

HOUSE BILL NO. 665

INTRODUCED BY R. BRODEHL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PUBLIC DEFENDER  
5 SERVICES; REPEALING THE STATEWIDE PUBLIC DEFENDER SYSTEM; REQUIRING COUNTIES TO  
6 ESTABLISH COUNTY PUBLIC DEFENDERS; PROVIDING FOR DEPUTY COUNTY PUBLIC DEFENDERS;  
7 PROVIDING QUALIFICATIONS AND LIMITATIONS; PROVIDING STATE FUNDING FOR CERTAIN COUNTY  
8 PUBLIC DEFENDER COSTS; AUTHORIZING COUNTIES TO LEVY A TAX TO SUPPORT COUNTY PUBLIC  
9 DEFENDER SERVICES; ESTABLISHING A STATE OFFICE OF DEFENDER SERVICES FOR APPELLATE  
10 DEFENSE, CONFLICT OF INTEREST CASES, AND MAJOR CRIMES; PROVIDING FOR ELIGIBILITY  
11 DETERMINATION FOR PUBLIC DEFENDER SERVICES; ESTABLISHING A SPECIAL REVENUE ACCOUNT  
12 FOR THE DEPOSIT OF COURT-ORDERED REPAYMENTS FOR PUBLIC DEFENDER SERVICES;  
13 PROVIDING FOR A PUBLIC DEFENDER LAW CLINIC; PROVIDING FOR A TRANSITION OF EMPLOYEES;  
14 PROVIDING APPROPRIATIONS AND A STATUTORY APPROPRIATION; AMENDING SECTIONS 2-18-103,  
15 3-5-511, 3-5-604, 3-5-901, 15-10-420, 17-7-502, 18-4-132, 26-2-506, 26-2-508, 26-2-510, 40-6-119, 41-3-425,  
16 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-8-113, 46-8-114, 46-12-210, 46-14-202,  
17 46-15-115, 46-15-116, 46-17-203, 46-21-201, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122,  
18 53-24-302, 53-30-110, 61-5-218, 72-5-225, 72-5-234, 72-5-315, 72-5-322, AND 72-5-408, MCA; REPEALING  
19 SECTIONS 2-15-1028, 47-1-101, 47-1-102, 47-1-103, 47-1-104, 47-1-105, 47-1-110, 47-1-111, 47-1-118,  
20 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, AND 47-1-216, MCA; AND PROVIDING EFFECTIVE  
21 DATES."

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

24  
25 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 14], the following definitions  
26 apply:

- 27 (1) "County" means a county or city-county consolidated government.
- 28 (2) "Full-time county public defender" means the county public defender position established as a  
29 full-time position pursuant to [section 2(1)];
- 30 (3) "Part-time county public defender" means the county public defender position established as a



1 part-time position pursuant to [section 2(1)];

2 (4) "Salary" means wage plus the employer contributions required for retirement, workers' compensation  
3 insurance, and the Federal Insurance Contributions Act; and

4 (5) "State office" means the state office of defender services established in [section 8].

5

6 **NEW SECTION. Section 2. County public defenders -- contracting -- state assistance -- scope of**  
7 **services -- compensation.** (1) (a) In a county with a population of less than 30,000, the county commissioners  
8 may by resolution effective July 1 of any year establish the position of county public defender as a full-time or  
9 part-time position. A copy of the adopted resolution must be provided to the state office.

10 (b) In a county with a population of 30,000 or more, the position of county public defender must be a  
11 full-time position.

12 (2) The county commissioners of any county may, by agreement with the commissioners of any other  
13 county, contract in writing to share county public defender services by a county public defender or member of a  
14 county public defender's staff to perform public defender-related services for the counties at a reasonable rate,  
15 subject to the provisions of an interlocal cooperative agreement.

16 (3) A county may request and receive assistance in a case from the state office if:

17 (a) a case may not be handled by a county public defender because of a conflict of interest; or

18 (b) a case involves complex issues or may be considered a major crime pursuant to a policy adopted  
19 by the state office.

20 (4) Except as provided pursuant to this section, a county public defender shall provide trial-level public  
21 defender services as ordered by a court of competent jurisdiction within the county, including in a municipal or  
22 city court case if a person in the case is determined to be eligible for and is assigned counsel. A county public  
23 defender may not be assigned to handle appellate cases.

24 (5) The salary of a county public defender shall be set in a manner similar to the process outlined for  
25 county attorneys under Title 7, chapter 4, part 25.

26

27 **NEW SECTION. Section 3. Deputy county public defenders -- compensation.** (1) In counties having  
28 a taxable valuation of \$30 million or more, the county public defender may appoint one chief deputy and one  
29 deputy. In all other counties, the county public defender may appoint a chief deputy or a deputy only with the  
30 approval of the board of county commissioners.

1 (2) (a) The salary of a deputy county public defender, including longevity payments, may not exceed 90%  
2 of the salary of the county public defender under whom the deputy is serving.

3 (b) If a deputy is employed for a period of less than 1 year, the compensation of the deputy must be for  
4 the time employed and the rate of compensation may not be in excess of the rates provided by law for similar  
5 deputies.

6  
7 **NEW SECTION. Section 4. Qualifications for county public defenders and deputy county public**

8 **defenders.** (1) A person is not eligible for the position of full-time county public defender in a county that has a  
9 population of 30,000 or more unless the person is a citizen of the United States and has resided in the state for  
10 2 years immediately before being hired and has been admitted to the practice of law for at least 5 years before  
11 the date of hire.

12 (2) A person is not eligible for the position of full-time county public defender in a county that has a  
13 population of less than 30,000 unless the person is a citizen of the United States and has resided in the state for  
14 2 years immediately before being hired and has been admitted to the practice of law for at least 3 years before  
15 the date of hire.

16 (3) A person is not eligible for the position of part-time county public defender in a county that has a  
17 population of less than 30,000 unless the person is a citizen of the United States and resides in the state and has  
18 been admitted to the practice of law before being hired.

19  
20 **NEW SECTION. Section 5. Limitations on activities of county public defenders and deputy county**

21 **public defenders.** (1) Except as provided in subsection (3), in each county in which the county public defender  
22 is a full-time position pursuant to [section 2(1)], the county public defender may not engage in the private practice  
23 of law or share directly or indirectly in the profits of any private practice of law, except that the county public  
24 defender may engage in self-representation and may represent the county public defender's immediate family.

25 (2) Except as provided in subsection (3), a deputy county public defender in a county in which the county  
26 public defender is a full-time position pursuant to [section 2(1)] who is paid 70% or more of the county public  
27 defender's salary may not engage in the private practice of law or share directly or indirectly in the profits of any  
28 private practice of law, except as to those matters in which the deputy public defender has a direct interest.

29 (3) Any county public defender or deputy county public defender must, upon demonstration of need to  
30 the county commissioners, be granted a period of time, not to exceed 3 months from the date that the person is

1 hired, to complete any pending matters remaining from a previous private practice of law. During that time, the  
2 county public defender or deputy county public defender is bound by the customary rules of ethics applicable to  
3 attorneys at law.

4 (4) A contracted public defender must accept all assigned cases. A person who is contracted to handle  
5 a full-time public defender caseload may not carry a private practice caseload.

6  
7 **NEW SECTION. Section 6. State funding for county public defender services -- statutory**  
8 **appropriation.** (1) Funding for county public defender services is a shared state and county responsibility. Each  
9 county is entitled to receive payments from the state as specified in this section for certain costs of providing  
10 public defender services.

11 (2) (a) For each fiscal year, the state office shall pay to each county the amount calculated under  
12 subsection (2)(b). Payments must be made quarterly.

13 (b) (i) For each county with a full-time county public defender, the amount paid each fiscal year must be  
14 equal to the sum of the following amounts:

15 (A) 65% of a district court judge's salary most recently set under 3-5-211 plus an amount equal to 50%  
16 of the annual employer contribution for group benefits under 2-18-703(2) for an employee as defined in 2-18-701;

17 (B) 75% of the midpoint of the salary range set under the state's broadband classification and pay plan  
18 pursuant to Title 2, chapter 18, for a legal secretary plus an amount equal to 50% of the annual employer  
19 contribution for group benefits under 2-18-703(2) for an employee as defined in 2-18-701;

20 (C) 80% of the midpoint of the salary range set under the state's broadband classification and pay plan  
21 pursuant to Title 2, chapter 18, for an investigator plus an amount equal to 50% of the annual employer  
22 contribution for group benefits under 2-18-703(2) for an employee as defined in 2-18-701;

23 (D) if the county has a deputy county public defender pursuant to [section 2], 80% of the salary set by  
24 the county commission for the deputy plus an amount equal to 50% of the annual employer contribution for group  
25 benefits under 2-18-703(2) for an employee as defined in 2-18-701; and

26 (E) \$10,000 for general operating costs.

27 (ii) For each county with a part-time county public defender, for each fiscal year, the state office shall pay  
28 to the county a total amount equal to the amounts calculated under subsection (2)(b)(i)(A) through (D), prorated  
29 according to the applicable position's regular work hours, plus \$5,000 for general operating costs.

30 (3) The amount to be paid to each county pursuant to this section is statutorily appropriated, as provided

1 in 17-7-502, from the general fund to the state office for the purposes of this section.

2

3 **NEW SECTION. Section 7. County public defender levy authorized.** Subject to 15-10-420, the board  
4 of county commissioners may, annually at the time of levying county taxes, fix and levy a tax on all property within  
5 the county for the purpose of providing for county public defender services. The tax must be used to support  
6 county public defender services. Money received from the tax must be placed in a special account to be used  
7 for the purposes of this section.

8

9 **NEW SECTION. Section 8. State office of defender services -- executive director.** (1) (a) There is  
10 a state office of defender services.

11 (b) The head of the office is an executive director who is appointed by and serves at the pleasure of the  
12 governor. The executive director is exempt from the state classification and pay plan as provided in 2-18-103.

13 (c) The governor shall make the appointment after considering at least three nominees submitted by the  
14 judicial nomination commission established in 3-1-1001. Candidates for appointment must have managerial  
15 experience in business, government, or private law practice. The managerial experience must include knowledge  
16 of human resources, labor law, budgeting, contracting, and facilities management. A candidate for appointment  
17 may be, but is not required to be, an attorney.

18 (2) The executive director shall:

19 (a) manage all public defender services performed by the state office;

20 (b) ensure that public defender assignments comply with standards issued by the Montana supreme  
21 court for counsel for indigent persons in capital cases; and

22 (c) contract for services if necessary.

23 (3) The state office is allocated to the department of administration for administrative purposes only, as  
24 provided in 2-15-121, except that the office may hire its own staff.

25

26 **NEW SECTION. Section 9. Organization and scope of services of state office.** (1) The state office  
27 consists of the following offices:

28 (a) an office of appellate defender, which shall provide assigned counsel in appellate cases;

29 (b) an office of conflict defender services, which shall provide assigned counsel in cases in which a  
30 county public defender or an appellate defender may not handle the case because of a conflict of interest; and

1 (c) a major crimes office, which shall provide assigned counsel or other support and assistance as  
2 requested by county public defenders pursuant to [section 2(3)].

3 (2) Each office shall have a chief accountable to the executive director. The executive director shall hire  
4 the chief of each office.

5

6 **NEW SECTION. Section 10. Payment responsibility of court fees and other case-specific**  
7 **expenses.** (1) Costs incurred in a case being handled by a state public defender, such as filing fees, transcript  
8 fees, witness fees, expenses for mental health evaluations, or other case-specific costs are the responsibility of  
9 the state office, except that 50% of any costs incurred by a state public defender in a case being handled by the  
10 state office pursuant to a county public defender's request for assistance under [section 2(3)] must be reimbursed  
11 to the state office by the county.

12 (2) Except as provided in subsection (1), any case-specific costs incurred in a case being handled by  
13 a county public defender are the responsibility of the county public defender office.

14

15 **NEW SECTION. Section 11. Eligibility determination for public defender services.** (1) (a) The office  
16 of court administrator provided for in 3-1-701 shall establish standard forms and procedures for the determination  
17 of eligibility for state and county public defender services.

18 (b) The forms and procedures must be used by public defender offices to determine an applicant's  
19 eligibility for public defender services. The forms and procedures must cover the application, provision of a  
20 financial statement, and an applicant's affidavit. The affidavit must clearly state that it is signed under the penalty  
21 of perjury and that a false statement may be prosecuted.

22 (c) Procedures adopted pursuant to this subsection (1):

23 (i) must ensure that the eligibility determination process is fair and consistent;

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

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

29 (iv) must avoid unnecessary duplication of processes; and

30 (v) must prohibit a public defender from performing eligibility screening for the public defender's own

1 cases.

2 (2) The judge may inquire into the truth of the information contained in the affidavit.

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

6 (4) An applicant is indigent if:

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

11 (ii) in a misdemeanor or civil case, the applicant's gross household income, as defined in 15-30-2337,  
12 is at or less than 100% of the poverty level set according to the most current federal poverty guidelines updated  
13 periodically in the Federal Register by the United States department of health and human services under the  
14 authority of 42 U.S.C. 9902(2); or

15 (b) subject to subsection (5), the disposable combined income and assets of the applicant and the  
16 members of the applicant's household are insufficient to retain competent private counsel without substantial  
17 hardship to the applicant or the members of the applicant's household.

18 (5) If the applicant is determined to be indigent under subsection (4)(b) and is convicted of a criminal  
19 offense, the court must order the applicant to pay the costs of assigned counsel pursuant to 46-8-113.

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

22 (7) Subject to 48-8-101:

23 (a) when a court orders the assignment of counsel to an applicant for assigned counsel, counsel shall  
24 immediately be assigned prior to a determination of eligibility under this section; and

25 (b) a person for whom counsel is assigned is entitled to the full benefit of public defender services until  
26 the court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded  
27 pursuant to [section 12].

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

29 (9) Public defender services may not be withheld or delayed because of an applicant's failure to fill out  
30 an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay

1 or failure to fill out an application or provide other necessary documentation.

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

4 (11) Nothing in this section may be construed to impair a person's right to refuse public defender services  
5 or to refuse to be represented by assigned counsel. A court may not order a person to submit an application to  
6 be represented by a public defender unless the court finds that there are exigent circumstances in a felony case.

7  
8 **NEW SECTION. Section 12. Rescinding assignment of counsel.** (1) If a person for whom counsel  
9 has been assigned is later determined to be ineligible for public defender services, the public defender handling  
10 the case shall immediately file a motion to rescind appointment so that the court's order may be rescinded.

11 (2) The person may request that the court conduct a hearing on the motion to rescind appointment. If  
12 the person requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

13 (3) (a) The sole purpose of the hearing is to determine the financial eligibility of the person for public  
14 defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the  
15 hearing is limited to determining the financial eligibility of the person for public defender services. Only evidence  
16 related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

17 (b) If the person testifies at the hearing:

18 (i) the person may be questioned only regarding financial eligibility for public defender services; and

19 (ii) the court shall advise the person that any testimony or evidence introduced on the person's behalf  
20 other than testimony or evidence regarding financial eligibility may be used during any criminal action.

21 (c) Evidence regarding financial eligibility under this section may not be used in any criminal action,  
22 except in a criminal action regarding a subsequent charge of perjury or false swearing related to the person's  
23 claim of entitlement to public defender services.

24 (4) If the person does not request a hearing on the motion to rescind appointment, does not appear at  
25 a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial  
26 eligibility at the hearing on the motion to rescind appointment, the court shall find the person is not eligible to have  
27 counsel assigned and shall grant the motion to rescind appointment and order the assignment of counsel to be  
28 rescinded.

29  
30 **NEW SECTION. Section 13. Court-ordered repayment of public defender costs -- special revenue**



1 **account.** (1) Money received by a court pursuant to a court order under 46-8-113 for repayment of public  
2 defender costs must be allocated as follows:

3 (a) for public defender services provided by a county public defender, the money must be forwarded to  
4 the appropriate county; and

5 (b) for public defender services provided by the state office, the money must be forwarded to the  
6 department of administration and deposited in the special revenue account established in subsection (2).

7 (2) There is a public defender account in the state special revenue fund established in 17-2-102. All  
8 money received by the department of administration under subsection (1)(b) must be deposited in the account.  
9 Money in the account may be spent only as appropriated by the legislature.

10  
11 **NEW SECTION. Section 14. Public defender law clinic.** The office of the commissioner of higher  
12 education shall administer any funds appropriated by the legislature for the university of Montana law school to  
13 provide for a law clinic program so that law school students may earn credit or compensation for performing legal  
14 research or providing defender services in a county public defender office.

15  
16 **Section 15.** Section 2-18-103, MCA, is amended to read:  
17 **"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following  
18 officers and employees in state government:

- 19 (1) elected officials;
- 20 (2) county assessors and their chief deputies;
- 21 (3) employees of the office of consumer counsel;
- 22 (4) judges and employees of the judicial branch;
- 23 (5) members of boards and commissions appointed by the governor, the legislature, or other elected  
24 state officials;
- 25 (6) officers or members of the militia;
- 26 (7) agency heads appointed by the governor;
- 27 (8) academic and professional administrative personnel with individual contracts under the authority of  
28 the board of regents of higher education;
- 29 (9) academic and professional administrative personnel and live-in houseparents who have entered into  
30 individual contracts with the state school for the deaf and blind under the authority of the state board of public

1 education;

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

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

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

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

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

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

9 (16) commissioner of banking and financial institutions;

10 (17) training coordinator for county attorneys;

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

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

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

15 ~~(21) chief public defender appointed by the public defender commission pursuant to the Montana Public  
16 Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed  
17 by the chief public defender executive director of the state office of defender services appointed pursuant to  
18 [section 8]; and~~

19 ~~————(22) chief appellate defender in the office of appellate defender."~~

20

21 **Section 16.** Section 3-5-511, MCA, is amended to read:

22 **"3-5-511. Witnesses' warrants -- state reimbursement.** (1) The witnesses in criminal actions,  
23 witnesses called by a public defender, ~~as defined in 47-1-103,~~ and witnesses called in a grand jury proceeding  
24 shall report their presence to the clerk the first day they attend under the subpoena.

25 (2) At the time any witness is excused from further attendance, the clerk shall give to the witness a  
26 county warrant, signed by the clerk, in which must be stated the name of the witness, the number of days in  
27 attendance, the number of miles traveled, and the amount due pursuant to Title 26, chapter 2, part 5, and  
28 46-15-116.

29 (3) The state shall reimburse the clerk for the amount specified in the warrant as follows:

30 (a) if the witness was subpoenaed by the prosecution in a criminal proceeding or in a grand jury or by

1 an indigent defendant acting pro se, the amount must be reimbursed by the office of court administrator as  
 2 provided in 3-5-901; or

3 (b) if the witness was subpoenaed by a public defender, the amount must be ~~reimbursed by the office~~  
 4 ~~of state public defender as provided in 47-1-201~~ paid as provided in [section 10]."

5

6 **Section 17.** Section 3-5-604, MCA, is amended to read:

7 **"3-5-604. Court reporters -- transcript of district court proceedings -- costs.** (1) When a transcript  
 8 of the testimony and proceedings of a trial or hearing or a part of a trial or hearing is requested, a court reporter  
 9 shall furnish the transcript to the requester with all reasonable diligence. The court reporter shall submit an invoice  
 10 with the transcript when it is furnished. The court reporter may withhold delivery of the transcript until the  
 11 transcription fee is paid or satisfactory arrangement for payment is made.

12 (2) Compensation for transcripts under this section is as follows:

13 (a) (i) Ordinary transcript - \$2 per page for the original furnished to a state or local government agency,  
 14 \$2.50 per page for the original furnished to any other party, 50 cents per page for the first copy to each party, and  
 15 25 cents per page for each additional copy to the same party.

16 (ii) Expedited transcript - \$4 per page for the original, 50 cents per page for the first copy to each party,  
 17 and 25 cents per page for each additional copy to the same party.

18 (iii) Daily transcript - \$5 per page for the original, 50 cents per page for the first copy to each party, and  
 19 25 cents per page for each additional copy to the same party.

20 (b) (i) The transcript cost is subject to a cost-of-living adjustment as provided in subsection (2)(b)(ii).

21 (ii) Prior to June 30 of each even-numbered year, the office of the court administrator shall determine  
 22 whether an increase of the transcript amount specified in subsections (2)(a)(i) through (2)(a)(iii) must be made  
 23 based on the increase, if any, from June of the preceding year to May of the year in which the calculation is made  
 24 in the consumer price index, U.S. city average, all urban consumers, for all items, as published by the bureau of  
 25 labor statistics of the United States department of labor.

26 (iii) The transcript amount established under subsection (2)(b)(ii) must be rounded to the nearest 5 cents  
 27 and becomes effective as the new transcript cost, replacing the costs specified in subsections (2)(a)(i) through  
 28 (2)(a)(iii), on July 1 of the year following the year the calculation was made. The office of the court administrator  
 29 shall publish the adjusted costs on the judicial branch website prior to July 1 of each year.

30 (3) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees

1 required by subsection (2) must be paid to the clerk of district court, who shall forward the amount to the  
2 department of revenue for deposit in the state general fund.

3 (4) (a) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the  
4 reporter shall furnish it. The transcription fee must be paid by the office of court administrator as provided in  
5 3-5-901. The office of the court administrator may pay only for ordinary transcripts and may not pay for daily or  
6 expedited transcripts.

7 (b) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish  
8 the copy without charge.

9 (c) In civil cases, all transcripts required by the county must be furnished and must be paid for by the  
10 county pursuant to subsection (2).

11 (5) (a) If a public defender, ~~as defined in 47-1-103,~~ requests a transcript, the transcript must be furnished  
12 to the public defender and paid for ~~by the office of state public defender, as provided in 47-1-201~~ as provided in  
13 [section 10].

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

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

17 (a) "Copy" means any replication of the original transcript regardless of the medium.

18 (b) "Daily transcript" means a transcript of all or part of the proceedings to be delivered the following day.

19 (c) "Expedited transcript" means a transcript of all or part of the proceedings to be delivered within 7  
20 calendar days.

21 (d) "Ordinary transcript" means a transcript of all or part of the proceedings."  
22

23 **Section 18.** Section 3-5-901, MCA, is amended to read:

24 **"3-5-901. State assumption of district court expenses.** (1) There is a state-funded district court  
25 program under the judicial branch. Under this program, the office of court administrator shall fund all district court  
26 costs, except as provided in subsection (3). These costs include but are not limited to the following:

27 (a) salaries and benefits for:

28 (i) district court judges;

29 (ii) law clerks;

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

- 1 (iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and
- 2 (v) other employees of the district court;
- 3 (b) in criminal cases:
- 4 (i) fees for transcripts of proceedings, as provided in 3-5-604;
- 5 (ii) witness fees and necessary expenses, as provided in 46-15-116;
- 6 (iii) juror fees and necessary expenses;
- 7 (iv) for a psychiatric examination under 46-14-202, the cost of the examination and other associated
- 8 expenses, as provided in 46-14-202(4); and
- 9 (v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the director
- 10 of the department of public health and human services to be placed in an appropriate facility of the department
- 11 of public health and human services and of transporting the defendant back for any proceedings, as provided in
- 12 46-14-221(5);
- 13 (c) except as provided in ~~47-4-201(5)~~ section 10, the district court expenses in all postconviction
- 14 proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title
- 15 46, chapter 22, and appeals from those proceedings;
- 16 (d) except as provided in ~~47-4-201(5)~~ section 10, the following expenses incurred by the state in federal
- 17 habeas corpus cases that challenge the validity of a conviction or of a sentence:
- 18 (i) transcript fees;
- 19 (ii) witness fees; and
- 20 (iii) expenses for psychiatric examinations;
- 21 (e) except as provided in ~~47-4-201(5)~~ section 10, the following expenses incurred by the state in a
- 22 proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a
- 23 youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent
- 24 custody:
- 25 (i) transcript fees;
- 26 (ii) witness fees;
- 27 (iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other
- 28 person having physical or legal custody of the youth except for expenses for services that a person is eligible to
- 29 receive under a public program that provides medical or psychological evaluation;
- 30 (iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

- 1 (v) expenses associated with court-ordered alternative dispute resolution;
- 2 (f) except as provided in ~~47-1-201(5)~~ [section 10], costs of juror and witness fees and witness expenses  
3 before a grand jury;
- 4 (g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage  
5 on children, as required in 40-4-226, and expenses of education when ordered for the investigation and  
6 preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);
- 7 (h) except as provided in ~~47-1-201(5)~~ [section 10], all district court expenses associated with civil jury  
8 trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;
- 9 (i) all other costs associated with the operation and maintenance of the district court, including contract  
10 costs for court reporters who are independent contractors; and
- 11 (j) costs associated with the operation and maintenance of the youth court and youth court division  
12 operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities  
13 identified in Title 41, chapter 5.
- 14 (2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the  
15 office of court administrator shall reimburse the county within 30 days of receipt of a claim.
- 16 (3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not  
17 include:
- 18 (a) costs for clerks of district court and employees and expenses of the offices of the clerks of district  
19 court;
- 20 (b) costs of providing and maintaining district court office space; or
- 21 (c) charges incurred against a county by virtue of any provision of Title 7 or 46."

22

23 **Section 19.** Section 15-10-420, MCA, is amended to read:

24 **"15-10-420. Procedure for calculating levy.** (1) (a) Subject to the provisions of this section, a  
25 governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount  
26 of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3  
27 years. The maximum number of mills that a governmental entity may impose is established by calculating the  
28 number of mills required to generate the amount of property tax actually assessed in the governmental unit in the  
29 prior year based on the current year taxable value, less the current year's newly taxable value, plus one-half of  
30 the average rate of inflation for the prior 3 years.

1 (b) A governmental entity that does not impose the maximum number of mills authorized under  
2 subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between  
3 the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority  
4 carried forward may be imposed in a subsequent tax year.

5 (c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of  
6 inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using  
7 the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

8 (2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional  
9 levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly  
10 taxable property.

11 (3) (a) For purposes of this section, newly taxable property includes:

12 (i) annexation of real property and improvements into a taxing unit;

13 (ii) construction, expansion, or remodeling of improvements;

14 (iii) transfer of property into a taxing unit;

15 (iv) subdivision of real property; and

16 (v) transfer of property from tax-exempt to taxable status.

17 (b) Newly taxable property does not include an increase in value that arises because of an increase in  
18 the incremental value within a tax increment financing district.

19 (4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the  
20 release of taxable value from the incremental taxable value of a tax increment financing district because of:

21 (i) a change in the boundary of a tax increment financing district;

22 (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

23 (iii) the termination of a tax increment financing district.

24 (b) If a tax increment financing district terminates prior to the certification of taxable values as required  
25 in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment  
26 financing district terminates. If a tax increment financing district terminates after the certification of taxable values  
27 as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

28 (c) For the purpose of subsection (3)(a)(ii), the value of newly taxable class four property that was  
29 constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current  
30 year market value of that property less the previous year market value of that property.

1 (d) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real  
2 property that results in the property being taxable as class four property under 15-6-134 or as nonqualified  
3 agricultural land as described in 15-6-133(1)(c).

4 (5) Subject to subsection (8), subsection (1)(a) does not apply to:

5 (a) school district levies established in Title 20; or

6 (b) a mill levy imposed for a newly created regional resource authority.

7 (6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received  
8 under 15-6-131 and 15-6-132.

9 (7) In determining the maximum number of mills in subsection (1)(a), the governmental entity:

10 (a) may increase the number of mills to account for a decrease in reimbursements; and

11 (b) may not increase the number of mills to account for a loss of tax base because of legislative action  
12 that is reimbursed under the provisions of 15-1-121(7).

13 (8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes  
14 of 15-10-108, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the  
15 department may not exceed the mill levy limits established in those sections. The mill calculation must be  
16 established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the  
17 calculation must be rounded up to the nearest tenth of a mill.

18 (9) (a) The provisions of subsection (1) do not prevent or restrict:

19 (i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

20 (ii) a levy to repay taxes paid under protest as provided in 15-1-402;

21 (iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;

22 (iv) a levy for the support of a study commission under 7-3-184;

23 (v) a levy for the support of a newly established regional resource authority;

24 (vi) the portion that is the amount in excess of the base contribution of a governmental entity's property  
25 tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703; ~~or~~

26 (vii) a levy for reimbursing a county for costs incurred in transferring property records to an adjoining  
27 county under 7-2-2807 upon relocation of a county boundary; or

28 (viii) a levy for the support of county public defender services under [section 7].

29 (b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes  
30 actually assessed in a subsequent year.



1 (10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402,  
 2 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport  
 3 authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating  
 4 funds by a county or municipality during that time.

5 (11) The department may adopt rules to implement this section. The rules may include a method for  
 6 calculating the percentage of change in valuation for purposes of determining the elimination of property, new  
 7 improvements, or newly taxable value in a governmental unit."

8

9 **Section 20.** Section 17-7-502, MCA, is amended to read:

10 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory  
 11 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the  
 12 need for a biennial legislative appropriation or budget amendment.

13 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both  
 14 of the following provisions:

15 (a) The law containing the statutory authority must be listed in subsection (3).

16 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory  
 17 appropriation is made as provided in this section.

18 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;  
 19 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;  
 20 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101;  
 21 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215;  
 22 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;  
 23 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617;  
 24 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301;  
 25 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213;  
 26 44-13-102; [section 6]; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415;  
 27 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222;  
 28 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603;  
 29 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

30 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,

1 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued  
 2 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana  
 3 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state  
 4 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory  
 5 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion  
 6 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded  
 7 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and  
 8 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.  
 9 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under  
 10 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion  
 11 of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004  
 12 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30,  
 13 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017;  
 14 pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency;  
 15 pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch.  
 16 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec.  
 17 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015,  
 18 the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of  
 19 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of  
 20 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117  
 21 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates  
 22 September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December  
 23 31, 2023.)"

24

25 **Section 21.** Section 18-4-132, MCA, is amended to read:

26 **"18-4-132. Application.** (1) This chapter applies to:

27 (a) the expenditure of public funds irrespective of their source, including federal assistance money, by  
 28 this state acting through a governmental body under any contract, except a contract exempted from this chapter  
 29 by this section or by another statute;

30 (b) a procurement of supplies or services that is at no cost to the state and from which income may be

1 derived by the vendor and to a procurement of supplies or services from which income or a more advantageous  
2 business position may be derived by the state; and

3 (c) the disposal of state supplies.

4 (2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or  
5 political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative  
6 agreement.

7 (3) This chapter does not apply to:

8 (a) either grants or contracts between the state and its political subdivisions or other governments,  
9 except as provided in part 4;

10 (b) construction contracts;

11 (c) expenditures of or the authorized sale or disposal of equipment purchased with money raised by  
12 student activity fees designated for use by the student associations of the university system;

13 (d) contracts entered into by the Montana state lottery that have an aggregate value of less than  
14 \$250,000;

15 (e) contracts entered into by the state compensation insurance fund to procure insurance-related  
16 services;

17 (f) employment of:

18 (i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

19 (ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

20 (iii) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case  
21 proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of  
22 the governor;

23 (iv) consulting actuaries;

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

26 (vi) a private consultant employed by the Montana state lottery;

27 (vii) a private investigator licensed by any jurisdiction;

28 (viii) a claims adjuster; or

29 (ix) a court reporter appointed as an independent contractor under 3-5-601;

30 (g) electrical energy purchase contracts by the university of Montana or Montana state university, as

1 defined in 20-25-201. Any savings accrued by the university of Montana or Montana state university in the  
 2 purchase or acquisition of energy must be retained by the board of regents of higher education for university  
 3 allocation and expenditure.

4 (h) the purchase or commission of art for a museum or public display;

5 (i) contracting for state public defender services under ~~47-1-216~~ of the ~~Montana Public Defender Act~~  
 6 ~~[section 8(2)(c)]~~; or

7 (j) contracting under Title 90, chapter 4, part 11.

8 (4) (a) Food products produced in Montana may be procured by either standard procurement procedures  
 9 or by direct purchase. Montana-produced food products may be procured by direct purchase when:

10 (i) the quality of available Montana-produced food products is substantially equivalent to the quality of  
 11 similar food products produced outside the state;

12 (ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and

13 (iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the lowest  
 14 bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the lowest bid  
 15 or price quoted when, in the discretion of the person charged by law with the duty to purchase food products for  
 16 a governmental body, the higher bid is reasonable and capable of being paid out of that governmental body's  
 17 existing budget without any further supplemental or additional appropriation.

18 (b) The department shall adopt any rules necessary to administer the optional procurement exception  
 19 established in this subsection (4).

20 (5) As used in this section, the following definitions apply:

21 (a) "Food" means articles normally used by humans as food or drink, including articles used for  
 22 components of articles normally used by humans as food or drink.

23 (b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or  
 24 manufactured."

25

26 **Section 22.** Section 26-2-506, MCA, is amended to read:

27 **"26-2-506. Fees paid by party subpoenaing -- exceptions.** (1) Except as provided in subsection (2),  
 28 fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the  
 29 witness to be subpoenaed.

30 (2) (a) When a witness is subpoenaed by a public defender, ~~as defined in 47-1-103~~, the fees and

1 expenses must be paid by the office of state public defender as provided in ~~47-1-201(5)~~ section 10.

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

4 (c) In any proceeding in which a defendant or respondent is entitled to a public defender, ~~as defined in~~  
5 ~~47-1-103~~, but is acting pro se, the witness fees and expenses must be paid by the office of court administrator,  
6 as provided in 3-5-901."

7

8 **Section 23.** Section 26-2-508, MCA, is amended to read:

9 **"26-2-508. Witnesses for state, county, or public defender -- advance payment not required.** The  
10 attorney general, any county attorney, or any public defender, ~~as defined in 47-1-103~~, is authorized to cause  
11 subpoenas to be issued and compel the attendance of witnesses without paying or tendering fees in advance  
12 to either officers or witnesses. A witness refusing to or failing to attend, after being served with a subpoena, may  
13 be proceeded against and is liable in the same manner as is provided by law in other cases where fees have  
14 been tendered or paid."

15

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

17 **"26-2-510. Application of sections exempting from advance payment.** The provisions of 26-2-508  
18 and 26-2-509 extend to all actions and proceedings brought in the name of the attorney general, any other person  
19 or persons for the benefit of the state or county, or any other person or persons for the benefit of a public  
20 defender, ~~as defined in 47-1-103.~~"

21

22 **Section 25.** Section 40-6-119, MCA, is amended to read:

23 **"40-6-119. Right to counsel -- transcript on appeal fees.** (1) At the pretrial hearing and in further  
24 proceedings, any party may be represented by counsel. The court shall order ~~the office of state public defender,~~  
25 ~~pursuant to the Montana Public Defender Act, Title 47, chapter 1, to assign counsel~~ the assignment of a public  
26 defender for a party who is financially unable to obtain counsel.

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

30 (3) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a

1 transcript for purposes of appeal. Transcript fees must be paid as provided in 3-5-604."

2

3 **Section 26.** Section 41-3-425, MCA, is amended to read:

4 **"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right  
5 to counsel in all proceedings held pursuant to the petition.

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

8 (a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal,  
9 placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to  
10 ~~47-1-111~~ [section 11];

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

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

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

17 (4) When appropriate and in accordance with judicial branch policy, the court may assign counsel at the  
18 court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a  
19 petition filed pursuant to 41-3-422."

20

21 **Section 27.** Section 41-5-111, MCA, is amended to read:

22 **"41-5-111. Court costs and expenses.** (1) Compensation for services and related expenses for counsel  
23 assigned for a party must be paid ~~by the office of state public defender provided for in 47-1-201~~ as provided in  
24 [section 10].

25 (2) Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses,  
26 and other witness-related expenses incurred in any proceeding under the Montana Youth Court Act must be paid  
27 as provided for in 26-2-506.

28 (3) Reasonable compensation of a guardian ad litem appointed by the court must be paid as provided  
29 for in 3-5-901.

30 (4) Costs for transcripts and printing briefs must be paid as provided for in 3-5-604."

1

2 **Section 28.** Section 41-5-1413, MCA, is amended to read:

3 **"41-5-1413. Right to counsel -- assignment of counsel.** In all proceedings following the filing of a  
4 petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or  
5 guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the  
6 youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears  
7 that counsel will not be retained for the youth, the court shall order the ~~office of state public defender, provided~~  
8 ~~for in 47-1-201, to assign counsel~~ the assignment of a public defender for the youth pursuant to the Montana  
9 ~~Public Defender Act, Title 47, chapter 1,~~ unless the right to counsel is waived by the youth and the parents or  
10 guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has  
11 been filed if commitment to the department for a period of more than 6 months may result from adjudication."  
12

12

13 **Section 29.** Section 42-2-405, MCA, is amended to read:

14 **"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement**  
15 **adoption.** (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to  
16 consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

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

21 (3) If in the court's discretion it is in the best interest of justice, the court may order ~~the office of state~~  
22 ~~public defender, provided for in 47-1-201, to assign counsel~~ the assignment of a public defender to represent the  
23 minor parent."  
24

24

25 **Section 30.** Section 46-4-304, MCA, is amended to read:

26 **"46-4-304. Conduct of investigative inquiry.** (1) The prosecutor may examine under oath all witnesses  
27 subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel  
28 present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall order the ~~office~~  
29 ~~of state public defender, provided for in 47-1-201, to assign counsel~~ assignment of a public defender.

30 (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 without  
 2 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 **Section 31.** 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) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial  
 10 inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and  
 11 incarceration is a sentencing option if the defendant is convicted, the court shall order the ~~office of state public~~  
 12 ~~defender, provided for in 47-1-201, to assign counsel~~ assignment of a public defender to represent the defendant  
 13 without unnecessary delay pending a determination of eligibility under the provisions of ~~47-1-111~~ [section 11].

14 (3) If the defendant desires assigned counsel because of financial inability to retain private counsel and  
 15 the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted,  
 16 during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the  
 17 defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel  
 18 at public expense through the office of state public defender is not available and that time will be given to consult  
 19 with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may  
 20 not be assigned."

21

22 **Section 32.** Section 46-8-104, MCA, is amended to read:

23 **"46-8-104. Assignment of counsel after trial -- definition.** (1) Any court of record may order ~~the office~~  
 24 ~~of state public defender, provided for in 47-1-201, to assign counsel, subject to the provisions of the Montana~~  
 25 ~~Public Defender Act, Title 47, chapter 1, the assignment of a public defender~~ to represent any petitioner or  
 26 appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or  
 27 appellant is eligible for the appointment of counsel pursuant to [section 11] and:

28 (a) the district court determines that a hearing on the petition is required pursuant to 46-21-201;

29 (b) ~~the state public defender's office requests appointment of a public defender and a public defender~~  
 30 demonstrates good cause for the appointment;



- 1 (c) a statute specifically mandates the appointment of counsel;
- 2 (d) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana  
3 constitution; or
- 4 (e) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage  
5 of justice.

6 (2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be  
7 made only when extraordinary circumstances exist.

8 (3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or  
9 appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents  
10 the petitioner or appellant from reading or writing in English."

11

12 **Section 33.** Section 46-8-113, MCA, is amended to read:

13 **"46-8-113. Payment by defendant for assigned counsel -- costs to be filed with court.** (1) Subject  
14 to the provisions of subsections (2) and (3), as part of or as a condition of a sentence that is imposed under the  
15 provisions of this title, the court shall determine whether a convicted defendant should pay the costs of counsel  
16 assigned to represent the defendant as follows:

17 (a) If the defendant pleads guilty prior to trial:

18 (i) to one or more misdemeanor charges and no felony charges, the cost of counsel is \$250; or

19 (ii) to one or more felony charges, the cost of counsel is \$800.

20 (b) If the case goes to trial, the defendant shall pay the costs incurred ~~by the office of state public~~  
21 ~~defender~~ for providing the defendant with ~~counsel~~ a public defender in the criminal trial. The ~~office of state public~~  
22 ~~defender~~ office handling the case shall file with the court a statement of the hours spent on the case and the costs  
23 and expenses incurred for the trial.

24 (2) Any costs imposed pursuant to this section must be paid in accordance with 46-18-251(2)(e).

25 (3) In any proceeding for the determination of whether a defendant is or will be able to pay the costs of  
26 counsel, the court shall question the defendant as to the defendant's ability to pay those costs and shall inform  
27 the defendant that purposely false or misleading statements by the defendant may result in criminal charges  
28 against the defendant.

29 (4) The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant  
30 is or will be able to pay the costs imposed by subsection (1). The court may find that the defendant is able to pay

1 only a portion of the costs assessed. In determining the amount and method of payment of costs, the court shall  
2 take into account the financial resources of the defendant and the nature of the burden that payment of costs will  
3 impose.

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

9 (6) A defendant's obligation to make payments for the cost of counsel is suspended during periods of  
10 incarceration.

11 (7) Any costs imposed under this section must be included in the court's judgment."  
12

13 **Section 34.** Section 46-8-114, MCA, is amended to read:

14 **"46-8-114. Time and method of payment.** (1) Except as provided in subsection (2), when a defendant  
15 is sentenced to pay the costs of assigned counsel pursuant to 46-8-113, the court may order payment to be made  
16 within a specified period of time or in specified installments.

17 (2) A defendant's obligation to make payments for the cost of counsel is suspended during periods of  
18 incarceration.

19 (3) Payments must be made to the clerk of the sentencing court for allocation as provided in 46-18-201,  
20 46-18-232, and 46-18-251 and deposited in the account established in ~~47-4-110~~ section 13."  
21

22 **Section 35.** Section 46-12-210, MCA, is amended to read:

23 **"46-12-210. Advice to defendant.** (1) Before accepting a plea of guilty or nolo contendere, the court  
24 shall determine that the defendant understands the following:

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

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

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

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

1 (b) if the defendant is not represented by an attorney, the fact that the defendant has the right to be  
2 represented by an attorney at every stage of the proceeding and that, if necessary, ~~an attorney~~ a public defender  
3 will be assigned pursuant to the ~~Montana Public Defender Act, Title 47, chapter 1,~~ to represent the defendant;

4 (c) that the defendant has the right:

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

6 (ii) to be tried by a jury and at the trial has the right to the assistance of counsel;

7 (iii) to confront and cross-examine witnesses against the defendant; and

8 (iv) not to be compelled to reveal personally incriminating information;

9 (d) that if the defendant pleads guilty or nolo contendere in fulfillment of a plea agreement, the court is  
10 not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea  
11 if the agreement is not accepted pursuant to 46-12-211;

12 (e) that if the defendant's plea of guilty or nolo contendere is accepted by the courts, there will not be  
13 a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial;  
14 and

15 (f) that if the defendant is not a United States citizen, a guilty or nolo contendere plea might result in  
16 deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

17 (2) The requirements of subsection (1) may be accomplished by the defendant filing a written  
18 acknowledgment of the information contained in subsection (1)."

19  
20 **Section 36.** Section 46-14-202, MCA, is amended to read:

21 **"46-14-202. Examination of defendant.** (1) If the defendant or the defendant's counsel files a written  
22 motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the court,  
23 prosecution, or defense counsel, the court shall appoint at least one qualified psychiatrist, licensed clinical  
24 psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana state  
25 hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice  
26 registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental  
27 condition.

28 (2) The court may order the defendant to be committed to a hospital or other suitable facility for the  
29 purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to  
30 be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or

1 advanced practice registered nurse retained by the defendant be permitted to witness and participate in the  
2 examination.

3 (3) In the examination, any method may be employed that is accepted by the medical or psychological  
4 profession for the examination of those alleged to be suffering from mental disease or disorder.

5 (4) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows:

6 (i) if the issue of the defendant's fitness to proceed was raised by the court or the examination was  
7 requested by the prosecution, the cost of the examination and other associated expenses must be paid by the  
8 court or, in district court proceedings, by the office of court administrator, except as provided in subsection  
9 (4)(a)(iv);

10 (ii) if the examination was requested by the defendant or the defendant's counsel, the cost of the  
11 examination and other associated expenses must be paid by the defendant or, if the defendant was represented  
12 by ~~an attorney pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state~~ a public  
13 defender, paid as provided in [section 10], except as provided by subsection (4)(a)(iv);

14 (iii) if the examination was jointly requested by the prosecution and defense counsel or the need for the  
15 examination was jointly agreed to by the prosecution and defense, the cost of the examination and other  
16 associated expenses must be divided and paid equally by the court or, in district court proceedings, by the office  
17 of court administrator, and the defendant or, if the defendant was represented by ~~an attorney assigned pursuant~~  
18 ~~to the Montana Public Defender Act, Title 47, chapter 1, by the office of state~~ a public defender, paid as provided  
19 in [section 10], except as provided in subsection (4)(a)(iv);

20 (iv) any costs for an examination performed by an employee of the department of public health and  
21 human services, any other associated expenses at a facility of the department of public health and human  
22 services, and any other associated expenses for which the legislature has made a general fund appropriation to  
23 the department of public health and human services may not be charged to the office of court administrator or  
24 ~~the office of state public defender~~ to an office providing public defender services.

25 (b) For purposes of this subsection (4), "other associated expenses" means the following costs incurred  
26 in association with the commitment to a hospital or other suitable facility for the purpose of examination,  
27 regardless of whether the examination is done at the Montana state hospital or any other facility:

28 (i) the expenses of transporting the defendant from the place of detention to the place where the  
29 examination is performed and returning the defendant to detention, including personnel costs of the law  
30 enforcement agency by whom the defendant is detained;

- 1 (ii) housing expenses of the facility where the examination is performed; and  
 2 (iii) medical costs, including medical and dental care, including costs of medication."  
 3

4 **Section 37.** Section 46-15-115, MCA, is amended to read:

5 **"46-15-115. Subpoena for witness when defendant unable to pay.** (1) The court shall order at any  
 6 time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant  
 7 acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred  
 8 for the witness and that the presence of the witness is necessary to an adequate defense.

9 (2) If a defendant is indigent but is acting pro se and is not represented by a public defender, ~~as defined~~  
 10 ~~in 47-1-103~~, a court order must be obtained if more than six witnesses are to be subpoenaed.

11 (3) If the defendant is represented by a public defender, ~~as defined in 47-1-103~~, witness costs must be  
 12 paid by the office of state public defender as provided for in ~~47-1-201~~ as provided in [section 10]."  
 13

14 **Section 38.** Section 46-15-116, MCA, is amended to read:

15 **"46-15-116. Fees, costs, and expenses.** (1) When a person attends before a judge, grand jury, or court  
 16 as a witness in a criminal case upon a subpoena, the witness must receive the witness fee prescribed by Title  
 17 26, chapter 2, part 5, except as otherwise provided in this section.

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

19 (3) The court may determine the reasonable and necessary expenses of subpoenaed witnesses for an  
 20 indigent defendant not represented by a public defender, ~~as defined in 47-1-103~~, and order the clerk of court to  
 21 pay the expenses.

22 (4) When a person is subpoenaed in this state to testify in another state or is subpoenaed from another  
 23 state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum equal  
 24 to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend as a  
 25 witness. If the state where the witness is found has by statute required that the subpoenaed witness be paid an  
 26 amount in excess of the amount specified in this section, the witness may be paid the amount required by that  
 27 state.

28 (5) The witness fees, costs, and expenses must be paid as provided in 26-2-506."  
 29

30 **Section 39.** Section 46-17-203, MCA, is amended to read:

1           **"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before or  
2 during trial, a plea of guilty must be accepted, and a plea of nolo contendere may be accepted with the consent  
3 of the court and the prosecutor, when:

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

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

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

12           (b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move  
13 to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the  
14 motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the ~~office~~  
15 ~~of state public defender, provided for in 47-1-201, to assign counsel pursuant to the Montana Public Defender~~  
16 ~~Act, Title 47, chapter 1~~ the assignment of a public defender, hold a hearing, and enter appropriate findings of fact,  
17 conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea  
18 by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the  
19 decision of the district court.

20           (3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense,  
21 an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication,  
22 allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an  
23 entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party  
24 objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."  
25

26           **Section 40.** Section 46-21-201, MCA, is amended to read:

27           **"46-21-201. Proceedings on petition.** (1) (a) Unless the petition and the files and records of the case  
28 conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be sent  
29 to the county attorney in the county in which the conviction took place and to the attorney general and order that  
30 a responsive pleading be filed. The attorney general shall determine whether the attorney general will respond

1 to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney.  
 2 Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure  
 3 to state a claim for relief or it may proceed to determine the issue.

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

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

12 (2) If the death sentence has not been imposed and a hearing is required or if the interests of justice  
 13 require, the court shall order the ~~office of state public defender, provided for in 47-1-201, to assign counsel~~ the  
 14 assignment of a public defender for a petitioner who qualifies for the assignment of ~~counsel~~ a public defender  
 15 under Title 46, chapter 8, part 1, and the Montana Public Defender Act, Title 47, chapter 1 [section 11].

16 (3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the  
 17 sentencing court shall notify the sentenced person that if the person is indigent, as defined in ~~47-1-103~~ [section  
 18 11], and wishes to file a petition under this chapter, the court will order the ~~office of state public defender, provided~~  
 19 ~~for in 47-1-201, to assign counsel~~ assignment of a public defender who meets the Montana supreme court's  
 20 standards and the office of state public defender's standards for competency of assigned counsel in proceedings  
 21 under this chapter for an indigent person sentenced to death.

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

24 (i) order the ~~office of state public defender to assign counsel~~ assignment of a public defender to  
 25 represent the person pending a determination ~~by the office of state public defender that the person is indigent,~~  
 26 ~~as defined in 47-1-103 of indigence under [section 11],~~ and that the person either has accepted the offer of an  
 27 assigned counsel public defender or is unable to competently decide whether to accept the offer of assigned  
 28 counsel an assigned public defender;

29 (ii) if the offer of an assigned counsel public defender is rejected by a person who understands the legal  
 30 consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is

1 necessary, stating that the person rejected the offer with an understanding of the legal consequences of the  
2 rejection; or

3 (iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment  
4 of ~~counsel~~ a public defender.

5 (c) ~~The office of state public defender may not assign counsel~~ A public defender who has previously  
6 represented the person at any stage in the case may not be assigned to represent the person unless the person  
7 and the ~~counsel~~ public defender expressly agree to the assignment.

8 (d) If a petitioner entitled to ~~counsel~~ a public defender under this subsection (3) is determined not to be  
9 indigent but becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment  
10 of ~~counsel~~ a public defender as provided in subsection (3)(b)(i).

11 (e) The expenses of ~~counsel~~ a public defender assigned pursuant to this subsection (3) must be paid  
12 ~~by the office of state public defender~~ as provided in [section 10].

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

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

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

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

23

24 **Section 41.** Section 50-20-509, MCA, is amended to read:

25 **"50-20-509. Procedure for judicial waiver of consent.** (1) The requirements and procedures under  
26 this section are available to minors whether or not they are residents of this state.

27 (2) A minor may petition the youth court for a waiver of the requirement for consent and may participate  
28 in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant  
29 and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required  
30 to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to ~~assigned~~



1 ~~counsel and shall order the office of state~~ be assigned a public defender, provided for in ~~47-1-201~~, to assign  
2 ~~counsel~~ upon request.

3 (3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All  
4 proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the  
5 minor's initials. All documents related to the petition and the proceedings on the petition are confidential and are  
6 not available to the public. The proceedings on the petition must be given preference over other pending matters  
7 to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings  
8 of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is  
9 extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the  
10 petition is granted and the requirement for consent is waived.

11 (4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall  
12 issue an order authorizing the minor to consent to the performance or inducement of an abortion without the  
13 consent of a parent or legal guardian.

14 (5) The court shall issue an order authorizing the minor to consent to an abortion without the consent  
15 of a parent or legal guardian if the court finds that:

16 (a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both  
17 parents, a legal guardian, or a custodian; or

18 (b) the consent of a parent or legal guardian is not in the best interests of the minor.

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

21 (7) A court that conducts proceedings under this section shall issue written and specific findings of fact  
22 and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings,  
23 and conclusions be maintained.

24 (8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth  
25 court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not  
26 subject to appeal.

27 (9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for  
28 consent or who appeals a denial of a petition."

29

30 **Section 42.** Section 53-9-104, MCA, is amended to read:

- 1           **"53-9-104. (Temporary) Powers and duties of office.** (1) The office shall:
- 2           (a) adopt rules to implement this part;
- 3           (b) prescribe forms for applications for compensation;
- 4           (c) determine all matters relating to claims for compensation; and
- 5           (d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime
- 6 for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based
- 7 directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying
- 8 crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the
- 9 crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund
- 10 for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a
- 11 period of time that the office may determine is reasonably necessary to perfect the claims of the victims or
- 12 dependents. Deposited proceeds may also be used to reimburse ~~the office of state public defender, provided for~~
- 13 ~~in 47-1-201,~~ state or county public defender offices provided for in [sections 1 through 14] for costs associated
- 14 with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is
- 15 entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining
- 16 after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney
- 17 assigned for the charged person must be paid to the crime victims compensation and assistance program in the
- 18 department of justice for deposit in the account provided for in 53-9-113.
- 19           (2) The office may:
- 20           (a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data
- 21 to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute
- 22 providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.
- 23           (b) request and obtain from a health care provider medical reports that are relevant to the physical
- 24 condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that
- 25 is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant
- 26 a release of the records or information. No civil or criminal liability arises from the release of information requested
- 27 under this subsection (2)(b).
- 28           (c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct
- 29 hearings, and receive relevant, nonprivileged evidence;
- 30           (d) take notice of judicially cognizable facts and general, technical, and scientific facts within its

1 specialized knowledge;

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

4 (f) establish a victims assistance coordinating and planning program. (Terminates June 30, 2021--sec.  
5 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

6 **53-9-104. (Effective July 1, 2021) Powers and duties of office.** (1) The office shall:

7 (a) adopt rules to implement this part;

8 (b) prescribe forms for applications for compensation;

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

10 (d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime  
11 for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based  
12 directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying  
13 crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the  
14 crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund  
15 for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a  
16 period of time that the office may determine is reasonably necessary to perfect the claims of the victims or  
17 dependents. Deposited proceeds may also be used to reimburse ~~the office of state public defender, provided for~~  
18 ~~in 47-1-201, state or county public defender offices provided for in [sections 1 through 14]~~ for costs associated  
19 with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is  
20 entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining  
21 after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney  
22 assigned for the charged person must be deposited in the state general fund.

23 (2) The office may:

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

27 (b) request and obtain from a health care provider medical reports that are relevant to the physical  
28 condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that  
29 is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant  
30 a release of the records or information. No civil or criminal liability arises from the release of information requested

1 under this subsection (2)(b).

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

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

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

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

10 **Section 43.** Section 53-20-112, MCA, is amended to read:

11 **"53-20-112. Procedural rights -- appointment of counsel.** (1) A respondent has all the rights accorded  
12 to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary  
13 commitment of a person who suffers from a mental disorder and who requires commitment, as provided in  
14 53-21-115 through 53-21-118.

15 (2) In addition, the parents or guardian of a respondent has the right to:

16 (a) be present at any hearing held pursuant to this part;

17 (b) be represented by counsel in any hearing;

18 (c) offer evidence and cross-examine witnesses in any hearing; and

19 (d) have the respondent examined by a professional of the parents' or guardian's choice when a  
20 professional is reasonably available unless the person chosen is objected to by the respondent or by a  
21 responsible person appointed by the court.

22 (3) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall  
23 order the ~~office of the state public defender, provided for in 47-1-201, to assign counsel~~ the assignment of a public  
24 defender for the respondent. If the parents are indigent and the parents request it or if the guardian is indigent  
25 and the guardian requests it, the court shall order the ~~office of state public defender to assign counsel~~ assignment  
26 of a public defender for the parents or guardian pending a determination of indigence pursuant to ~~47-1-111~~  
27 [section 11]."

28

29 **Section 44.** 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 parent  
12 or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian,  
13 pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as  
14 provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by  
15 the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor  
16 patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's  
17 request or at any time that the minor is faced with potential legal proceedings, the court shall order ~~the office of~~  
18 ~~state public defender, provided for in 47-1-201, to assign counsel~~ the assignment of a public defender for the  
19 minor."  
20

21 **Section 45.** Section 53-21-116, MCA, is amended to read:

22 **"53-21-116. Right to be present at hearing or trial -- assignment of counsel.** The person alleged to  
23 be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel  
24 at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best  
25 interest of justice, the judge shall order the ~~office of state public defender, provided for in 47-1-201, to immediately~~  
26 ~~assign counsel~~ assignment of a public defender to represent the person at either the hearing or the trial, or both."  
27

28 **Section 46.** Section 53-21-122, MCA, is amended to read:

29 **"53-21-122. Petition for commitment -- filing of -- initial hearing on.** (1) The petition must be filed with  
30 the clerk of court who shall immediately notify the judge.

1           (2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be  
2 dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge  
3 may order the ~~office of state public defender, provided for in 47-1-201, to immediately assign counsel~~ immediate  
4 assignment of a public defender for the respondent, and the respondent must be brought before the court with  
5 the respondent's ~~counsel~~ public defender. The respondent must be advised of the respondent's constitutional  
6 rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also  
7 be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the  
8 professional person's report a recommendation about whether the respondent should be diverted from involuntary  
9 commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The respondent may  
10 at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a  
11 professional person and set a date and time for the hearing on the petition that may not be on the same day as  
12 the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls  
13 upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

14           (b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of  
15 respondent as set out in this part and the respondent personally or through counsel consents, the court shall  
16 appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's  
17 conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person  
18 appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of  
19 this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court  
20 shall change the designation of the friend of respondent at the request of the respondent or if it determines that  
21 a conflict of interest exists between the respondent and the friend of respondent.

22           (3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone  
23 and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by  
24 telephone as if the judge were personally present, including ordering the ~~office of state public defender, provided~~  
25 ~~for in 47-1-201, to immediately provide assigned counsel~~ immediate assignment of a public defender. The judge,  
26 through the clerk of court, may also order that the respondent be brought before a justice of the peace with the  
27 respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this  
28 part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent  
29 must also be advised that the professional person appointed to conduct the examination under 53-21-123 will  
30 include in the professional person's report a recommendation about whether the respondent should be diverted

1 from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The  
2 justice of the peace shall ascertain the desires of the respondent with respect to the assignment of ~~counsel~~ of  
3 a public defender or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must  
4 be immediately communicated to the resident judge."

5

6 **Section 47.** Section 53-24-302, MCA, is amended to read:

7 **"53-24-302. Involuntary commitment of alcoholics -- rights.** (1) A person may be committed to the  
8 custody of the department by the district court upon the petition of the person's spouse or guardian, a relative,  
9 the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the  
10 person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person  
11 has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict  
12 physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute  
13 evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of  
14 a licensed physician who has examined the person within 2 days before submission of the petition unless the  
15 person whose commitment is sought has refused to submit to a medical examination, in which case the fact of  
16 refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the  
17 allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be  
18 the certifying physician.

19 (2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the  
20 petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must  
21 be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the  
22 petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the  
23 approved public treatment facility to which the person has been committed for emergency care, and any other  
24 person the court believes advisable. A copy of the petition and certificate must be delivered to each person  
25 notified.

26 (3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at  
27 least one licensed physician who has examined the person whose commitment is sought. The person has a right  
28 to have a licensed physician of the person's own choosing conduct an examination and testify on the person's  
29 behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and  
30 testimony must be paid by the county. The person must be present unless the court believes that the person's

1 presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable,  
2 shall examine the person in chambers. If the person refuses an examination by a licensed physician and there  
3 is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more  
4 medical evidence is necessary, the court may make a temporary order committing the person to the department  
5 for a period of not more than 5 days for purposes of a diagnostic examination.

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

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

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

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



1 in subsection (3).

2 (8) A person committed to the custody of the department for treatment must be discharged at any time  
3 before the end of the period for which the person has been committed if either of the following conditions is met:

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

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

9 (9) The court shall inform the person whose commitment or recommitment is sought of the person's right  
10 to contest the application, be represented by counsel at every stage of any proceedings relating to the person's  
11 commitment and recommitment, and have an assigned counsel pursuant to the Montana Public Defender Act,  
12 Title 47, chapter 1, public defender if the person wants the assistance of counsel and is unable to obtain private  
13 counsel. If the court believes that the person needs the assistance of counsel, the court shall order ~~the office of~~  
14 ~~state public defender, provided for in 47-1-201, to assign counsel~~ the assignment of a public defender for the  
15 person regardless of the person's wishes. The person whose commitment or recommitment is sought must be  
16 informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to  
17 obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

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

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

23 (12) The venue for proceedings under this section is the place in which the person to be committed  
24 resides or is present."  
25

26 **Section 48.** Section 53-30-110, MCA, is amended to read:

27 **"53-30-110. Expense of trial for offenses committed in prison.** (1) Whenever a trial of any person  
28 takes place under any of the provisions of 45-7-306 or whenever a prisoner in the state prison is tried for any  
29 crime committed in prison, the county clerk of the county where the trial is held shall make out a statement of all  
30 the costs incurred by the county for the trial of the case and of guarding and keeping the prisoner. The statement

1 must be certified by a district judge of the county.

2 (2) The statement must be sent to the department of corrections for its approval. After the approval, the  
3 department shall pay the costs out of the money appropriated for the support of the state prison to the county  
4 treasurer of the county where the trial was held.

5 (3) Public defender costs, if any, must be paid pursuant to ~~the Montana Public Defender Act provided~~  
6 ~~for in Title 47, chapter 4 [section 10]."~~

7

8 **Section 49.** Section 61-5-218, MCA, is amended to read:

9 **"61-5-218. License reinstatement fee following license suspension or revocation.** (1) Except as  
10 provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving  
11 privilege has been suspended or revoked shall pay a reinstatement fee of \$100 to the department to have the  
12 driver's license or driving privilege reinstated.

13 (2) (a) A person whose driver's license or driving privilege was suspended or revoked under 61-5-205  
14 or 61-8-402 shall pay a reinstatement fee as required by 61-2-107.

15 (b) A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be  
16 reinstated without payment of a reinstatement fee.

17 (c) The reinstatement fee required under subsection (1) must be waived by the department when a court  
18 notifies the department that the person has satisfied the requirements of 61-5-214(2) and the court has  
19 determined that the person is indigent under the standards set forth in ~~47-1-111~~ [section 11].

20 (3) The department shall deposit the fees collected under subsection (1) in the general fund."  
21

22 **Section 50.** Section 72-5-225, MCA, is amended to read:

23 **"72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing --**  
24 **representation by attorney.** (1) Notice of the time and place of hearing of a petition for the appointment of a  
25 guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

26 (a) the minor, if the minor is 14 years of age or older;

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

29 (c) any living parent of the minor.

30 (2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks

1 appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been  
 2 met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by  
 3 the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition  
 4 of the matter that will best serve the interests of the minor.

5 (3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be  
 6 inadequately represented, the court may order the ~~office of state public defender, provided for in 47-1-201, to~~  
 7 ~~assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, assignment of a public defender~~  
 8 to represent the minor."

9

10 **Section 51.** Section 72-5-234, MCA, is amended to read:

11 **"72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation**  
 12 **by attorney.** (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may  
 13 petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A  
 14 guardian may petition for permission to resign. A petition for removal or for permission to resign may but need  
 15 not include a request for appointment of a successor guardian.

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

18 (3) If at any time in the proceeding the court determines that the interests of the ward are or may be  
 19 inadequately represented, it may order the ~~office of state public defender, provided for in 47-1-201, to assign~~  
 20 ~~counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, assignment of a public~~  
 21 ~~defender to represent the minor."~~

22

23 **Section 52.** Section 72-5-315, MCA, is amended to read:

24 **"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview --**  
 25 **procedural rights.** (1) The incapacitated person or any person interested in the incapacitated person's welfare,  
 26 including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

27 (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The  
 28 allegedly incapacitated person may have counsel of the person's own choice or the court may, in the interest of  
 29 justice, appoint an appropriate official or order the ~~office of state public defender, provided for in 47-1-201, to~~  
 30 ~~assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, assignment of a public defender~~

1 to represent the person in the proceeding.

2 (3) The person alleged to be incapacitated must be examined by a physician appointed by the court who  
 3 shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever  
 4 possible, the court shall appoint as visitor a person who has particular experience or expertise in treating,  
 5 evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the  
 6 incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the  
 7 person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be  
 8 incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment  
 9 is made and submit the visitor's report in writing to the court. Whenever possible without undue delay or expense  
 10 beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize  
 11 the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly  
 12 incapacitated person and make recommendations to the court regarding the most appropriate form of state  
 13 intervention in the person's affairs.

14 (4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see  
 15 or hear all evidence bearing upon the person's condition. The person is entitled to be present by counsel, to  
 16 present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial  
 17 by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated  
 18 or the person's counsel requests it."

19

20 **Section 53.** Section 72-5-322, MCA, is amended to read:

21 **"72-5-322. Petition of guardian for treatment of ward.** (1) If a guardian believes that the guardian's  
 22 ward should receive medical treatment for a mental disorder and the ward refuses, the court may, upon petition  
 23 by the guardian, grant an order for evaluation or treatment. However, the order may not forcibly detain the ward  
 24 against the ward's will for more than 72 hours.

25 (2) The ward is entitled to the assignment of ~~counsel, in accordance with the provisions of the Montana~~  
 26 ~~Public Defender Act, Title 47, chapter 1, a public defender~~ and a hearing along with all the other rights guaranteed  
 27 to a person with a mental disorder and who requires commitment under 53-21-114, 53-21-115, 53-21-119, and  
 28 53-21-120."

29

30 **Section 54.** Section 72-5-408, MCA, is amended to read:

1           **"72-5-408. Procedure concerning hearing and order on original petition.** (1) Upon receipt of a  
 2 petition for appointment of a conservator or other protective order because of minority, the court shall set a date  
 3 for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the  
 4 interests of the minor are or may be inadequately represented, the court may order the ~~office of state public~~  
 5 ~~defender, provided for in 47-1-201, to assign counsel pursuant to the Montana Public Defender Act, Title 47,~~  
 6 ~~chapter 4, assignment of a public defender~~ to represent the minor.

7           (2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other  
 8 than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's  
 9 own choice, the court shall order the ~~office of state public defender, provided for in 47-1-201, to assign counsel~~  
 10 ~~assignment of a public defender~~ to represent the person pursuant to the Montana Public Defender Act, Title 47,  
 11 ~~chapter 4.~~ If the alleged disability is mental illness or mental deficiency, the court may direct that the person to  
 12 be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court.  
 13 If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication,  
 14 the court may direct that the person to be protected be examined by a physician designated by the court. It is  
 15 preferable that a physician designated by the court not be connected with any institution in which the person is  
 16 a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be  
 17 a guardian ad litem or an officer or employee of the court.

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

20           (4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order  
 21 has been established, the court shall make an appointment or other appropriate protective order."  
 22

23           NEW SECTION. **Section 55. Repealer.** The following sections of the Montana Code Annotated are  
 24 repealed:

25 2-15-1028.     Public defender commission.  
 26 47-1-101.     Short title.  
 27 47-1-102.     Purpose.  
 28 47-1-103.     Definitions.  
 29 47-1-104.     Statewide system -- structure and scope of service -- assignment of council at public expense.  
 30 47-1-105.     Commission -- duties -- report -- rules.

- 1 47-1-110. Public defender account.  
 2 47-1-111. Eligibility -- determination of indigence -- rules.  
 3 47-1-118. Conflicts of interest.  
 4 47-1-201. Office of state public defender -- personnel -- compensation -- expenses -- reports.  
 5 47-1-202. Chief public defender -- duties.  
 6 47-1-205. Office of appellate defender -- chief appellate defender.  
 7 47-1-210. Training program -- coordinator.  
 8 47-1-215. Regional offices -- deputy public defenders -- office space.  
 9 47-1-216. Contracted services -- rules.

10

11 **NEW SECTION. Section 56. Transition -- transfer of state employees to county employment.** (1)

12 Employees of office of state public defender who are employed by the state on June 30, 2018, may be transferred  
 13 to county employment pursuant to an agreement between the state and the county. Transferred employees  
 14 become county employees on July 1, 2018.

15 (2) This section does not preserve the right of any former state employee to any salary or compensation,  
 16 including longevity benefits, that was not accrued and payable as of June 30, 2018.

17 (3) A transferred employee may elect to remain on the employee's state group benefit plan through the  
 18 remainder of the plan year in effect on June 30, 2018. For an employee who elects to remain on the state's group  
 19 benefit plan, an amount equal to the monthly state contribution toward insurance benefits must be paid by the  
 20 county to the state plan.

21 (4) Any liability for accumulated sick leave, compensatory time, or annual leave for an employee  
 22 transferred from state employment to county employment under this section is not transferred to the county and  
 23 remains an obligation of the state.

24 (5) A collective bargaining agreement in effect for the state employees on June 30, 2018, may not be  
 25 construed as binding on the county.

26

27 **NEW SECTION. Section 57. Rights to property.** (1) Subject to subsection (2), office equipment,  
 28 computer equipment, furniture, and fixtures that are owned by the state and used by employees of a public  
 29 defender office on June 30, 2018, remain the property of the state unless otherwise agreed upon by the county  
 30 and the state.

1 (2) A state employee who becomes a county employee under [section 56] retains the right to use all  
2 property relating to the functions of the employee and being used by the employee on June 30, 2018, subject to  
3 subsection (1). The property includes records, office equipment, computer equipment, supplies, contracts, books,  
4 papers, documents, maps, grant and earmarked account balances, vehicles, and all other similar property.  
5 However, the employee may not use or divert money in a state fund or account for a purpose other than as  
6 provided by law.

7  
8 **NEW SECTION. Section 58. Appropriations.** The following amounts are appropriated from the state  
9 general fund for the fiscal year beginning July 1, 2018:

10 (1) \$350,000 to the office of commissioner of higher education for the purposes of [section 14]; and  
11 (2) \$840,000 to the state office of defender services established [section 8], which shall grant to each  
12 county a one-time-only payment of \$15,000 for start-up costs for county public defender services pursuant to  
13 [section 2].

14  
15 **NEW SECTION. Section 59. Codification instruction.** [Sections 1 through 14] are intended to be  
16 codified as an integral part of Title 47, and the provisions of Title 47 apply to [sections 1 through 14].

17  
18 **COORDINATION SECTION. Section 60. Coordination instruction.** If [this act] is passed and  
19 approved, then Chapter 35, Laws of 2017, is void.

20  
21 **COORDINATION SECTION. Section 61. Coordination instruction.** If [this act] is passed and  
22 approved, then section 2, Chapter 52, Laws of 2017, must be amended to read as follows:

23 **Section 2.** Section 41-3-425, MCA, is amended to read:

24 **"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right  
25 to counsel in all proceedings held pursuant to the petition.

26 (2) Except as provided in subsections (3) ~~and (4)~~ through (5), the court shall immediately appoint the  
27 office of state public defender to assign counsel for:

28 (a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal,  
29 placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to  
30 47-1-111;

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

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

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

7 (4) When appropriate and in accordance with judicial branch policy, the court may assign counsel at the  
8 court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a  
9 petition filed pursuant to 41-3-422.

10 (5) Except as provided in the federal Indian Child Welfare Act, a court may not appoint a public defender  
11 to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding  
12 pursuant to 41-3-422 until:

13 (a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

14 (b) the putative father makes a request to the court in writing to appoint a public defender."

15  
16 NEW SECTION. Section 62. Saving clause. [This act] does not affect rights and duties that matured,  
17 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

18  
19 NEW SECTION. Section 63. Severability. If a part of [this act] is invalid, all valid parts that are  
20 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
21 the part remains in effect in all valid applications that are severable from the invalid applications.

22  
23 NEW SECTION. Section 64. Effective dates. (1) Except as provided in subsection (2), [this act] is  
24 effective July 1, 2018.

25 (2) [Sections 60 and 61] and this section are effective on passage and approval.

26 - END -