



# **For the Defense:**

## **Enacting a Statewide Public Defender System in Montana**

**A Report to the 59th Legislature  
by the  
Law and Justice Interim Committee  
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2003-2004

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**PART 1:  
EXECUTIVE SUMMARY OF FINAL RECOMMENDATIONS**

The Law and Justice Interim Committee (LJIC) unanimously recommends that the Legislature enact a bill (LC 214 at *Appendix A*) establishing a statewide public defender system. The major recommendations contained in the bill are summarized below.

- ☞ The statewide public defender system should encompass all courts (the Supreme Court, District Courts, and all Courts of Limited Jurisdiction) and all case types (criminal as well as civil) in which a person is entitled by law to the assistance of counsel at public expense. In Montana, the primary civil case types that can involve assistance of counsel at public expense include abuse and neglect, juvenile delinquency, involuntary commitment, and conservatorship/guardianship cases. However, guardian ad litem services should remain a separate program administered under the judiciary and not become part of the public defender system.
  
- ☞ A governor-appointed independent 7-member Public Defender Commission administratively attached to the Department of Administration should supervise the statewide public defender system, set uniform standards, and hire a Chief Public Defender to direct and administer the system to ensure that public defender services are provided by qualified and competent counsel in a manner that is fair and consistent throughout the state.
  
- ☞ The Chief Public Defender, through a central Office of State Public Defender, should direct the delivery of and manage the budget for public defender services statewide, including appellate services. The Commission should decide whether appellate defense should be

provided centrally or remain the obligation of trial lawyers, except when there are conflicts of interest at the trial level. The Office should have assistant public defenders available to assist local public defenders upon request and also include a training coordinator to coordinate a statewide training program for state-employed and contracted public defenders.

- ☞ The state should be divided into no more than 11 public defender regions. Regional offices (currently the 6 county public defender offices), headed by deputy public defenders (currently the county chief public defenders), should coordinate public defender services within the regions. Services should be delivered either by state employees where offices are necessary, justified, and cost-effective or by private attorneys contracted by the state central or regional offices in areas where staffed offices are not required or feasible and contracted services are most cost-effective.
  
- ☞ Judges should no longer directly appoint public defenders. Rather, when counsel needs to be assigned, the court should order the Office of State Public Defender to assign counsel. Assignments should be made through the regional offices and protocols should be established between the court and the regional public defender offices and contractors to ensure that assignments are made without delay and that a public defender is readily available when needed. Assignments should be made taking into consideration counsel's caseload, experience, training, qualifications, and the type and complexity of the case.
  
- ☞ There should be a uniform process to determine a person's indigence and eligibility for assigned counsel. The eligibility screening process should be managed locally, but should be applied consistently and uniformly statewide under the supervision of the Public Defender Commission and the Office of State Public Defender. Eligibility

determinations should be subject to the review and approval of the court.

- ☛ The threshold for eligibility based on indigence should be 133% of federal poverty guidelines, which is the threshold for public assistance eligibility in Montana. There should also be a partial indigence threshold so that a person with income and assets above 133% of poverty but at or below 200% of poverty would be eligible for a public defender but would also be asked to make a financial contribution (based on a sliding scale) toward costs.
  
- ☛ The first biennium costs (which includes one year of partial costs) are estimated to be about \$14.1 million, of which \$10.6 million is current spending by the state, the counties, and the cities and \$3.5 million is new spending. The new spending is primarily associated with the cost of the 7-member Public Defender Commission, the new Office of State Public defender with 20 new state employee positions, and a public defender information technology system needs assessment. For each biennium after the Office of State Public Defender becomes fully functional on July 1, 2006, total biennial costs are estimated to be \$27 million, of which \$5.9 million would be new spending.
  
- ☛ Funding obligations for the state system should be shared by the state, counties, and cities proportionate to current funding obligations and spending levels. Thus, using current spending levels, the state should be responsible for 77.7%, counties should pay a total of 15.6%, and cities should pay a total of 6.7% of the total budget for the statewide public defender system. Costs (i.e., funding obligations) should be allocated to individual counties based on a three-factor formula using the county's taxable value of property, population, and crime rate. A caseload factor would replace the crime rate factor when accurate data becomes available. For cities, costs should be allocated according to a

two-factor formula using the city's taxable value and population. A caseload factor would be added when accurate data becomes available.

## PART 2: BACKGROUND

### The ACLU lawsuit

On February 14, 2004, the American Civil Liberties Union (ACLU) filed a class action lawsuit in state district court against the state and seven counties (*White v. Martz* CVD-2002-133). The complaint alleges that Montana has failed "to provide constitutionally and statutorily adequate legal representation to indigent adults with criminal cases pending in the district courts in Butte-Silver Bow, Missoula, Glacier, Teton, Flathead, Lake, and Ravalli Counties". The complaint also states that this failure "deprives, or threatens to deprive, plaintiffs rights guaranteed to them by the Sixth and Fourteenth Amendments to the United States Constitution, Section 4, 17, and 24, of Article II of the Montana Constitution, and other provisions of state law".<sup>1</sup>

State law leaves the decision about how to provide public defender services to local governments. Thus, a county may decide to establish a county public defender office staffed by county employees or to contract for services from private attorneys. Absent county action, the district court judge must appoint a private attorney on an ad-hoc case-by-case basis.

In 1991, the legislature created a state Appellate Defender Commission and provided for a state appellate defender office to represent indigent clients in appeals from district court when the appeal alleges ineffective assistance of counsel.<sup>2</sup> The Appellate Defender Commission is also charged by statute to compile and keep current a statewide roster of attorneys eligible to be appointed as a public defender by district court judges and to propose to the

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<sup>1</sup> Montana First Judicial District Court, Lewis & Clark County, Case No. C DV-2002-133 Amended Complaint, pg 2.

<sup>2</sup> Section 46-8-212, Montana Code Annotated (MCA).

Supreme Court "minimum standards to which all trial and appellate public defenders, including locally appointed private counsel, shall conform".<sup>3</sup>

The ACLU complaint argues that the counties fail to provide adequate administrative oversight and financial resources to ensure indigent clients get adequate legal representation and that the state has failed to set standards or exercise sufficient supervision to fulfill its constitutional obligations.<sup>4</sup>

At the urging of the Montana Association of Counties (MACo), a bill (SB 218) was introduced during the 2003 Legislature to establish a statewide public defender system. However, the scope of the bill was limited to district court criminal cases. Although the legislature as a whole generally supported the direction of the bill, concerns about how the bill was to be funded led to the bill stalling and dying in House Appropriations.

In the wake of the lawsuit and the failure of SB 218, many of the counties that had been contracting for public defender services stopped contracting in an effort to limit their exposure to legal liabilities. The ACLU eventually dropped six of the seven counties named in the lawsuit, keeping only Missoula County as a county defendant in the case. Missoula has a staffed county public defender office, but threatened to close its doors due to defense costs. Subsequent negotiations resulted in the state agreeing to defend Missoula County as part of the state's defense.

The Law and Justice Interim Committee (LJIC) voted in October 2003 to make the public defender issues its top priority and initiated a thorough study of the issues and policy options.

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<sup>3</sup> Section 2-15-1020, MCA.

<sup>4</sup> *Ibid.*, pp. 3-4.

In May 2004, the Attorney General and the ACLU signed a stipulation placing the ACLU's lawsuit on hold pending legislative action. The stipulation makes specific reference to legislation proposed by the LJIC. Under the stipulation, the Attorney General must lobby for the passage of a bill meeting specified goals. If the 59th Legislature fails to pass a bill meeting those goals to the satisfaction of the plaintiffs, litigation will likely resume in May 2005.

### **National study says Montana's services unconstitutional**

On August 4, 2004, the National Legal Aid & Defender Association (NLADA), the nation's largest non-profit advocacy organization on equal justice issues, submitted a report assessing indigent defense services in Montana.<sup>5</sup> The report states that after conducting site visits and interviews and reviewing the depositions and discovery documents in *White v. Martz*, the NLADA concluded that the provision of indigent defense services in Montana is unconstitutional in several respects. Specifically, the NLADA report states that:

- Montana has failed to adequately fund indigent defense, not only by failing to fully fund these services in district court, but also for not assuming funding responsibility in misdemeanor courts.
- Montana's lack of funding means that public defenders are not afforded the resources, including office and operational expenses, for basic necessities such as computers, secretarial, and paralegal support, required to provide adequate defense, but that these resources are afforded to the prosecution.

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<sup>5</sup> The National Legal Aid & Defender Association, *Expert Report: An Assessment of Indigent Defense Services in Montana*, Submitted in the Case *White v. Martz* CDV-2002-133, August 4, 2004, pp. 4-5. This report has been posted at the ACLU website, [www.aclumontana.org](http://www.aclumontana.org), or is available by contacting the NLADA at [www.nlada.org](http://www.nlada.org) or (202) 452-0620.

- Montana's indigent defense services are not sufficiently independent from undue political influence that can be exercised by judges when they directly appoint counsel, set compensation, and approve or disapprove the defense's expenses, or that can be exercised by county executive branch officials in counties where the county attorney is allowed to review the public defender budget.
- Montana has failed to ensure that the counsel assigned to act as a public defender has adequate qualifications, experience, and training to perform competently, in contrast to training and technical experience available to county attorneys through a program under the Attorney General's office.
- Montana has no uniform system of screening and determining a person's indigence or to ensure that public defenders are appointed for eligible persons in a timely manner with even-handed treatment county to county.
- Montana has no uniform policies or procedures to ensure that public defenders have adequate time to meet with their clients, that meetings are confidential, and that there are regular meetings to maintain a working relationship between the defender and the client.
- Montana has no policies or procedures to limit the number or type of cases that can be assigned to a public defender and no means of monitoring caseloads to ensure public defenders are not overloaded.
- Public defenders are not supervised or monitored for compliance with any established performance standards.<sup>6</sup>

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<sup>6</sup> Ibid, pp. 4-5.

The NLADA report's executive summary concludes:

These failings have resulted in significant harm to indigent defense clients in Montana, who pay a price in the form of attorneys who take cases despite their clear conflicts of interest, inappropriate waivers of probable cause hearings, lack of meaningful contact with their attorneys, failures to investigate or to use experts, infrequent motion practice and trials, pressure to take guilty pleas and to sign speedy trial waivers, and infrequent appeals. . . . Montana has failed to deliver the constitutional right to effective assistance of counsel promised over forty years ago by the United States Supreme Court.<sup>7</sup>

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<sup>7</sup> *Ibid.*, pp. 5-6.

**PART 3:  
STUDY OVERVIEW**

**Report organization**

This report briefly outlines the activities, research, and conclusions of the LJIC during the 2003-2004 interim that resulted in the LJIC's final recommendation, LC 214, the Montana Public Defender Act to establish a statewide public defender system.

The following appendices provide reference material related to the LJIC's activities:

Appendix A - LC 214, the Montana Public Defender Act

Appendix B - meeting agendas

Appendix C - figures (charts, graphs, and maps) referenced in this report

Appendix D - fiscal presentation by staff of the Legislative Fiscal Division

**Legislature's role**

While the courts have firmly established the case law regarding the situations in which a person has a constitutional right to receive legal counsel at public expense, the role of the Montana legislature is to establish the public policy . Public policy decisions encompass deciding how to structure and fund Montana's public defender services.

## **Study process**

### Meetings

The LJIC studied the public defender issues for more than 10 months. The full committee set basic parameters, a subcommittee hammered out the details, and the full committee further deliberated the subcommittee's work and revised and adopted LC 214 on September 8, 2004. At each meeting, staff presented research reports, and experts, stakeholders, and interested persons provided testimony and exhibits. Committee members discussed the information and took action at various stages of the study.<sup>8</sup>

### Stakeholders

Stakeholders invited to participate in the process included the Chief Justice of the Montana Supreme Court, the District Court Council, the Appellate Defender Commission, the Chief Appellate Defender, the Montana Association of Criminal Defense Lawyers, the Attorney General, the County Attorney Association, the Supreme Court Administrator, MACo, the ACLU, and national public defender research groups, including the NLADA and the Spangenberg Group.

Additionally, the chief public defenders in Oregon, Wyoming, and Colorado and the chief legal counsel for an indigent defense commission in North Dakota, appeared before the LJIC to discuss their state's experiences. They shared their observations and offered recommendations.

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<sup>8</sup> The dates and agendas of each meeting are provided at *Appendix B*. The minutes of each meeting are available on-line and are accessible by following the links from the Legislative Branch home page at <http://leg.mt.gov>. Exhibits to the minutes are available by contacting the Legislative Services Division.

Finally, a number of Montana district courts, justice's courts, selected city and municipal courts, and county public defender offices were surveyed for data and opinions. Legislative staff made several site visits to meet personally with county public defenders and other personnel.

The LJIC study also examined a national *Compendium of Standards for Indigent Defense Systems*, which pulls together model language and sample statutes related to public defender system design, administration, and quality standards.<sup>9</sup>

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<sup>9</sup> U.S. Department of Justice, Bureau of Justice Assistance, *Compendium of Standards for Indigent Defense Systems*, December 2000. Available at the following web address: <http://www.ojp.usdoj.gov/indigentdefense/compendium/welcome.html>.

**PART 4:  
CURRENT SYSTEM**

**When counsel must be provided at public expense**

Case law and Montana statutory law require that persons in certain types of cases (and appeals in these cases) are entitled to legal counsel at public expense. In most cases, a person is entitled to counsel at public expense only if the person is indigent. In special cases, a person is entitled to council at public expense irrespective of income level.<sup>10</sup> In all cases, however, the right to counsel at public expense involves the potential for the person to lose a fundamental liberty, such as one's life, freedom, or children.

*Figure 1 at Appendix C* is a chart listing all the case types in which a person is entitled to a public defender. It also shows which courts have jurisdiction in those cases and whether the state, county, or city currently pays for public defender costs in those cases.

**Current service delivery options**

Currently, how public defender services are delivered is a local decision. For district court and justice's court cases, the decision is made by the county, and for the municipal and city courts, the decision is made by the city.

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<sup>10</sup> Section 4(4)(b) of LC 214 at *Appendix A*, lists the case types in which a person is entitled to counsel at public expense irrespective of income level. These special cases involve, for example, involuntary civil commitments, youth court cases when parents do not retain counsel for the youth, or guardianship cases, such as when a guardian seeks a court order to force medical treatment on a ward.

Public defender services may be provided by one of the following methods:

- by a county or city public defender office staffed by county or city employees, if the county or city chooses to establish such an office;
- by private attorneys on contract with the county or city, if the county or city chooses to contract for services; or
- absent any action by the county or city, the judge must directly appoint on a case-by-case basis.

## **District courts**

### Structure

Montana's district courts are administratively structured into 22 judicial districts serviced by 42 district court judges who serve 56 counties. In 2001, the Legislature initiated what has been called "state assumption", whereby a provision that required counties to fund district court costs if state special revenue was insufficient was removed and ultimate funding responsibility shifted entirely to the state. State assumption became fully effective on July 1, 2003.

Administration of the district courts is the responsibility of the Judicial Branch. The Office of Court Administrator, supervised by the Supreme Court, administers the budget for the district court program. A District Court Council advises the Supreme Court on district court policies and procedures.

As previously mentioned, under current law, how public defender services are delivered in a district court case is decided by the county in which the case is filed. Several counties with relatively high populations -- Missoula, Yellowstone, Cascade, Lewis & Clark, Gallatin, and Anaconda-Deer Lodge (which services

Deer Lodge, Powell, and Granite) Counties -- have established county public defender offices. Dawson County has one full-time county public defender. Some counties still have contracts with private attorneys for public defender services. However, many counties are terminating these contracts pending the outcome of the ACLU's 2002 lawsuit. In Flathead County, where the county public defender office was dissolved, there is now an informal consortium of private attorneys who take cases referred by the district court. One of the attorneys then assigns the cases to the others on a rotating basis. The majority of Montana counties rely on district court judges to appoint counsel on a case-by-case basis.

*Figure 2 at Appendix C* provides a map showing how public defender services are currently provided for in each county, based on survey data collected in the spring of 2004.

#### Caseload and funding

The state, through the Office of Court Administrator, currently pays public defender costs in district courts, but only if those costs are incurred in the following circumstances:

- for an indigent defendant in a felony criminal case;
- for any youth in a youth court case (irrespective of indigence) if the youth's parent or guardian fails to hire private counsel for the youth ;
- for an indigent respondent in an involuntary civil commitment case for mental illness; and
- for an indigent parent in an abuse and neglect case.

The following list shows which district court case types include cases in which public defenders may be assigned or appointed. The list is alphabetical by the abbreviation commonly used to identify the case type. The \* in front of an abbreviation means that if there is a public defender cost associated with the case, the costs are currently paid by the state.

DA	Adoption
*DC	Criminal
DD	Developmentally Disabled
DF	Paternity
DG	Guardianship/Conservator
*DI	Involuntary Commitment (mental illness)
*DJ	Youth Court
*DN	Child Abuse and Neglect
DP	Probate
DR	Domestic Relations

In calendar year 2003, the DC, DI, DJ, and DN case types accounted for 11,655 cases statewide, which was about 31% of the total District Court/Youth Court caseload of 37,092 cases (all case types statewide). However, DC, DI, DJ, and DN cases types account for almost 80% of total public defender costs. Of the 11,655 DC, DI, DJ, and DN cases, the majority (69%) were criminal cases, 15% were juvenile cases, 8% were involuntary commitment cases and 8% were abuse and neglect cases.<sup>11</sup> See *Figures 3, 4, and 5 at Appendix C.*

Of the total DC, DI, DJ, and DN, cases, how many actually involved public defenders? According to the U.S. Bureau of Justice Statistics, 82% of the felony criminal defendants prosecuted in the nation's largest state courts typically

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<sup>11</sup> Compiled from information provided by the Office of Court Administrator.

need public defenders.<sup>12</sup> The State Public Defender in Wyoming, Mr. Kenneth Koski, estimates that between 90% and 95% of the criminal cases filed in Wyoming (upper and lower courts) involve indigent defendants.<sup>13</sup>

Test data requested on behalf of the LJIC for all of the DC, DN, DJ, and DI cases filed in district court in Missoula County showed that 75% of the county's DC, DN, DJ, and DI cases were assigned to public defenders. Subsequent data collected statewide for July 1, 2003, through March 31, 2004, showed that an average of about 60% of the total DC, DN, DJ, and DI cases statewide were actually assigned to public defenders.<sup>14</sup>

#### A word of caution

It is important to note that the state lacks the capability to accurately track public defender caseloads on a statewide basis. The data reported in the above paragraph is based on the Office of Court Administrator's best effort to capture the requested data from the Judicial Caseload Management System (JCMS) in each county. There is no centralized data base. Some of the downloads captured from some counties presented questionable numbers. Additionally, Cascade and Gallatin Counties, which have significant caseloads, have their own caseload management systems outside of the JCMS. Thus, data could not be captured from these counties using the special JCMS download programs written by the Office of Court Administrator to accommodate the LJIC's study.

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<sup>12</sup> Bureau of Justice Statistics, *Special Report: Defense Counsel in Criminal Cases*, November 2000, NCJ 179023.

<sup>13</sup> The Wyoming percentages do not include the civil case types in which a public defender may be assigned in Montana.

<sup>14</sup> Compiled and estimated from data provided by the Office of Court Administrator collected by downloading data from county Judicial Case Management System computer files.

A number of other factors also affect the consistency of the data reported. There is no standard definition of indigence. Each court may define indigence differently and use a different standard to determine whether the defendant is eligible for a public defender. This affects how often and under what circumstances a public defender will be assigned or appointed. It also means that the basis for deciding whether a public defender should be assigned for an indigent defendant can vary from county to county. Additionally, the accuracy of the data is dependent on how uniformly classification is done in each county.

All of this is a long way of stating that the caseload data available to the LJIC and the percentages reported above should be considered "soft" and incomplete.

#### State payments for county offices

In each of the 6 counties with public defender offices, the state reimburses the county for the personal services and operational expenses incurred for public defender services. The reimbursement is made proportionate to the hours worked by each attorney on the DC, DN, DJ, or DI cases, as reported on timesheets submitted to the Office of Court Administrator. Thus, the compensation rates paid to attorneys in county public defender offices depends on what salaries are paid by the county.

#### State payments to contractors and appointed attorneys

Private attorneys who are either contracted by the county or appointed by a district judge on a case-by-case basis bill the state directly and are paid directly by the Office of Court Administrator. District Court Council policy is that a contracted or appointed attorney will not be paid more than \$60 per hour for public defender work. The hourly rate paid must include all other expenses for support services because contracted and court-appointed attorneys may not bill for office expenses. However, a district judge may issue a court order setting

the hourly rate at more than \$60 per hour if, in the judge's opinion, there are "extraordinary circumstances". In other words, when a judge appoints an attorney, the judge not only sets the hourly compensation rate by court order, but approves or disapproves any other expense requests by the public defender for expenses such as for investigators, expert witnesses, or paralegal support.<sup>15</sup>

Office of Court Administrator records indicate that between July 1, 2003, and December 31, 2003, 182 different private vendors (court-appointed or county contracted private attorneys and law firms) received payments from the Office of Court Administrator for providing public defender services.<sup>16</sup> However, no more specific data than this is available because invoices submitted are not automated or entered into a data base where caseload information can be tied to the bills paid by the Office of Court Administrator.

#### Total state expenditures for district court public defender services

State expenditures for district court public defender costs in FY 2004 totaled \$8,509,298. However, after determining that some of these costs should remain separate from a state public defender budget, the LJIC estimates that the state is currently spending about \$8.1 million on what would eventually become the major portion of roughly \$14.1 million budget for the recommended new State Office of Public Defender during the first biennium.<sup>17</sup>

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<sup>15</sup> See Montana Supreme Court, Office of Court Administrator, "Handbook on the Payment of State Costs for Montana's District Courts", July 2003.

<sup>16</sup> Compiled from an Excel spreadsheet provided by the Office of Court Administrator listing vendor codes and total payments made to that vendor.

<sup>17</sup> This includes costs for witness fees, transcripts, and psychiatric evaluations. However, due to the nature of these costs and the fact that the state also pays these expenses for the prosecution, the LJIC decided that these costs should not be transferred to the new Office of State Public Defender but should remain payable by the state through the Office of Court Administrator under the  
(continued...)

*Figure 6 at Appendix C* is a spreadsheet identifying how these costs break out by cost categories. *Figure 7 at Appendix C* provides a pie chart showing how these state expenditures break out in terms of the service delivery method.

What costs remain a county obligation

The county remains responsible to fund all other district court public defender costs not reimbursable or paid directly by the state. These costs include public defender services in, for example, involuntary civil commitment cases for a developmentally disabled persons or for chemical dependency and conservatorship/guardianship cases.

*Appendix D* is a Power Point presentation summarizing the fiscal data presented to the LJIC on September 8, 2004.

According to estimates, the six counties with public defender offices are spending about \$674,157 annually on district court public defender costs that are not reimbursable by the state.<sup>18</sup>

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<sup>17</sup>(...continued)

Supreme Court. Thus, in the final fiscal analysis provided by staff of the Legislative Fiscal Division, current state costs relevant to LC 214 as finally approved by the LJIC are estimated to total \$8.1 million.

<sup>18</sup> The estimates are based on a telephone survey conducted by staff of the Legislative Fiscal Division. The question asked in the survey was "What public defender district court costs did you have in FY 2004 that were not reimbursable by the state Office of Court Administrator?"

## **Justice's Courts**

### Structure of services

Each county has the option of establishing one or more justice's courts to handle misdemeanors. Typically, these courts are not courts of record. However, current law allows a county to make a justice's court a court of record. Any time a person is charged with a misdemeanor for which a penalty could be incarceration (such as in a DUI case) and the person is unable to afford an attorney, the person is entitled to a public defender.

Initially, the LJIC study focused only on public defender services in district courts. However, it quickly became clear that the county public defender offices were also handling the justice's courts' public defender caseloads. Thus, if the county offices were to become state offices, the delivery of public defender services to the justice's courts would somehow need to be addressed; and if left to each county, issues about uniform standards and adequate oversight of public defender services could be raised. Consequently, the LJIC decided to expand the scope of the study to include public defender service delivery in justice's courts as well as in district courts.<sup>19</sup>

While each county with a county public defender office also handles justice's court cases, the delivery of services in justice's courts of other counties are a mixed bag--some counties cover public defender services provided in district courts and justice's courts in one contract that covers both courts, while other counties use separate contracts for each court. Most of the counties simply rely on judges to appoint private attorneys on a case-by-case basis in their justice's courts, just as in their district courts.

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<sup>19</sup> See LJIC, Subcommittee on Public Defender Reform, Minutes, June 28, 2004.

### Caseload

Although legislative staff requested from each justice's court public defender caseload data, the data was not uniformly collected and only partially reported. Statistics provided by the NLADA suggest that for every district court criminal case requiring a public defender there are three misdemeanor cases requiring public defenders.<sup>20</sup> The NLADA also reports that about 80% to 85% of misdemeanor cases are likely to require a public defender.<sup>21</sup>

*Figure 8 at Appendix C* provides a chart of total case filings in justice's courts by county in calendar year 2003.

*Figure 9 at Appendix C* is a pie chart of justice's court case filings by case type in calendar year 2003.

### Funding

To assist the LJIC Subcommittee on Public Defender Reform estimate costs for providing public defender services in justices' courts, MACo staff surveyed each county, asking the county to identify in lump sum how much money it spent on public defender services in FY 2004. The results of that survey are provided at *Figure 10 at Appendix C*. According to the MACo survey, counties are currently spending a total of about \$1,040,000 on public defender services in justices' courts.

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<sup>20</sup> Mr. David Carroll, NLADA Director of Research and Evaluations, testimony to the LJIC Subcommittee on Public Defender Reform, June 28, 2004.

<sup>21</sup> Staff interview with Mr. David Carroll, NLADA Director of Research and Evaluations, November 3, 2004.

## **Municipal and city courts**

### Structure of services

Each city has the option of establishing one or more city courts or municipal courts. A municipal court is a court of record, while a city court is not. Montana currently has five municipal courts, one located in each of the following cities: Missoula, Billings, Bozeman, Great Falls, and Kalispell. In municipal or city court cases where incarceration is a potential penalty and the defendant is financially unable to retain private counsel, a public defender must be provided.

Again, the LJIC study initially focused on the district courts, then the justices' courts. It was not until the very end of the study process, August 2004, that the LJIC Subcommittee on Public Defender Reform turned its attention to the city and municipal courts.

A quick and limited telephone survey by legislative staff revealed that Billings operates a city public defender office and that Gallatin County has negotiated and inter-local agreement so that its county public defender office handles the public defender caseload for the city courts of Bozeman and Belgrade. Often, in more rural areas, the public defender tapped for district court, justice's court, and city or municipal court cases will be the same attorney.

### Caseload

Because actual public defender caseload data is not collected or reported on a statewide basis, city and municipal court caseload data was unavailable to the LJIC. Thus, the LJIC looked at data available from Office of Court Administrator used to compile the Office's annual report. *Figure 11 at Appendix C* provides a chart of the total case filings in city and municipal courts. *Figure 12 at Appendix C* provides a pie chart of the total case filings by case type.

## Funding

Legislative staff estimates indicate that cities are spending about \$740,000 annually on public defender services. However, caution is advised in relying on this estimate because it is based on using a telephone survey of the state's five largest cities (each with a municipal court) and staff estimating possible maximum and minimum costs.

## **Summary and conclusions about the current system**

- ▶ The state has no automated capability to collect accurate public defender caseload data.
  
- ▶ Public defender service delivery currently cuts across state, county, and city jurisdictional boundaries. A criminal case in which a person is entitled to a public defender may initially be filed in a municipal, city, or justice's court where initial hearings may be held prior to the case being moved to the district court. Additionally, public defenders working on cases in district court and paid by the state for that work may also be the same public defender used in justice's or city court cases. All this is further complicated by the fact that in many counties, the justice's and city courts are operated as combined courts.
  
- ▶ There is no standard definition of indigence to govern a court's determination of whether a person with a given income level is considered indigent. Each court requires a person who requests counsel to fill out and sign an affidavit. However, each court may develop its own affidavit and set its own criteria.<sup>22</sup>

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<sup>22</sup> According to the Office of Court Administrator, the District Court Council is, as of November 5, 2004, preparing to consider a draft policy that would set standard guidelines for how each district court should define and determine indigence.

(continued...)

- ▶ The Supreme Court has adopted policies outlined in its "Handbook on the Payment of State Costs in Montana's District Courts", July 2003, which specify what public defender costs are eligible or not eligible for state payment. These policies set \$60 per hour as the maximum amount a contract or court-appointed attorney may be paid. In contrast, public defenders in county offices are paid by the state based on the salary that is set by the county.<sup>23</sup>
  
- ▶ The state currently pays about \$8.1 million annually for public defender services delivered in district court for criminal, child abuse and neglect, civil involuntary commitment for mental illness, and juvenile delinquency cases.<sup>24</sup> These cases constitute the vast majority of all case types where a public defender could be appointed. However, there are some district court cases requiring public defenders and these costs are paid for by the county. County public defender office expenses that are not reimbursable by the state amount to an estimated \$675,157 annually.
  
- ▶ Counties are spending approximately \$1,040,000 on public defender services in justice's courts, based on a MACo survey.
  
- ▶ Cities are spending an estimated \$737,546 on public defender services in municipal and city courts, based on a quick telephone survey of municipal courts and several assumptions applied by staff.

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<sup>22</sup>(...continued)

However, this policy would not apply to justice's, city, or municipal courts.

<sup>23</sup> Public defender staff serving in justice's, city, or municipal courts are compensated entirely by the local government based on the

<sup>24</sup> This does not include costs for transcripts, witnesses, or psychiatric evaluations associated with public defender cases. These additional costs are estimated to be about \$400,000 annually.

*Appendix D* provides a power point presentation summarizing the fiscal data presented to the LJIC on September 8, 2004.

**PART 5:**  
**POLICY ISSUES, GOALS, OPTIONS, AND DECISIONS**

The key policy issues, questions, and goals discussed by the LJIC and the Subcommittee on Public Defender Reform included the following:<sup>25</sup>

**Structure**

*Policy question:*

- ▶ How should Montana's public defender services be structured?

*Policy goals:*

- ▶ Accountability
- ▶ Adequate oversight and supervision
- ▶ Independence from undue influence or conflicts of interest
- ▶ Flexibility to meet local needs
- ▶ Incorporation of current system to the extent things are working well, but change to the extent things are not working well
- ▶ Uniformity in the determination of indigence and eligibility for public defender services
- ▶ Appropriate channels available for grievances

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<sup>25</sup> These were compiled after the LJIC's meetings were concluded based on staff's assessment of all the discussion among LJIC and Subcommittee members during the meetings. These were not formally adopted or expressly stated by any member, the LJIC, or the Subcommittee on Public Defender Reform.

## **Quality of services**

*Policy question:*

- ▶ What can be done to ensure that eligible individuals are provided with effective and competent assistance of counsel as required by law?

*Policy goals:*

- ▶ Statewide performance standards
- ▶ Appropriate education and training for public defenders
- ▶ Providing public defenders with access to needed support services, such as services provided by paralegals and investigators
- ▶ Caseload standards and caseload management system to ensure public defenders are not overloaded
- ▶ Adequate pay and compensation
- ▶ Case assignments that match the capabilities of the public defenders
- ▶ Sufficient parity with the prosecution

## **Funding**

*Policy question:*

- ▶ How should public defender services be funded (e.g., funding levels, sources, spending authority, budgetary accountability, etc.?)

*Policy goals:*

- ▶ Fiscal accountability
- ▶ Responsible and efficient use of available resources
- ▶ Sufficient funding
- ▶ Appropriate cost sharing among the state, counties, and cities
- ▶ Appropriately defining indigence to control costs but ensure constitutional and legal obligations are met (i.e., establishing an appropriate threshold and definition for indigence so that those who really need public defenders are provided with public defenders, those with some ability to pay for services do pay for services proportionate to their ability to pay, and those who do not meet the definition of indigent do not get assigned a public defender)

## **Options considered**

On March 20, 2004, the full LJIC considered the following three basic options concerning public defender services in Montana:

Option A: Retain the current system, but add some clarity to the statutes regarding the role of the state and counties and wait to see how the ACLU lawsuit is settled by the courts.

Option B: Develop a hybrid system where the state would set policy and standards and manage a state contracted services program so judges would no longer appoint public defenders on a case-by-cases basis, but provide that county public defender offices remain locally controlled by the counties. (This would involve enhancing the role of the current Appellate Defender Commission and the District Court Council to oversee standards for county public defender programs, which would essentially leave oversight of public defenders under the auspices of the Judicial Branch.)

Option C: Develop a statewide public defender system managed and supervised by a state public defender office.

After receiving input and testimony from numerous stakeholders, it became clear that Option A was not considered a real option, that Option B was unacceptable to the Judicial Branch, and that there was overwhelming support for and compelling issues weighing in favor of Option C. Thus, the LJIC voted unanimously to pursue development of Option C, a statewide public defender system.<sup>26</sup>

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<sup>26</sup> See LJIC, Minutes, March 20, 2004.

## **Key policy decisions and rationale**

### The independence, duties, and makeup of the public defender commission

With respect to the proposed Public Defender Commission, committee discussion focused on how best to ensure that the membership of the commission was appropriate to its duties. The Committee discussed recommendations by the NLADA that such a commission consist of between 9 and 13 members and represent a range of interests, but that it not include law enforcement, judicial, or prosecutorial officers. The LJIC decided by consensus that a 7-member commission was best, subject to further discussion during the session.<sup>27</sup>

*See New Section 5 of LC 214.*

### Structure of services balanced with flexibility

The Subcommittee on Public Defender Reform considered various methods for delivering public defender services, as follows:

- ▶ providing that all public defenders be salaried state employees, as is done in Colorado, New Mexico, and, with some exceptions, in Wyoming;
- ▶ providing that public defender services be provided entirely through contracted services, as is done in Oregon, which could include contracting with loose consortiums of private attorneys;  
or

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<sup>27</sup> See LJIC, Subcommittee on Public Defender Reform, Minutes, August 8, 2004, and LJIC (full committee), Minutes, August 9, 2004.

- ▶ providing that a private, non-profit corporation administer a statewide public defender system, as is done in New Hampshire.

The Subcommittee on Public Defender Reform discussed the pros and cons of each of these service delivery models, which included consideration of how policy goals such as standardization, quality assurance, fiscal accountability, efficiency, and consideration of and responsiveness to local needs, could be met by the model. Subcommittee members reached consensus that the Public Defender Commission and Chief Public Defender should have the flexibility to decide how best to structure service delivery within Montana. Members also agreed that the Commission should divide the state into no more than 11 service regions, that an office with salaried state staff could be established within each region (if approved by the commission), or that services within a region could be delivered through contracted services.

*See New Section 4, subsection (2) in LC 214.*

#### Eligibility and indigence determination

According to the NLADA, nationally, the definition of indigence with respect to public defender programs is most often set at 150% of federal poverty guidelines. (See *Figure 13 at Appendix C* for a chart of these guidelines.) Colorado, Wyoming, Oregon, and North Dakota have set their eligibility thresholds at 125% of poverty. In Montana, 133% percent of poverty is the current threshold set for public assistance eligibility. The Subcommittee on Public Defender Reform discussed these thresholds and reached consensus to set the threshold for indigence in LC 214 at 133% of poverty.

The Subcommittee also discussed the idea of a partial indigence standard to address the situation where a person may have income above the set poverty threshold, but is still financially unable to retain private counsel. Some states have adopted partial indigence standards whereby a person in this situation

may be provided with public defender services, but must make some sort of financial contribution for a portion of the public defender costs. The Subcommittee decided to incorporate this concept into LC 214 and create a category called "partial indigence". However, there was much discussion about whether or not a partial indigence provision would work. In the interest of compromise and consensus, the Subcommittee decided to leave this in the bill subject to further discussion during the session.

*See New Section 13 of LC 214.*

Some of the practical issues with respect to eligibility and indigence determination are that some cases are more complex and time consuming than other cases. For example, defense costs will be higher for a person charged with homicide than for a person charged with a misdemeanor offense. Consequently, New Section 13, subsections (4) and (5) in LC 214 includes language about considering whether a person's disposable income and assets are sufficient or insufficient to retain private counsel.

What remains somewhat problematic in the language of New Section 13 in LC 214 is that, even with the partial indigence provision, if a person's household income is above 200% of poverty, the person will not be considered eligible for public defender services even if the nature of the charges are such that the person still does not have the financial ability to retain private counsel (such as in a homicide case). The recourse provided in LC 214 for such a person is that New Section 13, subsection (1)(d), contains language stating that any determination under the section is subject to the review and approval of the court. Thus, the courts retain ultimate authority to determine a person's eligibility for public defender services.

Cost-sharing among the state, counties, and cities

The LJIC debated what the appropriate fiscal obligations were for the state, counties, and cities for funding public defender services within their jurisdictions. Members reached consensus that the obligation should be shared proportionate to the current spending ratios. The state is paying for 77.7% of the estimated total expenditures, counties are paying 15.6%, and cities are paying 6.7%. See *Figure 14 at Appendix C*. There are pros and cons to setting future funding obligations based on current funding ratios, all of which is discussed in the minutes of the LJIC's September 8, 2004, meeting. However, the consensus among LJIC's members was that setting future funding obligations based on current funding ratios seemed to be the most reasonable approach at this time given the state's inability to determine actual caseloads.

Cost allocation factors

Cost allocation factors (i.e., the method to be used to calculate what each county and city will pay to reach the total percentages of the county and city obligations specified above) is also set forth in New Section 14 of LC 214. These factors and the calculation methodology were developed based on Wyoming's method of allocating the costs of its statewide public defender program. The cost allocation factors include consideration of population, taxable value of property in each jurisdiction, and the index crime rate.<sup>28</sup> The LJIC's consensus was that the index crime rate should eventually be replaced by an actual caseload factor when accurate data becomes available. Thus, language was added to New Section 6, subsection (9), of LC 214 requiring the Public Defender Commission to make recommendations to the legislature

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<sup>28</sup> Index crimes are the categories of crime (such as homicides, assaults, felony burglaries, etc.) determined by the Montana Board of Crime Control to be the most serious. The index crime rate is used in LC 214 as a cost allocation factor only with respect to the counties because index crime rate information is not readily available for every city.

about how to amend these cost allocation factors to include a factor based on caseload.<sup>29</sup>

### Transition and implementation

The LJIC provided for a phased-in implementation to ensure that the Public Defender Commission and a Chief Public Defender had time to adopt appropriate standards, hire staff, and establish management systems before the Office of State Public Defender became responsible for the public defender caseload statewide. Thus, LC 214 provides that the system would not be fully operational until July 1, 2006.

Other key considerations are reflected in the implementation and transition sections of LC 214 (Sections 67, 68, and 69), which provide:

- ▶ for a thorough assessment of the information technology needs of the Office of State Public Defender;
- ▶ for the transition of county and city public defender employees to state employment in what would become regional or satellite state public defender offices; and

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<sup>29</sup> When the Legislature decides the total public defender budget, cost allocation worksheets showing each county's and city's funding obligation under the formula provided for in LC 214 will be available for discussion and analysis. However, there is some controversy about whether this cost allocation method is the best approach. At the LJIC's final meeting on September 8, 2004, MACo suggested looking at how county and city obligations could be paid through a one-time adjustment to the base of each county's and city's entitlement share. The entitlement share is a method enacted by the legislature to simplify the administration of revenue collection and disbursements. Rather than discussing MACo's entitlement share proposal "at the last minute", the LJIC decided to move forward with LC 214 as drafted for the September 8, 2004, meeting.

- ▶ that the Appellate Defender Commission and the Office of Appellate Defender continue to operate through the transitional period (FY 2006) and not have their respective functions transferred to the Public Defender Commission and the Office of State Public Defender until July 1, 2006.

## **PART 6: CONCLUSION**

There is little doubt that Montana's public defender services need attention. The ACLU lawsuit has been suspended pending action by the 59th Legislature to address the concerns that the ACLU and others have raised. Although the Attorney General has signed a stipulation with the ACLU to support and lobby for legislation meeting the goals outlined in the stipulation, the legislature is the only body with the authority or power to set public policy in this area and provide state funding. Maintaining the status quo, though dismissed by the LJIC as a viable option, is an option open to the full legislature, but would likely result in the resumption of litigation by the ACLU.

The LJIC worked independently of the ACLU and of the NLADA study of Montana's system. Committee members deliberated all the research it could gather, considered testimony from all stakeholders who became involved in the process, and worked diligently to formulate a bipartisan policy. For good or ill, this policy is now reflected in LC 214.



# **Appendix A**

**LC 214**

**Montana Public Defender Act**



BILL NO. LC0214  
INTRODUCED BY  
BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

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

72-5-315, 72-5-322, AND 72-5-408, MCA; REPEALING SECTIONS 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, AND 46-8-213, MCA; AND PROVIDING EFFECTIVE DATES."

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

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

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

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

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

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

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

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

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

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

(1) establish a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and

other persons in civil cases who are entitled by law to assistance of counsel at public expense;

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

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

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

(5) ensure that public funding of the statewide public defender system is provided and managed in a fiscally responsible manner.

**NEW SECTION. Section 4. Statewide system -- structure and scope of services -- assignment of counsel at public expense.** (1) There is a statewide public defender system, which must deliver public defender services in all courts in this state. The system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in [section 10], establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in [section 3].

(3) Beginning July 1, 2006, when a court orders the office to assign counsel, the office shall immediately assign a public defender qualified to provide the required services. The commission may establish protocols to provide that public defenders work with a court to establish assignment rosters or other methodologies to ensure that the office makes appropriate assignments in a timely manner.

(4) Beginning July 1, 2006, a court may order the office to assign counsel under [sections 1 through 4 and 6 through 14] in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to [section 13], as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in [section 15];

(iv) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(v) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vi) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The commission consists of seven members appointed by the governor as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**NEW SECTION. Section 6. Commission -- duties -- report -- rules.**

The commission shall supervise and direct the system. In addition to other duties assigned pursuant to [sections 1 through 4 and 6 through 14], the commission shall:

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

(2) establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner

that is fair and consistent throughout the state. The standards must take into consideration:

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

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

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

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

(e) performance criteria; and

(f) performance evaluation protocols.

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

(4) review and approve any proposal to hire permanent staff;

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

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

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

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

(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice

interim committee established pursuant to 5-5-202 and 5-5-226. The report must include detailed expenditure, caseload, and workload data by court and case type and any recommendations for amending the cost allocation factors provided for in [section 14] in order to include a cost allocation factor based on actual caseload and the associated workload.

**NEW SECTION. Section 7. Office of state public defender -- personnel -- compensation -- expenses.** (1) There is an office of state public defender. The head of the office is the chief public defender, who is supervised by the commission.

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

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

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

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

(ii) a chief appellate defender;

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

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

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

(b) assistant public defenders; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) establish administrative management procedures for regional offices;

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

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

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

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

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

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

**NEW SECTION. Section 9. Training program -- coordinator.** (1) There is within the office a position of training coordinator for public defenders.

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

(3) The training coordinator shall:

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

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

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

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

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

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

**NEW SECTION. Section 10. Regional offices -- deputy public defenders -- office space.** (1) Beginning July 1, 2006, the chief public defender shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to [section 4(2)].

(2) Each deputy public defender shall:

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

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

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

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

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

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

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

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

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

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

**NEW SECTION. Section 11. Contracted services -- rules.** (1) The commission shall establish standards for a statewide contracted services program that ensures that contracting for public defender services is done fairly and consistently statewide and within each public defender region.

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

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

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

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

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

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

(d) reporting protocols and caseload monitoring processes;

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

(f) a process for conflict resolution; and

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

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

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

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

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

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

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

(c) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

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

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

**NEW SECTION. Section 13. Eligibility -- processing fee -- determination of indigence and partial indigence -- contributions toward costs -- rules.**

(1) (a) Beginning July 1, 2006, when a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

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

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

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

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

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

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

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

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

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

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

(4) An applicant is indigent if:

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

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

(5) An applicant is partially indigent if:

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

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain

competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

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

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

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

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

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

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

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

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

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

(d) may provided for the use of other public or private agencies or contractors to conduct eligibility screening and collect processing fees and contribution amounts payable under this section;

(e) must avoid unnecessary duplication of processes and provide that:

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

(ii) the procedures for collecting the processing fee and contributions required pursuant to this section use collection processes already in place to the extent feasible; and

(f) must prohibit individual public defenders from performing eligibility screening or collection activities pursuant to this section.

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

**NEW SECTION. Section 14. Legislative findings -- cost-sharing.** (1)

The legislature finds that protecting the constitutional rights of persons entitled by law to effective assistance of counsel at public expense is the obligation of the state, each county, and each city operating a court where counsel must be assigned to eligible persons. The legislature further finds that enactment of a statewide public defender system funded with pooled resources is the most effective and efficient way of ensuring the provision of effective assistance of counsel in a manner that meets state, county, and city obligations.

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

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

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

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

(c) total city funding must equal 6.7%.

(4) (a) Each county shall annually contribute to the total budget for the system the amount calculated as provided in this subsection (4).

(b) For each county, the commission shall calculate the amount to be contributed by the county by calculating specific allocation factors for the county as follows:

(i) a population allocation factor for the county must be calculated by dividing the county's population by the state population based on the most current population data available from the United States census bureau;

(ii) a taxable value allocation factor for the county must be calculated by dividing the county's taxable value by the total taxable value of all counties as reported for the previous year in the latest biennial report published by the Montana department of revenue pursuant to 15-1-205; and

(iii) a crime rate allocation factor for the county must be calculated by dividing the total number of index crimes, as defined by the Montana board of crime control provided for in 2-15-2006, committed in the county by the total number of index crimes committed in the state based on the latest statistics available for the previous year from the Montana board of crime control.

(c) A total allocation factor for the county must be calculated by adding the allocation factors determined under subsection (4)(b) and dividing the sum by three.

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

(5) (a) Each city with a city or municipal court shall annually contribute to the total budget for the system the amount calculated as provided in this subsection (5).

(b) For each city, the commission shall calculate the amount that the city is required to contribute by calculating specific allocation factors for the city as follows:

(i) a population allocation factor for the city must be calculated by dividing the city's population by the state population based on the most recent population data available from the United States census bureau; and

(ii) a taxable value allocation factor for the city must be calculated by dividing the city's taxable value by the total taxable value of all cities as reported for the previous year in the latest biennial report published by the Montana department of revenue pursuant to 15-1-205.

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

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

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

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

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

**NEW SECTION. Section 15. 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 subsection (3), upon request or if the court, in its own discretion, determines that appointment or assignment of counsel is in the best interest of justice, the court shall immediately appoint or 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;

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

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

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

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

**"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

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

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

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

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

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

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

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

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

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

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

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

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

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

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

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

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

**"3-5-511. Procedure in reference to witnesses' Witnesses' warrants -- state reimbursement.**

(1) The witnesses in criminal actions, witnesses called by a public defender, as defined in [section 2], and witnesses called in a grand jury proceeding shall report their presence to the clerk the first day they attend under the subpoena.

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

(3) The state shall reimburse the clerk for the amount specified in the warrant as provided in 3-5-901 and 3-5-902 follows:

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

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

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

**"3-5-604. Court reporters -- transcript of proceedings -- costs.**

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

(2) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (1) must be paid to the clerk of district court who shall forward

the amount to the department of revenue for deposit in the state general fund.

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

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

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

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

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

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

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

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

(a) salaries and benefits for:

(i) district court judges;  
(ii) law clerks;  
(iii) court reporters, as provided in 3-5-601;  
(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and  
(v) other employees of the district court;  
(b) except as provided in [section 7(5)], the following expenses in criminal cases:  
~~(i) fees for transcripts of proceedings, as provided in 3-5-604; expenses for indigent defense that are paid under contract or at an hourly rate, and expenses for psychiatric examinations;~~  
(ii) witness fees and necessary expenses, as provided in 46-15-116;  
(iii) juror fees and necessary expenses;  
(iv) for a psychiatric evaluation under 46-14-202, the cost of the examination only, as provided in 46-14-202(4); and  
(v) for a psychiatric evaluation under 46-14-221, cost of the examination and other associated expenses, as provided in 46-14-221(5);  
(c) except as provided in [section 7(5)], the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;  
(d) except as provided in [section 7(5)], the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:  
(i) transcript fees;  
(ii) witness fees; and  
(iii) expenses for psychiatric examinations;  
(e) except as provided in [section 7(5)], the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or

termination of the parent-child legal relationship and permanent custody:  
(i) transcript fees;  
(ii) witness fees;  
(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;  
(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and  
(v) expenses associated with court-ordered alternative dispute resolution;  
~~(f) in involuntary commitment cases pursuant to 53-21-121, reasonable compensation for services and related expenses for counsel appointed by the court;~~  
(f) except as provided in [section 7(5)], costs of juror and witness fees and witness expenses before a grand jury;  
(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);  
(h) except as provided in [section 7(5)], all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;  
(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors, ~~but excluding the cost of providing district court office, courtroom, and other space as provided in 3-1-125;~~ and  
(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to

41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5, ~~and the costs of providing youth court office, courtroom, and other space as provided in 3-1-125.~~

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

~~(3) In addition to the costs assumed under the state funded district court program, as provided in subsection (1)~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(c) salaries of employees and expenses of the offices of county attorneys;~~

~~(d)(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;~~

~~(e)(b) costs of providing and maintaining district court office space; or~~

~~(f)(c) charges incurred against a county by virtue of any provision of Title 7 or 46."~~

**Section 20.** Section 18-4-132, MCA, is amended to read:

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

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

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

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

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

(d) consulting actuaries;

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

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

(g) a private investigator licensed by any jurisdiction;

(h) a claims adjuster; or

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

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

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

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

**Section 21.** Section 26-2-501, MCA, is amended to read:

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

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

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

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

**Section 22.** Section 26-2-505, MCA, is amended to read:

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

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

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

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

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

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

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

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

**"26-2-508. Witnesses on behalf of for state, or county, or public defender -- advance payment not required.** The attorney general, ~~or~~ any county attorney, or any public defender, as defined in [section 2], is authorized to cause subpoenas to be issued and compel the attendance of witnesses ~~on behalf of the state or county~~ without paying or tendering fees in advance to either officers or witnesses~~7~~, and any A witness refusing to or failing to attend, after being served with a subpoena, may be proceeded against and is liable in the same manner as is provided by law in other cases where fees have been tendered or paid."

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

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

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

**"40-5-236. Referral of paternity issue to district court -- record -- parties -- exclusion of other matters -- fees.** (1) If the scientific evidence resulting from a paternity blood test does not exclude the alleged father and the alleged father continues to deny

paternity, the alleged father shall file a written objection with the department within 20 days after service of the paternity blood test results specifically requesting referral of the paternity issue to the district court. Upon receipt of the written objection, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

- (a) a copy of the notice of parental responsibility and the return of service of the notice;
- (b) the alleged father's written denial of paternity, if any;
- (c) the transcript of the administrative hearing;
- (d) the paternity blood test results and any report of an expert based on the results; and
- (e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys ~~appointed~~ assigned under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."

**Section 27.** Section 40-6-119, MCA, is amended to read:

**"40-6-119. Right to counsel -- ~~payment of counsel fees and costs~~ — free transcript on appeal.** (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall ~~appoint~~ order the office of state public defender, pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to assign counsel for a party who is financially unable to obtain counsel.

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

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

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

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

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public

disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

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

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

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

**Section 29.** Section 41-3-422, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

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

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

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

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this

chapter. Proceedings under a petition are not a bar to criminal prosecution.

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

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

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

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

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

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

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

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

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall ~~appoint~~ immediately provide for the appointment or assignment of an attorney as provided for in [section 15] to represent the unavailable party when, in the opinion of the court, the interests of justice require.

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

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

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

(10) An abuse and neglect petition must:

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

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

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

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

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

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

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

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

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

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

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

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

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

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

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

**Section 30.** Section 41-3-423, MCA, is amended to read:

**"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan.** (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to voluntary protective services agreements, development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward

reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

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

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

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

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

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

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

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

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

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

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

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever

steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning may be used.

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

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

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

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

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

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected

child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel as provided for in [section 15]. The court may permit testimony by telephone, audiovisual means, or other electronic means.

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

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

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

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

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

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

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

(6) The court may consider:

- (a) terms and conditions for parental visitation; and
- (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

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

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

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

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

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

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

- (a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:
  - (i) the department;

(ii) a licensed child-placing agency; or

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

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

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

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

~~(5)~~(4) 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.

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

**Section 33.** Section 41-3-1010, MCA, is amended to read:

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

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

(iii) whether caseworkers have diligently provided services;  
(iv) whether appropriate services have been available to the child and family on a timely basis; and  
(v) the results of intervention.

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

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

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

(4) Notice of each review must be sent to the department, any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney or the child's assigned attorney, the guardian ad litem, the court-appointed ~~attorney or~~ special advocate of the child, the county attorney or deputy attorney general actively involved in the case, the child's tribe if the child is an Indian, and other interested persons who are authorized by the board to receive notice and who are subject to 41-3-205. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

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

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

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

(c) compliance with the case plan;

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

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

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

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

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

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

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

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

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

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

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

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

**Section 34.** Section 41-3-1012, MCA, is amended to read:

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

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

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

(4) Deliberations concerning the recommendations that will be made by the board must be open to all present at the review, except that the presiding officer may close all or part of a deliberation if there has been a threat of a reprisal made by someone who will

attend the review or if confidentiality laws preclude open deliberations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"41-5-1413. Right to counsel -- assignment of counsel.** In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in [section 7], to assign counsel ~~must be appointed~~ for the youth ~~if the parents or guardian and the youth are unable to provide counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14],~~ unless the right to ~~appointed~~ counsel is waived by the

youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

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

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

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

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

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

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

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the

proceedings without legal privilege to do so is punishable for contempt of court.

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

**Section 40.** Section 46-8-101, MCA, is amended to read:

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

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

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

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

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

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

**Section 41.** Section 46-8-104, MCA, is amended to read:

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

**Section 42.** Section 46-8-113, MCA, is amended to read:

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

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

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

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

**Section 43.** Section 46-8-114, MCA, is amended to read:

**"46-8-114. Time and method of payment.** When a defendant is sentenced to pay the costs of ~~court-appointed~~ assigned counsel pursuant to 46-8-113, the court may order payment to be made within a specified period of time or in specified installments. Payments must be made to the ~~clerk of district court. The clerk of district court shall forward the payments to the department of revenue for deposit in the state general fund~~ office of state public defender,

provided for in [section 7], and deposited in the account established in [section 12]."

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

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

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

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

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

(5) A default in the payment of costs or any installment may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not

discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected."

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

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

- (a) (i) the nature of the charge for which the plea is offered;
- (ii) the mandatory minimum penalty provided by law, if any;
- (iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction;

and

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

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

(c) that the defendant has the right:

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

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

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

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

(d) that if the defendant pleads guilty or nolo contendere in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be

entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;

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

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

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

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

**"46-14-202. Examination of defendant.** (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the district court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse or, if the examination cannot be done in the community, shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental condition.

(2) ~~The~~ If the examination cannot be done without a commitment, the court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or advanced

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

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

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

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

**"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses.** (1) The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate

mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, of the department of public health and human services for so long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.

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

(3) (a) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4).

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

(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner

provided in Title 53, chapter 20, to determine the disposition of the defendant pursuant to those provisions.

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

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

**Section 48.** Section 46-15-115, MCA, is amended to read:

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

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

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

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

**"46-15-116. Fees, costs, and expenses.** (1) When a person attends before a judge, grand jury, or court as a witness in a criminal case upon a subpoena, the witness must receive the witness fee

prescribed by Title 26, chapter 2, part 5, except as otherwise provided in this section.

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

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

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

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

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

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

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

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

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea

is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, costs of ~~court-appointed~~ assigned counsel, as provided

in 46-8-113, and, if the offender is a sex offender, costs of any chemical treatment.

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

**Section 52.** Section 46-18-201, MCA, is amended to read:

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

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

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

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

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

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

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

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

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

(d) commitment of:

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

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

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

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

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

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

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

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

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

(c) conditions for probation;

(d) payment of the costs of confinement;

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

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

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

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a

victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

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

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

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision

within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

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

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

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

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

(i) ~~appoint~~ order the office of state public defender to assign counsel to represent the person ~~if~~ pending a determination by the court finds office of state public defender that the person is indigent, as defined in [section 2], and that the person either has accepted the offer of ~~appointment~~ assigned counsel or is unable to

competently decide whether to accept the offer of ~~appointed~~ assigned counsel;

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

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

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

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

(e) The expenses of counsel ~~appointed~~ assigned pursuant to this subsection (3) must be paid ~~as provided in 46-8-201~~ by the office of state public defender.

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

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

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

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

**Section 54.** Section 50-20-212, MCA, is amended to read:

**"50-20-212. Procedure for judicial waiver of notice.** (1) The requirements and procedures under this section are available to minors and incompetent persons whether or not they are residents of this state.

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

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

(3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym or using the petitioner's initials. All documents related to the petition are confidential and are not available to the public. The proceedings on the petition must be given

preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the notice requirement is waived.

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

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

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

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

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

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

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

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

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

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

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

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

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

(2) The office may:

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

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from

an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

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

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

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

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

**Section 56.** Section 53-20-125, MCA, is amended to read:

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

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

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

(2) If as a result of the screening required by 53-20-133 the residential facility screening team concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team shall file its written recommendation and report with the court. The report must include the factual basis for the

recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent.

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

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

(a) the respondent;

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

(c) the responsible person;

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

(e) the county attorney;

(f) the residential facility;

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

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

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

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

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

(8) If the court finds that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, it shall order the respondent committed to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, it shall dismiss the

petition and refer the respondent to the department of public health and human services to be considered for placement in community-based services according to 53-20-209. If the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, it shall dismiss the petition.

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

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

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

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

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

**"53-21-112. Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

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

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

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

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

**Section 58.** Section 53-21-116, MCA, is amended to read:

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

**Section 59.** Section 53-21-122, MCA, is amended to read:

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

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

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. ~~if the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause, the judge shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided~~

~~for in [section 7], to immediately provide assigned counsel. The judge, through the clerk of court, may also order~~ must also direct that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the ~~clerk's~~ order, as well as to furnish the respondent with a copy of the order. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge. ~~The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present."~~

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

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

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

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

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. ~~The person must be advised of the right to counsel, and if the person is unable to hire counsel, the court shall appoint an attorney to represent the person at the expense of the county.~~ The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

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

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

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

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed

by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

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

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

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

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

requests examination by a physician, the court shall employ a licensed physician.

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

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

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

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

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

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

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

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

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program

operated or approved by the department of corrections or in a state prison.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) community service;

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

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

(5) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may,

at its discretion, place the offender in another facility or program.

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

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

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

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

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

(c) any living parent of the minor.

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

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

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

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

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

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

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

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

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

~~him the person~~ in the proceeding~~7~~. The official or assigned counsel ~~who shall have~~ has the powers and duties of a guardian ad litem.

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

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

**Section 65.** Section 72-5-322, MCA, is amended to read:

**"72-5-322. Petition of guardian for treatment of ward.** (1) If a guardian believes that the guardian's ward should receive medical

treatment for a mental disorder and the ward refuses, the court may, upon petition by the guardian, grant an order for evaluation or treatment. However, the order may not forcibly detain the ward against the ward's will for more than 72 hours.

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

**Section 66.** Section 72-5-408, MCA, is amended to read:

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

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of ~~his~~ the person's own choice, the court ~~must appoint a lawyer~~ shall order the office of state public defender, provided for in [section 7], to assign counsel to represent him the person pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14]. Assigned counsel who then has the powers and

duties of a guardian ad litem. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

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

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

**NEW SECTION. Section 67. Implementation.** (1) The governor shall appoint the members of the public defender commission established pursuant to [section 5] no later than July 1, 2005.

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

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

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

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

(6) The department of administration shall assist the commission in developing a public defender information technology system that utilizes existing resources as much as possible and that interfaces with state executive branch, judicial branch, and local computer systems to the extent necessary and practicable to ensure that data required to effectively manage public defender caseloads and track costs can be efficiently collected and analyzed.

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

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

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

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

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

(6) A transferred employee may elect to become a member of the state employee benefit plan beginning July 1, 2006, or remain on

the employee's county or city benefit plan through the remainder of the plan year in effect on June 30, 2006. For an employee who elects to remain on a county or city benefit plan, the monthly state contribution toward insurance benefits must be transferred to the county or city benefit plan. Any benefit costs in excess of the state contribution must be paid by the employee.

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

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

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

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

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

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

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

**NEW SECTION. Section 70. Rights to property.** (1) Subject to subsection (2), office equipment, computer equipment, furniture,

and fixtures that are owned by a county or city and used by employees of a public defender office on June 30, 2006, remain the property of the county or city unless otherwise agreed upon by the county or city and the state.

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

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

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

**NEW SECTION. Section 71. Interim report.** During fiscal year 2007, the public defender commission established in [section 5] shall make regular progress reports to the governor, legislative finance committee, law and justice interim committee, and supreme court regarding the operation and administration of the statewide public defender system.

**NEW SECTION. Section 72. Repealer.** Sections 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, and 46-8-213, MCA, are repealed.

**NEW SECTION. Section 73. Codification instruction.** (1) [Sections 1 through 4 and 6 through 14] are intended to be codified as a new title in the Montana Code Annotated.

(2) [Section 5] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 5].

(3) [Section 15] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 15].

NEW SECTION. Section 74. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 75. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 17 through 19, 23 through 28, 33 through 66, and 72] are effective July 1, 2006.

- END -

# **Appendix B**

## **Meeting Agendas**

# **Appendix C**

## **Figures Referenced in Report**

## **Appendix D**

# **Fiscal Presentation by Staff of the Legislative Fiscal Division**