary to
20 properly carry out his duties.

21 Section 10. There is a new R.C.M. section that reads
22 as follows:

23 Right to representation and services. (1) Any indigent
24 person who is threatened with loss of liberty as a result of
25 any of the following listed actions is entitled to be

1 represented by the state public defender and to be provided
2 with the necessary supporting services required for adequate
3 representation:

4 (a) an arrest for, a charge of committing, or a
5 conviction of a criminal offense;

6 (b) any proceeding under the jurisdiction of the youth
7 court in which a youth is alleged to be a delinquent youth
8 or a youth in need of supervision;

9 (c) a hearing on a petition for involuntary commitment
10 under 38-1206, 38-1208, Title 38, chapter 13, or 80-2718; or

11 (d) a hearing regarding a prisoner's furlough release
12 under 95-2226.1.

13 (2) If a person having a right to representation under
14 subsection (1) is not represented by an attorney, any law
15 enforcement officer, public defender, or court which comes
16 into contact with him shall inform him of the right of an
17 indigent person to be represented by an attorney at public
18 expense.

19 Section 11. There is a new R.C.M. section that reads
20 as follows:

21 Determination of indigence. (1) Unless otherwise
22 ordered by the court, the determination of indigence shall
23 be made by a public defender, subject to review by the
24 court. The determination shall be based upon an appropriate
25 inquiry into the financial circumstances of the person

1 seeking legal representation and an affidavit signed by such
2 person demonstrating his financial inability to obtain legal
3 counsel. Release on bail does not preclude a finding that a
4 person is indigent.

5 (2) A person waives his right to be represented by an
6 attorney at public expense by refusing to furnish any
7 information requested pertinent to the determination of
8 indigency.

9 Section 12. There is a new R.C.M. section that reads
10 as follows:

11 Appointment of another attorney in place of state
12 public defender. For cause, the court may, on its own motion
13 or upon the application of the state public defender or the
14 indigent person, appoint an attorney other than the state
15 public defender to represent the indigent person at any
16 stage of the proceedings or on appeal. The attorney shall be
17 awarded compensation and reimbursement for expenses
18 necessarily incurred. The amount of compensation and
19 allowable expenses shall be determined and paid by the court
20 from funds appropriated therefor.

21 Section 13. Section 10-1218, R.C.M. 1947, is amended
22 to read as follows:

23 "10-1218. Basic legal rights. (1) When a youth alleged
24 to be a delinquent youth or a youth in need of supervision
25 is taken into custody, the following requirements must be

1 met:

2 (a) the youth shall be immediately and effectively
3 advised of his constitutional rights and his rights under
4 this Act;

5 (b) the youth may waive such rights under the
6 following situations:

7 (i) when the youth is under the age of twelve (12)
8 years, the parents of the youth may make an effective
9 waiver;

10 (ii) when the youth is over the age of twelve (12)
11 years, and the youth and his parent agree, they may make an
12 effective waiver; and

13 (iii) when the youth is over the age of twelve (12)
14 years and the youth and his parents do not agree, the youth
15 may make an effective waiver only with advice of counsel.

16 (c) In a proceeding alleging a youth to be a
17 delinquent youth:

18 (i) An extra-judicial statement that would be
19 constitutionally inadmissible in a criminal matter shall not
20 be received in evidence;

21 (ii) Evidence illegally seized or obtained shall not be
22 received in evidence to establish the allegations of a
23 petition against a youth; and

24 (iii) An extra-judicial admission or confession made by
25 the youth out of court is insufficient to support a finding

1 that the youth committed the acts alleged in the petition
2 unless it is corroborated by other evidence.

3 (2) Title 95, R.C.M. 1947, shall apply to all law
4 enforcement investigations relating to a complaint alleging
5 a delinquent youth or youth in need of supervision, except
6 that:

7 (a) No youth shall be fingerprinted or photographed
8 for criminal identification purposes except by order of the
9 youth court judge.

10 (b) No fingerprint records or photographs shall be
11 filed with the federal bureau of investigation, state of
12 Montana identification bureau, or any other than the
13 originating agency, except for sending the fingerprints or
14 photographs to any law enforcement agency for comparison
15 purposes in the original investigation.

16 (c) At such time as the proceedings in the matter
17 including appeals, are complete, the fingerprint records and
18 photographs shall be destroyed; except that such fingerprint
19 records and photographs may be retained by the originating
20 agency for a specific period when ordered by the court for
21 good cause shown.

22 (3) In all proceedings on a petition alleging a
23 delinquent youth or youth in need of supervision as set
24 forth in subsection (1) of this section, the youth, parents
25 and guardian of the youth shall be advised by the court or,

1 in the absence of the court, by its representative that the
 2 youth may be represented by counsel at all stages of the
 3 proceedings. If counsel is not retained, or if it appears
 4 that counsel will not be retained, ~~the youth, the parents~~
 5 ~~and guardian of the youth, and the state public defender~~
 6 ~~shall be advised by the court or by its representative that~~
 7 ~~the youth is entitled to be represented by the state public~~
 8 ~~defender or, if there is cause, that counsel shall~~ will be
 9 appointed for the youth, unless the right to appointed
 10 counsel is waived by the youth and the parents or guardian.
 11 Neither the youth nor his parent or guardian may waive
 12 counsel if commitment to a detention facility or a youth
 13 forest camp or to the department of institutions for a
 14 period of more than six (6) months may result from
 15 adjudication.

16 (4) The court, at any stage of a proceeding on a
 17 petition under this act, may appoint a guardian ad litem for
 18 a youth if the youth has no parent or guardian appearing in
 19 his behalf, or if their interests conflict with those of the
 20 youth. A party to the proceeding or an employee or
 21 representative of a party shall not be appointed as guardian
 22 ad litem.

23 (5) In a proceeding on a petition, a party is entitled
 24 to: the opportunity to introduce evidence and otherwise be
 25 heard on the party's own behalf; confront and cross-examine

1 witnesses testifying against the party; and admit or deny
 2 the allegations against the party in the petition.

3 (6) Persons afforded rights under this act shall be
 4 advised of those rights and any other rights existing under
 5 law at the time of their first appearance in a proceeding on
 6 a petition under the Montana Youth Court Act and at any
 7 other time specified in the Youth Court Act or other law.

8 (7) All post trial motions and other remedies
 9 available to an adult in a criminal proceeding under the
 10 Montana Code of Criminal Procedure shall be available to a
 11 youth proceeded against under this act."

12 Section 14. Section 38-1309, R.C.M. 1947, is amended
 13 to read as follows:

14 "38-1309. Right to counsel and appeal -- examination
 15 of respondent -- records. (1) The person alleged to be
 16 seriously mentally ill shall have the right to be present at
 17 any hearing or trial. If he has no attorney, the judge
 18 shall appoint an attorney to represent him at either the
 19 hearing or the trial or both. ~~If the court determines it is~~
 20 ~~determined~~ that the respondent is financially unable to
 21 employ an attorney, the court shall ~~advise the person~~
 22 ~~alleged to be seriously mentally ill and the state public~~
 23 ~~defender that the person is entitled to be represented by~~
 24 ~~the state public defender or, if there is cause, that the~~
 25 ~~court will~~ appoint counsel ~~who shall be compensated from the~~

1 ~~public funds of the county where the respondent resides.~~ The
 2 county of residence shall also pay all precommitment
 3 expenses including transportation to a mental health
 4 facility incurred in connection with the detention,
 5 examination, and precommitment custody of the respondent.

6 (2) The respondent, his attorney, or the responsible
 7 person appointed by the court may secure a professional
 8 person of his own choice to examine the respondent and to
 9 testify at the hearing before the court or jury as to the
 10 results of his examination.

11 (3) If the person wishing to secure the testimony of a
 12 professional person is unable to do so because of financial
 13 reasons, and if the respondent joins in the request for such
 14 examination, the court shall appoint a professional person
 15 other than the professional person requesting the commitment
 16 to perform the examination. Whenever possible, the court
 17 shall allow the respondent a reasonable choice of an
 18 available professional person qualified to perform the
 19 requested examination ~~who will be compensated from the~~
 20 ~~public funds of the county where the respondent resides.~~

21 (4) Every respondent subject to an order for
 22 short-term treatment or long-term care and treatment shall
 23 be advised of his right to appeal such order by the court at
 24 the conclusion of any hearing as a result of which such an
 25 order may be entered.

1 (5) Records and papers in proceedings under this act
 2 shall be maintained separately by the clerks of the several
 3 courts. Upon the release of any respondent or patient, the
 4 facility shall notify the clerk of the court within five (5)
 5 days of the release, and the clerk shall immediately seal
 6 the record in the case and omit the name of the respondent
 7 or patient from the index or indices of cases in such court
 8 unless the court orders the record opened for good cause
 9 shown."

10 Section 15. Section 80-2718, R.C.M. 1947, is amended
 11 to read as follows:

12 "80-2718. Involuntary commitment of alcoholics. (1) A
 13 person may be committed to the custody of the department of
 14 institutions by the district court upon the petition of his
 15 spouse or guardian, a relative, the certifying physician, or
 16 the chief of any approved public treatment facility. The
 17 petition shall allege that the person is an alcoholic who
 18 habitually lacks self-control as to the use of alcoholic
 19 beverages and that he (a) has threatened, attempted, or
 20 inflicted physical harm on another and that unless
 21 committed is likely to inflict physical harm on another; or
 22 (b) is incapacitated by alcohol. A refusal to undergo
 23 treatment does not constitute evidence of lack of judgment
 24 as to the need for treatment. The petition shall be
 25 accompanied by a certificate of a licensed physician who has

1 examined the person within two (2) days before submission of
 2 the petition, unless the person whose commitment is sought
 3 has refused to submit to a medical examination, in which
 4 case the fact of refusal shall be alleged in the petition.
 5 The certificate shall set forth the physician's findings in
 6 support of the allegations of the petition. A physician
 7 employed by the admitting facility or the department is not
 8 eligible to be the certifying physician.

9 (2) Upon filing the petition, the court shall fix a
 10 date for a hearing no later than ten (10) days after the
 11 date the petition was filed. A copy of the petition and of
 12 the notice of the hearing, including the date fixed by the
 13 court, shall be served on the petitioner, the person whose
 14 commitment is sought, his next of kin other than the
 15 petitioner, a parent or his legal guardian if he is a minor,
 16 the administrator in charge of the approved public treatment
 17 facility to which he has been committed for emergency care,
 18 and any other person the court believes advisable. A copy of
 19 the petition and certificate shall be delivered to each
 20 person notified.

21 (3) At the hearing the court shall hear all relevant
 22 testimony, including, if possible, the testimony of at least
 23 one licensed physician who has examined the person whose
 24 commitment is sought. The person shall have a right to have
 25 a licensed physician of his own choosing examine him and

1 testify on his behalf, and if he has no funds with which to
 2 pay such physician, the reasonable costs of one such
 3 examination and testimony shall be paid by the county state.
 4 The person shall be present unless the court believes that
 5 his presence is likely to be injurious to him; he shall be
 6 advised of his right to counsel and, if he is unable to hire
 7 his own counsel, the court shall advise him and the state
 8 public defender that he is entitled to be represented by the
 9 state public defender or, if there is cause, that the court
 10 will appoint an attorney to represent him at the expense of
 11 the county. The court shall examine the person in open
 12 court, or if advisable, shall examine the person in
 13 chambers. If he refuses an examination by a licensed
 14 physician and there is sufficient evidence to believe that
 15 the allegations of the petition are true, or if the court
 16 believes that more medical evidence is necessary, the court
 17 may make a temporary order committing him to the department
 18 of institutions for a period of not more than five (5) days
 19 for purposes of a diagnostic examination.

20 (4) If after hearing all relevant evidence, including
 21 the results of any diagnostic examination by the department
 22 of institutions, the court finds that grounds for
 23 involuntary commitment have been established by clear and
 24 convincing evidence, it shall make an order of commitment to
 25 the department of institutions. It may not order commitment

1 of a person unless it determines that the department of
 2 institutions is able to provide adequate and appropriate
 3 treatment for him and the treatment is likely to be
 4 beneficial.

5 (5) A person committed under this section shall remain
 6 in the custody of the department of institutions for
 7 treatment for a period of thirty (30) days unless sooner
 8 discharged. At the end of the thirty (30) day period, he
 9 shall be discharged automatically unless the department of
 10 institutions before expiration of the period obtains a court
 11 order from the district court of the committing district for
 12 his recommitment upon the grounds set forth in subsection
 13 (1) for a further period of ninety (90) days unless sooner
 14 discharged. If a person has been committed because he is an
 15 alcoholic likely to inflict physical harm on another, the
 16 department of institutions shall apply for recommitment if
 17 after examination it is determined that the likelihood still
 18 exists.

19 (6) A person recommitment under subsection (5) who has
 20 not been discharged by the department of institutions before
 21 the end of the ninety (90) day period shall be discharged at
 22 the expiration of that period unless the department of
 23 institutions, before expiration of the period, obtains a
 24 court order from the district court of the committing
 25 district on the grounds set forth in subsection (1) for

1 recommitment for a further period not to exceed ninety (90)
 2 days. If a person has been committed because he is an
 3 alcoholic likely to inflict physical harm on another, the
 4 department shall apply for recommitment if after examination
 5 it is determined that the likelihood still exists. Only two
 6 (2) recommitment orders under subsections (5) and (6) are
 7 permitted.

8 (7) Upon the filing of a petition for recommitment
 9 under subsections (5) or (6), the court shall fix a date for
 10 hearing no later than ten (10) days after the date the
 11 petition was filed. A copy of the petition and of the notice
 12 of hearing, including the date fixed by the court, shall be
 13 served on the petitioner, the person whose commitment is
 14 sought, his next of kin other than the petitioner, the
 15 original petitioner under subsection (1) if different from
 16 the petitioner for recommitment, one of his parents or his
 17 legal guardian if he is a minor, and any other person the
 18 court believes advisable. At the hearing the court shall
 19 proceed as provided in subsection (3).

20 (8) A person committed to the custody of the
 21 department of institutions for treatment shall be discharged
 22 at any time before the end of the period for which he has
 23 been committed if either of the following conditions is met:
 24 (a) in case of an alcoholic committed on the grounds
 25 of likelihood of infliction of physical harm upon another,

1 that he is no longer in need of treatment or the likelihood
2 no longer exists; or

3 (b) in case of an alcoholic committed on the grounds
4 of the need of treatment and incapacity, that the incapacity
5 no longer exists, further treatment will not be likely to
6 bring about significant improvement in the person's
7 condition, or treatment is no longer adequate or
8 appropriate.

9 (9) The court shall inform the person whose commitment
10 or recommitment is sought of his right to contest the
11 application, be represented by counsel at every stage of any
12 proceedings relating to his commitment and recommitment, and
13 have counsel appointed by the court or provided by the
14 court, if he wants the assistance of counsel and is unable
15 to obtain counsel. If the court believes that the person
16 needs the assistance of counsel, the court shall require, by
17 appointment, if necessary, counsel for him regardless of his
18 wishes. The person whose commitment or recommitment is
19 sought shall be informed of his right to be examined by a
20 licensed physician of his choice. If the person is unable to
21 obtain a licensed physician and requests examination by a
22 physician, the court shall employ a licensed physician.

23 (10) If a private treatment facility agrees with the
24 request of a competent patient or his parent, sibling, adult
25 child, or guardian to accept the patient for treatment, the

1 department of institutions may transfer him to the private
2 treatment facility.

3 (11) A person committed under this section may at any
4 time seek to be discharged from commitment by writ of habeas
5 corpus or other appropriate means.

6 (12) The venue for proceedings under this section is
7 the place in which person to be committed resides or is
8 present."

9 Section 16. Section 95-902, R.C.M. 1947, is amended to
10 read as follows:

11 "95-902. Duty of the court. The judge shall inform the
12 defendant:

13 (a) Of the charge against him;

14 (b) Of his right to counsel;

15 (c) Of his right to have counsel assigned ~~by a court~~
16 ~~of record~~, in accordance with the provisions of section
17 95-1001;

18 (d) That he is not required to make a statement and
19 that any statement made by him may be offered in evidence at
20 his trial;

21 (e) Admit the defendant to bail in accordance with the
22 provisions of this code.

23 After the initial appearance a justice of the peace
24 court shall, within a reasonable time, hold a preliminary
25 examination unless the defendant waives a preliminary

1 examination or the district court has granted leave to file
 2 an information or an indictment has been returned, or the
 3 case is triable in justice court."

4 Section 17. Section 95-1001, R.C.M. 1947, is amended
 5 to read as follows:

6 "95-1001. Right to counsel. Every defendant brought
 7 before the court must be informed by the court that it is
 8 his right to have counsel before proceeding and must be
 9 asked if he desires the aid of counsel. The defendant, if
 10 charged with ~~a felony or an offense punishable by imprisonment,~~
 11 must be advised that counsel will be furnished at state
 12 expense if he is unable to employ counsel. ~~if the offense~~
 13 ~~charged is a felony and if the defendant desires counsel and~~
 14 ~~is unable to employ counsel a court of record must assign~~
 15 ~~counsel to defend him if the offense charged is a~~
 16 ~~misdemeanor and if the defendant desires counsel and is~~
 17 ~~unable to employ counsel a court of record in the interest~~
 18 ~~of justice may assign counsel to defend him. The court~~
 19 ~~shall advise any defendant unable to employ counsel and the~~
 20 ~~state public defender that such defendant is entitled to be~~
 21 ~~represented by the state public defender, or if there is~~
 22 ~~cause, the court may, on its own motion or upon the~~
 23 ~~application of the state public defender or the defendant,~~
 24 ~~appoint an attorney other than the state public defender to~~
 25 ~~represent the defendant at any stage of the proceedings or~~

1 on appeal."

2 Section 18. Saving clause. This act does not affect
 3 proceedings involving the representation of indigent persons
 4 that were begun before the effective date of this act.

5 Section 19. Severability. If a part of this act is
 6 invalid, all valid parts that are severable from the invalid
 7 part remain in effect. If a part of this act is invalid in
 8 one or more of its applications, the part remains in effect
 9 in all valid applications that are severable from the
 10 invalid applications.

11 Section 20. Repealer. Sections 95-1005 and 95-1006,
 12 R.C.M. 1947, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 502-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, 1977, there is hereby submitted a Fiscal Note for House Bill 777 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Establishes a statewide, state-funded public defender system.

ASSUMPTIONS:

1. January 1, 1978 start-up date will allow sufficient savings to fund Commission expenses during FY 78.
2. The public defender and all new employees will not be hired prior to January 1, 1978.
3. The Division will consist of one state office, three urban offices, three urban/rural offices and twelve rural offices.
4. Current public defender costs to the Department of Institutions are \$48,787 in FY 78 and \$98,574 in FY 79.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Cost of proposed system		
Personal services	\$363,540	\$744,167
Operating expenses	75,500	160,000
Equipment	<u>61,180</u>	<u>0</u>
Total cost of proposed system	500,220	904,167
Less: Current budgeted costs	<u>48,787</u>	<u>98,574</u>
Additional cost of proposed legislation	<u>\$451,433</u>	<u>\$805,593</u>

LOCAL IMPACT:

Counties are currently incurring an annual cost of approximately \$591,000 for public defenders. One-half of this cost, \$295,000, would be shifted to the state in FY 78 and the full amount, or \$591,000, in FY 79.

Richard A. Drury, Jr.
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-18-77