

1 HOUSE BILL NO. 684

2 INTRODUCED BY M. REGIER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE PROVISIONS OF THE GENERAL
5 APPROPRIATIONS ACT; GENERALLY REVISING LAWS RELATED TO THE JUSTICE SYSTEM; CREATING
6 STATE SPECIAL REVENUE ACCOUNTS; PROVIDING THAT PRESENTENCE INVESTIGATIONS AND
7 REPORTS ARE AT THE DISCRETION OF THE COURT; REVISING LAWS RELATED TO THE PUBLIC
8 SAFETY OFFICER STANDARDS AND TRAINING COUNCIL; CREATING A PUBLIC SAFETY OFFICER
9 STANDARDS AND TRAINING BUREAU IN THE DEPARTMENT OF JUSTICE; REMOVING THE COUNCIL'S
10 ADMINISTRATIVE ATTACHMENT TO THE DEPARTMENT OF JUSTICE; PROVIDING FOR REPORTING TO
11 THE LAW AND JUSTICE INTERIM COMMITTEE; AMENDING THE DEFINITION OF "TELEWORK"; MAKING
12 REVISIONS RELATED TO THE WORKING INTERDISCIPLINARY NETWORK OF GUARDIANSHIP
13 STAKEHOLDERS; REVISING RULEMAKING AUTHORITY REGARDING CORRECTIONAL FACILITIES;
14 PROVIDING FUND TRANSFERS; ~~MAKING THE CHILD ABUSE COURT DIVERSION PROGRAM~~
15 ~~PERMANENT~~; AMENDING SECTIONS 2-15-2029, 2-18-101, 3-1-710, 3-1-711, 46-1-1104, 46-1-1211,
16 46-12-211, 46-14-311, 46-18-111, 46-18-112, 46-18-242, AND 53-6-1312, AND 53-30-507, MCA; ~~AMENDING~~
17 ~~SECTION 8, CHAPTER 241, LAWS OF 2017~~; AMENDING SECTION 28, CHAPTER 368, LAWS OF 2015;
18 REPEALING SECTION 3-1-712, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

19

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

21

22 NEW SECTION. **Section 1. Pretrial diversion program state special revenue account.** (1) There
23 is an account in the state special revenue fund established in 17-2-102 to the credit of the judicial branch to be
24 known as the pretrial diversion program account.

25 (2) The purpose of the account is to fund a pilot project in five counties to analyze the costs and benefits
26 of the following:

27 (a) the risk associated with an offender being released into the community prior to the offender's trial date;
28 and

29 (b) the potential or actual savings in jail costs for not having the offender incarcerated during that time.

30

1 **NEW SECTION. Section 2. Legislative committees and activities state special revenue account.**

2 (1) There is an account in the state special revenue fund established in 17-2-102 to the credit of the legislative
3 services division to be known as the legislative committees and activities account.

4 (2) The purpose of the account is to provide funding for legislative committees and activities.

5 (3) Expenditures from the account must be approved by the majority and minority leaders of both houses.

6
7 **NEW SECTION. Section 3. Public safety officer standards and training bureau.** There is a bureau

8 within the department of justice called the public safety officer standards and training bureau. The purpose of the
9 bureau is to provide staff support to the public safety officer standards and training council established in
10 2-15-2029.

11
12 **Section 4.** Section 2-15-2029, MCA, is amended to read:

13 **"2-15-2029. Montana public safety officer standards and training council -- ~~administrative~~**
14 **~~attachment -- rulemaking -- report to law and justice interim committee.~~** (1) (a) There is a Montana public
15 safety officer standards and training council. The council is a quasi-judicial board, as provided for in 2-15-124,
16 and is allocated to the department of justice, established in 2-15-2001, ~~for administrative purposes only as~~
17 ~~provided in 2-15-121, except as provided in subsection (1)(b) of this section~~ except as provided in subsections
18 (1)(b) and (1)(c) of this section.

19 (b) ~~The council may hire its own personnel and independently administer the conduct of its business,~~
20 ~~and 2-15-121(2)(a), (2)(d), and (3)(a) do not apply.~~ The council shall coordinate with the department of justice
21 to hire the bureau chief of the public safety officer standards and training bureau.

22 (c) The council maintains its independent and quasi-judicial authority and duties provided for in 44-4-403.

23 ~~(d) THE COUNCIL SHALL SUPERVISE THE BUREAU CHIEF.~~

24 (2) The council may adopt rules to implement the provisions of Title 44, chapter 4, part 4. Rules must
25 be adopted pursuant to the Montana Administrative Procedure Act.

26 (3) The department of justice and the public safety officer standards and training council shall report to
27 the law and justice interim committee."

28
29 **SECTION 5. SECTION 2-18-101, MCA, IS AMENDED TO READ:**

30 **"2-18-101. Definitions.** As used in parts 1 through 3 and part 10 of this chapter, the following definitions

1 apply:

2 (1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state
3 government recognized in the state budget.

4 (2) "Base salary" means the base hourly pay rate annualized paid to an employee, excluding overtime
5 and longevity.

6 (3) "Benchmark" means a representative position in a specific occupation that is used to illustrate the
7 application of the job evaluation factor used to classify the occupation.

8 (4) "Blue-collar pay plan" means a strictly negotiated classification and pay plan consisting of unskilled
9 or skilled labor, trades, and crafts occupations.

10 (5) "Board" means the board of personnel appeals established in 2-15-1705.

11 (6) "Broadband classification plan" means a job evaluation method that measures the difficulty of the
12 work and the knowledge or skills required to perform the work.

13 (7) "Broadband pay plan" means a pay plan using a pay hierarchy of broad pay bands based on a
14 classification plan, including market midpoint and occupational wage ranges.

15 (8) "Compensation" means the annual or hourly wage or salary and includes the longevity allowance
16 provided in 2-18-304 and leave and holiday benefits provided in part 6 of this chapter.

17 (9) "Competencies" means sets of measurable and observable knowledge, skills, and behaviors that
18 contribute to success in a position.

19 (10) "Department" means the department of administration created in 2-15-1001.

20 (11) (a) Except in 2-18-306, "employee" means any state employee other than an employee excepted
21 under 2-18-103 or 2-18-104.

22 (b) The term does not include a student intern.

23 (12) "Job evaluation factor" means a measure of the complexities of the predominant duties of a position.

24 (13) "Job sharing" means the sharing by two or more persons of a position.

25 (14) "Market midpoint" means the median base salary that other employers pay to employees in
26 comparable occupations as determined by the department's salary survey of the relevant labor market.

27 (15) "Occupation" means a generalized family of positions having substantially similar duties and
28 requiring similar qualifications, education, and experience.

29 (16) "Occupational wage range" means a range of pay, including a minimum, market midpoint, and
30 maximum salary, for a specific occupation that is most consistent with the pay being offered by competing

1 employers for fully competent employees within that occupation. The salary for an employee may be less than
2 the minimum salary.

3 (17) "Pay band" means a wide salary range covering a number of different occupations. Pay bands are
4 used for reporting and analysis purposes only.

5 (18) "Pay progression" means a process by which an employee's compensation may be increased, based
6 on documented factors determined by the department, to bring the employee's compensation to a higher rate
7 within the occupational wage range of the employee.

8 (19) "Permanent employee" means an employee who is designated by an agency as permanent, who
9 was hired through a competitive selection process unless excepted from the competitive process by law, and who
10 has attained or is eligible to attain permanent status.

11 (20) "Permanent status" means the state an employee attains after satisfactorily completing an
12 appropriate probationary period.

13 (21) "Personal staff" means those positions occupied by employees appointed by the elected officials
14 enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

15 (22) "Position" means a collection of duties and responsibilities currently assigned or delegated by
16 competent authority, requiring the full-time, part-time, or intermittent employment of one person.

17 (23) "Program" means a combination of planned efforts to provide a service.

18 (24) "Seasonal employee" means a permanent employee who is designated by an agency as seasonal,
19 who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits
20 accrued during the preceding season.

21 (25) "Short-term worker" means a person who:

22 (a) may be hired by an agency without using a competitive hiring process for an hourly wage established
23 by the agency;

24 (b) may not work for the agency for more than 90 days in a continuous 12-month period;

25 (c) is not eligible for permanent status;

26 (d) may not be hired into a permanent position by the agency without a competitive selection process;

27 (e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter; and

28 (f) may be discharged without cause.

29 (26) "Student intern" means a person who:

30 (a) has been accepted in or is currently enrolled in an accredited school, college, or university and may

- 1 be hired by an agency in a student intern position without using a competitive selection process;
- 2 (b) is not eligible for permanent status;
- 3 (c) is not eligible to become a permanent employee without a competitive selection process;
- 4 (d) must be covered by the hiring agency's workers' compensation insurance;
- 5 (e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter; and
- 6 (f) may be discharged without cause.
- 7 (27) (a) "Telework" means a flexible work arrangement where a designated employee may work from;
- 8 (i) home within the state of Montana or an alternative worksite within the state of Montana 1 or more days
- 9 a week instead of physically traveling to a central workplace; or
- 10 (ii) an alternative worksite outside the state of Montana limited to:
- 11 (A) employees who are mental health professionals as defined in 27-1-1101 involved in psychological
- 12 or psychiatric evaluations and treatment; or
- 13 (B) employees engaged in providing services related to information technology as defined in 2-17-506-;
- 14 OR
- 15 (C) EMPLOYEES WHO ARE MEDICAL PROFESSIONALS INVOLVED IN MEDICAL EVALUATIONS AND TREATMENT.
- 16 (b) The office of budget and program planning must approve a designated employee's alternative
- 17 worksite outside the state of Montana before the employee begins work.
- 18 (28) "Temporary employee" means an employee who:
- 19 (a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;
- 20 (b) performs duties on a temporary basis;
- 21 (c) is not eligible for permanent status;
- 22 (d) is terminated at the end of the employment period; and
- 23 (e) is not eligible to become a permanent employee without a competitive selection process."

24

25 **SECTION 6. SECTION 3-1-710, MCA, IS AMENDED TO READ:**

26 **"3-1-710. (Temporary) Working interdisciplinary network of guardianship stakeholders.** (1) There

27 is a working interdisciplinary network of guardianship stakeholders to provide ongoing evaluation of Montana

28 laws, services, and practices related to adult guardianship and conservatorship.

29 (2) The network consists of nine members appointed by the chief justice of the Montana supreme court

30 as follows, in a manner that reflects a geographic balance:

- 1 (a) a representative of a district court;
- 2 (b) a representative of the department of public health and human services who works in the area of
3 adult protective services;
- 4 (c) a representative of an advocacy group for individuals with developmental disabilities;
- 5 (d) a representative of an advocacy group for senior citizens;
- 6 (e) a professional guardian or conservator;
- 7 (f) an unpaid guardian or conservator;
- 8 (g) a member of a volunteer guardianship council;
- 9 (h) a member of the Montana state bar association; and
- 10 (i) a health care provider with experience in working with patients in need of a guardianship.
- 11 (3) The chief justice shall appoint the presiding officer.
- 12 (4) After the initial appointments, members ~~shall~~ may serve staggered 4-year terms and may be
13 reappointed. Initial appointments must be for terms of at least 2 years.
- 14 ~~———(5) The network shall meet at least four times a year. Members may be reimbursed for travel expenses~~
15 ~~as provided for in 2-18-501 through 2-18-503. (Terminates June 30, 2023--sec. 8, Ch. 241, L. 2017.)"~~

16

17 **SECTION 7. SECTION 3-1-711, MCA, IS AMENDED TO READ:**18 **"3-1-711. (Temporary) Duties of working interdisciplinary network of guardianship stakeholders.**

19 The working interdisciplinary network of guardianship stakeholders shall:

- 20 (1) identify strengths and weaknesses in the state's current system of adult guardianship and
21 conservatorship;
- 22 (2) identify less restrictive decisionmaking options for incapacitated persons;
- 23 (3) review national standards on guardianship and conservatorship practices and recommend standards
24 for adoption in Montana;
- 25 (4) propose methods of training guardians and conservators in best practices or adopted standards;
- 26 (5) recommend or conduct other outreach, education, and training as needed; and
- 27 ~~(6) make recommendations to the supreme court administrator regarding grants to be awarded as~~
28 ~~provided in 3-1-712; and~~
- 29 ~~(7)~~(6) serve as an ongoing problem-solving mechanism to enhance the quality of care and quality of life
30 for adults who are or may soon be in the guardianship or conservatorship system. (Terminates June 30,

1 2023--sec. 8, Ch. 241, L. 2017.)"

2

3 **SECTION 8. SECTION 46-1-1104, MCA, IS AMENDED TO READ:**

4 **"46-1-1104. Drug treatment court structure.** (1) Each judicial district or court of limited jurisdiction may
5 establish a drug treatment court under which drug offenders may be processed to address an identified substance
6 abuse problem as a condition of pretrial release, pretrial diversion under 46-16-130, probation, incarceration,
7 parole, or other release from a detention or correctional facility.

8 (2) Participation in drug treatment court is voluntary and is subject to the consent of the prosecutor, the
9 defense attorney, and the court pursuant to a written agreement.

10 (3) A drug treatment court and governmental entities that refer an offender to a drug treatment court shall
11 adopt an evidence-based program evaluation tool that measures how closely the drug treatment court programs
12 meet the known principles of effective intervention. The tool must measure program content and capacity to
13 ensure the delivery of effective interventions for offenders.

14 ~~(3)~~(4) A drug treatment court may grant reasonable incentives under a written agreement if the court
15 finds that a drug offender is performing satisfactorily in drug treatment court, is benefiting from education,
16 treatment, and rehabilitation, has not engaged in criminal conduct, and has not violated the terms and conditions
17 of the agreement. Reasonable incentives may include but are not limited to:

- 18 (a) graduation certificates;
19 (b) early graduation;
20 (c) fee reduction or waiver of fees;
21 (d) record expungement of the underlying case; or
22 (e) reduced contact with a probation officer.

23 ~~(4)~~(5) The court may impose reasonable sanctions under the agreement, including incarceration or
24 termination from the drug treatment court, if the court finds that the drug offender is not performing satisfactorily
25 in drug treatment court, is not benefiting from education, treatment, or rehabilitation, has engaged in conduct
26 rendering the offender unsuitable for the program, has otherwise violated the terms and conditions of the
27 agreement, or is for any reason unable to participate. Sanctions may include but are not limited to:

- 28 (a) a short-term jail sentence;
29 (b) fines;
30 (c) extension of time in the program;

- 1 (d) peer review;
2 (e) geographical restrictions;
3 (f) termination; or
4 (g) contempt of court.

5 ~~(5)~~(6) Upon successful completion of drug treatment court, a drug offender's case must be disposed of
6 by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted
7 by the drug treatment court. This may include but is not limited to pretrial diversion under 46-16-130, dismissal
8 of criminal charges, probation, deferred sentencing, suspended sentencing, or a reduced period of incarceration.
9 A drug offender who successfully completes the program may be given credit for the time the offender served
10 in the drug treatment program by the judge upon disposition.

11 ~~(6)~~(7) Each local jurisdiction that intends to establish a drug treatment court or to continue the operation
12 of an existing drug treatment court shall establish a local drug treatment court team.

13 ~~(7)~~(8) The drug treatment court team shall, when practicable, conduct a staff meeting prior to each drug
14 treatment court session to discuss and provide updated information regarding drug offenders. After determining
15 the offender's progress or lack of progress, the court, with input from the drug treatment court team, shall
16 determine the appropriate incentive or sanction to be applied.

17 ~~(8)~~(9) The provisions of this part apply only to offenders who qualify for participation based on
18 qualifications established by each drug treatment court. The provisions of this part do not apply to drug offenders
19 who have been convicted of a sexual offense, as defined in 46-23-502. This part does not confer a right or
20 expectation of a right to participate in a drug treatment court and does not obligate a drug treatment court to
21 accept any offender. The establishment of a drug treatment court may not be construed as limiting the discretion
22 of a prosecutor to act on any criminal case that the prosecutor considers advisable to prosecute. Each drug
23 treatment court judge may establish rules and may make special orders and necessary rules that do not conflict
24 with rules adopted by the Montana supreme court.

25 ~~(9)~~(10) Each drug offender shall contribute to the cost of drug treatment court in accordance with
26 46-1-1112(2).

27 ~~(10)~~(11) A drug treatment court coordinator is responsible for the general administration of a drug
28 treatment court under the direction of the drug treatment court judge.

29 ~~(11)~~(12) The supervising agency shall timely forward information to the drug treatment court concerning
30 the drug offender's progress and compliance with any court-imposed terms and conditions.

1 ~~(12)~~(13) A department of corrections probation and parole officer may participate in a drug treatment
 2 court team if authorized by the department. The department may authorize participation if it determines, in its
 3 discretion, that the caseloads of local probation and parole officers permit participation. If necessitated by a
 4 change in caseloads, the department may withdraw authorization for participation by its probation and parole
 5 officers in a drug treatment court. The department of corrections may not authorize its probation and parole
 6 officers to supervise a participant of a drug treatment court program who has not been convicted of a felony
 7 offense and committed to the supervision of the department."
 8

9 **SECTION 9. SECTION 46-1-1211, MCA, IS AMENDED TO READ:**

10 **"46-1-1211. Treatment and support services.** (1) As part of a diagnostic assessment, each jurisdiction
 11 shall establish a system to ensure that participants are placed into a clinically approved mental health treatment
 12 program. To accomplish this, the program conducting the individual assessment shall make specific
 13 recommendations to the mental health treatment court team regarding the type of treatment program and duration
 14 necessary so that a participant's individualized needs are addressed. The assessments and recommendations
 15 must be based upon evidence-based treatment principles. The mental health treatment court and governmental
 16 entities that refer an offender to a mental health treatment court shall adopt an evidence-based program
 17 evaluation tool that measures how closely the mental health treatment court programs meet the known principles
 18 of effective intervention. The tool must measure program content and capacity to ensure the delivery of effective
 19 interventions for offenders. Treatment recommendations accepted by the mental health treatment court pursuant
 20 to this part must be considered to be reasonable and necessary and be evidence-based or research-driven.

21 (2) An adequate continuum of care for participants must be established in response to this part.

22 (3) The mental health treatment court shall, when practicable, ensure that one agency may not provide
 23 both assessment and treatment services for the mental health treatment court to avoid potential conflicts of
 24 interest or the appearance that a diagnostic assessment agency might benefit by determining that a participant
 25 is in need of the particular form of treatment that the agency provides.

26 (4) A mental health treatment court making a referral for mental health services or substance abuse
 27 treatment shall refer the participant to a program that is licensed, certified, or approved by the court.

28 (5) The court shall determine which treatment programs are authorized to provide the recommended
 29 treatment to participants. The relationship between the treatment program and the court must be governed by
 30 a memorandum of understanding, which must include the timely reporting of the participant's progress or lack

1 of progress to the mental health treatment court."
2

3 **Section 10.** Section 46-12-211, MCA, is amended to read:

4 **"46-12-211. Plea agreement procedure -- use of two-way electronic audio-video communication.**

5 (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in
6 discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo
7 contendere to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

8 (a) move for dismissal of other charges;

9 (b) agree that a specific sentence is the appropriate disposition of the case; or

10 (c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence,
11 with the understanding that the recommendation or request may not be binding upon the court.

12 (2) Subject to the provisions of subsection (5), if a plea agreement has been reached by the parties, the
13 court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause
14 in camera, at the time that the plea is offered. If the agreement is of the type specified in subsection (1)(a) or
15 (1)(b), the court may accept or reject the agreement or may defer its decision as to the acceptance or rejection
16 until there has been an opportunity to consider the a presentence report, if requested by the court pursuant to
17 46-18-111. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that,
18 if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw
19 the plea.

20 (3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the
21 judgment and sentence the disposition provided for in the plea agreement.

22 (4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the court shall,
23 on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea
24 agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the
25 defendant persists in the guilty or nolo contendere plea, the disposition of the case may be less favorable to the
26 defendant than that contemplated by the plea agreement.

27 (5) For purposes of this section, a disclosure of the agreement through the use of two-way electronic
28 audio-video communication, allowing all of the participants to be heard in the courtroom by all present and
29 allowing the party speaking to be seen, is considered to be a disclosure in open court. Audio-video
30 communication may be used if neither party objects and the court agrees to its use and has informed the

1 defendant that the defendant has the right to object to its use. The audio-video communication must operate as
2 provided in 46-12-201."

3

4 **Section 11.** Section 46-14-311, MCA, is amended to read:

5 **"46-14-311. Consideration of mental disease or disorder or developmental disability in**
6 **sentencing.** (1) Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere
7 and claims at the time of the omnibus hearing held pursuant to 46-13-110 or, if no omnibus hearing is held, at
8 the time of any change of plea by the defendant that at the time of the commission of the offense of which
9 convicted the defendant was suffering from a mental disease or disorder or developmental disability that rendered
10 the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's
11 behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the
12 trial and ~~shall~~ may also consider the results of the presentence investigation ~~required~~ requested pursuant to
13 subsection (2).

14 (2) Under the circumstances referred to in subsection (1), the sentencing court ~~shall~~ may order a
15 presentence investigation and a report on the investigation pursuant to 46-18-111. ~~The~~ If requested, the
16 investigation must include a mental evaluation by a person appointed by the director of the department of public
17 health and human services or the director's designee. The evaluation must include an opinion as to whether the
18 defendant suffered from a mental disease or disorder or developmental disability with the effect as described in
19 subsection (1). If the opinion concludes that the defendant did suffer from a mental disease or disorder or
20 developmental disability with the effect as described in subsection (1), the evaluation must also include a
21 recommendation as to the care, custody, and treatment needs of the defendant."

22

23 **Section 12.** Section 46-18-111, MCA, is amended to read:

24 **"46-18-111. Presentence investigation -- when required -- definition.** (1) (a) (i) Upon the acceptance
25 of a plea or upon a verdict or finding of guilty to one or more felony offenses, EXCEPT AS PROVIDED IN SUBSECTION
26 (1)(D), the district court ~~shall~~ may request and direct the probation and parole officer to make a presentence
27 investigation and report unless an investigation and report has been provided to the court prior to the plea or the
28 verdict or finding of guilty.

29 (ii) Unless additional information is required under ~~subsections~~ SUBSECTION (1)(b), (1)(c), or (1)(d) (1)(D),
30 OR (1)(E) or unless more time is required to allow for victim input, a preliminary or final presentence investigation

1 and report, if requested, must be available to the court within 30 BUSINESS days of the plea or the verdict or finding
2 of guilty.

3 (iii) ~~The~~ If A PRESENCE INVESTIGATION REPORT HAS BEEN requested, the district court shall consider the
4 presentence investigation report prior to sentencing.

5 (b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507,
6 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), 45-5-625, 45-5-627, 45-5-704, 45-5-705, or 45-8-218 or if the defendant
7 was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant
8 to Title 46, chapter 23, part 5, the ~~investigation must include~~ court shall order a psychosexual evaluation of the
9 defendant ~~and~~ that includes a recommendation as to treatment of the defendant in the least restrictive
10 environment, considering the risk the defendant presents to the community and the defendant's needs, unless
11 the defendant was sentenced under 46-18-219.

12 (ii) The evaluation must be completed by a sexual offender evaluator who ~~is a member of the Montana~~
13 ~~sex offender treatment association or has comparable~~ HAS credentials acceptable to the department of labor and
14 industry AND THE COURT. The psychosexual evaluation must be made available to the county attorney's office,
15 the defense attorney, the probation and parole officer, and the sentencing judge.

16 (iii) All costs related to the evaluation must be paid by the defendant. If the defendant is determined by
17 the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and
18 must be paid by the county or the state, or both, under Title 3, chapter 5, part 9. The district court may order
19 subsequent psychosexual evaluations at the request of the county attorney. The requestor of any subsequent
20 psychosexual evaluations is responsible for the cost of the evaluation.

21 (c) (i) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation may
22 include a mental health evaluation of the defendant and a recommendation as to treatment of the defendant in
23 the least restrictive environment, considering the risk the defendant presents to the community and the
24 defendant's needs.

25 (ii) The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced
26 practice registered nurse, or other professional with comparable credentials acceptable to the department of labor
27 and industry. The mental health evaluation must be made available to the county attorney's office, the defense
28 attorney, the probation and parole officer, and the sentencing judge.

29 (iii) All costs related to the evaluation must be paid by the defendant. If the defendant is determined by
30 the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and

1 must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

2 (D) IF THE DEFENDANT IS CONVICTED OF A VIOLENT OFFENSE, AS DEFINED IN 46-23-502, OR IF THE DEFENDANT
 3 IS CONVICTED OF A CRIME FOR WHICH A VICTIM OR ENTITY MAY BE ENTITLED TO RESTITUTION, AND THE AMOUNT OF
 4 RESTITUTION IS NOT CONTAINED IN A PLEA AGREEMENT, THE COURT SHALL ORDER A PRESENTENCE INVESTIGATION.

5 ~~(d)~~(E) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report
 6 pursuant to this section, the mental evaluation ~~required by 46-14-311~~ must be attached to the presentence
 7 investigation report and becomes part of the report. The report must be made available to persons and entities
 8 as provided in 46-18-113.

9 (2) ~~The court shall order a presentence investigation report unless the court makes a finding that a report~~
 10 ~~is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in~~
 11 ~~subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written~~
 12 ~~presentence investigation report by a probation and parole officer is presented to and considered by the district~~
 13 ~~court.~~ The district court may order a presentence investigation for a defendant convicted of a misdemeanor only
 14 if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense
 15 as defined in 46-23-502.

16 (3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is
 17 completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time.
 18 The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5).

19 (4) For the purposes of 46-18-112 and this section, "probation and parole officer" means:

20 (a) a probation and parole officer who is employed by the department of corrections pursuant to
 21 46-23-1002; or

22 (b) an employee of the department of corrections who has received specific training or who possesses
 23 specific expertise to make a presentence investigation and report but who is not required to be licensed as a
 24 probation and parole officer by the public safety officer standards and training council created in 2-15-2029."
 25

26 **Section 13.** Section 46-18-112, MCA, is amended to read:

27 **"46-18-112. Content of presentence investigation report.** (1) Whenever an investigation is ~~required~~
 28 requested by the court, the probation and parole officer shall promptly inquire into and report upon:

29 (a) the defendant's characteristics, circumstances, needs, and potentialities, as reflected in a validated
 30 risk and needs assessment;

- 1 (b) the defendant's criminal record and social history;
- 2 (c) the circumstances of the offense;
- 3 (d) the time of the defendant's detention for the offenses charged;
- 4 (e) the harm caused, as a result of the offense, to the victim, the victim's immediate family, and the
- 5 community; and
- 6 (f) the victim's pecuniary loss, if any. The officer shall make a reasonable effort to confer with the victim
- 7 to ascertain whether the victim has sustained a pecuniary loss. If the victim is not available or declines to confer,
- 8 the officer shall record that information in the report.

9 (2) THE FOLLOWING INFORMATION PERTAINING TO THE DEFENDANT MAY ALSO BE INCLUDED OR CONSIDERED IN

10 THE REPORT:

- 11 (A) PRIOR CRIMINAL HISTORY;
- 12 (B) PROBATION OR PAROLE HISTORY;
- 13 (C) OFFICIAL VERSION OF THE OFFENSE OR OFFENSES;
- 14 (D) CUSTODY STATUS;
- 15 (E) PENDING CASES OR CHARGES AGAINST THE DEFENDANT;
- 16 (F) PROBATION OFFICER RECOMMENDATIONS;
- 17 (G) GANG AFFILIATION;
- 18 (H) BACKGROUND AND TIES TO THE COMMUNITY;
- 19 (I) HISTORY OF SUBSTANCE USE DISORDER;
- 20 (J) PHYSICAL AND MENTAL HEALTH;
- 21 (K) EMPLOYMENT HISTORY AND STATUS;
- 22 (L) EDUCATION HISTORY; AND
- 23 (M) PRESCREENING AND PLACEMENT OPTIONS.

24 ~~(2)~~(3) All local and state mental and correctional institutions, courts, and law enforcement agencies shall

25 furnish, upon request of the officer preparing a presentence investigation, the defendant's criminal record and

26 other relevant information.

27 ~~(3)~~(4) The court may, in its discretion, require that the presentence investigation report include a physical

28 and mental examination of the defendant.

29 ~~(4)~~(5) Upon sentencing, the court shall forward to the sheriff all information contained in the presentence

30 investigation report concerning the physical and mental health of the defendant, and the information must be

1 delivered with the defendant as required in 46-19-101."

2

3 **Section 14.** Section 46-18-242, MCA, is amended to read:

4 **"46-18-242. Investigation and report of victim's loss.** (1) Whenever the court believes that a victim
5 may have sustained a pecuniary loss or whenever the prosecuting attorney requests, the court shall order the
6 probation officer, restitution officer, or other designated person to include in the presentence investigation and
7 report if requested pursuant to 46-18-111:

8 (a) a list of the offender's assets; and

9 (b) an affidavit that specifically describes the victim's pecuniary loss and the replacement value in dollars
10 of the loss, submitted by the victim.

11 (2) When a presentence report is not ~~authorized or~~ requested, the court shall accept evidence of the
12 victim's loss at the time of sentencing."

13

14 **Section 15.** Section 53-6-1312, MCA, is amended to read:

15 **"53-6-1312. (Temporary) Health care services payment schedules.** (1) The department of corrections
16 and the department of public health and human services shall reimburse health care service for individuals
17 identified in subsection (2) at the rates adopted by the department for the medicaid program under Title 53,
18 chapter 6, part 1, if the health care services are not otherwise covered by medicaid, medicare, a health insurer,
19 or another private or governmental program that pays for health care costs.

20 (2) This section applies to individuals:

21 (a) in the custody of the department of corrections; or

22 (b) who are residents, by commitment or otherwise, of the Montana state hospital, the Montana mental
23 health nursing care center, the Montana chemical dependency center, the state facility at Galen, or the Montana
24 developmental center. (~~Terminates June 30, 2019--sec. 28, Ch. 368, L. 2015.~~)"

25

26 **SECTION 16.** SECTION 53-30-507, MCA, IS AMENDED TO READ:

27 **"53-30-507. Rulemaking authority.** (1) The department may adopt rules to implement this part,
28 including rules for the determination of how sites are to be chosen for regional correctional facilities. The rules
29 must provide that in selecting a site, the department shall consider the need for a regional correctional facility in
30 the area, the ability and willingness of a local governmental entity or a corporation to enter into a long-term

1 contract with the department, and the availability of rehabilitative services to inmates. The rules must require that
2 a corporation respond to a request for proposals prepared by the department for a regional correctional facility
3 before a contract may be entered with that corporation.

4 (2) The department shall adopt rules that include the minimum applicable standards for the construction,
5 operation, and physical condition of a state correctional facility portion of a regional correctional facility and for
6 the security, safety, health, treatment, and discipline of persons confined in a state correctional facility portion of
7 a regional correctional facility. The rules must require that a privately operated or privately owned and operated
8 state correctional facility portion of a regional correctional facility conform to applicable American correctional
9 association and national commission on correctional health care standards.

10 (3) (a) The department shall adopt rules pursuant to Title 2, chapter 4, that specify a per diem rate that
11 must be paid to a regional correctional facility for the confinement of persons in the state correctional facility
12 portion of the regional correctional facility.

13 (b) The rules adopted pursuant to subsection (3)(a) must include but are not limited to:

14 (i) a definition of per diem rate;

15 (ii) a method of calculating the per diem rate; and

16 (iii) the costs to be included in the per diem rate calculation.

17 (c) At a minimum, the per diem rate must include compensation for:

18 (i) direct costs, including budget expenditures directly attributable to confining inmates;

19 (ii) indirect costs, including budget expenditures that are not directly associated with the confinement of
20 inmates but that are incurred to provide support services for the regional correctional facility, not to exceed 3%
21 annually;

22 (iii) capital costs, ~~including depreciation or a pro rata portion of capital costs incurred;~~ and limited to the
23 following use allowances:

24 (A) for buildings and improvements, not to exceed ~~2%~~ 2.5% of acquisition cost for no more than 40
25 years; and

26 (B) for equipment with an individual acquisition cost of \$5,000 or more, not to exceed 6 2/3% of
27 acquisition cost for no more than 15 years; and

28 (iv) other costs that the department determines are necessary, including medical or transportation costs.

29 (d) The department shall determine by rule the costs that are not allowable as part of a per diem rate.

30 Unallowable costs must include programs and services that do not have a direct benefit to persons confined in

1 the regional correctional facility and depreciation for capital improvements paid for by the department and
 2 depreciation for equipment used in providing support services.

3 (e) A population factor must be included in the per diem rate to allow for accurate compensation based
 4 on the number of inmates confined in the regional correctional facility.

5 (f) The rules must provide for billing procedures and must allow for review of the per diem rate at least
 6 once each fiscal year. When reviewing the per diem rate, the department shall accept public comment that must
 7 be considered when the department is determining the accuracy of the per diem rate for the next fiscal year.

8 (4) ~~For the biennium beginning July 1, 2017, the department may pay to a regional correctional facility~~
 9 ~~no more than the rate it paid to that facility on December 6, 2016. Beginning July 1, 2019, the regional correctional~~
 10 ~~facility and the department must mutually agree on any personal services increases or nonroutine purchases~~
 11 ~~exceeding a total of \$5,000 in a fiscal year."~~

12

13 ~~Section 11. Section 8, Chapter 241, Laws of 2017, is amended to read:~~

14 ~~"Section 8. Termination. [Sections 1 through 3] terminate June 30, 2023 2019."~~

15

16 **Section 17.** Section 28, Chapter 368, Laws of 2015, is amended to read:

17 **"Section 28. Termination.** (1) [This act], except [section 9], terminates June 30, 2019.

18 (2) The department may reapply for the same waiver received to implement the Montana Health and
 19 Economic Livelihood Partnership Act program if the waiver expires before June 30, 2019."

20

21 NEW SECTION. SECTION 18. REPEALER. THE FOLLOWING SECTION OF THE MONTANA CODE ANNOTATED IS
 22 REPEALED:

23 3-1-712. GRANTS FOR PUBLIC GUARDIANSHIP PROGRAMS.

24

25 NEW SECTION. Section 19. Fund transfers. (1) By June 30, 2019, the state treasurer shall ~~make the~~
 26 ~~following transfers~~ TRANSFER \$2,353,000 \$4,353,000 TO THE GENERAL FUND from the account established in
 27 30-14-143~~;~~

28 (2) BY JUNE 30, 2019, THE STATE TREASURER SHALL TRANSFER THE FOLLOWING AMOUNTS FROM THE GENERAL
 29 FUND:

30 ~~(+)(A)~~ \$1,553,000 to the pretrial diversion program state special revenue account established in [section

1 1]; and

2 ~~(2)(B)~~ \$300,000 to the legislative committees and activities state special revenue account established
3 in [section 2]; ~~AND~~

4 ~~(C) \$250,000 TO A STATE SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE STATE LIBRARY; AND~~

5 ~~(D) \$2,000,000 TO THE TREATMENT COURT SUPPORT ACCOUNT ESTABLISHED IN [SECTION 3 OF HOUSE BILL NO.~~
6 ~~654].~~

7
8 NEW SECTION. Section 20. Codification instruction. (1) [Section 1] is intended to be codified as
9 an integral part of Title 46, and the provisions of Title 46 apply to [section 1].

10 (2) [Section 3] is intended to be codified as an integral part of Title 2, chapter 15, part 20, and the
11 provisions of Title 2, chapter 15, part 20, apply to [section 3].

12
13 COORDINATION SECTION. SECTION 21. COORDINATION INSTRUCTION. IF [THIS ACT], [SECTION 1 OF SENATE
14 BILL NO. 352 FUNDING AN INTERDICTION TEAM], AND [HOUSE BILL NO. 2] ARE PASSED AND APPROVED, THEN THE STATE
15 SPECIAL REVENUE APPROPRIATIONS FOR THE DEPARTMENT OF JUSTICE, MONTANA HIGHWAY PATROL, IN [HOUSE BILL
16 NO. 2] IS REDUCED BY \$300,206 FOR THE FISCAL YEAR BEGINNING JULY 1, 2019, AND BY \$299,336 FOR THE FISCAL YEAR
17 BEGINNING JULY 1, 2020.

18
19 NEW SECTION. Section 22. Effective dates. (1) Except as provided in subsection (2), [this act] is
20 effective July 1, 2019.

21 (2) ~~[Sections 11 through 15] [SECTIONS 14 AND 16 THROUGH 18] [SECTIONS 15 AND 17 THROUGH 19]~~
22 ~~[SECTIONS 17 AND 19 THROUGH 22]~~ are effective on passage and approval.

23

24 NEW SECTION. SECTION 23. TERMINATION. [SECTIONS 3 AND 4] TERMINATE JUNE 30, 2021.

25

- END -