

SENATE BILL NO. 146

INTRODUCED BY D. MCGEE

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA PUBLIC DEFENDER ACT; PROVIDING PURPOSES AND DEFINITIONS; ESTABLISHING A STATEWIDE PUBLIC DEFENDER SYSTEM TO DELIVER ASSIGNED COUNSEL SERVICES IN STATE, COUNTY, MUNICIPAL, AND CITY COURTS; SPECIFYING THE SCOPE OF PUBLIC DEFENDER SERVICES IN CRIMINAL AND CIVIL PROCEEDINGS TO BE DELIVERED BY THE SYSTEM; REPLACING THE APPELLATE DEFENDER COMMISSION WITH A PUBLIC DEFENDER COMMISSION; ESTABLISHING AN OFFICE OF STATE PUBLIC DEFENDER; SPECIFYING DUTIES AND RESPONSIBILITIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR REGIONAL OFFICES; PROVIDING FOR A CONTRACTED SERVICES PROGRAM; PROVIDING CERTAIN EXEMPTIONS FROM THE MONTANA PROCUREMENT ACT; PROVIDING FOR DETERMINATIONS OF ELIGIBILITY AND INDIGENCE; REALLOCATING PAYMENT RESPONSIBILITIES FOR CERTAIN COSTS PAYABLE BY THE OFFICE OF COURT ADMINISTRATOR AND THE NEW OFFICE OF STATE PUBLIC DEFENDER; ESTABLISHING A SPECIAL REVENUE ACCOUNT; PROVIDING A COST SHARING FORMULA FOR STATE, COUNTY, AND CITY FUNDING; CLARIFYING PROVISIONS RELATED TO WITNESS FEES, TRANSCRIPT FEES, AND PSYCHIATRIC EVALUATION AND EXAMINATION COSTS; PROVIDING THAT A PUBLIC DEFENDER BE ASSIGNED AT THE BEGINNING OF ANY CHILD ABUSE AND NEGLECT PROCEEDING; PROVIDING FOR THE TRANSFER OF EMPLOYEES IN COUNTY AND CITY PUBLIC DEFENDER OFFICES TO STATE EMPLOYMENT; PROVIDING FOR AN IMPLEMENTATION AND TRANSITION PERIOD; AMENDING SECTIONS 2-18-103, 3-5-511, 3-5-604, 3-5-901, 18-4-132, 26-2-501, 26-2-505, 26-2-506, 26-2-508, 26-2-510, 40-5-236, 40-6-119, 41-3-205, 41-3-422, 41-3-423, 41-3-432, 41-3-607, 41-3-1010, 41-3-1012, 41-5-111, 41-5-112, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-8-113, 46-8-114, 46-8-115, 46-12-210, 46-14-202, 46-14-221, 46-15-115, 46-15-116, 46-17-203, 46-18-101, 46-18-201, 46-21-201, 50-20-212, 53-9-104, 53-20-125, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 61-8-731, 72-5-225, 72-5-234, 72-5-315, 72-5-322, AND 72-5-408, MCA; REPEALING SECTIONS 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, AND 46-8-213, MCA; AND PROVIDING EFFECTIVE DATES."

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Establishing an office of APPELLATE DEFENDER AND PROVIDING FOR A CHIEF APPELLATE DEFENDER

changing the local gov't. entitlement share paym't law to compensate the State for Local gov't share of cost of state public defender system

REQUIRING REPORTING + A Legislative Audit of ACTUAL EXPENSES so that FUNDING RESPONSIBILITIES can be adjusted



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

2

3 NEW SECTION. Section 1. Short title. [Sections 1 through 4 and 6 through 14] may be cited as the
4 "Montana Public Defender Act".

5

6 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 4 and 6 through 14], the
7 following definitions apply:

8 (1) "Commission" means the public defender commission established in [section 5].

9 (2) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court,
10 or a city court.

11 (3) "Indigent" means that a person has been determined under the provisions of [section 13] to be
12 indigent ~~or partially indigent~~ and financially unable to retain private counsel.

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13 (4) "Office" means the office of state public defender established in [section 7].

14 (5) "Public defender" means an attorney employed by or under contract with the office and assigned
15 to provide legal counsel to a person under the provisions of [sections 1 through 4 and 6 through 14].

16 (6) "Statewide public defender system", "state system", or "system" means the system of public
17 defender services established pursuant to [sections 1 through 4 and 6 through 14].

18

19 NEW SECTION. Section 3. Purpose. The purposes of [sections 1 through 4 and 6 through 14] are
20 to:

21 (1) establish a statewide public defender system to provide effective assistance of counsel to indigent
22 criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public
23 expense;

24 (2) ensure that the system is free from undue political interference and conflicts of interest;

25 (3) provide that public defender services are delivered by qualified and competent counsel in a manner
26 that is fair and consistent throughout the state;

27 (4) establish a system that utilizes state employees, contracted services, or other methods of providing
28 services in a manner that is responsive to and respectful of regional and community needs and interests; and

29 (5) ensure that ^{adequate} public funding of the statewide public defender system is provided and managed in a
30 fiscally responsible manner.

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2 **NEW SECTION. Section 4. Statewide system -- structure and scope of services -- assignment**3 **of counsel at public expense.** (1) There is a statewide public defender system, which must deliver public
4 defender services in all courts in this state. The system is supervised by the commission and administered by
5 the office.6 (2) The commission shall approve a strategic plan for service delivery and divide the state into not more
7 than 11 public defender regions. The commission may establish a regional office to provide public defender
8 services in each region, as provided in [section 10], establish a contracted services program to provide services
9 in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described
10 in [section 3].11 (3) Beginning July 1, 2006, when a court orders the office to assign counsel, the office shall immediately
12 assign a public defender qualified to provide the required services. The commission may establish protocols to
13 provide that public defenders work with a court to establish assignment rosters or other methodologies to ensure
14 that the office makes appropriate assignments in a timely manner.15 (4) Beginning July 1, 2006, a court may order the office to assign counsel under [sections 1 through 4
16 and 6 through 14] in the following cases:17 (a) in cases in which a person is entitled to assistance of counsel at public expense because of financial
18 inability to retain private counsel, subject to a determination of indigence pursuant to [section 13], as follows:19 (i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of
20 incarceration, as provided in 46-8-101;21 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided
22 in 40-6-119;23 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
24 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child
25 Welfare Act, as provided in [section 15]; *(iv) for an applicant for sentence review pursuant
to title 46, chapter 18, part 9;*26 (v) ~~(iv)~~ for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;27 (vi) ~~(v)~~ for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;28 (vii) ~~(vi)~~ for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
29 disabled person to a residential facility, as provided in 53-20-112;30 (viii) ~~(vii)~~ for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in

1 53-21-116;

2 (~~i~~) (~~x~~) (~~viii~~) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as
3 provided in 53-24-302; and

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

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

7 (i) as provided for in [section 15];

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

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

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

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

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

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

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

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

23 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
24 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
25 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

26 (b) A private attorney who is contracted with under the provisions of [section 11] to provide public
27 defender services under [sections 1 through 4 and 6 through 14] may be appointed as a court-appointed special
28 advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from
29 the attorney's service for the statewide public defender system and does not result in a conflict of interest.

30

NEW SECTION. Section 5. Public defender commission. (1) There is a public defender commission.

(2) The commission consists of ~~seven~~ ^{eleven} members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in ^{the defense of} juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents ~~a Montana association for criminal defense lawyers; and~~

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

insert (d) - (g) SEE Attachment A. (3)

(4)(3) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5)(4) Members shall serve staggered 3-year terms.

(6)(5) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:

(a) the commission and chief public defender shall hire their own staff, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and

(b) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection ^{(6)(b)} ~~(5)(b)~~ prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.

(7)(6) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in [section 7], a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

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

4 (9) The commission shall establish procedures for the conduct of its affairs and elect a presiding officer
5 from among its members.
6

7 NEW SECTION. Section 6. Commission -- duties -- report -- rules. The commission shall supervise
8 and direct the system. In addition to other duties assigned pursuant to [sections 1 through 4 and 6 through 14],
9 the commission shall:

10 (1) establish the qualifications, duties, and compensation of the chief public defender, as provided in
11 [section 7], appoint a chief public defender after considering qualified applicants, and regularly evaluate the
12 performance of the chief public defender;

13 (2) establish statewide standards for the qualification and training of attorneys providing public defender
14 services to ensure that services are provided by competent counsel and in a manner that is fair and consistent
15 throughout the state. The standards must take into consideration:

16 (a) the level of education and experience that is necessary to competently handle certain cases and
17 case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types in
18 order to provide effective assistance of counsel;

19 (b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads
20 are manageable;

21 (c) access to and use of necessary professional services, such as paralegal, investigator, and other
22 services that may be required to support a public defender in a case;

23 (d) continuing education requirements for public defenders and support staff;

24 (f) ← (e) practice standards;
(e) performance criteria; and

25 (g) performance evaluation protocols.

26 (3) review and approve the strategic plan and budget proposals submitted by the chief public defender
27 and the administrative director;

28 (4) review and approve any proposal to ^{create} hire permanent staff; ^{positions}

29 (5) establish policies and procedures for identifying cases in which public defenders may have a conflict
30 of interest and for ensuring that cases involving a conflict of interest are handled according to professional

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1 ethical standards;

2 (6) establish policies and procedures for handling excess caseloads;

3 (7) establish policies ^{and procedures} to ensure that detailed expenditure and caseload data is collected, recorded, and
4 reported to support strategic planning efforts for the system;

5 (8) adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the
6 provisions of [sections 1 through 4 and 6 through 14]; and

7 (9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in
8 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee
9 established pursuant to 5-5-202 and 5-5-226. The report must include detailed expenditure, caseload, and
10 workload data by court and case type and any recommendations for amending the cost allocation factors

11 provided for in [section 14] in order to include a cost allocation factor based on actual caseload and the
12 associated workload.

14 NEW SECTION. Section 7. Office of state public defender -- personnel -- compensation --

15 expenses. (1) There is an office of state public defender. The head of the office is the chief public defender, who
16 is supervised by the commission.

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

22 (3) ~~Subject to the commission's approval,~~ ^{The} the chief public defender shall hire or contract for and
23 supervise other personnel necessary to perform the function of the office and to implement the provisions of
24 [sections 1 through 4 and 6 through 14], including but not limited to:

25 (a) the following personnel who are exempt from the state classification and pay plan, as provided in
26 2-18-103:

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

29 (ii) a chief appellate defender;

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

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1 (iv) a training coordinator, appointed as provided in [section 9];

2 (v) deputy public defenders, as provided in [section 10]; and

3 (b) assistant public defenders; and

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

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

7 (5) Beginning July 1, 2006, the following expenses are payable by the office if the expense is incurred
8 at the request of a public defender:

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

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

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

14 (7) The office may accept gifts, grants, or donations, which must be deposited in the account provided
15 for in [section 12].

16 (8) The chief public defender shall establish procedures to provide for the approval, payment, recording,
17 reporting, and management of defense expenses paid pursuant to this section.

18
19 **NEW SECTION. Section 8. Chief public defender -- duties.** In addition to the duties provided in
20 [section 7], the chief public defender shall:

21 (1) act as secretary to the commission and provide administrative staff support to the commission;

22 (2) assist the commission in establishing the state system and establishing the standards, policies, and
23 procedures required pursuant to [sections 1 through 4 and 6 through 14];

24 (3) develop and present for the commission's approval a regional strategic plan for the delivery of public
25 defender services;

26 (4) ensure that when a case that is assigned to the office presents a conflict of interest for a public
27 defender, the conflict is identified and handled appropriately and ethically;

28 (5) establish processes and procedures to ensure that office and contract personnel use information
29 technology and caseload management systems so that detailed expenditure and caseload data is accurately
30 collected, recorded, and reported;

(8) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

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(6) establish administrative management procedures for regional offices;

(7) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, ~~and~~ ^{and manageable caseloads} training and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

~~(9)~~ ^{insert (8) here}

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attorneys and

(9) establish and supervise a training and performance evaluation program for nonattorney staff members and contractors;

(10) establish procedures to handle complaints about public defender performance and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

(11) maintain a minimum client caseload, as determined by the commission;

(12) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system; and

(13) perform all other duties assigned by the commission pursuant to [sections 1 through 4 and 6 through 14].

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NEW SECTION. Section 9, Office of appellate defender -- chief appellate defender. (See insert) C.

NEW SECTION. Section 8, Training program -- coordinator. (1) There is within the office a position of training coordinator for public defenders.

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(2) The chief public defender shall appoint the training coordinator ~~from a list of three names submitted by the president of the state bar of Montana.~~

(3) The training coordinator shall:

(a) coordinate training to public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

(d) provide assistance with research or briefs and provide other technical assistance requested by a

1 public defender;

2 (e) apply for and assist in the disbursement of federal funds or other grant money to aid the statewide
3 public defender system; and

4 (f) perform other duties assigned by the chief public defender.

5
6 NEW SECTION. Section ¹¹~~10~~. **Regional offices -- deputy public defenders -- office space.** (1)

7 Beginning July 1, 2006, the chief public defender shall hire, assign, and supervise a deputy public defender to
8 manage and supervise each regional office established pursuant to [section 4(2)].

9 (2) Each deputy public defender shall:

10 (a) manage and supervise all public defender services provided within the deputy public defender's
11 assigned region;

12 (b) consult with the courts within the region and establish agreed-upon protocols so that when a court
13 orders the office to assign counsel, the assignment is made promptly to an appropriate public defender and so
14 that a public defender is immediately available when necessary;

15 (c) ensure that public defender assignments within the region comply with the provisions of [section
16 8(7)];

17 (d) hire and supervise the work of regional office personnel as authorized by the chief public defender;

18 (e) contract for services as provided in [section 11] and authorized by the chief public defender
19 according to the strategic plan approved by the commission;

20 (f) keep a record of public defender and associated services and expenses in the region and submit
21 the records to the chief public defender as requested;

22 (g) implement the standards and procedures established by the commission and chief public defender
23 for the region;

24 (h) maintain a minimum client caseload as determined by the chief public defender; and

25 (i) perform all other duties as assigned by the chief public defender.

26 (3) Expenses for office space required for regional offices, including rent, utilities, and maintenance,
27 must be paid by the office and may not be considered a county or city obligation.

28
29 NEW SECTION. Section ¹²~~11~~. **Contracted services -- rules.** (1) The commission shall establish
30 standards for a statewide contracted services program that ensures that contracting for public defender services

5 **Insert:** " (b) attorney qualifications necessary to provide effective assistance of counsel that meet the standards 46.01 issued by the Montana supreme court for counsel for indigent persons in capital cases; "

1 is done fairly and consistently statewide and within each public defender region.

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

7 (3) Contracts may not be awarded based solely on the lowest bid or provide compensation to
8 contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

9 (4) Contracting for public defender services must be done through a competitive process that must, at
10 a minimum, involve the following considerations:

11 (a) attorney qualifications necessary to provide effective assistance of counsel that meets the standards
12 established by the commission;

13 (c) ~~(b)~~ attorney access to support services, such as paralegal and investigator services;

14 (d) ~~(c)~~ attorney caseload, including the amount of private practice engaged in outside the contract;

15 (e) ~~(d)~~ reporting protocols and caseload monitoring processes;

16 (f) ~~(e)~~ a process for the supervision and evaluation of performance;

17 (g) ~~(f)~~ a process for conflict resolution; and

18 (h) ~~(g)~~ continuing education requirements in accordance with standards set by the commission.

19 (5) The chief public defender and deputy public defenders shall provide for contract oversight and
20 enforcement to ensure compliance with established standards.

21 (6) The commission shall adopt rules to establish reasonable compensation for attorneys contracted
22 to provide public defender services and for others contracted to provide nonattorney services.

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24 ¹³
NEW SECTION. Section 12. Public defender account. (1) There is a public defender account in the
25 state special revenue fund. Gifts, grants, or donations provided to support the system must be deposited in the
26 account. Money in the account may be used only for the operation of the system.

27 (2) Beginning July 1, 2006, money to be deposited in the account also includes:

28 ~~(a) the county and city share of funding for the system, as provided in [section 14];~~

29 (a) ~~(b)~~ the processing fee and any contributions required pursuant to [section 13];

30 (b) ~~(c)~~ payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a

1 sentence in a criminal case;

2 (c) ~~(d)~~ payments for public defender costs ordered pursuant the Montana Youth Court Act; and

3 (d) ~~(e)~~ payments made pursuant to The Crime Victims Compensation Act of Montana and designated as
4 payment for public defender costs pursuant to 53-9-104.

5
6 NEW SECTION. Section ¹⁴ 13. Eligibility -- processing fee -- determination of indigence and partial

7 ~~indigence-- contributions toward costs -- rules.~~ (1) (a) Beginning July 1, 2006, when a court orders the office
8 to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

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

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

14 (d) Any determination pursuant to this section is subject to the review and approval of the court.

15 ~~(2) (a) A person for whom a public defender has been assigned or for whom assignment of a public~~
16 ~~defender is sought shall, within a reasonable amount of time, complete and return to personnel designated~~
17 ~~pursuant to commission policy an application and a \$25 processing fee payable to the office.~~

18 ~~(b) The processing fee must be reduced or waived by the office if payment of the fee would result in~~
19 ~~a substantial financial hardship to the applicant.~~

20 (2) (a) ~~(c)~~ An applicant who is eligible for a public defender only because the applicant is indigent shall also
21 provide a detailed financial statement and sign an affidavit.

22 (b) ~~(d)~~ The application, financial statement, and affidavit must be on a form prescribed by the commission.

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

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

29 ~~(3) An applicant in a proceeding listed in [section 4(4)(a)] must be screened for indigence as provided~~
30 ~~in subsection (4) of this section or for partial indigence as provided in subsection (5) of this section.~~

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1 (3) (4) An applicant is indigent if:

2 (a) the applicant's gross household income, as defined in 15-30-171, is at or less than 133% of the
3 poverty level set according to the most current federal poverty guidelines updated periodically in the federal
4 register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2);
5 and

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

9 ~~(5) An applicant is partially indigent if:~~

10 (a) the applicant's gross household income, as defined in 15-30-171, is higher than the percentage of
11 poverty set in subsection (4)(a) but lower than 200% of the federal poverty guidelines; and

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

15 (6) (a) Except as provided in subsection (6)(b), an applicant determined to be partially indigent under
16 subsection (5) shall make a contribution toward the cost of public defender services. The contribution amount
17 must be a total flat dollar amount determined according to a sliding scale adopted by the commission by rule.
18 The sliding scale must be based on the applicant's gross household income, as defined in 15-30-171, and on
19 factors weighted according to the type and complexity of the case.

20 (b) The contribution amount required under this subsection (6) may be reduced or waived by a court
21 if the court determines that the contribution amount constitutes a substantial financial hardship to the applicant
22 or the members of the applicant's household.

23 (c) The court may find that failure to make the contribution required under this subsection (6) constitutes
24 civil contempt of court. A default in the payment of the contribution may be collected by any means authorized
25 by law for the enforcement of a judgment.

26 (4) (7) A determination of indigence or partial indigence may not be denied based solely on an applicant's
27 ability to post bail or solely because the applicant is employed.

28 (5) (8) A determination may be modified by the office or the court if additional information becomes
29 available or if the applicant's financial circumstances change.

30 (6) (9) The commission shall establish procedures and adopt rules to implement this section. Commission

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1 procedures and rules:

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

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

6 ~~(c) may allow contributions under subsection (6) to be made in installments;~~

7 (c) ~~(c)~~ ^{provide} may ^{provide} for the use of other public or private agencies or contractors to conduct eligibility
8 screening and collect processing fees and contribution amounts payable under this section;

9 (d) ~~(d)~~ must avoid unnecessary duplication of processes ~~and provide that:~~

10 ~~(i) the financial eligibility determinations performed under other public assistance programs on behalf
11 of the applicant are used to the extent feasible when determining the applicant's indigence pursuant to this
12 section; and~~

13 ~~(ii) the procedures for collecting the processing fee and contributions required pursuant to this section
14 use collection processes already in place to the extent feasible; and~~ ^{Keep; and"}

15 (e) ~~(e)~~ must prohibit individual public defenders from performing eligibility screening or collection activities
16 pursuant to this section.

17 ~~(f) (f) The processing fee and contributions paid under this section must be deposited in the account
18 established in [section 12].~~

19
20 ~~NEW SECTION. Section 14. Legislative findings -- cost-sharing. (1) The legislature finds that
21 protecting the constitutional rights of persons entitled by law to effective assistance of counsel at public expense
22 is the obligation of the state, each county, and each city operating a court where counsel must be assigned to
23 eligible persons. The legislature further finds that enactment of a statewide public defender system funded with
24 pooled resources is the most effective and efficient way of ensuring the provision of effective assistance of
25 counsel in a manner that meets state, county, and city obligations.~~

26 (2) Beginning July 1, 2006, funding for the system must be shared by the state, counties, and cities as
27 provided for in this section.

28 (3) Of the total biennial budget for the system:

29 (a) total state funding, including funds received by the state from the federal government or other
30 sources, must equal 77.7%;

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1 ~~(b) total county funding must equal 15.6%; and~~

2 (c) total city funding must equal 6.7%.

3 (4) (a) Each county shall annually contribute to the total budget for the system the amount calculated

4 as provided in this subsection (4).

5 (b) For each county, the commission shall calculate the amount to be contributed by the county by

6 calculating specific allocation factors for the county as follows:

7 (i) a population allocation factor for the county must be calculated by dividing the county's population

8 by the state population based on the most current population data available from the United States census

9 bureau;

10 (ii) a taxable value allocation factor for the county must be calculated by dividing the county's taxable

11 value by the total taxable value of all counties as reported for the previous year in the latest biennial report

12 published by the Montana department of revenue pursuant to 15-1-205; and

13 (iii) a crime rate allocation factor for the county must be calculated by dividing the total number of index

14 crimes, as defined by the Montana board of crime control provided for in 2-15-2006, committed in the county by

15 the total number of index crimes committed in the state based on the latest statistics available for the previous

16 year from the Montana board of crime control.

17 (c) A total allocation factor for the county must be calculated by adding the allocation factors determined

18 under subsection (4)(b) and dividing the sum by three.

19 (d) Each county's share of the budget must be calculated by multiplying the total biennial budget for the

20 office by the total county funding percentage specified in subsection (3)(b) and multiplying the product by the

21 total allocation factor for the county determined under subsection (4)(c).

22 (5) (a) Each city with a city or municipal court shall annually contribute to the total budget for the system

23 the amount calculated as provided in this subsection (5).

24 (b) For each city, the commission shall calculate the amount that the city is required to contribute by

25 calculating specific allocation factors for the city as follows:

26 (i) a population allocation factor for the city must be calculated by dividing the city's population by the

27 state population based on the most recent population data available from the United States census bureau; and

28 (ii) a taxable value allocation factor for the city must be calculated by dividing the city's taxable value by

29 the total taxable value of all cities as reported for the previous year in the latest biennial report published by the

30 Montana department of revenue pursuant to 15-1-205.

1 ~~(c) A total allocation factor must be calculated by adding the allocation factors determined under~~
2 ~~subsection (5)(b) and dividing the sum by two.~~

3 (d) Each city's share of the budget must be calculated by multiplying the total biennial budget for the
4 office by the total city funding percentage specified in subsection (3)(c) and multiplying the product by the total
5 allocation factor for the city determined under subsection (5)(c).

6 (6) The formulas used in subsections (4) and (5) must be recalculated each biennium and may not be
7 recalculated annually.

8 (7) (a) By June 30 of each fiscal year, the chief public defender shall notify each city and county of its
9 proportional share of funding and shall invoice each city and county for that amount.

10 (b) ~~The state treasurer may deduct the payment amount from the city's or county's entitlement share~~
11 ~~to be allocated to the city or county pursuant to 15-1-121. However, a shortfall in the city or county entitlement~~
12 ~~share does not relieve the city or county from its funding obligation pursuant to this section.~~

13

14 NEW SECTION. Section 15. Right to counsel. (1) Any party involved in a petition filed pursuant to
15 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

16 (2) Except as provided in subsection (3), ~~upon request or if the court, in its own discretion, determines~~
17 ~~that appointment or assignment of counsel is in the best interest of justice, the court shall immediately appoint~~
18 ~~or assign counsel for:~~
19 *have assigned*

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

(b) any child, youth, or guardian ad litem involved in a proceeding under a petition filed pursuant to
21 41-3-422; and

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

(3) Beginning July 1, 2006, the court's action pursuant to subsection (2) must be to order the office of
24 state public defender, provided for in [section 7], to immediately assign counsel pursuant to the Montana Public
25 Defender Act, [sections 1 through 4 and 6 through 14], pending a determination of eligibility pursuant to [section
26 13].
27

28

29 **Section 16.** Section 2-18-103, MCA, is amended to read:

30 **"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following



1 officers and employees in state government:

2 (1) elected officials;

3 (2) county assessors and their chief deputies;

4 (3) employees of the office of consumer counsel;

5 (4) judges and employees of the judicial branch;

6 (5) members of boards and commissions appointed by the governor, the legislature, or other elected
7 state officials;

8 (6) officers or members of the militia;

9 (7) agency heads appointed by the governor;

10 (8) academic and professional administrative personnel with individual contracts under the authority
11 of the board of regents of higher education;

12 (9) academic and professional administrative personnel and live-in houseparents who have entered
13 into individual contracts with the state school for the deaf and blind under the authority of the state board of
14 public education;

15 (10) investment officer, assistant investment officer, executive director, and five professional staff
16 positions of the board of investments;

17 (11) four professional staff positions under the board of oil and gas conservation;

18 (12) assistant director for security of the Montana state lottery;

19 (13) executive director and employees of the state compensation insurance fund;

20 (14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

21 (15) executive director of the Montana wheat and barley committee;

22 (16) commissioner of banking and financial institutions;

23 (17) training coordinator for county attorneys;

24 (18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

25 (19) chief information officer in the department of administration;

26 (20) chief business development officer and six professional staff positions in the office of economic
27 development provided for in 2-15-218;

28 (21) chief public defender appointed by the public defender commission pursuant to the Montana Public
29 Defender Act, [sections 1 through 4 and 6 through 14], and the employees in the positions listed in [section
30 7(3)(a)], who are appointed by the chief public defender."

1
2 **Section 17.** Section 3-5-511, MCA, is amended to read:

3 "**3-5-511. Procedure in reference to witnesses' Witnesses' warrants -- state reimbursement.** (1)
4 The witnesses in criminal actions, witnesses called by a public defender, as defined in [section 2], and witnesses
5 called in a grand jury proceeding shall report their presence to the clerk the first day they attend under the
6 subpoena.

7 (2) At the time any witness is excused from further attendance, the clerk shall give to the witness a
8 county warrant, signed by the clerk, in which must be stated the name of the witness, the number of days in
9 attendance, the number of miles traveled, and the amount due pursuant to Title 26, chapter 2, part 5, and
10 46-15-116.

11 (3) The state shall reimburse the clerk for the amount specified in the warrant as ~~provided in 3-5-904~~
12 ~~and 3-5-902 follows:~~

13 (a) if the witness was subpoenaed by the prosecution in a criminal proceeding or in a grand jury or by
14 an indigent defendant acting pro se, the amount must be reimbursed by the office of court administrator as
15 provided in 3-5-901; or

16 (b) if the witness was subpoenaed by a public defender, the amount must be reimbursed by the office
17 of state public defender as provided in [section 7]."

18
19 **Section 18.** Section 3-5-604, MCA, is amended to read:

20 "**3-5-604. Court reporters -- transcript of proceedings -- costs.** (1) Each court reporter shall furnish,
21 upon request, with all reasonable diligence, to a party or a party's attorney in a case in which the court reporter
22 has attended the trial or hearing a transcript from stenographic notes of the testimony and proceedings of the
23 trial or hearing or a part of a trial or hearing upon payment by the person requiring the transcript of \$2 a page
24 for the original transcript, 50 cents a page for the first copy, and 25 cents a page for each additional copy, except
25 as otherwise provided in this section.

26 (2) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees
27 required by subsection (1) must be paid to the clerk of district court who shall forward the amount to the
28 department of revenue for deposit in the state general fund.

29 (3) (a) If the judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription
30 fee must be paid by the state office of court administrator as provided in 3-5-901.

1 (b) If the county attorney or the attorney general requires a transcript in a criminal case, the reporter
2 shall furnish the transcript and only the reporter's actual cost of preparation may be paid by the county or the
3 office of the attorney general.

4 ~~(4)(c)~~ If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall
5 furnish the copy without charge.

6 (d) In civil cases, all transcripts required by the county must be furnished; and only the reporter's actual
7 costs of preparation may be paid by the county.

8 ~~(5)(4)~~ (a) ~~If it appears to the judge that a defendant in a criminal case or a parent or guardian in a~~
9 ~~proceeding brought pursuant to Title 41, chapter 3, part 4 or 6, is unable to pay for a transcript a public defender,~~
10 ~~as defined in [section 2], requests a transcript, # the transcript must be furnished to the party public defender and~~
11 ~~paid for by the state office of public defender, as provided in 3-5-901 [section 7].~~

12 (b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the
13 transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901."

14
15 **Section 19.** Section 3-5-901, MCA, is amended to read:

16 **"3-5-901. State assumption of district court expenses.** (1) There is a state-funded district court
17 program under the judicial branch. Under this program, the state office of court administrator shall fund all district
18 court costs, except as provided in subsection ~~(4)~~ (3). These costs must be paid under guidelines adopted
19 pursuant to 3-1-1601 and include but are not limited to the following:

20 (a) salaries and benefits for:

21 (i) district court judges;

22 (ii) law clerks;

23 (iii) court reporters, as provided in 3-5-601;

24 (iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court;

25 and

26 (v) other employees of the district court;

27 (b) except as provided in [section 7(5)], the following expenses in criminal cases:

28 (i) fees for transcripts of proceedings, as provided in 3-5-604, expenses for indigent defense that are
29 paid under contract or at an hourly rate, and expenses for psychiatric examinations;

30 (ii) witness fees and necessary expenses, as provided in 46-15-116;

- 1 (iii) juror fees and necessary expenses;
- 2 (iv) for a psychiatric evaluation under 46-14-202, the cost of the examination only, as provided in
- 3 46-14-202(4); and
- 4 (v) for a psychiatric evaluation under 46-14-221, cost of the examination and other associated
- 5 expenses, as provided in 46-14-221(5);
- 6 (c) except as provided in [section 7(5)], the district court expenses in all postconviction proceedings held
- 7 pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and
- 8 appeals from those proceedings;
- 9 (d) except as provided in [section 7(5)], the following expenses incurred by the state in federal habeas
- 10 corpus cases that challenge the validity of a conviction or of a sentence:
- 11 (i) transcript fees;
- 12 (ii) witness fees; and
- 13 (iii) expenses for psychiatric examinations;
- 14 (e) except as provided in [section 7(5)], the following expenses incurred by the state in a proceeding
- 15 held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth,
- 16 temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:
- 17 (i) transcript fees;
- 18 (ii) witness fees;
- 19 (iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or
- 20 other person having physical or legal custody of the youth except for expenses for services that a person is
- 21 eligible to receive under a public program that provides medical or psychological evaluation;
- 22 (iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and
- 23 (v) expenses associated with court-ordered alternative dispute resolution;
- 24 ~~(f) in involuntary commitment cases pursuant to 53-21-121, reasonable compensation for services and~~
- 25 ~~related expenses for counsel appointed by the court;~~
- 26 (f) except as provided in [section 7(5)], costs of juror and witness fees and witness expenses before
- 27 a grand jury;
- 28 (g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage
- 29 on children, as required in 40-4-226, and expenses of education when ordered for the investigation and
- 30 preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

1 (h) except as provided in [section 7(5)], all district court expenses associated with civil jury trials if similar
 2 expenses were paid out of the district court fund or the county general fund in any previous year;

3 (i) all other costs associated with the operation and maintenance of the district court, including contract
 4 costs for court reporters who are independent contractors, ~~but excluding the cost of providing district court office,
 5 courtroom, and other space as provided in 3-1-125; and~~

6 (j) costs associated with the operation and maintenance of the youth court and youth court division
 7 operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other
 8 entities identified in Title 41, chapter 5, ~~and the costs of providing youth court office, courtroom, and other space
 9 as provided in 3-1-125.~~

10 ~~(2) In addition to the costs assumed under the state-funded district court program, as provided in
 11 subsection (1), the state shall fund and directly pay the expenses of the appellate defender program. These
 12 costs must be allocated to and paid by the appellate defender program.~~

13 ~~———— (3) In addition to the costs assumed under the state-funded district court program, as provided in
 14 subsection (4)~~

15 (2) If a cost is not paid directly by the office of court administrator, the state county shall pay the cost
 16 and the office of court administrator shall reimburse counties; the county within 30 days of receipt of a claim, for
 17 the following:

18 ~~———— (a) in district court criminal cases:~~

19 ~~———— (i) expenses for indigent defense that are not paid under subsection (1)(b);~~

20 ~~———— (ii) juror fees and necessary expenses; and~~

21 ~~———— (iii) witness fees and necessary expenses as provided in 46-15-116;~~

22 ~~———— (b) in proceedings under subsection (1)(c):~~

23 ~~———— (i) expenses for appointed counsel for the youth; and~~

24 ~~———— (ii) expenses for appointed counsel for the parent, guardian, or other person having physical or legal
 25 custody of the youth; and~~

26 ~~———— (c) costs of juror and witness fees and witness expenses before a grand jury.~~

27 ~~(4)(3)~~ For the purposes of subsection (1), district court costs paid by the office of court administrator do
 28 not include:

29 ~~(a) one-half of the salaries of county attorneys;~~

30 ~~(b) salaries of deputy county attorneys;~~

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- 1 ~~(c) salaries of employees and expenses of the offices of county attorneys;~~
- 2 ~~(d)(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district~~
- 3 ~~court;~~
- 4 ~~(e)(b) costs of providing and maintaining district court office space; or~~
- 5 ~~(f)(c) charges incurred against a county by virtue of any provision of Title 7 or 46."~~

Section 20 . amend 7-6-2426 see (D)
 Section 21 . amend 15-1-121 - please refer to SB 014605.avl
 Section 20. Section 18-4-132, MCA, is amended to read:
 22

8 "18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their
 9 source, including federal assistance money, by this state acting through a governmental body under any
 10 contract, except a contract exempted from this chapter by this section or by a statute that provides that this
 11 chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at
 12 no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or
 13 services from which income or a more advantageous business position may be derived by the state. This
 14 chapter does not apply to either grants or contracts between the state and its political subdivisions or other
 15 governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This
 16 chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision
 17 from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

- 18 (2) This chapter does not apply to construction contracts.
- 19 (3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment
- 20 purchased with money raised by student activity fees designated for use by the student associations of the
- 21 university system.
- 22 (4) This chapter does not apply to contracts entered into by the Montana state lottery that have an
- 23 aggregate value of less than \$250,000.
- 24 (5) This chapter does not apply to contracts entered into by the state compensation insurance fund to
- 25 procure insurance-related services.
- 26 (6) This chapter does not apply to employment of:
- 27 (a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;
- 28 (b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;
- 29 (c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case
- 30 proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order

1 of the governor;

2 (d) consulting actuaries;

3 (e) a private consultant employed by the student associations of the university system with money
4 raised from student activity fees designated for use by those student associations;

5 (f) a private consultant employed by the Montana state lottery;

6 (g) a private investigator licensed by any jurisdiction;

7 (h) a claims adjuster; or

8 (i) a court reporter appointed as an independent contractor under 3-5-601.

9 (7) (a) This chapter does not apply to electrical energy purchase contracts by the university of Montana
10 or Montana state university, as defined in 20-25-201.

11 (b) Any savings accrued by the university of Montana or Montana state university in the purchase or
12 acquisition of energy must be retained by the board of regents of higher education for university allocation and
13 expenditure.

14 (8) This chapter does not apply to contracting under [section 11] of the Montana Public Defender Act."

15

16 ²³
Section ~~21~~. Section 26-2-501, MCA, is amended to read:

17 "**26-2-501. Witnesses in courts of record and before certain court officers.** (1) Witness Except as
18 provided in 26-2-505 and subsection (2) of this section, witness fees are as follows:

19 (a) for attending in any civil or criminal action or proceeding before any court of record, referee, or officer
20 authorized to take depositions or commissioners to assess damages or otherwise, for each day, \$10;

21 (b) for mileage in traveling to the place of trial or hearing, each way, for each mile, a mileage allowance
22 as provided in 2-18-503.

23 (2) However, ~~no~~ an officer of the United States, the state of Montana, or any county, incorporated city,
24 or town within the limits of the state of Montana ~~shall~~ may not receive any per diem when testifying in a criminal
25 proceeding, and ~~no~~ a witness ~~shall~~ may not receive fees in any more than one criminal case on the same day."

26

27 ²⁴
Section ~~22~~. Section 26-2-505, MCA, is amended to read:

28 "**26-2-505. Expert witnesses -- authorization for additional compensation.** An (1) Except as
29 provided in subsection (2), an expert is a witness and receives the same compensation as a witness.

30 (2) The court may authorize additional compensation for a witness upon request of the prosecution or

1 defense."

2

25

3 **Section 23.** Section 26-2-506, MCA, is amended to read:

4 **"26-2-506. Fees paid by party subpoenaing in ~~civil actions~~ -- exceptions.** The (1) Except as
5 provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by
6 the party who caused ~~him~~ the witness to be subpoenaed.

7 (2) (a) When a witness is subpoenaed by a public defender, as defined in [section 2], the fees and
8 expenses must be paid by the office of state public defender as provided in [section 7(5)].

9 (b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a
10 county attorney, the witness fees and expenses must be paid by the office of court administrator as provided
11 in 3-5-901.

12 (c) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined
13 in [section 2], but is acting pro se, the witness fees and expenses must be paid by the office of court
14 administrator, as provided in 3-5-901."

15

26

16 **Section 24.** Section 26-2-508, MCA, is amended to read:

17 **"26-2-508. Witnesses ~~on behalf of for~~ for state, or county, or public defender -- advance payment not**
18 **required.** The attorney general, or any county attorney, or any public defender, as defined in [section 2], is
19 authorized to cause subpoenas to be issued and compel the attendance of witnesses ~~on behalf of the state or~~
20 county without paying or tendering fees in advance to either officers or witnesses; ~~and any~~ A witness refusing
21 to or failing to attend, after being served with a subpoena, may be proceeded against and is liable in the same
22 manner as is provided by law in other cases where fees have been tendered or paid."

23

27

24 **Section 25.** Section 26-2-510, MCA, is amended to read:

25 **"26-2-510. Application of sections exempting from advance payment.** The provisions of 26-2-508
26 and 26-2-509 shall extend to all actions and proceedings brought in the name of the attorney general, or any
27 other person or persons for the benefit of the state or county, or any other person or persons for the benefit of
28 a public defender, as defined in [section 2]."

29

28

30 **Section 26.** Section 40-5-236, MCA, is amended to read:

1 At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall
 2 ~~appoint order the office of state public defender, pursuant to the Montana Public Defender Act, [sections 1~~
 3 ~~through 4 and 6 through 14], to assign~~ counsel for a party who is financially unable to obtain counsel.

4 (2) The court may order reasonable fees ~~of counsel, for experts;~~ and the child's guardian ad litem and
 5 other costs of the action and pretrial proceedings, including blood test costs, to be paid by the parties in
 6 proportions and at times determined by the court.

7 (3) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a
 8 transcript for purposes of appeal. Transcript fees must be paid as provided in 3-5-604(4)."

9

10 ³⁰
Section 28. Section 41-3-205, MCA, is amended to read:

11 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
 12 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
 13 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except
 14 as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly
 15 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a
 16 misdemeanor.

17 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The
 18 court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before
 19 it.

20 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless
 21 otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child
 22 or harmful to another person who is a subject of information contained in the records, may be disclosed to the
 23 following persons or entities in this state and any other state or country:

24 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal
 25 organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and
 26 that otherwise meets the disclosure criteria contained in this section;

27 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the
 28 family or child who is the subject of a report in the records or to a person authorized by the department to receive
 29 relevant information for the purpose of determining the best interests of a child with respect to an adoptive
 30 placement;

1 (c) a health or mental health professional who is treating the family or child who is the subject of a report
2 in the records;

3 (d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of
4 a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any
5 person who reported or provided information on the alleged child abuse or neglect incident contained in the
6 records;

7 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian
8 or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by
9 the court to represent a child in a pending case;

10 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

11 (g) approved foster and adoptive parents who are or may be providing care for a child;

12 (h) a person about whom a report has been made and that person's attorney, with respect to the
13 relevant records pertaining to that person only and without disclosing the identity of the reporter or any other
14 person whose safety may be endangered;

15 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of
16 an alleged perpetrator of child abuse or neglect;

17 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and
18 that is authorized by the department to conduct the research or evaluation;

19 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family
20 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a
21 treatment plan, and monitoring the plan;

22 (l) the coroner or medical examiner when determining the cause of death of a child;

23 (m) a child fatality review team recognized by the department;

24 (n) a department or agency investigating an applicant for a license or registration that is required to
25 operate a youth care facility, day-care facility, or child-placing agency;

26 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
27 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
28 children through employment or volunteer activities. A request for information under this subsection (3)(o) must
29 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to
30 children, persons with developmental disabilities, or older persons posed by the person about whom the

1 information is sought, as determined by the department.

2 (p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited
3 to confirmation of factual information regarding how the case was handled and if disclosure does not violate the
4 privacy rights of the child or the child's parent or guardian, as determined by the department;

5 (q) an employee of the department or other state agency if disclosure of the records is necessary for
6 administration of programs designed to benefit the child;

7 (r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary
8 to meet requirements of the federal Indian Child Welfare Act;

9 (s) a youth probation officer who is working in an official capacity with the child who is the subject of a
10 report in the records;

11 (t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure
12 is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

13 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review
14 board established under Title 41, chapter 3, part 10;

15 (v) a school employee participating in an interview of a child by a social worker, county attorney, or
16 peace officer, as provided in 41-3-202;

17 (w) a member of a county interdisciplinary child information team formed under the provisions of
18 52-2-211;

19 (x) members of a local interagency staffing group provided for in 52-2-203;

20 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or

21 (z) a principal of a school or other employee of the school district authorized by the trustees of the
22 district to receive the information with respect to a student of the district who is a client of the department.

23 (4) A school or school district may disclose, without consent, personally identifiable information from
24 the education records of a pupil to the department, the court, a review board, and the child's ~~court-appointed~~
25 assigned attorney, guardian ad litem, or special advocate.

26 (5) Information that identifies a person as a participant in or recipient of substance abuse treatment
27 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent
28 provisions of the law.

29 (6) A person who is authorized to receive records under this section shall maintain the confidentiality
30 of the records and may not disclose information in the records to anyone other than the persons described in

1 subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the
2 proceedings confidential.

3 (7) A news organization or its employee, including a freelance writer or reporter, is not liable for
4 reporting facts or statements made by an immediate family member under subsection (6) if the news
5 organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the
6 proceeding.

7 (8) This section is not intended to affect the confidentiality of criminal court records, records of law
8 enforcement agencies, or medical records covered by state or federal disclosure limitations.

9 (9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
10 section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided
11 without cost."

12

13 ^{3/}
Section 29. Section 41-3-422, MCA, is amended to read:

14 **"41-3-422. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter
15 must be initiated by the filing of a petition. A petition may request the following relief:

16 (i) immediate protection and emergency protective services, as provided in 41-3-427;

17 (ii) temporary investigative authority, as provided in 41-3-433;

18 (iii) temporary legal custody, as provided in 41-3-442;

19 (iv) long-term custody, as provided in 41-3-445;

20 (v) termination of the parent-child legal relationship, as provided in 41-3-607;

21 (vi) appointment of a guardian pursuant to 41-3-444;

22 (vii) a determination that preservation or reunification services need not be provided; or

23 (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that
24 may be required for the best interests of the child.

25 (b) The petition may be modified for different relief at any time within the discretion of the court.

26 (c) A petition for temporary legal custody may be the initial petition filed in a case.

27 (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in
28 a case if a request for a determination that preservation or reunification services need not be provided is made
29 in the petition.

30 (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under

1 this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be
2 accompanied by:

3 (a) an affidavit by the department alleging that the child appears to have been abused or neglected and
4 stating the basis for the petition; and

5 (b) a separate notice to the court stating any statutory time deadline for a hearing.

6 (3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

7 (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
8 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.
9 Proceedings under a petition are not a bar to criminal prosecution.

10 (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the
11 burden of presenting evidence required to justify the relief requested and establishing:

12 (i) probable cause for the issuance of an order for immediate protection and emergency protective
13 services or an order for temporary investigative authority;

14 (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

15 (iii) a preponderance of the evidence for an order of long-term custody; or

16 (iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

17 (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child
18 Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian
19 Child Welfare Act apply.

20 (6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent,
21 guardian, or other person or agency having legal custody of the child named in the petition, if residing in the
22 state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal
23 relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally,
24 the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

25 (b) Copies of all other petitions must be served by certified mail. If service is by certified mail, the
26 department must receive a return receipt signed by the person to whom the notice was mailed for the service
27 to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person
28 to whom the notice was mailed appears at the hearing.

29 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency
30 having legal custody, the court shall appoint immediately provide for the appointment or assignment of an

1 attorney as provided for in [section 15] to represent the unavailable party when, in the opinion of the court, the
2 interests of justice require.

3 (8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian,
4 and if there is no guardian, the court shall appoint one.

5 (9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent,
6 preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition
7 of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be
8 heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring
9 for the child must be given notice of all reviews by the reviewing body.

10 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child
11 who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section
12 may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented
13 on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best
14 interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the
15 adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held
16 pursuant to this chapter involving the custody of the child.

17 (10) An abuse and neglect petition must:

18 (a) state the nature of the alleged abuse or neglect and of the relief requested;

19 (b) state the full name, age, and address of the child and the name and address of the child's parents
20 or guardian or person having legal custody of the child;

21 (c) state the names, addresses, and relationship to the child of all persons who are necessary parties
22 to the action.

23 ~~(11) The court may at any time on its own motion or the motion of any party appoint counsel for any~~
24 ~~indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an~~
25 ~~indigent parent at the time that a request is made for a determination that preservation or reunification services~~
26 ~~need not be provided.~~

27 (11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in [section 15].

28 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
29 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
30 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family

1 group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute
 2 resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the
 3 department is a party to the original proceeding, a representative of the department who has complete authority
 4 to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution
 5 proceeding.

6 (13) Service of a petition under this section must be accompanied by a written notice advising the child's
 7 parent, guardian, or other person having physical or legal custody of the child of the:

8 (a) right, pursuant to section 15, to ~~request the~~ appointment or assignment of counsel if the person
 9 is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if
 10 applicable;

11 (b) right to contest the allegations in the petition; and

12 (c) timelines for hearings and determinations required under this chapter.

13 (14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's
 14 parent, guardian, or other person having physical or legal custody of the child that:

15 (a) the court is required by federal and state laws to hold a permanency hearing to determine the
 16 permanent placement of a child no later than 12 months after a judge determines that the child has been abused
 17 or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

18 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination
 19 of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental
 20 rights; and

21 (c) completion of a treatment plan does not guarantee the return of a child.

22 (15) A court may appoint a standing master to conduct hearings and propose decisions and orders to
 23 the court for court consideration and action. A standing master may not conduct a proceeding to terminate
 24 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
 25 in the area of child abuse and neglect laws."

26

27 ³²
 Section ~~30~~. Section 41-3-423, MCA, is amended to read:

28 "**41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption --**
 29 **findings -- permanency plan.** (1) The department shall make reasonable efforts to prevent the necessity of
 30 removal of a child from the child's home and to reunify families that have been separated by the state.

14601-ash
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1 Reasonable efforts include but are not limited to voluntary protective services agreements, development of
 2 individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting
 3 possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely
 4 progress toward reunification or permanent placement. In determining preservation or reunification services to
 5 be provided and in making reasonable efforts at providing preservation or reunification services, the child's
 6 health and safety are of paramount concern.

7 (2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any
 8 time during an abuse and neglect proceeding, make a request for a determination that preservation or
 9 reunification services need not be provided. ~~If~~ ^{If} ~~When a request for such a determination is made,~~ if an indigent
 10 parent is not already represented by counsel, the court shall immediately provide for the appointment or
 11 assignment of counsel must be appointed by the court at the time that a request is made for a determination
 12 under this subsection to represent the indigent parent in accordance with the provisions of [section 15]. A court
 13 may make a finding that the department need not make reasonable efforts to provide preservation or
 14 reunification services if the court finds that the parent has:

- 15 (a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture,
 16 chronic abuse, or sexual abuse or chronic, severe neglect of a child;
 17 (b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate
 18 homicide of a child;
 19 (c) committed aggravated assault against a child;
 20 (d) committed neglect of a child that resulted in serious bodily injury or death; or
 21 (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the
 22 circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care
 23 for the child at issue.

24 (3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201,
 25 if the court makes a finding that the putative father has failed to do any of the following:

- 26 (a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;
 27 (b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:
 28 (i) visiting the child at least monthly when physically and financially able to do so; or
 29 (ii) having regular contact with the child or with the person or agency having the care and custody of the
 30 child when physically and financially able to do so; and

14601.ash
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1 (iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child
2 was not in the physical custody of the other parent.

3 (c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has
4 not been:

5 (i) adjudicated in Montana to be the father of the child for the purposes of child support; or

6 (ii) recorded on the child's birth certificate as the child's father.

7 (4) A judicial finding that preservation or reunification services are not necessary under this section must
8 be supported by clear and convincing evidence.

9 (5) If the court finds that preservation or reunification services are not necessary pursuant to subsection
10 (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must
11 be made to place the child in a timely manner in accordance with the permanency plan and to complete
12 whatever steps are necessary to finalize the permanent placement of the child.

13 (6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child
14 to the child's home but continuation of the efforts is determined by the court to be inconsistent with the
15 permanency plan for the child, the department shall make reasonable efforts to place the child in a timely
16 manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the
17 permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an
18 alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child
19 to the child's home. Concurrent planning may be used.

20 (7) When determining whether the department has made reasonable efforts to prevent the necessity
21 of removal of a child from the child's home or to reunify families that have been separated by the state, the court
22 shall review the services provided by the agency including, if applicable, protective services provided pursuant
23 to 41-3-302."

24 33

25 **Section 31.** Section 41-3-432, MCA, is amended to read:

26 **"41-3-432. Show cause hearing -- order.** (1) (a) Except as provided in the federal Indian Child Welfare
27 Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect
28 petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted
29 by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any
30 petition to which the time deadline applies.

1 (b) The court may grant an extension of time for a show cause hearing only upon a showing of
2 substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

3 (2) The person filing the petition has the burden of presenting evidence establishing probable cause
4 for the issuance of an order for temporary investigative authority after the show cause hearing, except as
5 provided by the federal Indian Child Welfare Act, if applicable.

6 (3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for
7 a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay
8 evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other
9 person may be represented by legal counsel *and may be appointed or assigned counsel* as provided for in [section 15]. The court may permit testimony by
10 telephone, audiovisual means, or other electronic means.

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11 (4) At the show cause hearing, the court shall explain the procedures to be followed in the case and
12 explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if
13 appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and
14 the right to challenge the allegations contained in the petition. The parent, guardian, or other person having
15 physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained
16 in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements
17 of the federal Indian Child Welfare Act, if applicable, have been met.

18 (5) The court shall make written findings on issues including but not limited to the following:

19 (a) whether the child should be returned home immediately if there has been an emergency removal
20 or remain in temporary out-of-home care or be removed from the home;

21 (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home
22 would be contrary to the child's best interests and welfare;

23 (c) whether the department has made reasonable efforts to avoid protective placement of the child or
24 to make it possible to safely return the child to the child's home;

25 (d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or
26 other person having physical or legal custody of the child to contribute to the costs for the care, custody, and
27 treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

28 (e) whether another hearing is needed and, if so, the date and time of the next hearing.

29 (6) The court may consider:

30 (a) terms and conditions for parental visitation; and

1 (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are
2 needed.

3 (7) Following the show cause hearing, the court may enter an order for the relief requested or amend
4 a previous order for immediate protection of the child if one has been entered. The order must be in writing.

5 (8) If a child who has been removed from the child's home is not returned home after the show cause
6 hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or
7 legal custody of the child named in the petition may request that a citizen review board, if available pursuant to
8 part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation
9 to the district court, as provided in 41-3-1010.

10 (9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the
11 requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must
12 be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties
13 pursuant to 41-3-434 and order of the court."

14

15 ³⁴
Section 32. Section 41-3-607, MCA, is amended to read:

16 **"41-3-607. Petition for termination -- separate hearing -- ~~right to counsel~~ -- no jury trial.** (1) The
17 termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to
18 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

19 (2) If termination of a parent-child legal relationship is ordered, the court may:

20 (a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

21 (i) the department;

22 (ii) a licensed child-placing agency; or

23 (iii) another individual who has been approved by the department and has received consent for the
24 transfer of custody from the department or agency that has custody of the child; or

25 (b) transfer permanent legal custody of the child to the department with the right to petition for
26 appointment of a guardian pursuant to 41-3-444.

27 (3) If the court does not order termination of the parent-child legal relationship, the child's prior legal
28 status remains in effect until further order of the court.

29 ~~(4) At the time that a petition for termination of a parent-child relationship is filed, parents must be~~
30 ~~advised of the right to counsel, and counsel must be appointed for an indigent party.~~

1 ~~(5)~~(4) A guardian ad litem must be appointed to represent the child's best interests in any hearing
 2 determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall
 3 continue to represent the child until the child is returned home or placed in an appropriate permanent placement.
 4 If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition
 5 to any appointed or assigned counsel requested by the minor parent.

6 ~~(6)~~(5) There is no right to a jury trial at proceedings held to consider the termination of a parent-child
 7 legal relationship."

8
 9 35
 9 Section ~~33~~. Section 41-3-1010, MCA, is amended to read:

10 **"41-3-1010. Review -- scope -- procedures -- immunity.** (1) (a) The board shall review the case of
 11 each child in foster care focusing on issues that are germane to the goals of permanency and to accessing
 12 appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness
 13 of services, the board may consider:

14 (i) the safety of the child;

15 (ii) whether an involved agency has selected services specifically relevant to the problems and needs
 16 of the child and family;

17 (iii) whether caseworkers have diligently provided services;

18 (iv) whether appropriate services have been available to the child and family on a timely basis; and

19 (v) the results of intervention.

20 (b) The board may review the case of a child who remains in or returns to the child's home and for
 21 whom the department retains legal custody.

22 (2) The review must take place at times set by the board. The time limit must comply with the Adoption
 23 and Safe Families Act of 1997.

24 (3) The district court, by rule of the court or on an individual case basis, may relieve the board of its
 25 responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next
 26 scheduled board review.

27 (4) Notice of each review must be sent to the department, any agency directly responsible for the care
 28 or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the
 29 preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older,
 30 the child's attorney or the child's assigned attorney, the guardian ad litem, the court-appointed ~~attorney~~ or special

1 advocate of the child, the county attorney or deputy attorney general actively involved in the case, the child's
2 tribe if the child is an Indian, and other interested persons who are authorized by the board to receive notice and
3 who are subject to 41-3-205. The notice must include a statement that persons receiving a notice may participate
4 in the hearing and be accompanied by a representative.

5 (5) After reviewing each case, the board shall prepare written findings and recommendations with
6 respect to:

7 (a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need
8 for removal of the child from the home and to make it possible for the child to be returned home;

9 (b) the continuing need for the placement and the appropriateness and safety of the placement;

10 (c) compliance with the case plan;

11 (d) the progress that has been made toward alleviating the need for placement;

12 (e) a likely date by which the child may be returned home or placed for adoption;

13 (f) other problems, solutions, or alternatives that the board determines should be explored; and

14 (g) whether the district court should appoint an attorney or other person as special advocate to
15 represent or appear on behalf of the child pursuant to 41-3-112.

16 (6) Whenever a member of a board has a potential conflict of interest in a case being reviewed, the
17 member shall declare to the board the nature of the potential conflict prior to participating in the case review.
18 The following provisions apply:

19 (a) The declaration of the member must be recorded in the official records of the board.

20 (b) If, in the judgment of the majority of the board, the potential conflict of interest may prevent the
21 member from fairly and objectively reviewing the case, the board may remove the member from participation
22 in the review.

23 (7) The board shall keep accurate records and retain the records on file. The board shall send copies
24 of its written findings and recommendations to the district court, the department, and other participants in the
25 review unless prohibited by the confidentiality provisions of 41-3-205.

26 (8) The board may hold joint or separate reviews for groups of siblings.

27 (9) The board may disclose to parents and their attorneys, foster parents, children who are 12 years
28 of age or older, children's attorneys, and other persons authorized by the board to participate in the case review
29 the records disclosed to the board pursuant to 41-3-1008. Before participating in a board case review, each
30 participant, other than parents and children, shall swear or affirm to the board that the participant will keep

1 confidential the information disclosed by the board in the case review and will disclose it only as authorized by
2 law.

3 (10) A person who serves on a board in a volunteer capacity, as provided in this part, is considered an
4 agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112."

5
6 ³⁶
7 **Section 34.** Section 41-3-1012, MCA, is amended to read:

8 **"41-3-1012. Presence of employees and participants at reviews and deliberations of board.** (1)
9 Unless excused from doing so by the board, the department and any other agency directly responsible for the
10 care and placement of the child shall require the presence of employees having knowledge of the case at board
11 reviews.

12 (2) The board may require the presence of specific employees of the department or any other agency
13 or other persons at board reviews. If an employee fails to be present at the review, the board may request a
14 court order. The court may require the employee to be present and show cause why the employee should not
15 be compelled to appear before the board.

16 (3) The persons who are allowed to be present at a review include representatives of the department
17 or any agency directly responsible for the care or placement of the child, the parents and their attorneys, the
18 foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the
19 subject of the review if 12 years of age or older, the child's attorney or the child's assigned attorney, the guardian
20 ad litem, the court-appointed ~~attorney~~ or special advocate of the child, the county attorney or deputy attorney
21 general actively involved in the case, a representative of the child's tribe if the child is an Indian, and other
22 interested persons subject to 41-3-205 and authorized to be present by the board.

23 (4) Deliberations concerning the recommendations that will be made by the board must be open to all
24 present at the review, except that the presiding officer may close all or part of a deliberation if there has been
25 a threat of a reprisal made by someone who will attend the review or if confidentiality laws preclude open
26 deliberations.

27 (5) For the purposes of bringing criminal charges against a person who threatens a board member or
28 staff, the board members and board staff must be considered public servants as defined in 45-2-101.

29 (6) As used in this section, the following definitions apply:

30 (a) "Close", with regard to deliberations, means that only the board members and board staff may
remain in attendance.

1 (b) "Open" means that review participants may remain in attendance during the deliberations to observe
 2 and be available for questions from the board.

3 ~~(a)(c)~~ "Presence" includes telephone participation, except that a representative of the department
 4 knowledgeable about the case at the time of the review must be physically present if required.

5 ~~(b) "Open" means that review participants may remain in attendance during the deliberations to observe~~
 6 ~~and be available for questions from the board.~~

7 ~~----- (c) "Close", with regard to deliberations, means that only the board members and board staff may~~
 8 ~~remain in attendance."~~

9 37

10 **Section 35.** Section 41-5-111, MCA, is amended to read:

11 **"41-5-111. Court costs and expenses.** ~~The following expenses must be a charge upon the funds of~~
 12 ~~the court or other appropriate agency when applicable, upon their certification by the court:~~

13 (1) ~~reasonable compensation~~ Compensation for services and related expenses for counsel appointed
 14 ~~by the court assigned for a party must be paid by the office of state public defender provided for in [section 7].;~~

15 (2) ~~the expenses of~~ Expenses for service of summons, notices, subpoenas, fees, and traveling
 16 expenses of witnesses, and other like witness-related expenses incurred in any proceeding under the Montana
 17 Youth Court Act must be paid as provided for by law in 26-2-506.;

18 (3) ~~reasonable~~ Reasonable compensation of a guardian ad litem appointed by the court must be paid
 19 as provided for in 3-5-901.; ~~and~~

20 (4) ~~cost of~~ Costs for transcripts and printing briefs ~~on appeal~~ must be paid as provided for in 3-5-604."

21 38

22 **Section 36.** Section 41-5-112, MCA, is amended to read:

23 **"41-5-112. Parental contributions account -- allocation of proceeds.** (1) There is a parental
 24 contributions account in the state special revenue fund.

25 (2) Contributions paid by the parents and guardians of youth under 41-3-446, 41-5-1501, or 41-5-1525
 26 must be deposited in the account, except that contributions for public defender costs must be deposited in the
 27 public defender account established in [section 12].

28 (3) All money in the account established in subsection (1), except any amount required to be returned
 29 to federal or county sources, is allocated to the department of public health and human services to carry out its
 30 duties under 52-1-103."

1

39

Section 37. Section 41-5-1413, MCA, is amended to read:

2

3

"41-5-1413. Right to counsel – assignment of counsel. In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in [section 7], to assign counsel ~~must be appointed~~ for the youth if ~~the parents or guardian and the youth are unable to provide counsel~~ pursuant to the Montana Public Defender Act. [sections 1 through 4 and 6 through 14], unless the right to ~~appointed~~ counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

13

40

Section 38. Section 42-2-405, MCA, is amended to read:

14

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"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

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(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

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(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in [section 7], to assign counsel to represent the minor parent."

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Section 39. Section 46-4-304, MCA, is amended to read:

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"46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel.

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(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings

1 conducted under subsection (1). A person who divulges the contents of the application or the proceedings
2 without legal privilege to do so is punishable for contempt of court.

3 (3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings
4 conducted under this part."

5

6 ⁴²
~~Section 40.~~ Section 46-8-101, MCA, is amended to read:

7 "**46-8-101. Right to counsel.** (1) During the initial appearance before the court, every defendant must
8 be informed of the right to have counsel; and must be asked if the aid of counsel is desired.

9 (2) If the defendant desires assigned counsel because of financial inability to retain private counsel and
10 the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the
11 defendant is convicted, is unable to employ counsel, and is entitled to have counsel assigned, the court shall
12 order the office of state public defender, provided for in [section 7], to assign counsel to represent the defendant
13 without unnecessary delay pending a determination of eligibility under the provisions of [section 13].

14 ~~(3) The defendant, if unable to employ counsel, is entitled to have counsel assigned if:~~

15 ~~—— (a) the offense charged is a felony;~~

16 ~~—— (b) the offense charged is a misdemeanor and the court desires to retain imprisonment as a sentencing~~
17 ~~option; or~~

18 ~~—— (c) the interests of justice would be served by assignment."~~

19

20 ⁴³
~~Section 41.~~ Section 46-8-104, MCA, is amended to read:

21 "**46-8-104. Appointment Assignment of counsel after trial.** Any court of record may order the office
22 of state public defender, provided for in [section 7], to assign counsel, subject to the provisions of the Montana
23 Public Defender Act, [sections 1 through 4 and 6 through 14], to defend any defendant, petitioner, or appellant
24 in any postconviction criminal action or proceeding if he the defendant, petitioner, or appellant desires counsel
25 and is unable to employ counsel."

26

27 ⁴⁴
~~Section 42.~~ Section 46-8-113, MCA, is amended to read:

28 "**46-8-113. Payment for court-appointed counsel by defendant for assigned counsel.** (1) The As
29 part of or as a condition under a sentence imposed under the provisions of this title, the court may require a
30 convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under the sentence

1 ~~imposed as provided in Title 46 assigned to represent the defendant.~~

2 (2) Costs must be limited to ~~reasonable compensation and~~ costs incurred by the ~~court-appointed~~
3 ~~counsel office of state public defender, provided for in [section 7], for providing the defendant with counsel~~ in
4 the criminal proceeding.

5 (3) The court may not sentence a defendant to pay the costs of ~~court-appointed~~ for assigned counsel
6 unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs,
7 the court shall take into account the financial resources of the defendant and the nature of the burden that
8 payment of costs will impose.

9 (4) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced
10 the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the
11 satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the
12 defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method
13 of payment."

14

15 ⁴⁵
Section ~~43~~. Section 46-8-114, MCA, is amended to read:

16 "**46-8-114. Time and method of payment.** When a defendant is sentenced to pay the costs of
17 ~~court-appointed~~ assigned counsel pursuant to 46-8-113, the court may order payment to be made within a
18 specified period of time or in specified installments. Payments must be made to the clerk of district court. The
19 ~~clerk of district court shall forward the payments to the department of revenue for deposit in the state general~~
20 ~~fund~~ office of state public defender, provided for in [section 7], and deposited in the account established in
21 [section 12]."

22

23 ⁴⁶
Section ~~44~~. Section 46-8-115, MCA, is amended to read:

24 "**46-8-115. Effect of nonpayment.** (1) When a defendant who is sentenced to pay the costs of
25 ~~court-appointed~~ assigned counsel defaults in payment of the costs or of any installment, the court on motion of
26 the prosecutor or on its own motion may require the defendant to show cause why the default should not be
27 treated as contempt of court and may issue a show cause citation or an arrest warrant requiring the defendant's
28 appearance.

29 (2) Unless the defendant shows that the default was not attributable to an intentional refusal to obey
30 the order of the court or to a failure on the defendant's part to make a good faith effort to make the payment, the

1 court may find that the default constitutes civil contempt.

2 (3) The term of imprisonment for contempt for nonpayment of the costs of ~~court-appointed~~ assigned
3 counsel must be set forth in the judgment and may not exceed 1 day for each \$25 of the payment, 30 days if
4 the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case,
5 whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward
6 payment for each day of imprisonment at the rate specified in the judgment.

7 (4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt,
8 the court may enter an order allowing the defendant additional time for payment, reducing the amount of the
9 payment or of each installment, or revoking the order for payment of the unpaid portion of the costs in whole or
10 in part.

11 (5) A default in the payment of costs or any installment may be collected by any means authorized by
12 law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a
13 defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been
14 collected."

15

16 ⁴⁷
Section 45. Section 46-12-210, MCA, is amended to read:

17 **"46-12-210. Advice to defendant.** (1) Before accepting a plea of guilty or nolo contendere, the court
18 shall determine that the defendant understands the following:

19 (a) (i) the nature of the charge for which the plea is offered;

20 (ii) the mandatory minimum penalty provided by law, if any;

21 (iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision
22 or special parole restriction; and

23 (iv) when applicable, the requirement that the court may also order the defendant to make restitution
24 of the costs and assessments provided by law;

25 (b) if the defendant is not represented by an attorney, the fact that the defendant has the right to be
26 represented by an attorney at every stage of the proceeding and that, if necessary, ~~one~~ an attorney will be
27 ~~appointed~~ assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to
28 represent the defendant;

29 (c) that the defendant has the right:

30 (i) to plead not guilty or to persist in that plea if it has already been made;

- 1 (ii) to be tried by a jury and at the trial has the right to the assistance of counsel;
- 2 (iii) to confront and cross-examine witnesses against the defendant; and
- 3 (iv) not to be compelled to reveal personally incriminating information;
- 4 (d) that if the defendant pleads guilty or nolo contendere in fulfillment of a plea agreement, the court
- 5 is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the
- 6 plea if the agreement is not accepted pursuant to 46-12-211;
- 7 (e) that if the defendant's plea of guilty or nolo contendere is accepted by the courts, there will not be
- 8 a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial;
- 9 and
- 10 (f) that if the defendant is not a United States citizen, a guilty or nolo contendere plea might result in
- 11 deportation from or exclusion from admission to the United States or denial of naturalization under federal law.
- 12 (2) The requirements of subsection (1) may be accomplished by the defendant filing a written
- 13 acknowledgment of the information contained in subsection (1)."

14

15 ⁴⁸
Section ~~46~~. Section 46-14-202, MCA, is amended to read:

16 "**46-14-202. Examination of defendant.** (1) If the defendant or the defendant's counsel files a written

17 motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the district

18 court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist, licensed

19 clinical psychologist, or advanced practice registered nurse or, if the examination cannot be done in the

20 community, shall request the superintendent of the Montana state hospital to designate at least one qualified

21 psychiatrist, licensed clinical psychologist, or advanced practice registered nurse, who may be or include the

22 superintendent, to examine and report upon the defendant's mental condition.

23 (2) ~~The~~ if the examination cannot be done without a commitment, the court may order the defendant

24 to be committed to a hospital or other suitable facility for the purpose of the examination for a period not

25 exceeding 60 days or a longer period that the court determines to be necessary for the purpose and may direct

26 that a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse retained by the

27 defendant be permitted to witness and participate in the examination.

28 (3) In the examination, any method may be employed that is accepted by the medical or psychological

29 profession for the examination of those alleged to be suffering from mental disease or defect.

30 (4) If the defendant is indigent, as defined in [section 2], or the examination occurs at the request of the

1 prosecution, the cost of the examination must be paid by the state office of court administrator as provided in
 2 3-5-901. All other expenses incurred in connection with the examination, including costs of detention, custody,
 3 treatment, and transportation, must be paid by the county determined by the court to be the residence of the
 4 defendant at the time that the examination is ordered."

5

6 ⁴⁹ **Section 47.** Section 46-14-221, MCA, is amended to read:

7 **"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1)**

8 The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's
 9 counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the
 10 prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may
 11 make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on
 12 the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and
 13 cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence
 14 upon the issue.

15 (2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the
 16 defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant
 17 to the custody of the director of the department of public health and human services to be placed in an
 18 appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, of the
 19 department of public health and human services for so long as the unfitness endures or until disposition of the
 20 defendant is made pursuant to this section, whichever occurs first.

21 (b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to
 22 proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication
 23 that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan,
 24 the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on
 25 the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made,
 26 and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record
 27 specific findings that the state has proved an overriding justification for the order and that the treatment being
 28 ordered is medically appropriate.

29 (3) (a) The committing court shall, within 90 days of commitment, review the defendant's fitness to
 30 proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the

1 defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the
2 defendant must be dismissed, except as provided in subsection (4).

3 (b) If the court determines that the defendant lacks fitness to proceed because the defendant has a
4 mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the
5 court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to
6 those provisions.

7 (c) If the court determines that the defendant lacks fitness to proceed because the defendant has a
8 developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and
9 the prosecutor shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition
10 of the defendant pursuant to those provisions.

11 (4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the
12 prosecution that is susceptible to fair determination prior to trial and that is made without the personal
13 participation of the defendant.

14 (5) The expenses of sending the defendant to the custody of the director of the department of public
15 health and human services to be placed in an appropriate ~~institution~~ facility of the department of public health
16 and human services, of keeping the defendant there, and of bringing the defendant back are payable by the
17 ~~state office of court administrator~~ as a district court expense as provided for in 3-5-901."

18
19 ⁵⁰
20 **Section 48.** Section 46-15-115, MCA, is amended to read:

21 **"46-15-115. Subpoena for witness when defendant unable to pay.** (1) The court shall order at any
22 time that a subpoena be issued for service on a named witness upon the ex parte application of ~~the~~ a defendant
23 acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred
24 for the witness and that the presence of the witness is necessary to an adequate defense.

25 (2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined
26 in [section 2], a court order must be obtained if more than six witnesses are to be subpoenaed.

27 (3) If the defendant is represented by a public defender, as defined in [section 2], witness costs must
28 be paid by the office of state public defender as provided for in [section 7]."

29 ⁵¹
30 **Section 49.** Section 46-15-116, MCA, is amended to read:

"46-15-116. Fees, costs, and expenses. (1) When a person attends before a judge, grand jury, or

1 court as a witness in a criminal case upon a subpoena, the witness must receive the witness fee prescribed by
2 Title 26, chapter 2, part 5, except as otherwise provided in this section.

3 (2) The court, on motion by either party, may allow additional fees for expert witnesses.

4 ~~(2)~~(3) The court may determine the reasonable and necessary expenses of subpoenaed witnesses for
5 an indigent defendant not represented by a public defender, as defined in [section 2], and order the clerk of court
6 to pay the expenses.

7 ~~(3)~~(4) When a person is subpoenaed in this state to testify in another state or is subpoenaed from
8 another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum
9 equal to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend
10 as a witness. If the state where the witness is found has by ~~statutory enactment~~ statute required that the
11 subpoenaed witness be paid an amount in excess of the amount specified in this section, the witness may be
12 paid the amount required by that state.

13 ~~(4)~~(5) The witness fees, costs, and expenses must be paid ~~by the state according to procedures~~
14 ~~required by the supreme court administrator under 3-5-902~~ as provided in 26-2-506."

15 52
16 **Section 50.** Section 46-17-203, MCA, is amended to read:

17 **"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before or
18 during trial, a plea of guilty or nolo contendere may be accepted when:

19 (a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere
20 in open court; and

21 (b) the court has informed the defendant of the consequences of the plea and of the maximum penalty
22 provided by law that may be imposed upon acceptance of the plea.

23 (2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or
24 other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed
25 of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that
26 the plea and waiver are entered voluntarily.

27 (b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may
28 move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial
29 of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may ~~appoint~~
30 order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana

1 Public Defender Act, [sections 1 through 4 and 6 through 14], hold a hearing, and enter appropriate findings of
2 fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw
3 the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal
4 the decision of the district court.

5 (3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor
6 offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video
7 communication, allowing all of the participants to be observed and heard in the courtroom by all present, is
8 considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may
9 be used if neither party objects and the court agrees to its use. The audio-video communication must operate
10 as provided in 46-12-201."

11

12 ⁵³
Section 51. Section 46-18-101, MCA, is amended to read:

13 **"46-18-101. Correctional and sentencing policy.** (1) It is the purpose of this section to establish the
14 correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to
15 implement the policy established by this section.

16 (2) The correctional and sentencing policy of the state of Montana is to:

17 (a) punish each offender commensurate with the nature and degree of harm caused by the offense and
18 to hold an offender accountable;

19 (b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent
20 offenders and serious repeat offenders;

21 (c) provide restitution, reparation, and restoration to the victim of the offense; and

22 (d) encourage and provide opportunities for the offender's self-improvement to provide rehabilitation
23 and reintegration of offenders back into the community.

24 (3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following principles:

25 (a) Sentencing and punishment must be certain, timely, consistent, and understandable.

26 (b) Sentences should be commensurate with the punishment imposed on other persons committing the
27 same offenses.

28 (c) Sentencing practices must be neutral with respect to the offender's race, gender, religion, national
29 origin, or social or economic status.

30 (d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating

1 circumstances.

2 (e) Sentencing practices must include punishing violent and serious repeat felony offenders with
3 incarceration.

4 (f) Sentencing practices must provide alternatives to imprisonment for the punishment of those
5 nonviolent felony offenders who do not have serious criminal records.

6 (g) Sentencing and correctional practices must emphasize that the offender is responsible for obeying
7 the law and must hold the offender accountable for the offender's actions.

8 (h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must
9 require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, costs of
10 ~~court-appointed~~ assigned counsel, as provided in 46-8-113, and, if the offender is a sex offender, costs of any
11 chemical treatment.

12 (i) Sentencing practices should promote and support practices, policies, and programs that focus on
13 restorative justice principles."

14
15 ⁵⁴
Section 52. Section 46-18-201, MCA, is amended to read:

16 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an
17 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition
18 of sentence, except as otherwise specifically provided by statute, for a period:

19 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

20 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a
21 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless
22 of whether any other conditions are imposed.

23 (b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the
24 case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was
25 imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

26 (2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty
27 or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically
28 provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever
29 is greater, for each particular offense.

30 (3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty

1 or nolo contendere, a sentencing judge may impose a sentence that may include:

2 (a) a fine as provided by law for the offense;

3 (b) payment of costs; as provided in 46-18-232; or payment of costs of ~~court-appointed~~ assigned
4 counsel as provided in 46-8-113;

5 (c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a
6 state prison to be designated by the department of corrections;

7 (d) commitment of:

8 (i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a
9 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years
10 of the commitment to the department of corrections must be suspended; or

11 (ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense
12 enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in
13 an appropriate correctional facility or program;

14 (e) with the approval of the facility or program, placement of the offender in a community corrections
15 facility or program as provided in 53-30-321;

16 (f) with the approval of the prerelease center or prerelease program and confirmation by the department
17 of corrections that space is available, placement of the offender in a prerelease center or prerelease program
18 for a period not to exceed 1 year;

19 (g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and
20 for a period of time determined by the department of corrections, but not exceeding the period of state
21 supervision of the person; or

22 (h) any combination of subsections (2) through (3)(g).

23 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the
24 sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of
25 the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under
26 subsection (1)(a) or (2) may include but are not limited to:

27 (a) limited release during employment hours as provided in 46-18-701;

28 (b) incarceration in a detention center not exceeding 180 days;

29 (c) conditions for probation;

30 (d) payment of the costs of confinement;

- 1 (e) payment of a fine as provided in 46-18-231;
- 2 (f) payment of costs as provided in 46-18-232 and 46-18-233;
- 3 (g) payment of costs of ~~court-appointed~~ assigned counsel as provided in 46-8-113;
- 4 (h) with the approval of the facility or program, an order that the offender be placed in a community
- 5 corrections facility or program as provided in 53-30-321;
- 6 (i) with the approval of the prerelease center or prerelease program and confirmation by the department
- 7 of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease
- 8 program for a period not to exceed 1 year;
- 9 (j) community service;
- 10 (k) home arrest as provided in Title 46, chapter 18, part 10;
- 11 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 12 (m) with the approval of the department of corrections and with a signed statement from an offender
- 13 that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender
- 14 complete the boot camp incarceration program established pursuant to 53-30-403;
- 15 (n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
- 16 protection of the victim or society; or
- 17 (o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).
- 18 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a
- 19 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined
- 20 in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require
- 21 payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of
- 22 the sentence is deferred or suspended.
- 23 (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1)
- 24 through (5), the sentencing judge may include the suspension of the license or driving privilege of the person
- 25 to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension
- 26 of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.
- 27 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in
- 28 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23,
- 29 part 5.
- 30 (8) If a felony sentence includes probation, the department of corrections shall supervise the offender

1 unless the court specifies otherwise."

2

3 ⁵⁵
Section 53. Section 46-21-201, MCA, is amended to read:

4 **"46-21-201. Proceedings on petition.** (1) (a) Unless the petition and the files and records of the case
5 conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be
6 served upon the county attorney in the county in which the conviction took place and upon the attorney general
7 and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the
8 court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to
9 determine the issue.

10 (b) If the death sentence has been imposed, upon receipt of the response or responses to the petition,
11 the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the
12 proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no
13 hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued
14 during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief
15 to compel the issuance of a decision.

16 (c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of
17 procedure governing civil proceedings apply to the proceeding.

18 (2) If the death sentence has not been imposed and a hearing is required or if the interests of justice
19 require, the court shall appoint order the office of state public defender, provided for in [section 7], to assign
20 counsel for a petitioner who qualifies for the appointment assignment of counsel under Title 46, chapter 8, part
21 1, and the Montana Public Defender Act, [sections 1 through 4 and 6 through 14].

22 (3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the
23 sentencing court shall notify the sentenced person that if the person is indigent, as defined in [section 2], and
24 wishes to file a petition under this chapter, the court will appoint order the office of state public defender,
25 provided for in [section 7], to assign counsel who meets the Montana supreme court's standards and the office
26 of state public defender's standards for competency of appointed assigned counsel in proceedings under this
27 chapter for an indigent person sentenced to death.

28 (b) Within 75 days after a conviction for which a death sentence was imposed upon a person who
29 wishes to file a petition under this chapter becomes final, the sentencing court shall:

30 (i) appoint order the office of state public defender to assign counsel to represent the person if pending

1 ~~a determination by the court finds office of state public defender~~ that the person is indigent, as defined in [section
2 2], and ~~that the person~~ either has accepted the offer of ~~appointment~~ assigned counsel or is unable to
3 competently decide whether to accept the offer of ~~appointed~~ assigned counsel;

4 (ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of
5 the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating
6 that the person rejected the offer with an understanding of the legal consequences of the rejection; or

7 (iii) if the ~~court finds that the petitioner is~~ determined not to be indigent, deny or rescind any order
8 requiring the assignment ~~appointment~~ of counsel.

9 (c) ~~The court may not appoint counsel~~ The office of state public defender may not assign counsel who
10 has previously represented the person at any stage in the case unless the person and the counsel expressly
11 agree to the ~~appointment~~ assignment.

12 (d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent ~~at the time~~
13 ~~that the court's determination is made under subsection (3)(b)~~ but thereafter becomes indigent at any
14 subsequent stage of the proceedings, the court shall ~~appoint~~ order the assignment of counsel as provided in
15 subsection (3)(b)(i).

16 (e) The expenses of counsel ~~appointed~~ assigned pursuant to this subsection (3) must be paid as
17 ~~provided in 46-8-204 by the office of state public defender~~.

18 (f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

19 (4) The court, for good cause, may grant leave to either party to use the discovery procedures available
20 in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the
21 court has ordered or to which the parties have agreed.

22 (5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its
23 discretion, the court may order the petitioner brought before the court for the hearing.

24 (6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the
25 judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial,
26 custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition
27 must be dismissed."

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29 ⁵⁶
Section ~~54~~. Section 50-20-212, MCA, is amended to read:

30 "**50-20-212. Procedure for judicial waiver of notice.** (1) The requirements and procedures under this

1 section are available to minors and incompetent persons whether or not they are residents of this state.

2 (2) (a) The minor or incompetent person may petition the youth court for a waiver of the notice
3 requirement and may participate in the proceedings on the person's own behalf. The petition must include a
4 statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for
5 the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court
6 shall advise the petitioner of the right to ~~court-appointed~~ assigned counsel and shall ~~provide the petitioner with~~
7 order the office of state public defender, provided for in [section 7], to assign counsel upon request.

8 (b) If the petition filed under subsection (2)(a) alleges abuse as a basis for waiver of notice, the youth
9 court shall treat the petition as a report under 41-3-202. The provisions of Title 41, chapter 3, part 2, apply to an
10 investigation conducted pursuant to this subsection.

11 (3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All
12 proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym or using
13 the petitioner's initials. All documents related to the petition are confidential and are not available to the public.
14 The proceedings on the petition must be given preference over other pending matters to the extent necessary
15 to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions
16 of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of
17 the petitioner. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and
18 the notice requirement is waived.

19 (4) If the court finds by clear and convincing evidence that the petitioner is sufficiently mature to decide
20 whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance
21 or inducement of an abortion without the notification of a parent or guardian.

22 (5) The court shall issue an order authorizing the petitioner to consent to an abortion without the
23 notification of a parent or guardian if the court finds, by clear and convincing evidence, that:

24 (a) there is evidence of a pattern of physical, sexual, or emotional abuse of the petitioner by one or both
25 parents, a guardian, or a custodian; or

26 (b) the notification of a parent or guardian is not in the best interests of the petitioner.

27 (6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the
28 petition.

29 (7) A court that conducts proceedings under this section shall issue written and specific findings of fact
30 and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings,

1 and conclusions be maintained.

2 (8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if the
3 youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

4 (9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of parental
5 notification or appeals a denial of a petition."

6

7 ⁵⁷
Section 55. Section 53-9-104, MCA, is amended to read:

8 **"53-9-104. Powers and duties of office.** (1) The office shall:

9 (a) adopt rules to implement this part;

10 (b) prescribe forms for applications for compensation;

11 (c) determine all matters relating to claims for compensation; and

12 (d) require any person contracting directly or indirectly with an individual formally charged with or
13 convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television
14 production, play, or article relating to the crime to deposit any proceeds paid or owed to the individual under the
15 terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any
16 dependents of a deceased victim, if the individual is convicted of the crime, to be held for a period of time that
17 the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited
18 proceeds may also be used to ~~pay the costs and attorney fees of court-appointed~~ reimburse the office of state
19 public defender, provided for in [section 7], for costs associated with providing assigned counsel for the charged
20 person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all
21 kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased
22 victims, and the state for any public defender or any attorney ~~appointed~~ assigned for the charged person must
23 be deposited in the state general fund.

24 (2) The office may:

25 (a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data
26 to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute
27 providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

28 (b) request and obtain from a health care provider medical reports that are relevant to the physical
29 condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information
30 that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the

1 claimant a release of the records or information. No civil or criminal liability arises from the release of information
2 requested under this subsection (2)(b).

3 (c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct
4 hearings, and receive relevant, nonprivileged evidence;

5 (d) take notice of judicially cognizable facts and general, technical, and scientific facts within its
6 specialized knowledge;

7 (e) require that law enforcement agencies and officials take reasonable care that victims be informed
8 about the existence of this part and the procedure for applying for compensation under this part; and

9 (f) establish a victims assistance coordinating and planning program."

10

11 ⁵⁸
~~Section 56.~~ Section 53-20-125, MCA, is amended to read:

12 **"53-20-125. Outcome of screening -- recommendation for commitment to residential facility --**
13 **hearing.** (1) A person may be committed to a residential facility only if the person:

14 (a) is 18 years of age or older; and

15 (b) is determined to be seriously developmentally disabled and in need of commitment to a residential
16 facility by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129
17 or in this section.

18 (2) If as a result of the screening required by 53-20-133 the residential facility screening team concludes
19 that the respondent who has been evaluated is seriously developmentally disabled and recommends that the
20 respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team
21 shall file its written recommendation and report with the court. The report must include the factual basis for the
22 recommendation and must describe any tests or evaluation devices that have been employed in evaluating the
23 respondent.

24 (3) At the request of the respondent, the respondent's parents or guardian, or the responsible person,
25 the court shall ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel for
26 the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests
27 it, the court shall ~~appoint~~ order the office of state public defender to assign counsel for the parents or guardian
28 pending a determination of indigence pursuant to [section 13].

29 (4) Notice of the determination of the residential facility screening team must be mailed or delivered to:

30 (a) the respondent;

1 (b) the respondent's parents, guardian, or next of kin, if known;

2 (c) the responsible person;

3 (d) the respondent's advocate, if any;

4 (e) the county attorney;

5 (f) the residential facility;

6 (g) the attorney for the respondent, if any; and

7 (h) the attorney for the parents or guardian, if any.

8 (5) The respondent, the respondent's parents or guardian, the responsible person, the respondent's
9 advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the
10 residential facility screening team.

11 (6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (5).

12 (7) The hearing must be held before the court without jury. The rules of civil procedure apply.

13 (8) If the court finds that the respondent is seriously developmentally disabled and in need of
14 commitment to a residential facility, it shall order the respondent committed to a residential facility for an
15 extended course of treatment and habilitation. If the court finds that the respondent has a developmental
16 disability but is not seriously developmentally disabled, it shall dismiss the petition and refer the respondent to
17 the department of public health and human services to be considered for placement in community-based
18 services according to 53-20-209. If the court finds that the respondent does not have a developmental disability
19 or is not in need of developmental disability services, it shall dismiss the petition.

20 (9) If none of the parties notified of the recommendation request a hearing, the court may issue an order
21 for the commitment of the respondent to the residential facility for an extended period of treatment and
22 habilitation or the court may initiate its own inquiry as to whether the order should be granted.

23 (10) The court may refuse to authorize commitment of a respondent to a residential facility for an
24 extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

25 (11) An order for commitment must be accompanied by findings of fact.

26 (12) A court order entered in a proceeding under this part must be provided to the residential facility
27 screening team."

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29 ⁵⁹
Section 57. Section 53-21-112, MCA, is amended to read:

30 "53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a parent

1 or guardian of a minor may consent to mental health services to be rendered to the minor by:

- 2 (a) a facility;
- 3 (b) a person licensed in this state to practice medicine; or
- 4 (c) a mental health professional licensed in this state.

5 (2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent
6 to receive mental health services from those facilities or persons listed in subsection (1).

7 (3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of
8 a minor to a mental health facility but not to the state hospital.

9 (4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for
10 an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted
11 with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the
12 parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent
13 or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within
14 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission
15 consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the
16 case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1
17 year. ~~Counsel must be appointed for the minor at~~ At the minor's request or at any time that the minor is faced
18 with potential legal proceedings, the court shall order the office of state public defender, provided for in [section
19 7], to assign counsel for the minor."

20
21 ⁶⁰ ~~Section 58.~~ Section 53-21-116, MCA, is amended to read:

22 **"53-21-116. Right to be present at hearing or trial -- appointment assignment of counsel.** The
23 person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and
24 the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of
25 counsel is in the best interest of justice, the judge shall ~~appoint~~ order the office of state public defender, provided
26 for in [section 7], to immediately assign counsel to represent the person at either the hearing or the trial, or both;
27 ~~and the counsel must be compensated pursuant to 3-5-901(1)(f)."~~

28
29 ⁶¹ ~~Section 59.~~ Section 53-21-122, MCA, is amended to read:

30 **"53-21-122. Petition for commitment -- filing of -- initial hearing on.** (1) The petition must be filed

1 with the clerk of court who shall immediately notify the judge.

2 (2) ~~If a judge is available, the~~ The judge shall consider the petition, ~~and if~~ If the judge finds no probable
3 cause, ~~if the petition~~ must be dismissed. If the judge finds probable cause and the respondent does not have
4 private counsel present, the judge may order the office of state public defender, provided for in [section 7], to
5 immediately assign counsel ~~must be immediately appointed~~ for the respondent, and the respondent must be
6 brought before the court with the respondent's counsel. The respondent must be advised of the respondent's
7 constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The
8 respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall
9 appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition
10 that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends
11 and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on
12 behalf of the respondent. The desires of the respondent must be taken into consideration in the appointment
13 of the friend of respondent ~~and in the confirmation of the appointment of the attorney.~~

14 (3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone
15 and shall read the petition to the judge. ~~If the judge finds no probable cause, the petition must be dismissed. If~~
16 ~~the judge finds probable cause, the judge shall cause the clerk to issue an order appointing counsel and a~~
17 ~~professional person and setting a date and time for the hearing on the petition that may not be on the same day~~
18 ~~as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day~~
19 ~~falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The judge~~
20 may do all things necessary through the clerk of court by telephone as if the judge were personally present,
21 including ordering the office of state public defender, provided for in [section 7], to immediately provide assigned
22 counsel. The judge, through the clerk of court, ~~may also order~~ must also direct that the respondent be brought
23 before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional
24 rights, the respondent's rights under this part, and the contents of the clerk's order, as well as to furnish the
25 respondent with a copy of the order. The justice of the peace shall ascertain the desires of the respondent with
26 respect to the ~~appointment~~ assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and
27 53-21-117, and this information must be immediately communicated to the resident judge. The resident judge
28 ~~may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint~~
29 ~~a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident~~
30 ~~judge were personally present."~~

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62

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Section 60. Section 53-24-302, MCA, is amended to read:

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"53-24-302. Involuntary commitment of alcoholics – rights. (1) A person may be committed to the

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custody of the department by the district court upon the petition of the person's spouse or guardian, a relative,

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the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the

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person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person

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has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict

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physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute

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evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate

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of a licensed physician who has examined the person within 2 days before submission of the petition unless the

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person whose commitment is sought has refused to submit to a medical examination, in which case the fact of

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refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the

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allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be

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the certifying physician.

15

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date

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the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court,

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must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than

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the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the

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approved public treatment facility to which the person has been committed for emergency care, and any other

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person the court believes advisable. A copy of the petition and certificate must be delivered to each person

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notified.

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(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at

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least one licensed physician who has examined the person whose commitment is sought. The person has a right

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to have a licensed physician of the person's own choosing conduct an examination and testify on the person's

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behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and

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testimony must be paid by the county. The person must be present unless the court believes that the person's

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presence is likely to be injurious to the person. ~~The person must be advised of the right to counsel, and if the~~

28

~~person is unable to hire counsel, the court shall appoint an attorney to represent the person at the expense of~~

29

~~the county.~~ The court shall examine the person in open court or, if advisable, shall examine the person in

30

chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to

1 believe that the allegations of the petition are true or if the court believes that more medical evidence is
2 necessary, the court may make a temporary order committing the person to the department for a period of not
3 more than 5 days for purposes of a diagnostic examination.

4 (4) If after hearing all relevant evidence, including the results of any diagnostic examination by the
5 department, the court finds that grounds for involuntary commitment have been established by clear and
6 convincing evidence, it shall make an order of commitment to the department. The court may not order
7 commitment of a person unless it determines that the department is able to provide adequate and appropriate
8 treatment for the person and that the treatment is likely to be beneficial.

9 (5) A person committed under this section must remain in the custody of the department for treatment
10 for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically
11 be discharged unless before expiration of the period the department obtains a court order from the district court
12 of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further
13 period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic
14 likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is
15 determined that the likelihood still exists.

16 (6) A person recommitted under subsection (5) who has not been discharged by the department before
17 the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the
18 period the department obtains a court order from the district court of the committing district on the grounds set
19 forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been
20 committed because the person is an alcoholic likely to inflict physical harm on another, the department shall
21 apply for recommitment if after examination it is determined that the likelihood still exists. Only two
22 recommitment orders under subsections (5) and (6) are permitted.

23 (7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date
24 for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of
25 hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment
26 is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different
27 from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person
28 is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided
29 in subsection (3).

30 (8) A person committed to the custody of the department for treatment must be discharged at any time

1 before the end of the period for which the person has been committed if either of the following conditions is met:

2 (a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon
3 another, that the person is no longer in need of treatment or the likelihood no longer exists; or

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

7 (9) The court shall inform the person whose commitment or recommitment is sought of the person's
8 right to contest the application, be represented by counsel at every stage of any proceedings relating to the
9 person's commitment and recommitment, and have assigned counsel ~~appointed by the court or provided by the~~
10 court pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], if the person wants
11 the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the
12 assistance of counsel, the court shall ~~require, by appointment if necessary, order the office of state public~~
13 defender, provided for in [section 7], to assign counsel for the person regardless of the person's wishes. The
14 person whose commitment or recommitment is sought must be informed of the right to be examined by a
15 licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests
16 examination by a physician, the court shall employ a licensed physician.

17 (10) If a private treatment facility agrees with the request of a competent patient or the patient's parent,
18 sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to
19 the private treatment facility.

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

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

24 *Section 63. amend 53-30-110 See attachment (E.)*

25 *64*
25 ~~Section 61.~~ Section 61-8-731, MCA, is amended to read:

26 "61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol
27 concentration -- penalty for fourth or subsequent offense. (1) On the fourth or subsequent conviction under
28 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be
29 punished by:

30 (a) sentencing the person to the department of corrections for placement in an appropriate correctional

1 facility or program for a term of 13 months. The court shall order that if the person successfully completes a
2 residential alcohol treatment program operated or approved by the department of corrections, the remainder of
3 the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may
4 not be deferred or suspended, and the person is not eligible for parole.

5 (b) sentencing the person to either the department of corrections or the Montana state prison or
6 Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run
7 consecutively to the term imposed under subsection (1)(a); and

8 (c) a fine in an amount of not less than \$1,000 or more than \$10,000.

9 (2) The department of corrections may place an offender sentenced under subsection (1)(a) in a
10 residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

11 (3) The court shall, as a condition of probation, order:

12 (a) that the person abide by the standard conditions of probation promulgated by the department of
13 corrections;

14 (b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment
15 under this section;

16 (c) that the person may not frequent an establishment where alcoholic beverages are served;

17 (d) that the person may not consume alcoholic beverages;

18 (e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

19 (f) that the person enter in and remain in an aftercare treatment program for the entirety of the
20 probationary period;

21 (g) that the person submit to random or routine drug and alcohol testing; and

22 (h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition
23 interlock system.

24 (4) The sentencing judge may impose upon the defendant any other reasonable restrictions or
25 conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited
26 to:

27 (a) payment of a fine as provided in 46-18-231;

28 (b) payment of costs as provided in 46-18-232 and 46-18-233;

29 (c) payment of costs of ~~court-appointed~~ assigned counsel as provided in 46-8-113;

30 (d) community service;

1 (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
2 protection of society; or

3 (f) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(e).

4 (5) Following initial placement of a defendant in a treatment facility under subsection (2), the department
5 of corrections may, at its discretion, place the offender in another facility or program.

6 (6) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and
7 46-23-1031 apply to persons sentenced under this section."

8

9 ⁶⁵
Section 62. Section 72-5-225, MCA, is amended to read:

10 "72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing --
11 representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a
12 guardian of a minor ~~is to~~ must be given by the petitioner in the manner prescribed by 72-1-301 to:

13 (a) the minor, if ~~he~~ the minor is 14 ~~or more~~ years of age or older;

14 (b) the person who has had the principal care and custody of the minor during the 60 days preceding
15 the date of the petition; and

16 (c) any living parent of the minor.

17 (2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the
18 required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best
19 interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases,
20 the court may dismiss the proceedings or make any other disposition of the matter that will best serve the
21 ~~interest~~ interests of the minor.

22 (3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be
23 inadequately represented, ~~it the court may appoint an attorney order the office of state public defender, provided~~
24 for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6
25 through 14], to represent the minor, giving consideration to the preference of the minor if the minor is 14 years
26 of age or older. The county attorney and the deputy county attorneys, if any, may not be appointed for this
27 purpose."

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29 ⁶⁶
Section 63. Section 72-5-234, MCA, is amended to read:

30 "72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation

1 **by attorney.** (1) Any person interested in the welfare of a ward or the ward, if 14 ~~or more~~ years of age or older,
 2 may petition for removal of a guardian on the ground that removal would be in the best ~~interest~~ interests of the
 3 ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may
 4 but need not include a request for appointment of a successor guardian.

5 (2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate
 6 the guardianship and make any further order that may be appropriate.

7 (3) If at any time in the proceeding the court determines that the interests of the ward are or may be
 8 inadequately represented, it may ~~appoint an attorney~~ order the office of state public defender, provided for in
 9 [section 7], to assign counsel under the provisions of the Montana Public Defender Act, [sections 1 through 4
 10 and 6 through 14], to represent the minor, giving consideration to the preference of the minor if the minor is 14
 11 or more years of age."

12 ⁶⁷
 13 **Section 64.** Section 72-5-315, MCA, is amended to read:

14 **"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview --**
 15 **procedural rights.** (1) The incapacitated person or any person interested in ~~his~~ the incapacitated person's
 16 welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

17 (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The
 18 allegedly incapacitated person may have counsel of ~~his~~ the person's own choice or the court may, in the interest
 19 of justice, appoint an appropriate official or ~~attorney~~ order the office of state public defender, provided for in
 20 [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through
 21 14], to represent him the person in the proceeding. ~~The official or assigned counsel who shall have~~ has the
 22 powers and duties of a guardian ad litem.

23 (3) The person alleged to be incapacitated ~~shall~~ must be examined by a physician appointed by the
 24 court who shall submit ~~his~~ a report in writing to the court and must be interviewed by a visitor sent by the court.
 25 Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in
 26 treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of
 27 the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed
 28 and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged
 29 to be incapacitated and the place it is proposed that ~~he~~ the person will be detained or reside if the requested
 30 appointment is made and submit ~~his~~ the visitor's report in writing to the court. Whenever possible without undue

1 delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the
 2 judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the
 3 condition of the allegedly incapacitated person and make recommendations to the court regarding the most
 4 appropriate form of state intervention in ~~his~~ the person's affairs.

5 (4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see
 6 or hear all evidence bearing upon ~~his~~ the person's condition. He The person is entitled to be present by counsel,
 7 to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and
 8 to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be
 9 incapacitated or ~~his~~ the person's counsel ~~so~~ requests it."

10

11 ⁶⁸
 Section ~~65~~. Section 72-5-322, MCA, is amended to read:

12 "72-5-322. **Petition of guardian for treatment of ward.** (1) If a guardian believes that the guardian's
 13 ward should receive medical treatment for a mental disorder and the ward refuses, the court may, upon petition
 14 by the guardian, grant an order for evaluation or treatment. However, the order may not forcibly detain the ward
 15 against the ward's will for more than 72 hours.

16 (2) The ward is entitled to ~~an appointment~~ the assignment of counsel, in accordance with the provisions
 17 of the Montana Public Defender Act. [sections 1 through 4 and 6 through 14], and a hearing along with all the
 18 other rights guaranteed to a person with a mental disorder and who requires commitment under 53-21-114,
 19 53-21-115, 53-21-119, and 53-21-120."

20

21 ⁶⁹
 Section ~~66~~. Section 72-5-408, MCA, is amended to read:

22 "72-5-408. **Procedure concerning hearing and order on original petition.** (1) Upon receipt of a
 23 petition for appointment of a conservator or other protective order because of minority, the court shall set a date
 24 for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the
 25 interests of the minor are or may be inadequately represented, it the court may ~~appoint an attorney~~ order the
 26 office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public
 27 Defender Act, [sections 1 through 4 and 6 through 14], to represent the minor, ~~giving consideration to the choice~~
 28 ~~of the minor if 14 years of age or older. A lawyer appointed by the court~~ Counsel assigned to represent a minor
 29 also has the powers and duties of a guardian ad litem.

30 (2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other

1 than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his the
 2 person's own choice, the court must appoint a lawyer shall order the office of state public defender, provided
 3 for in [section 7], to assign counsel to represent him the person pursuant to the Montana Public Defender Act,
 4 [sections 1 through 4 and 6 through 14]. Assigned counsel ~~who then~~ has the powers and duties of a guardian
 5 ad litem. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be
 6 protected be examined by a physician or professional person as defined in 53-21-102 designated by the court.
 7 If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic
 8 intoxication, the court may direct that the person to be protected be examined by a physician designated by the
 9 court. It is preferable that a physician designated by the court not be connected with any institution in which the
 10 person is a patient or is detained. The court may send a visitor to interview the person to be protected. The
 11 visitor may be a guardian ad litem or an officer or employee of the court.

12 (3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to
 13 be protected be examined by a physician as set forth in subsection (2).

14 (4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order
 15 has been established, the court shall make an appointment or other appropriate protective order."

16
 17 NEW SECTION. Section ⁷⁰67. Implementation. (1) The governor shall appoint the members of the
 18 public defender commission established pursuant to [section 5] no later than July 1, 2005.

19 (2) The department of administration shall provide staff support to the commission beginning July 1,
 20 2005, and continuing until the commission hires a chief public defender and until the chief public defender hires
 21 necessary staff for the commission and the office of state public defender.

22 (3) By December 31, 2005, the commission shall hire a chief public defender and issue any requests
 23 for proposals for consulting services and technical assistance that may be needed to help establish the office
 24 of state public defender provided in [section 7].

25 (4) Standards and procedures required to implement the provisions of [sections 1 through 4 and 6
 26 through 14] must be established, and the office of state public defender must be opened by no later than July
 27 1, 2006.

28 (5) During fiscal year 2006, a commission member is entitled to \$50 for each day that the member
 29 spends conducting the official business of the commission.

30 (6) The department of administration shall assist the commission in developing a public defender

1 information technology system that utilizes existing resources as much as possible and that interfaces with state
2 executive branch, judicial branch, and local computer systems to the extent necessary and practicable to ensure
3 that data required to effectively manage public defender caseloads and track costs can be efficiently collected
4 and analyzed.

5

6 NEW SECTION. Section ^{7/}68. Transition -- transfer of county and city employees to state
7 employment -- rights. (1) Employees of county or city public defender offices who are employed by a county
8 or city on June 30, 2006, may be transferred to state employment in the office of state public defender provided
9 for in [section 7]. Transferred employees become state employees on July 1, 2006.

10 (2) All transferred employees become subject to the state classification plan on July 1, 2006, except
11 those specifically exempted under [section 7(2) and (3)(a)].

12 (3) The salary of transferred county or city employees on July 1, 2006, must be the same as it was on
13 July 1, 2005, plus any salary increases provided for by the county or city not exceeding 4%.

14 (4) An employee's compensation may not be reduced as the result of the transfer to the state
15 classification plan.

16 (5) This section does not preserve the right of any former county or city employee to any salary or
17 compensation, including longevity benefits, that was not accrued and payable as of June 30, 2006.

18 (6) A transferred employee may elect to become a member of the state employee benefit plan beginning
19 July 1, 2006, or remain on the employee's county or city benefit plan through the remainder of the plan year in
20 effect on June 30, 2006. For an employee who elects to remain on a county or city benefit plan, the monthly state
21 contribution toward insurance benefits must be transferred to the county or city benefit plan. Any benefit costs
22 in excess of the state contribution must be paid by the employee.

23 (7) Accumulated sick and vacation leave and years of service with a county or city must be transferred
24 fully to the state and become an obligation of the state on July 1, 2006. On July 1, 2006, the counties and cities
25 with office of public defender employees who are transferred to state employment by this section shall pay the
26 state 25% of the sick leave accrual and 100% of vacation leave accrual for each employee who is transferred
27 to state employment. The transferred employees shall retain their accumulated sick and vacation leave. Any
28 liability for accumulated compensatory time of employees who are transferred from county or city employment
29 to state employment under this section is not transferred to the state and remains an obligation of the county
30 or city that employed the employee prior to the transfer, subject to federal law and the county's or city's personnel

1 policies.

2 (8) A transferred employee who is not already covered by the public employees' retirement system
3 provided in Title 19, chapter 3, becomes a new member of the public employees' retirement system on July 1,
4 2006, and is subject to the provisions of Title 19, chapter 3.

5 (9) A collective bargaining agreement in effect on July 1, 2006, may not be construed as binding on the
6 state. However, transferred employees are entitled to organize and collectively bargain pursuant to Title 39,
7 chapter 31.

8

9 ⁷²
NEW SECTION. Section 69. Transition of appellate defender commission and office. (1) The
10 terms of members of the appellate defender commission established in 2-15-1020 terminate on June 30, 2006,
11 when that section is repealed.

12 (2) Commission staff in the office of appellate defender established pursuant to the Appellate Defender
13 Act in 46-8-210 through 46-8-213 must be officially transferred to the office of state public defender established
14 pursuant to [section 7]. The transfer is effective July 1, 2006, at which time the position of chief appellate
15 defender becomes exempt from the classification and pay plan pursuant to 2-18-103 and [section 7(3)(a)(ii)].
16 The compensation and benefits of the chief appellate defender and other staff of the office of appellate defender
17 may not be reduced as a result of this transfer and the chief appellate defender and other staff of the office of
18 appellate defender remain entitled to all compensation, rights, and benefits accrued as of June 30, 2006.

19 (3) The appellate defender commission and the public defender commission shall work together to
20 provide that the duties and responsibilities of the appellate defender commission and the caseload of the staff
21 of the office of appellate defender are transferred to the public defender commission and office of state public
22 defender in a manner that ensures continuity of services. On July 1, 2006, all work of the appellate defender
23 commission must officially be transferred to the supervision of the public defender commission and the chief
24 public defender.

25 (4) Subject to the provisions of [section 5], a member of the appellate defender commission may be
26 appointed by the governor to simultaneously serve on the public defender commission and the appellate
27 defender commission until the appellate defender commission terminates pursuant to this section. A member
28 serving on both commissions simultaneously is entitled to the compensation provided for the public defender
29 commission in [section 67(5)] when engaged in the official duties of the public defender commission, provided
30 that expenses paid pursuant to 2-18-501 through 2-18-503 may not be paid twice for the same period of time.

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73

NEW SECTION. Section 70. Rights to property. (1) Subject to subsection (2), office equipment, computer equipment, furniture, and fixtures that are owned by a county or city and used by employees of a public defender office on June 30, 2006, remain the property of the county or city unless otherwise agreed upon by the county or city and the state.

(2) (a) An employee of a county or city public defender office who becomes a state employee under [section 66] retains the right to use all property relating to the functions of the office and being used by the employee on June 30, 2006. The property includes records, office equipment, computer equipment, supplies, contracts, books, papers, documents, maps, grant and earmarked account balances, vehicles, and all other similar property. However, the employee may not use or divert money in a fund or account for a purpose other than as provided by law.

(b) Whenever the state replaces office equipment, computer equipment, furniture, or fixtures used as provided in subsection (2)(a) and still owned by a county or city, the right to use the replaced property reverts to the county or city.

(3) This section does not apply to property owned by the federal government.

See (F)

14604. ash
14604. ash

NEW SECTION. Section 74. Payment of costs to be based on actual expenses -- legislative audit -- report.

NEW SECTION. Section 75. Interim report. During fiscal year 2007, the public defender commission established in [section 5] shall make regular progress reports to the governor, legislative finance committee, law and justice interim committee, and supreme court regarding the operation and administration of the statewide public defender system.

76

NEW SECTION. Section 72. Repealer. Sections 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, and 46-8-213, MCA, are repealed.

77

NEW SECTION. Section 73. Codification instruction. (1) [Sections 1 through 4 and 6 through 14] are intended to be codified as a new title in the Montana Code Annotated.

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

(3) [Section 15] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 15].

14603.01
technical

"NEW SECTION. Section 74. Directions to code commissioner.

Whenever references to "court-appointed counsel", "court-appointed attorney", "appointed counsel" or "appointed attorney" appear in legislation enacted by the 2005 legislature, the code commissioner is directed to change the references to the appropriate term of "assigned counsel" or "assigned attorney".

2 **NEW SECTION. Section 74. Saving clause.** [This act] does not affect rights and duties that matured,
3 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

4 **NEW SECTION. Section 80. 3/5 vote Required**

14607.01
5 **NEW SECTION. Section 81. Effective dates.** (1) Except as provided in subsection (2), [this act] is
6 effective on passage and approval.

7 (2) [Sections 17 through 19, 23 through 28, 33 through 66, and 72] are effective July 1, 2006.

8 - END -

80
Insert: **"NEW SECTION. Section 75. Three-fifths vote required.**
Because 15-1-121(3)(a)(i), as amended in this bill, reduces the amount of entitlement share payments, 15-1-121(9), as amended in this bill, requires a vote of three-fifths of the members of each house of the legislature for passage."

A-

S B014602.avi

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P 5, l. 12

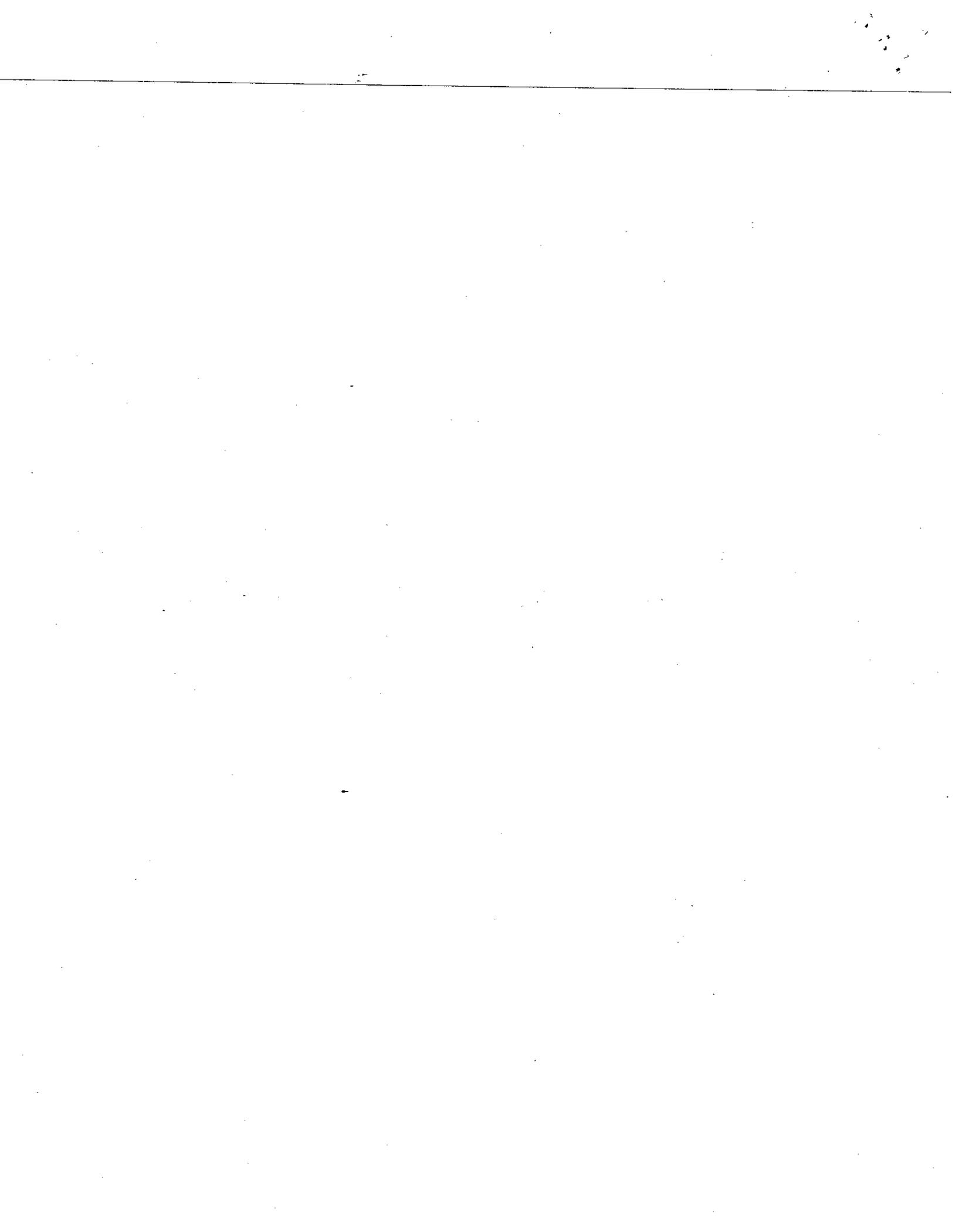
(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and development disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of [sections 1 through 4 and 6 through 14] or must have demonstrated a strong commitment to quality representation of indigent defendants."



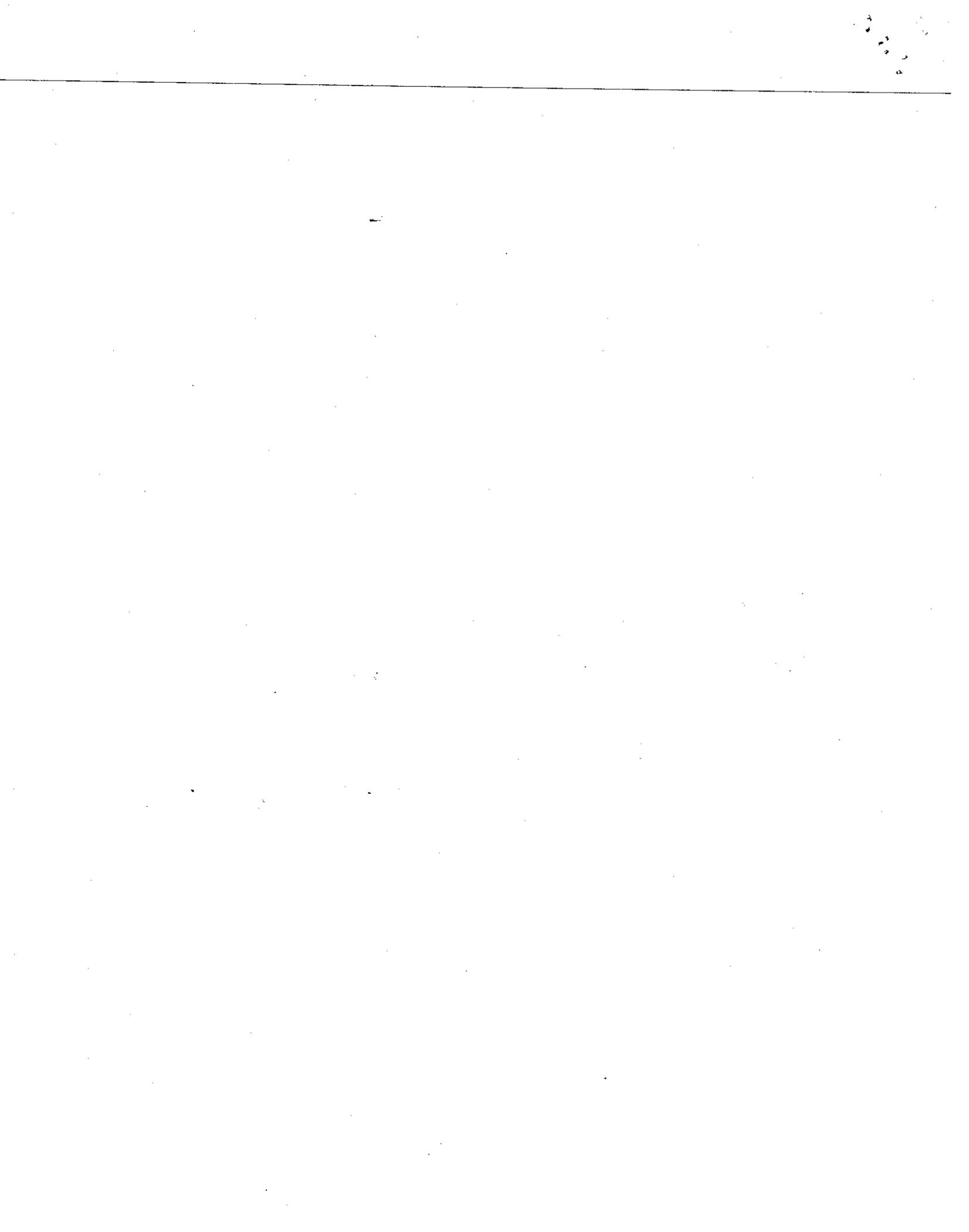
B.

P. 7, l 10
insert:

SB014606.avl #7

- (a) all policies or procedures in effect for the operation and administration of the statewide public defender system;
- (b) all standards established or being considered by the commission or the chief public defender;
- (c) the number of deputy public defenders and the region supervised by each;
- (d) the number of public defenders employed or contracted in the system, identified by region;
- (e) the number of attorney and nonattorney staff supervised by each deputy public defender;
- (f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;
- (g) the total number of persons represented by the office, identified by region, court, and case type;
- (h) the annual caseload and workload of each public defender, identified by region, court, and case type;
- (i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;
- (j) the continuing education on criminal defense or criminal procedure attended by each public defender employed or contracted in the system;
- (k) detailed expenditure data by court and case type; and

γ (1)



Insert: "NEW SECTION. Section 9. Office of appellate defender -- chief appellate defender. (1) There is within the office an office of appellate defender.

(2) Beginning July 1, 2006, the chief public defender shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender.

(3) The chief appellate defender shall:

(a) manage and supervise all public defender services provided by the office of appellate defender;

(b) ensure that when a court orders the office to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of [section 8(7)] and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of office of appellate defender personnel as authorized by the appellate defender;

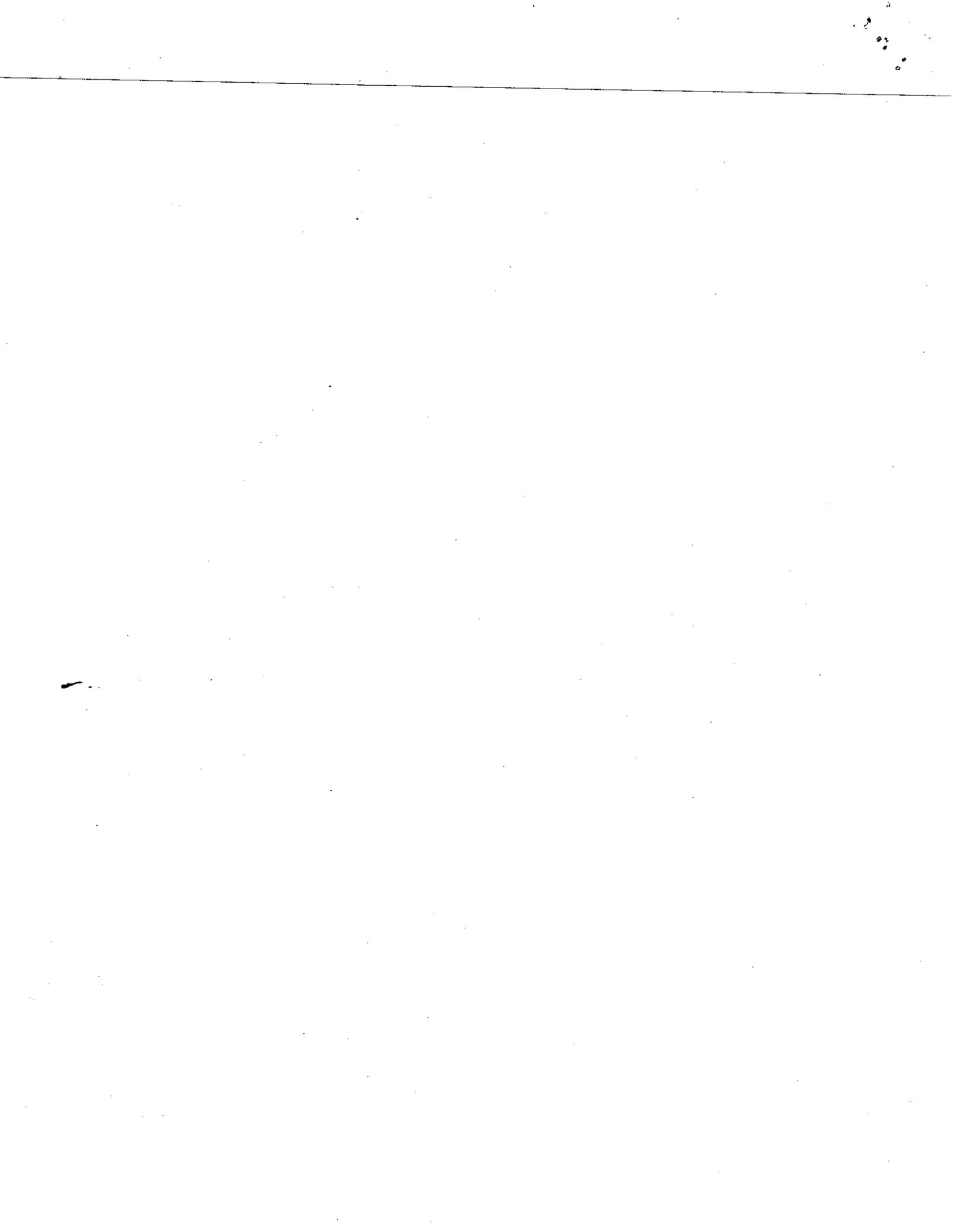
(e) contract for services as provided in [section 12] and as authorized by the chief public defender according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the appellate defender office and submit records and reports to the chief public defender as requested;

(g) implement standards and procedures established by the commission and the chief public defender for the office of appellate defender;

(h) maintain a minimum client caseload as determined by the chief public defender; and

(i) perform all other duties assigned to the chief appellate defender by the chief public defender."



(D.)

P22, 26.

SB014605aW

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20

Insert: "Section 19. Section 7-6-2426, MCA, is amended to read:
"7-6-2426. Enumeration of county charges. (1) The following are county charges:

- (a) charges incurred against the county by virtue of any provision of this title;
 - (b) one-half of the salary of the county attorney and all expenses necessarily incurred by the county attorney in criminal cases arising within the county, except as provided in subsection (2);
 - (c) the salary and actual expenses for traveling, when on official duty, allowed by law to sheriffs and the compensation allowed by law to constables for executing process on persons charged with criminal offenses;
 - (d) the board of prisoners confined in jail;
 - (e) the accounts of the coroner of the county for services that are provided by law;
 - (f) all charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law;
 - (g) the necessary expenses incurred in the support of county hospitals and poorfarms and in the support of the indigent sick and the otherwise dependent poor whose support is chargeable to the county;
 - (h) the contingent expenses necessarily incurred for the use and benefit of the county;
 - (i) every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners or declared to be a county charge.
- (2) The costs of subsection (1)(b) arising from the criminal prosecution of escape or of an offense committed in the state prison must be paid by the department of corrections office of state public defender as provided in 53-30-110."
{Internal References to 7-6-2426: None.}"

Section 21. Amended 15-1-121

see 14605.aW # 5

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E.

P 63, 224

SB014605.a.v1
#6.

Insert: "Section 63. Section 53-30-110, MCA, is amended to read:

"53-30-110. **Expense of trial for offenses committed in prison.** Whenever a trial of any person takes place under any of the provisions of 45-7-306 ~~and~~ or whenever a prisoner in the state prison is tried for any crime committed in prison, the county clerk of the county where the trial is held shall make out a statement of all the costs incurred by the county for the trial of the case and of guarding and keeping the prisoner, ~~properly.~~ The statement must be certified by a district judge of the county. The statement must be sent for approval to the department of corrections for its approval office of state public defender, provided for in [section 7], if counsel was assigned for the person pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 13]. After such approval, the department

If the statement is approved, the office of state public defender shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the trial was held."

{ Internal References to 53-30-110:
A 7-6-2426 } "

11



insert: NEW SECTION. section 15-1-121. Payment of costs to be based on actual expenses -- legislative audit -- report. (1) The purpose of this section is to provide that:

F.

(a) funding responsibilities for public defender costs pursuant to [sections 1 through 4 and 6 through 13] will be shared by state and local government based on an audit of actual costs; and

(b) that the counties and cities will pay their share of costs through a one-time reduction in the county's or city's base entitlement share under 15-1-121.

(2) During the fiscal year beginning July 1, 2005:

(a) district court public defender costs must continue to be paid by the office of court administrator pursuant to 3-5-901 and the office shall report all of its actual expenditures, including reimbursements and direct payments, to the legislative audit division;

(b) each county shall report monthly to the legislative audit division actual expenditures for district court public defender costs, whether or not those expenditures were reimbursed by the office; and

(c) each city and county shall report monthly to the legislative audit division the city's or county's actual expenditures for all public defender services in the city's or county's courts of limited jurisdiction.

(3) For the fiscal year beginning July 1, 2006:

(a) the office shall pay, either directly or through reimbursements, all public defender costs incurred under [sections 1 through 4 and 6 through 13];

(b) each city and county shall directly pay any public defender costs that are not directly paid by the office of state public defender pursuant to [sections 1 through 4 and 6 through 13] and shall submit a monthly claim to the office for reimbursement of those expenses;

(c) the office shall pay a claim for reimbursement within 30 days of receiving the claim; and

(d) the office and each city and county shall report monthly to the legislative audit division actual expenditures for public defender services through September 30, 2006.

(4) An audit, by or at the direction of the legislative auditor, must be conducted on all of the state, city, and county public defender expenditures incurred from July 1, 2005, through September 30, 2006. The reports to the legislative audit division required under this section must be in a form and include the content prescribed by the legislative auditor. The office and each city and county shall reimburse the legislative auditor for the cost of the audit.

(5) The results of the audit must be reported to the governor's budget office, the legislative audit committee, the legislative finance committee, and the law and justice interim committee.

(6) The law and justice interim committee shall prepare legislation to be introduced in the 2007 legislative session that will amend 15-1-121 to provide that each city's and county's base entitlement share is adjusted by an appropriate amount arrived at based on the audit and in consultation with the legislative finance committee, the legislative audit committee, representatives of the counties and cities, the governor's office, the American civil liberties union, the attorney general's office, and all other interested and participating parties."

p71, 216.

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