

SENATE BILL NO. 19
INTRODUCED BY D. GRIMES
BY REQUEST OF THE SUPREME COURT

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO STATE ASSUMPTION OF DISTRICT COURT COSTS; CLARIFYING JURORS' AND WITNESSES' WARRANT PAYMENT PROCESSES; REVISING THE APPOINTING AUTHORITY FOR COURT REPORTERS, JUVENILE PROBATION OFFICERS, AND YOUTH ASSESSMENT OFFICERS; CLARIFYING WORKERS' COMPENSATION REQUIREMENTS FOR INDEPENDENT CONTRACTOR COURT REPORTERS; ELIMINATING STATUTORY PROVISIONS RELATING TO JOB QUALIFICATIONS FOR JUVENILE PROBATION OFFICERS; AMENDING SECTIONS 3-5-510, 3-5-511, 3-5-601, 3-5-902, 3-15-204, 41-5-1701, 41-5-1703, 41-5-1706, AND 41-5-1707, MCA; REPEALING SECTION 41-5-1702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 3-5-510, MCA, is amended to read:

"3-5-510. Duties relating to jurors and witnesses. The clerk of the district court shall:

- (1) keep a book called "Book of Jurors' Warrants", which must contain ~~the~~ blank warrants ~~and copies~~ as provided in 3-15-204;
- (2) keep a "Witness Book", which must contain blank warrants ~~and copies~~ as provided in 3-5-511;
- (3) keep a record of the attendance of all jurors and witnesses in criminal actions and compute the amount due them for mileage, ~~(the~~ The distance from any point to the county seat must be determined by the shortest traveled route)."

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

"3-5-511. Procedure in reference to witnesses' warrants. (1) The witnesses in criminal actions shall report their presence to the clerk the first day they attend under the subpoena.

- (2) At the time any witness is excused from further attendance, the clerk shall give to the witness a county warrant ~~taken from a book containing a carbon copy of the warrant~~, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount

due.

(3) The state shall reimburse the clerk for the amount specified in the warrant ~~must be paid by the state~~ as provided in 3-5-901 and 3-5-902."

Section 3. Section 3-5-601, MCA, is amended to read:

"3-5-601. Court reporters -- appointment -- oath -- employment status. (1) The judge of a district court may appoint a reporter for the court who is an officer of the court ~~and holds office at the pleasure of the appointing judge.~~ The court reporter shall take the constitutional oath of office and file it with the clerk of court. In districts where there are two or more judges, each judge may appoint a reporter. The judge shall direct the performance of the court reporter's duties.

(2) Court reporter services may be provided by a court reporter appointed:

- (a) as a state employee foregoing transcription fees;
- (b) as a state employee retaining transcription fees; or
- (c) as an independent contractor.

(3) A court reporter appointed under subsection (2)(a) or (2)(b) is subject to classification and compensation as determined by the judicial branch personnel plan adopted under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18.

(4) (a) If a court reporter is appointed under subsection (2)(a), the state shall provide all equipment and supplies for the reporter's use. Any transcription fees paid for the reporter's transcription services must be forwarded to the department of revenue for deposit in the state general fund.

(b) If a court reporter is appointed under subsection (2)(b), the state shall provide equipment and supplies for the reporter's use, except that the reporter shall provide and maintain all equipment and supplies for performance of transcription duties unless equipment is shared as provided in subsection (5). A reporter may not receive overtime for time spent on preparation of transcripts for which the reporter retains fees. The reporter shall retain all transcription fees paid for the reporter's transcription services.

(c) A court reporter appointed under subsection (2)(c) shall contract with the judicial branch as an independent contractor. The reporter shall provide and maintain the reporter's necessary equipment and supplies, retain all transcription fees paid for the reporter's transcript preparation services, and maintain professional liability insurance and workers' compensation coverage unless an exemption from workers' compensation coverage has been obtained pursuant to 39-71-401.

(5) A court reporter may use state-owned equipment under policies adopted by the district court council

under 3-1-1602 to avoid duplication of equipment costs. Use of shared equipment under this subsection is not a violation of 2-2-121(2)(a)."

Section 4. Section 3-5-902, MCA, is amended to read:

"3-5-902. Fiscal administration for payment of court expenses. The supreme court administrator shall establish procedures for disbursement of funds for payment of district court expenses listed in 3-5-901 and other statutorily assumed or reimbursable district court costs and expenses and record payments at a detailed level for budgeting and auditing purposes."

Section 5. Section 3-15-204, MCA, is amended to read:

"3-15-204. (Temporary) Duties of clerk as to jurors. (1) The clerk shall keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk shall give to each juror, at the time that the juror is excused from further service, a county warrant signed by the clerk, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) The state shall reimburse the clerk for the amount specified in the warrant ~~must be paid by the state~~ as provided in 3-5-901 and 3-5-902.

3-15-204. (Effective on occurrence of contingency) Duties of clerk as to jurors. (1) The clerk shall keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk shall give to each juror, at the time that the juror is excused from further service, a county warrant signed by the clerk, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) The state shall reimburse the clerk for the amount specified in the warrant ~~must be paid by the state~~ as provided in 3-5-901 and 3-5-902.

(4) The clerk of court for the county in which an asbestos-related claim is tried shall perform the functions required in subsections (1) through (3). The payment of costs incurred under this section must be made from the asbestos claims administration fund provided for in 3-20-104."

Section 6. Section 41-5-1701, MCA, is amended to read:

~~"41-5-1701. **Appointment Employment of juvenile probation officers and youth court staff.** (1) The youth court judge of each judicial district shall appoint probation officers, deputy probation officers, and part-time probation officers necessary to administer this chapter. The qualifications for part-time probation officers must approximate those required for probation officers insofar as possible. A chief probation officer must be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also ensure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this chapter. A person while serving as a law enforcement officer may not be appointed or perform the duties of a full-time or part-time probation officer.~~

~~——(2) All probation officers and youth division office court staff hired or appointed under subsection (1) are employees of the judicial branch of state government. The employees are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18."~~

Section 7. Section 41-5-1703, MCA, is amended to read:

"41-5-1703. Powers and duties of probation officers. (1) A probation officer shall:

- (a) perform the duties set out in 41-5-1302;
- (b) make predisposition studies and submit reports and recommendations to the court;
- (c) supervise, assist, and counsel youth placed on probation or under the probation officer's supervision, including enforcement of the terms of probation or intervention;
- (d) assist any public and private community and work projects engaged in by youth to pay fines, make restitution, and pay any other costs ordered by the court that are associated with youth delinquency or need for intervention;
- (e) perform any other functions designated by the court.

(2) A probation officer does not have power to make arrests or to perform any other law enforcement functions in carrying out the probation officer's duties except that a probation officer may take into custody any youth who violates either the youth's probation or a lawful order of the court.

(3) The duties of a full-time or part-time probation officer may not be performed by a person serving as a law enforcement officer."

Section 8. Section 41-5-1706, MCA, is amended to read:

"41-5-1706. Juvenile probation officer training. (1) The department of justice may conduct a 40-hour

juvenile probation officer basic training program and other training programs and courses for juvenile probation officers. A 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers may be offered by another public agency or by a private entity if the program or course is approved by the board of crime control. If funding is available, the department shall conduct a 40-hour basic training program once a year.

(2) A juvenile probation officer who successfully completes the 40-hour basic training program or another program or course must be issued a certificate by the board.

~~(3) A juvenile probation officer is entitled to the officer's salary and expenses, as provided in 2-18-501 through 2-18-503, while attending a program or training course. The court shall also pay any program or course registration fee.~~

(3) Each chief probation officer and deputy probation officer shall obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers in a program or course conducted by the department of justice or approved by the board of crime control.

(4) The board may adopt rules to implement this section."

Section 9. Section 41-5-1707, MCA, is amended to read:

"41-5-1707. ~~Designation of assessment~~ Assessment officers -- duties -- access to records. ~~(1) The youth court judge of each judicial district may appoint and supervise assessment officers necessary to administer this chapter. Assessment officers appointed under this section are employees of the judicial branch of state government. The employees are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18.~~

~~(2)~~(1) An assessment officer employed by the state judicial branch shall perform the duties set out in 41-5-1201 and 41-5-1302.

~~(3)~~(2) Proceedings under 41-5-1201 and 41-5-1302 that are held prior to adjudication satisfy the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to assessment officers. The assessment officer is responsible for ensuring that officials and authorities to whom that information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent of the student."

NEW SECTION. **Section 10. Repealer.** Section 41-5-1702, MCA, is repealed.

NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.

- END -