

SB BILL NO. 176

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INTRODUCED BY Hestel

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW RELATED TO ELIGIBILITY FOR COURT-APPOINTED COUNSEL; ELIMINATING SUBSTANTIAL HARDSHIP IN PROVIDING FOR PERSONAL OR FAMILY NECESSITIES AS CRITERIA FOR COURT-APPOINTED COUNSEL; AND AMENDING SECTION 46-8-111, MCA."

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

Section 1. Section 46-8-111, MCA, is amended to read:

"46-8-111. Eligibility for court-appointed counsel -- determination of indigence. (1) The court shall make a determination of indigence.

(2) In applying for court-appointed counsel, a defendant shall submit a sworn financial statement demonstrating financial inability to obtain legal representation ~~without substantial hardship in providing for personal or family necessities~~. The statement is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false swearing."

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0176, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the law related to eligibility for court-appointed counsel; eliminating substantial hardship in providing for personal or family necessities as criteria for court-appointed counsel.

ASSUMPTIONS:

1. In order to obtain court-appointed counsel, an individual must prove financial inability to obtain legal representation, not just hardship.
2. The District Court Criminal Reimbursement Program covers indigent defense costs. If fewer individuals obtain court-appointed counsel, then expenditures charged to the program could decrease. Based on current available information, this potential decrease cannot be quantified.

FISCAL IMPACT:

There is no known fiscal impact to the state.

Dave Lewis 1-17-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

John R. Hertel 1/17/97

JOHN R. HERTEL, PRIMARY SPONSOR DATE

Fiscal Note for SB0176, as introduced

SB 176

1 SENATE BILL NO. 176

2 INTRODUCED BY HERTEL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW RELATED TO ELIGIBILITY FOR
5 COURT-APPOINTED COUNSEL; ~~ELIMINATING SUBSTANTIAL HARDSHIP IN PROVIDING FOR PERSONAL~~
6 ~~OR FAMILY NECESSITIES AS CRITERIA FOR COURT-APPOINTED COUNSEL;~~ REQUIRING THE ATTORNEY
7 GENERAL TO PROVIDE FORMS; AND AMENDING SECTION 46-8-111, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 46-8-111, MCA, is amended to read:

12 **"46-8-111. Eligibility for court-appointed counsel -- determination of indigence -- ATTORNEY**
13 **GENERAL TO PROVIDE FORMS.** (1) The court shall make a determination of indigence.

14 (2) (A) In applying for court-appointed counsel, a defendant shall submit a sworn financial
15 statement demonstrating financial inability to obtain legal representation ~~without substantial hardship in~~
16 ~~providing for personal or family necessities~~ WITHOUT SUBSTANTIAL HARDSHIP IN PROVIDING FOR
17 PERSONAL OR FAMILY NECESSITIES. The statement is not admissible in a civil or criminal action except
18 when offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false
19 swearing.

20 (B) FOR PURPOSES OF THIS SUBSECTION (2), THE FOLLOWING CIRCUMSTANCES DO NOT
21 CONSTITUTE SUBSTANTIAL HARDSHIP UNLESS THE JUDGE SPECIFICALLY FINDS OTHERWISE:

22 (I) THE NEED TO BORROW MONEY BY USING PERSONAL OR FAMILY ASSETS FOR COLLATERAL;
23 OR

24 (II) THE NEED TO SELL PERSONAL OR FAMILY ASSETS, OTHER THAN THE DEFENDANT'S HOME
25 OR MOTOR VEHICLE THAT IS USED FOR TRANSPORTATION TO THE DEFENDANT'S JOB OR TO THE JOB
26 OF A PERSON IN THE HOUSEHOLD UPON WHOM THE HOUSEHOLD DEPENDS FOR FINANCIAL SUPPORT.

27 (3) THE DEPARTMENT OF JUSTICE SHALL, BY RULE, PRESCRIBE THE FORM OF THE FINANCIAL
28 STATEMENT REQUIRED BY SUBSECTION (2) FOR USE IN DETERMINING INDIGENCE. THE FORM MUST
29 REQUIRE THE DISCLOSURE OF INCOME AND ASSETS, INCLUDING BUT NOT LIMITED TO THE
30 OWNERSHIP OF REAL AND PERSONAL PROPERTY, CASH, AND SAVINGS."

-END-

SECOND READING

- 1 -

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