TO: Task Force on State Public Defender Operations
FROM: Julie Johnson, Legal Services Office
DATE: January 25, 2016
RE: Information and Analysis Requested by the Task Force

OVERVIEW

At the December 2015 meeting, the Task Force ask that I conduct research on a variety of topics. In order that members of the Task Force may refer to my research and information, I have separated my memorandum by Tabs as follows:

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<thead>
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<td>E</td>
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</table>
In In re the Rules of Professional Conduct, 299 Mont. 321, 2 P.3d 806, 2000 MT 110, the Montana Supreme Court concluded that an attorney cannot agree to rules or policies that restrict, limit, or direct the attorney's scope of representation.

In Rules, attorneys who contracted with insurance companies to defend their policy holders asked the Supreme Court to determine whether, by adhering to certain billing rules and procedures of the insurance companies, they violated the Montana Rules of Professional Conduct.

Specifically, the attorneys asked the Supreme Court to consider the following issues:

1. Whether an attorney can agree to billing rules or policies that restrict, limit, or direct the attorney's scope of representation?

2. Whether an attorney can disclose detailed descriptions of professional services to third party auditors without a release from the attorney's client?

In Rules, certain insurance companies required that attorneys obtain prior approval before scheduling depositions, undertaking research, employing experts, or preparing motions. In re the Rules, ¶ 19. The attorneys claimed that the requirement of prior approval impermissibly interfered with defense counsel's exercise of independent judgment and duty of undivided loyalty to the client.

The Supreme Court agreed that requiring prior approval violated Rule 1.8(f)\(^1\) of the Rules of Professional Conduct and created a "substantial appearance of impropriety in its suggestion that it is insurers rather than defense counsel who control the day to day details of a defense." In re the Rules, ¶ 47. The Supreme Court concluded:

We hold that defense counsel in Montana who submit to the requirement of prior approval violated their duties under the Rules of Professional Conduct to exercise their independent judgment and to give their undivided loyalty to insureds.

In re the Rules, ¶ 51. However, the Supreme Court also cautioned:

[T]his holding should not be construed to mean that defense counsel have a "blank

\(^1\) Rule 1.8(f) currently provides:
A lawyer shall not accept compensation for representing a client from one other than the client unless: (1) the client gives written informed consent; (2) there is no interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship; and (3) information relating to representation of a client is protected as required by Rule 1.6.
check” to escalate litigation costs nor that defense counsel need not even consult with insurers. Under Rule 1.5 M.R.Prof.Conduct, for example, and attorney must charge reasonable fees. Nor, finally, should our holding be taken to signal that defense counsel cannot be held accountable for their work.

In re the Rules, ¶ 39.

Next, the Supreme Court considered whether an attorney could release information relating to representation of a client unless the client considers after consultation. Specifically, certain insurance companies required attorneys to disclose clients files, time sheets, and work product to third party auditors. The insurance company argued that such disclosure was lawful because their insureds had agreed to the disclosure as part of their insurance contract. The Supreme Court, however, rejected the argument that the policyholders had consented to disclosure of detailed information because they cannot know at the time of the contract what claims may be brought against the policyholder. At the time of Rules, Rule 1.6(a)\(^2\) provided:

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation.

In re the Rules, ¶ 53. Ultimately, the Supreme Court concluded:

We hold that disclosure by defense counsel of detailed descriptions of professional services to third-party auditors without first obtaining the contemporaneous fully informed consent of insureds violates client confidentiality under the Rules of Professional Conduct.

In re the Rules, ¶ 78.

While this case related to rules and policies of insurance companies, one may draw parallels between an insurance company setting policies and the OPD setting policies that direct or limit counsel's exercise of independent judgment and duty of undivided loyalty to the client or policies that require counsel to produce confidential information to OPD.

\(^2\) Rule 1.6 was amended in 2003, after the decision in Rules. Subsection (b) now provides four exceptions to subsection (a), none of which alter the holding in Rules.
TAB B: Inconsistent Guardian Ad Litem Statutes and Draft Bill to Resolve

See attached bill draft LC 7777 as possible legislation to address the inconsistency explained below.

Section 41-3-112(1), MCA, provides:

In every judicial proceeding, the court shall appoint a guardian ad litem for any child alleged to be abused or neglected.

(Emphasis added).

Similarly, section 41-3-607(4), MCA, also mandates that a guardian ad litem (GAL) be appointed to a child in a termination proceeding:

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

(Emphasis added). However, section 41-3-425(2)(b), MCA, implies that a court may choose to not appoint a GAL for the child or youth involved in an abuse and neglect proceeding:

. . . the court shall immediately appoint the office of state public defender to assign counsel for: . . .
(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth

LC 7777 is drafted to remove section 41-3-425(2)(b), MCA, to eliminate the inconsistency.
A Bill for an Act entitled: "An Act clarifying when a court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422; amending section 41-3-425, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-425, MCA, is amended to read:

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

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

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

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

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

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

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

{Internal References to 41-3-425:
  41-3-422 x   41-3-422 x    41-3-422 x   41-3-423 x
  41-3-432 x    47-1-104 x    47-1-104 x}

NEW SECTION. Section 2. {standard} Effective date. [This act] is effective October 1, 2017.

- END -

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**TAB C: STACKABLE OFFENSES**

Stackable offenses means that the punishment for each offense is enhanced during sentencing upon subsequent convictions of the same offense. Most criminal offenses are not stackable.

<table>
<thead>
<tr>
<th>Stackable Offense</th>
<th>Code Section</th>
<th>Maximum Jail Time for First Offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partner Family Member Assault</td>
<td>45-5-206</td>
<td>imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours (second offense: imprisoned in the county jail not less than 72 hours or more than 1 year)</td>
</tr>
<tr>
<td>Assault on a Minor (under 36 months, no serious bodily injury)</td>
<td>45-5-212</td>
<td>imprisoned in a state prison for a term not to exceed 10 years</td>
</tr>
<tr>
<td>Stalking</td>
<td>45-5-220</td>
<td>imprisoned in the county jail for a term not to exceed 1 year</td>
</tr>
<tr>
<td>Surreptitious Visual Observation</td>
<td>45-5-223</td>
<td>incarcerated in the county jail for a term not to exceed 6 months (second offense: incarcerated for a term not to exceed 1 year)</td>
</tr>
<tr>
<td>Sexual Assault (age of victim is 16 or older)</td>
<td>45-5-502</td>
<td>imprisoned in the county jail for a term not to exceed 6 months (second conviction: imprisoned in the county jail for a term not to exceed 1 year)</td>
</tr>
<tr>
<td>Sexual Intercourse Without Consent</td>
<td>45-5-503</td>
<td>imprisonment in the state prison for a term of not less than 2 years/4 years or more than 100 years</td>
</tr>
<tr>
<td>Indecent Exposure</td>
<td>45-5-504</td>
<td>imprisoned in the county jail for a term of not more than 6 months (second conviction: imprisoned in the county jail for a term of not more than 1 year)</td>
</tr>
<tr>
<td>Prostitution (Patron)</td>
<td>45-5-601</td>
<td>imprisoned for a term not to exceed 1 year</td>
</tr>
<tr>
<td>Stackable Offense</td>
<td>Code Section</td>
<td>Maximum Jail Time for First Offense</td>
</tr>
<tr>
<td>-------------------------------------------------------</td>
<td>--------------</td>
<td>------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Unlawful Transactions with Children</td>
<td>45-5-623</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Possession (of alcohol) (18 years of age or older)</td>
<td>45-5-624</td>
<td>For a third offense, at discretion of court, imprisoned in the county jail for a term not to exceed 6 months.</td>
</tr>
<tr>
<td>Violation of Order of Protection</td>
<td>45-5-626</td>
<td>imprisoned in the county jail for a term not to exceed 6 months</td>
</tr>
<tr>
<td>Theft (less than $1,500 in value) SB 90</td>
<td>45-6-301, -302, -305</td>
<td>imprisoned in the county jail for a term not to exceed 6 months (second offense: imprisoned in the county jail for a term not to exceed 6 months) (third offense: imprisoned in the county jail for a term of not less than 30 days or more than 6 months)</td>
</tr>
<tr>
<td>Criminal Distribution (drugs)</td>
<td>45-9-101</td>
<td>imprisoned in the state prison for a term of not less than 2 years or more than life</td>
</tr>
<tr>
<td>Criminal Possession (drugs)</td>
<td>45-9-102</td>
<td>marijuana or its derivatives less than 60 grams of marijuana or 1 gram of hashish, imprisonment in the county jail for not more than 6 months</td>
</tr>
<tr>
<td>Fraudulently Obtaining Dangerous Drugs</td>
<td>45-9-104, -106</td>
<td>imprisoned in the state prison for a term of not less than 1 year or more than 5 years</td>
</tr>
<tr>
<td>Driving Without a License SB 90</td>
<td>61-5-102</td>
<td>imprisonment of not more than 6 months</td>
</tr>
<tr>
<td>Driving While License or Suspended or Revoked SB 90</td>
<td>61-5-212</td>
<td>imprisonment for not less than 2 days or more than 6 months</td>
</tr>
<tr>
<td>DUI</td>
<td>61-8-714</td>
<td>imprisonment for not less than 24 consecutive hours or more than 6 months (if passengers over 16)</td>
</tr>
<tr>
<td>Stackable Offense</td>
<td>Code Section</td>
<td>Maximum Jail Time for First Offense</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
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<td>---------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Reckless Driving</td>
<td>61-8-715</td>
<td>imprisonment for a term of not more than 90 days (second or subsequent conviction, imprisonment for a term of not less than 10 days or more than 6 months)</td>
</tr>
<tr>
<td>Excessive Alcohol Concentration or THC Levels</td>
<td>61-8-722, 731</td>
<td>imprisonment for not more than 6 months (second offense: imprisonment for not less than 5 days or more than 1 year)</td>
</tr>
<tr>
<td>Driving Without Insurance</td>
<td>61-6-301, 302, 304</td>
<td>Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by imprisonment in the county jail for not more than 10 days. (second conviction: imprisonment in the county jail for not more than 10 days) (third or subsequent conviction: imprisonment in the county jail for not more than 6 months)</td>
</tr>
</tbody>
</table>
## Non-Stackable Offenses for Which the Maximum Amount of Jail Time is No More Than One Year

<table>
<thead>
<tr>
<th>Non-Stackable Offense</th>
<th>Code Section</th>
<th>Maximum Jail Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault (Non aggravated - no Serious Bodily Injury “SBI”)</td>
<td>45-5-201</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Negligent Vehicular Assault (no SBI)</td>
<td>45-5-205</td>
<td>incarcerated in a county jail for a term not to exceed 1 year</td>
</tr>
<tr>
<td>Negligent Endangerment</td>
<td>45-5-208</td>
<td>imprisoned in the county jail for a term not to exceed 1 year</td>
</tr>
<tr>
<td>Violation of No Contact Order</td>
<td>45-5-209</td>
<td>imprisoned in the county jail for a term not to exceed 6 months</td>
</tr>
<tr>
<td>Assault on a Sports Official</td>
<td>45-5-211</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Assault With a Bodily Fluid</td>
<td>45-5-214</td>
<td>incarcerated in a county jail or a state prison for a term not to exceed 1 year</td>
</tr>
<tr>
<td>Bigamy</td>
<td>45-5-611</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Marrying a Bigamist</td>
<td>45-5-612</td>
<td>imprisoned in the county jail for any period not to exceed 6 months</td>
</tr>
<tr>
<td>Nonsupport</td>
<td>45-5-621</td>
<td>imprisoned in the county jail for a term not to exceed 6 months</td>
</tr>
<tr>
<td>Criminal Mischief (less than $1,500 in damage)</td>
<td>45-6-101</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Negligent Arson</td>
<td>45-6-102</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Desecration (less than $1,500 in damage)</td>
<td>45-6-104</td>
<td>incarcerated for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Non-Stackable Offense</td>
<td>Code Section</td>
<td>Maximum Jail Time</td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
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</tr>
<tr>
<td>Criminal Destruction of Communication Device</td>
<td>45-6-105</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Criminal Mischief Damage to Rental Property</td>
<td>45-6-106</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Criminal Trespass to Vehicle</td>
<td>45-6-202</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Criminal Trespass to Property</td>
<td>45-6-203</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Possession of Burglary Tools</td>
<td>45-6-205</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Issuing a Bad Check (value less than $1,500)</td>
<td>45-6-316</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Forgery (less than $1,500)</td>
<td>45-6-325</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Disorderly Conduct</td>
<td>45-8-101</td>
<td>imprisoned in the county jail for any term not to exceed 10 days</td>
</tr>
<tr>
<td>Failure to Disperse</td>
<td>45-8-102</td>
<td>imprisoned in the county jail for a term not to exceed 10 days</td>
</tr>
<tr>
<td>Public Nuisance</td>
<td>45-8-111</td>
<td>imprisoned in the county jail for a term not to exceed 10 days</td>
</tr>
<tr>
<td>Altering Labels on Dangerous Drugs</td>
<td>45-9-105, -106</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Criminal Possession (inhalants)</td>
<td>45-9-121</td>
<td>imprisoned in the county jail for any term not to exceed 6 months</td>
</tr>
<tr>
<td>Criminal Possession of Drug Paraphernalia</td>
<td>45-10-103</td>
<td>imprisoned in the county jail for not more than 6 months</td>
</tr>
<tr>
<td>Manufacture or Delivery of Drug Paraphernalia</td>
<td>45-10-104</td>
<td>imprisoned in the county jail for not more than 6 months</td>
</tr>
<tr>
<td>Non-Stackable Offense</td>
<td>Code Section</td>
<td>Maximum Jail Time</td>
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<tr>
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</tr>
<tr>
<td>Advertisement of Drug Paraphernalia</td>
<td>45-10-106</td>
<td>imprisoned in the county jail for not more than 6 months</td>
</tr>
</tbody>
</table>

**Other Examples of Non-Stackable Offenses**

- Aggravated assault 45-5-202
- Assault on a Peace Officer 45-5-210
- Assault on a Minor (3+) 45-5-212
- Assault with a Weapon 45-5-213
- Criminal Endangerment 45-5-207
- Custodial Interference 45-5-304
- Incest 45-5-507
- Intimidation 45-5-203
- Involuntary Servitude 45-5-703
- Kidnapping 45-5-302,-303
- Malicious Intimidation 45-5-221
- Mistreating prisoners 45-5-204
- Negligent Vehicular Assault (causing SBI) 45-5-205
- Promoting Prostitution 45-5-602, -603
- Robbery 45-5-401
- Sexual Abuse of Children 45-5-625
- Sexual Servitude 45-5-704
- Trafficking of Persons 45-5-702
Attached is Senate Bill 90 as introduced by Senator Swandal in the 2015 Legislative Session. The bill passed Senate Judiciary by 11 to 1. It passed second reading in the Senate by 48 to 1 and third reading by 46 to 1. The bill was tabled in House Judiciary and never reached the House of Representatives for a vote by the Committee of the Whole.

It reduced or eliminated jail time for the following offenses:

- Theft
- Issuing a Bad Check
- Disorderly Conduct
- Public Nuisance
- Driving Without a License
- Driving With a Suspended or Revoked License
- No Proof of Registration or Insurance
SENATE BILL NO. 90

INTRODUCED BY N. SWANDAL

BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

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

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

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

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

(a) has the purpose of depriving the owner of the property;

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

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

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

(a) has the purpose of depriving the owner of the property;

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

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

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

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property."
owner of the property; or

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

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

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

(b) a fraudulent scheme or device.

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

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

(b) deception or other fraudulent action.

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

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

or

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

7. A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Section 45-8-101, MCA, is amended to read:
"45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if the person knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;
(b) making loud or unusual noises;
(c) using threatening, profane, or abusive language;
(d) rendering vehicular or pedestrian traffic impassable;
(e) rendering the free ingress or egress to public or private places impassable;
(f) disturbing or disrupting any lawful assembly or public meeting;
(g) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence would endanger human life;
(h) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or
(i) transmitting a false report or warning of an impending explosion in a place where its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined an amount not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

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

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

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

(a) a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;
(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or
(c) a condition that renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if the person knowingly creates, conducts, or maintains a public nuisance.
(3) Any act that affects an entire community or neighborhood or any considerable number of persons, as specified in subsection (1)(a), is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

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

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

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

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

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

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

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

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

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

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

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

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

(3) A low-speed restricted driver's license is not valid for the operation of a motor vehicle other than a
low-speed electric vehicle or a golf cart.

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

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

"61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving
without valid license or licensing exemption -- seizure of vehicle or rendering vehicle inoperable. (1) (a)
A person commits the offense of driving a motor vehicle without a valid license or without statutory exemption or
during a suspension or revocation period if the person drives:

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

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

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

(b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor
vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving
during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than
6 months and may be fined not more than $500.
(ii) If the reason for the suspension or revocation was that the person was convicted of a violation of
61-8-401, 61-8-406, or 61-8-411 or a similar offense under the laws of any other state or the suspension was
under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs
requested by a peace officer who believed that the person might be driving under the influence, the person shall
be punished by imprisonment for a term of not less than 2 days or more than 6 months or a fine not to exceed
$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

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

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

(3) The vehicle owned and operated at the time of an offense under this section by a person whose
driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, 61-8-410,
or 61-8-411 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the
convicted person's county of residence for a period of 30 days.

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

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

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

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

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

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

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

(a) personally; or

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

(4) An owner or operator charged with violating subsection (2) may not be convicted if:

(a) the arresting issuing officer or another person authorized to access information from the online motor vehicle liability insurance verification system under 61-6-309 submits to the system, when implemented, a request that provides proof of insurance valid at the time of arrest the alleged violation took place; or

(b) if the system under 61-6-157 is not available, the person produces in court or to the office of the arresting issuing officer proof of insurance valid at the time of arrest the alleged violation took place."

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

"61-6-304. Penalties. (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a fine of not less than $250 or more than $500 or by imprisonment in the county jail for not more than 10 days, or both. A second conviction is punishable by a fine of $350 or by imprisonment in the county jail for not more than 10 days, or both. A third or subsequent conviction is punishable by a fine of $500 or by imprisonment in the county jail for not more than 6 months, or both."
(2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall report the surrender of the registration receipt and license plates to the department, which shall immediately suspend the vehicle's registration. The vehicle's registration status may not be reinstated until proof of compliance with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is entitled to register the vehicle. The surrendered license plates must be recycled or destroyed by the court unless the court decides to retain the license plates for the owner until the registration suspension has been completed or the requirements for a restricted registration receipt have been met. Upon proof of compliance with 61-6-301 and payment of fees required under 61-3-333 for replacement license plates and registration decal and under 61-3-341 for a replacement registration receipt, during the period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration receipt to the offender. A restricted registration receipt limits the use of the motor vehicle operated at the time of the offense to use solely for employment purposes until the date indicated on the restricted registration receipt.

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

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

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

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

NEW SECTION.  Section 11.  Effective date. [This act] is effective July 1, 2015.
NEW SECTION. Section 12. Applicability. [This act] applies to offenses committed on or after July 1, 2015.

- END -
Tab E: Discussion of Independent Contractor v. Employee Laws

To be provided at meeting.