

MONTANA PUBLIC DEFENDER COMMISSION
April 13, 2012

Proposed 2013 Legislation Placeholders

1. Allow for Flat Fee Contracts
2. Remove jail time as a penalty in certain misdemeanors
3. Specialty Courts
4. Post Conviction Relief
5. GAL Issue
6. Case Dumping
7. Deputy Chief Public Defender
8. New Definition of a Household in the IQ Process (pending committee action)

Please note that the above items are written as "short titles" and a much more detailed description will be part of the actual legislation.

LJC members - I have asked OPD staff to have more information on each proposal for you at the meeting. Dave Bolger

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE PUBLIC DEFENDER COMMISSION TO AGREE
7 TO CERTAIN TYPES OF CONTRACTS FOR LEGAL REPRESENTATION SERVICES BASED ON A FIXED
8 FEE; AND AMENDING SECTION 47-1-216, MCA."

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

11
12 **Section 1.** Section 47-1-216, MCA, is amended to read:

13 **"47-1-216. Contracted services -- rules.** (1) The commission shall establish standards for a statewide
14 contracted services program that ensures that contracting for public defender services is done fairly and
15 consistently statewide and within each public defender region.

16 (2) Beginning July 1, 2006, the state office and each regional office, in a manner consistent with
17 statewide standards adopted by the commission pursuant to this section, may contract to provide public defender,
18 professional nonattorney, and other personal services necessary to deliver public defender services within each
19 public defender region. All contracting pursuant to this section is exempt from the Montana Procurement Act, as
20 provided in 18-4-132.

21 (3) (a) ~~Contracts~~ Except as provided in subsection (3)(b), contracts may not be awarded based solely
22 on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the
23 number of cases assigned.

24 (b) The following contracts may be awarded based on a fixed fee:

25 (i) contracts for legal representation of individuals appearing before specialty courts, such as drug courts;
26 and

27 (ii) contracts with consortiums for legal representation of individuals in proceedings pursuant to Title 41,
28 chapter 3. A consortium is a group of attorneys who have joined together for representation of individuals for a
29 fixed fee in certain types of proceedings and have agreed to monitor the monetary charges for legal
30 representation.

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SENATE BILL NO. 50
INTRODUCED BY S. GALLUS
BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PENALTIES FOR CERTAIN MISDEMEANOR OFFENSES; ELIMINATING JAIL TIME FOR CERTAIN MISDEMEANOR OFFENSES; AMENDING SECTIONS 45-6-301, 45-6-302, 45-6-305, 45-6-316, 45-8-101, 45-8-111, 61-5-102, 61-5-212, 61-6-302, AND 61-6-304, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE."

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

Section 1. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

- (a) has the purpose of depriving the owner of the property;
- (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
- (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

- (a) has the purpose of depriving the owner of the property;
- (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
- (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

- (a) has the purpose of depriving the owner of the property;
- (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the



1 owner of the property; or

2 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
3 probably will deprive the owner of the property.

4 (4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts
5 unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county
6 agency, regardless of the original source of assistance, by means of:

7 (a) a knowingly false statement, representation, or impersonation; or

8 (b) a fraudulent scheme or device.

9 (5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or
10 helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter
11 71, by means of:

12 (a) a knowingly false statement, representation, or impersonation; or

13 (b) deception or other fraudulent action.

14 (6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance
15 fraud as provided in 33-1-1202 or 33-1-1302;

16 (b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102;
17 or

18 (c) purposely or knowingly receives small business health insurance premium incentive payments or
19 premium assistance payments or tax credits under Title 33, chapter 22, part 20, to which the person is not
20 entitled.

21 (7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive
22 the owner of the property, the person:

23 (a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer
24 or over property entrusted to the person; or

25 (b) purposely or knowingly obtains by deception control over property of the person's employer or over
26 property entrusted to the person.

27 (8) (a) Except as provided in subsection (8)(b), a person convicted of the offense of theft of property not
28 exceeding \$1,500 in value shall be fined an amount not to exceed \$1,500 ~~or be imprisoned in the county jail for~~
29 ~~a term not to exceed 6 months, or both.~~ A person convicted of a second offense shall be fined \$1,500 or be
30 imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or

1 subsequent offense shall be fined \$1,500 and be imprisoned in the county jail for a term of not less than 30 days
2 or more than 6 months.

3 (b) (i) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property
4 exceeding \$1,500 in value or theft of any amount of anhydrous ammonia for the purpose of manufacturing
5 dangerous drugs shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term
6 not to exceed 10 years, or both.

7 (ii) A person convicted of the theft of any commonly domesticated hooved animal shall be fined an amount
8 of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years,
9 or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of community service
10 during a 1-year period, in the offender's county of residence. In addition to the fine and imprisonment, the
11 offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

12 (c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement
13 shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined
14 an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the
15 requirement that restitution be made under terms set by the court. If the terms are not met, the required prison
16 term may be ordered.

17 (9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
18 whether from the same person or several persons, may be aggregated in determining the value of the property."

19

20 **Section 2.** Section 45-6-302, MCA, is amended to read:

21 **"45-6-302. Theft of lost or mislaid property.** (1) A person who obtains control over lost or mislaid
22 property commits the offense of theft when the person:

23 (a) knows or learns the identity of the owner or knows, is aware of, or learns of a reasonable method of
24 identifying the owner;

25 (b) fails to take reasonable measures to restore the property to the owner; and

26 (c) has the purpose of depriving the owner permanently of the use or benefit of the property.

27 (2) (a) Except as provided in subsection (2)(b), a A person convicted of theft of lost or mislaid property:

28 (i) not exceeding \$1,500 in value shall be fined an amount not to exceed \$500; or

29 (ii) exceeding \$1,500 in value shall be fined an amount not to exceed \$500 or be imprisoned in the county
30 jail for a period not to exceed 6 months.

1 (b) A person convicted of a second or subsequent offense of theft of lost or mislaid property shall be
2 fined an amount not to exceed \$500 or be imprisoned in the county jail for a period not to exceed 6 months."

3
4 **Section 3.** Section 45-6-305, MCA, is amended to read:

5 **"45-6-305. Theft of labor or services or use of property.** (1) A person commits the offense of theft
6 when the person obtains the temporary use of property, labor, or services of another that are available only for
7 hire, by means of threat or deception or knowing that the use is without the consent of the person providing the
8 property, labor, or services.

9 (2) (a) Except as provided in subsection (2)(b), a A person convicted of theft of labor or services or use
10 of property shall be fined not to exceed \$500 ~~or be imprisoned in the county jail for a term not to exceed 6 months;~~
11 ~~or both.~~

12 (b) A person convicted of a second or subsequent offense of theft of labor or services or use of property
13 shall be fined not to exceed \$500 or be imprisoned in the county jail for a period not to exceed 6 months."

14
15 **Section 4.** Section 45-6-316, MCA, is amended to read:

16 **"45-6-316. Issuing a bad check.** (1) A person commits the offense of issuing a bad check when the
17 person issues or delivers a check or other order upon a real or fictitious depository for the payment of money
18 knowing that it will not be paid by the depository.

19 (2) If the offender has an account with the depository, failure to make good the check or other order
20 within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the
21 offender knew that it would not be paid by the depository.

22 (3) (a) Except as provided in subsection (3)(b), a A person convicted of issuing a bad check shall be
23 fined not to exceed \$1,500 ~~or be imprisoned in the county jail for any term not to exceed 6 months, or both.~~

24 (b) If the offender has engaged in issuing bad checks that are part of a common scheme or if the value
25 of any property, labor, or services obtained or attempted to be obtained exceeds \$1,500, the offender shall be
26 fined not to exceed \$50,000 or be imprisoned in the state prison for any a term not to exceed 10 years, or both."

27
28 **Section 5.** Section 45-8-101, MCA, is amended to read:

29 **"45-8-101. Disorderly conduct.** (1) A person commits the offense of disorderly conduct if the person
30 knowingly disturbs the peace by:

- 1 (a) quarreling, challenging to fight, or fighting;
2 (b) making loud or unusual noises;
3 (c) using threatening, profane, or abusive language;
4 (d) discharging firearms, except at a shooting range during established hours of operation;
5 (e) rendering vehicular or pedestrian traffic impassable;
6 (f) rendering the free ingress or egress to public or private places impassable;
7 (g) disturbing or disrupting any lawful assembly or public meeting;
8 (h) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence
9 would endanger human life;
10 (i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose;
11 or
12 (j) transmitting a false report or warning of an impending explosion in a place where its occurrence would
13 endanger human life.

14 (2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall
15 be fined not to exceed \$100 or be imprisoned in the county jail for a term not to exceed ~~40~~ 1 ~~days~~ day, or both.

16 (3) A person convicted of a violation of subsection (1)(j) shall be fined not to exceed \$1,000 or be
17 imprisoned in the county jail for a term not to exceed 1 year, or both."
18

19 **Section 6.** Section 45-8-111, MCA, is amended to read:

20 **"45-8-111. Public nuisance.** (1) "Public nuisance" means:

21 (a) a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of
22 property so as to interfere with the comfortable enjoyment of life or property by an entire community or
23 neighborhood or by any considerable number of persons;

24 (b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

25 (c) a condition that renders dangerous for passage any public highway or right-of-way or waters used
26 by the public.

27 (2) A person commits the offense of maintaining a public nuisance if the person knowingly creates,
28 conducts, or maintains a public nuisance.

29 (3) Any act that affects an entire community or neighborhood or any considerable number of persons,
30 as specified in subsection (1)(a), is no less a nuisance because the extent of the annoyance or damage inflicted

1 upon individuals is unequal.

2 (4) An agricultural or farming operation, a place, an establishment, or a facility or any of its
3 appurtenances or the operation of those things is not or does not become a public nuisance because of its normal
4 operation as a result of changed residential or commercial conditions in or around its locality if the agricultural
5 or farming operation, place, establishment, or facility has been in operation longer than the complaining resident
6 has been in possession or commercial establishment has been in operation.

7 (5) Noises resulting from the shooting activities at a shooting range during established hours of operation
8 are not considered a public nuisance.

9 (6) A person convicted of maintaining a public nuisance shall be fined not to exceed \$500 ~~or be~~
10 ~~imprisoned in the county jail for a term not to exceed 6 months, or both.~~ Each day of the conduct constitutes a
11 separate offense."

12

13 **Section 7.** Section 61-5-102, MCA, is amended to read:

14 **"61-5-102. Drivers to be licensed -- penalties.** (1) (a) Except as provided in 61-5-104, a person may
15 not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A
16 person may not receive a Montana driver's license until the person surrenders to the department all valid driver's
17 licenses issued by any other jurisdiction. A person may not have in the person's possession or under the person's
18 control more than one valid Montana driver's license at any time.

19 (b) Except as provided in subsection (1)(c), the penalty for a ~~first~~ violation of this section is a fine of not
20 more than \$500, ~~imprisonment for not more than 6 months, or both a fine and imprisonment.~~ ~~The penalty for~~
21 ~~second and subsequent violations of this section is a fine of not more than \$500 and imprisonment for not less~~
22 ~~than 2 days or more than 6 months.~~

23 (c) A person who is eligible to hold a driver's license and has obtained a valid driver's license but has
24 not renewed the license as provided in 61-5-111(3)(c) is not subject to the penalties in subsection (1)(b).

25 (2) (a) (i) Except as provided in subsection (2)(a)(ii), a license is not valid for the operation of a
26 motorcycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been
27 clearly marked with the words "motorcycle endorsement".

28 (ii) A motorcycle endorsement is not required for the operation of a motorcycle that is propelled by an
29 electric motor or other device that transforms stored electrical energy into the motion of the vehicle, has a fully
30 enclosed cab, is equipped with three wheels in contact with the ground, and is equipped with a seat and

1 seatbelts.

2 (b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license
3 has completed the requirements of 61-5-110, the license has been clearly marked with the words "commercial
4 driver's license", and the license bears the proper endorsement for:

5 (i) the specific vehicle type or types being operated; or

6 (ii) the passengers or type or types of cargo being transported.

7 (3) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or
8 permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this
9 chapter."

10

11 **Section 8.** Section 61-5-212, MCA, is amended to read:

12 **"61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving**
13 **without valid license or licensing exemption -- seizure of vehicle or rendering vehicle inoperable. (1) (a)**

14 A person commits the offense of driving a motor vehicle without a valid license or without statutory exemption or
15 during a suspension or revocation period if the person drives:

16 (i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or
17 apply for and be issued a driver's license is suspended or revoked in this state or any other state;

18 (ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended,
19 or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle
20 or from obtaining a commercial driver's license; or

21 (iii) a motor vehicle on any public highway of this state without possessing a valid driver's license, as
22 provided in 61-5-102, or without proof of a statutory exemption, as provided in 61-5-104.

23 (b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor
24 vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving
25 during a suspension or revocation period shall be ~~punished by imprisonment for not less than 2 days or more than~~
26 ~~6 months and may be~~ fined not more than \$500.

27 (ii) If the reason for the suspension or revocation was that the person was convicted of a violation of
28 61-8-401 or 61-8-406 or a similar offense under the laws of any other state or the suspension was under 61-8-402
29 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace
30 officer who believed that the person might be driving under the influence, the person shall be punished by

1 imprisonment for a term of not less than 2 days or more than 6 months or a fine not to exceed \$2,000, or both,
2 and in addition, the court may order the person to perform up to 40 hours of community service.

3 (2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of
4 driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and
5 be issued a driver's license was suspended or revoked, the department shall extend the period of suspension
6 or revocation for an additional 1-year period.

7 (b) Upon receiving a record of the conviction of any person under this section upon a charge of driving
8 a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled
9 or the person was disqualified from operating a commercial motor vehicle under federal regulations, the
10 department shall suspend the person's commercial driver's license in accordance with 61-8-802.

11 (3) The vehicle owned and operated at the time of an offense under this section by a person whose
12 driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410
13 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted
14 person's county of residence for a period of 30 days.

15 (4) The sentencing court shall order the action provided for under subsection (3) and shall specify the
16 date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered
17 inoperable by the sheriff within 10 days after the conviction.

18 (5) A convicted person is responsible for all costs associated with actions taken under subsection (3).
19 Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless
20 the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who
21 is determined to be without fault.

22 (6) A court may not suspend or defer imposition of penalties provided by this section."
23

24 **Section 9.** Section 61-6-302, MCA, is amended to read:

25 **"61-6-302. Proof of compliance.** (1) The registration receipt required by 61-3-322 must contain a
26 statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle
27 without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond,
28 as required by 61-6-301.

29 (2) Each owner or operator of a motor vehicle shall carry in the motor vehicle an insurance card
30 approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of

1 compliance with 61-6-301. If the card is issued under a commercial automobile insurance policy or a self-insured
2 fleet, the card must indicate the status as "commercially insured" or "fleet". A motor vehicle owner or operator
3 shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer,
4 a highway patrol officer, or a field deputy or inspector of the department. A person commits an offense under this
5 subsection if the person fails to carry the insurance card in a motor vehicle or fails to exhibit the insurance card
6 upon demand of a person specified in this subsection.

7 (3) Beginning July 1, 2011, a person charged with violating subsection (2) may not be convicted if:

8 (a) the ~~arresting~~ officer or another person authorized to access information from the online motor vehicle
9 liability insurance verification system under 61-6-309 submits to the system a request that provides proof of
10 insurance valid at the time of arrest; or

11 (b) if the system under 61-6-157 is not available, the person produces in court or the office of the
12 ~~arresting~~ officer proof of insurance valid at the time of arrest.

13 (4) In lieu of charging an operator who is not the owner of a vehicle with violating subsection (2), the
14 officer may issue a complaint and notice to appear charging the owner with a violation of 61-6-301 and serve the
15 complaint and notice to appear on the owner of the vehicle:

16 (a) personally; or

17 (b) by certified mail, return receipt requested, at the address for the owner listed on the registration
18 receipt for the vehicle or, following query through available law enforcement systems, at the address maintained
19 for the vehicle's owner by the jurisdiction in which the vehicle is titled and registered, or both."
20

21 **Section 10.** Section 61-6-304, MCA, is amended to read:

22 **"61-6-304. Penalties.** (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a
23 fine of not less than \$250 or more than \$500 ~~or by imprisonment in the county jail for not more than 10 days, or~~
24 ~~both.~~ A second conviction is punishable by a fine of \$350 ~~or by imprisonment in the county jail for not more than~~
25 ~~10 days, or both.~~ A third or subsequent conviction is punishable by a fine of \$500 or by imprisonment in the
26 county jail for not more than 6 months, or both.

27 (2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall
28 order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of
29 the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate
30 family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall

1 report the surrender of the registration receipt and license plates to the department, which shall immediately
2 suspend the vehicle's registration. The vehicle's registration status may not be reinstated until proof of compliance
3 with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is
4 entitled to register the vehicle. The surrendered license plates must be recycled or destroyed by the court unless
5 the court decides to retain the license plates for the owner until the registration suspension has been completed
6 or the requirements for a restricted registration receipt have been met. Upon proof of compliance with 61-6-301
7 and payment of fees required under 61-3-333 for replacement license plates and registration decal and under
8 61-3-341 for a replacement registration receipt, during the period of 90 days from the date of a second conviction
9 or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration
10 receipt to the offender. A restricted registration receipt limits the use of the motor vehicle operated at the time of
11 the offense to use solely for employment purposes until the date indicated on the restricted registration receipt.

12 (3) Upon a fourth or subsequent conviction under 61-6-301 or 61-6-302, the court shall order the
13 surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered
14 to the offender or a member of the offender's immediate family. The court shall send the driver's license, along
15 with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the
16 driver's license. The department may not reinstate a driver's license suspended under this subsection until the
17 registered owner provides the department proof of compliance with 61-6-301 and the department determines that
18 the registered owner is otherwise eligible for licensure.

19 (4) The court may suspend a required fine only upon a determination that the offender is or will be unable
20 to pay the fine.

21 (5) A court may not defer imposition of penalties provided by this section.

22 (6) An offender is considered to have been previously convicted for the purposes of sentencing if less
23 than 5 years have elapsed between the commission of the present offense and a previous conviction."

24

25 **NEW SECTION. Section 11. Applicability.** [This act] applies to offenses committed on or after July 1,
26 2011.

27

28 **NEW SECTION. Section 12. Effective date.** [This act] is effective July 1, 2011.

29

- END -

61-6-304. Penalties. (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a fine of not less than \$250 or more than \$500 or by imprisonment in the county jail for not more than 10 days, or both. A second conviction is punishable by a fine of \$350 or by imprisonment in the county jail for not more than 10 days, or both. A third or subsequent conviction is punishable by a fine of \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall report the surrender of the registration receipt and license plates to the department, which shall immediately suspend the vehicle's registration. The vehicle's registration status may not be reinstated until proof of compliance with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is entitled to register the vehicle. The surrendered license plates must be recycled or destroyed by the court unless the court decides to retain the license plates for the owner until the registration suspension has been completed or the requirements for a restricted registration receipt have been met. Upon proof of compliance with 61-6-301 and payment of fees required under 61-3-333 for replacement license plates and registration decal and under 61-3-341 for a replacement registration receipt, during the period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration receipt to the offender. A restricted registration receipt limits the use of the motor vehicle operated at the time of the offense to use solely for employment purposes until the date indicated on the restricted registration receipt.

(3) Upon a fourth or subsequent conviction under 61-6-301 or 61-6-302, the court shall order the surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered to the offender or a member of the offender's immediate family. The court shall send the driver's license, along with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the driver's license. The department may not reinstate a driver's license suspended under this subsection until the registered owner provides the department proof of compliance with 61-6-301 and the department determines that the registered owner is otherwise eligible for licensure.

(4) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

(5) A court may not defer imposition of penalties provided by this section.

(6) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction.

46-1-1103. Definitions [drug treatment court]. As used in this part, the following definitions apply:

(1) "Assessment" means a diagnostic evaluation to determine whether and to what extent a person is a drug offender under this part and would benefit from the provisions of this part.

(2) "Continuum of care" means a seamless and coordinated course of substance abuse education and treatment designed to meet the needs of drug offenders as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) "Drug" includes:

(a) a controlled substance, which is a drug or other substance for which a medical prescription or other legal authorization is required for purchase or possession;

(b) an illegal drug, which is a drug whose manufacture, sale, use, or possession is forbidden by law; or

(c) a harmful substance, which is a misused substance otherwise legal to possess, including alcohol.

(4) "Drug offender" means a person charged with a drug-related offense or an offense in which substance abuse is determined to have been a significant factor in the commission of an offense.

(5) "Drug treatment court" means a court established by a court pursuant to this part implementing a program of incentives and sanctions intended to assist a participant to end the participant's addiction to drugs and to cease criminal behavior associated with drug use and addiction.

(6) "Drug treatment court coordinator" means an individual who, under the direction of the drug treatment court judge, is responsible for coordinating the establishment, staffing, operation, evaluation, and integrity of the drug treatment court.

(7) "Drug treatment court team" means a group of individuals appointed by the drug treatment court that may consist of the following members:

(a) the judge, which may include a magistrate or other hearing officer;

(b) the prosecutor;

(c) the public defender or defense attorney;

(d) a law enforcement officer;

(e) the drug treatment court coordinator;

(f) a probation and parole officer;

(g) substance abuse treatment providers;

(h) a representative from the department of public health and human services; and

(i) any other person selected by the drug treatment court.

(8) "Memorandum of understanding" means a written document setting forth an agreed-upon procedure.

(9) "Recidivism" means any arrest for a serious offense that results in the filing of a charge and can carry a sentence of 1 or more years.

(10) "Staff meeting" means the meeting before a drug offender's appearance in drug treatment court in which the drug treatment court team discusses a coordinated response to the drug offender's behavior.

(11) "Substance abuse" means the illegal or improper consumption of a drug as defined in this section.

(12) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance use.

46-1-1203. Definitions [mental health treatment court]. As used in this part, the following definitions apply:

(1) "Assessment" means a diagnostic evaluation to determine whether and to what extent a person is an offender with a mental disorder under this part and would benefit from the provisions of this part.

(2) "Continuum of care" means a seamless and coordinated course of mental health counseling and treatment designed to meet the needs of participants as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) "Drug" has the meaning provided in 46-1-1103.

(4) "Memorandum of understanding" means a written document setting forth an agreed-upon procedure.

(5) "Mental health treatment court" means a court established by a court pursuant to this part implementing a program of incentives and sanctions intended to assist a participant, whose conduct has resulted in a criminal violation, in receiving the needed treatment and life skills to prevent further criminal behavior associated with a mental disorder.

(6) "Mental health treatment court coordinator" means an individual who, under the direction of the mental health treatment court judge, is responsible for coordinating the establishment, staffing, operation, evaluation, and integrity of the mental health treatment court.

(7) "Mental health treatment court team" means a group of individuals appointed by the mental health treatment court that:

(a) must include the following members:

(i) the judge, which may include a magistrate or other hearing officer;

(ii) the prosecutor;

(iii) the ~~public defender~~ or defense attorney;

(iv) the participant; and

(v) the mental health treatment court coordinator; and

(b) may include the following additional members:

(i) a law enforcement officer;

(ii) a probation and parole officer;

(iii) a mental health professional;

(iv) a substance abuse treatment provider;

(v) a representative from the department of public health and human services;

(vi) a mental health advocate; and

(vii) any other person selected by the mental health treatment court.

(8) "Mental health treatment program" means a program designed by the mental health treatment court team to provide prevention, education, and therapy directed toward ending criminal behavior and preventing a return to a condition leading to criminal behavior. Mental health treatment programs may consist of but are not limited to housing assistance, job training, mental health counseling, and psychiatric treatment.

(9) "Participant" means a person charged with a criminal offense or an offense in which a mental disorder, as defined in 53-21-102, is determined to have been a significant factor in the commission of the offense.

(10) "Staff meeting" means the meeting before a participant's appearance in mental health treatment court in which the mental health treatment court team discusses a coordinated response to the participant's behavior.

(11) "Substance abuse" means the illegal or improper consumption of a drug, but does not include inadvertent error in the use of medication.

(12) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance use.

47-1-118. Conflicts of interest. (1) The commission shall establish a conflicts office to contract for attorneys to represent indigent defendants in circumstances where, because of conflict of interest, the public defender program is unable to provide representation to a defendant.

(2) The commission shall appoint a conflicts manager to oversee the office. The conflicts manager reports directly to the commission and not to the chief public defender. The conflicts manager may not handle cases. The conflicts manager shall hire an attorney to handle the postconviction cases where district courts order assignment of counsel following the procedure established in 46-21-201.

(3) All attorneys contracted for conflict of interest cases shall report to the conflicts manager.

41-3-425. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsections (3) and (4), the court shall immediately appoint the office of the state public defender to assign counsel ~~or have counsel assigned for:~~

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending determination of eligibility pursuant to 47-1-111;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) When appropriate, the court may appoint the office of the state public defender to assign counsel ~~or have counsel assigned for:~~ any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) When appropriate, the court may assign counsel, at the court's expense for (a) a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422;

~~(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.~~

~~(4) The court's action pursuant to subsection (2) or (3) must be to order the office of state public defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, pending a determination of eligibility pursuant to 47-1-111.~~

History: En. Sec. 15, Ch. 449, L. 2005; amd. Sec. 1, Ch. 511, L. 2007; amd. Sec. 1, Ch. 343, L. 2011.

47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the office or the office of appellate defender to assign counsel, the appropriate office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order an office to assign counsel under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

~~(i) as provided for in 41-3-425;~~

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

~~(iii)~~ (iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice of Abortion Act, as provided in 50-20-212;

(iv) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

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

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest.

History: En. Sec. 4, Ch. 449, L. 2005; amd. Sec. 3, Ch. 24, L. 2011.

47-1-111. Eligibility -- determination of indigence -- rules. (1) (a) When a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

(d) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) An applicant is not indigent if that applicant previously retained private counsel to handle any matter of that applicant's case including, but not limited to, any pretrial hearings, trial, or sentencing.

(a) Private counsel is defined as a licensed attorney who has agreed to represent the applicant for monetary gain.

(b) An applicant is not indigent for purposes of obtaining a public defender under this title if private counsel has not received payment from the applicant for the contracted services with the private attorney.

(c) An applicant is not indigent for purposes of obtaining a public defender under this title if private counsel handles the applicant's case before any district court and, after conviction and sentencing, the applicant no longer has funds to appeal to the Montana Supreme Court.

(45) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(56) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(67) The commission shall establish procedures and adopt rules to implement this section. Commission procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

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(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit individual public defenders from performing eligibility screening pursuant to this section.

History: En. Sec. 14, Ch. 449, L. 2005; amd. Sec. 2, Ch. 467, L. 2009; amd. Sec. 7, Ch. 344, L. 2011.

47-1-201. Office of state public defender -- personnel -- compensation -- expenses -- reports. (1) There is an office of state public defender. The office must be located in Butte, Montana. The head of the office is the chief public defender, who is supervised by the commission.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office of state public defender and to implement the provisions of this chapter, including but not limited to:

(a) the following personnel who are exempt from the state classification and pay plan as provided in 2-18-103:

(i) a deputy chief public defender who is experienced in managing day to day operations of a public defender system;

(ii) an administrative director, who must be experienced in business management and contract management;

(iii) a chief contract manager to oversee and enforce the contracting program;

(iv) a training coordinator, appointed as provided in 47-1-210;

(iv) deputy public defenders, as provided in 47-1-215;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.

(8) The office shall provide assistance with the budgeting, reporting, and related administrative functions of the office of appellate defender as provided in 47-1-205.

(9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, including defense expenses paid for work performed by or for the office of appellate defender.

(10) (a) The office of public defender is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative finance committee. The report must include unduplicated count data for all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type.

(b) The office of public defender is required to report to the legislative finance committee for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid.

History: En. Sec. 7, Ch. 449, L. 2005; amd. Sec. 16, Ch. 486, L. 2009; amd. Sec. 5, Ch. 24, L. 2011; amd. Sec. 2, Ch. 394, L. 2011.