

\*\*\*\* Bill No. \*\*\*\*

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 a purpose and definitions; establishing a statewide public defender system to deliver assigned counsel services in state, county, 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 for eligibility and indigence determination; reallocating payment responsibilities for certain costs payable by the office of court administrator and the 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, 26-2-501, 26-2-505, 26-2-506, 26-2-508, 26-2-510, 40-6-

119, 41-3-422, 41-3-607, 41-5-111, 41-5-112, 41-5-1413, 42-2-405, 46-8-101, 46-8-104, 46-8-114, 46-14-202, 46-14-221, 46-15-115, 46-15-116, 46-21-201, 53-9-104, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, 72-5-315, 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 14] may be cited as the "Montana Public Defender Act".

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

(1) "Commission" means the public defender commission established in 2-15-1020.

(2) "Contractor" means a private attorney, law firm, or other legal entity authorized to provide legal services in this state, including a consortium of individuals or legal entities, that contracts with the state office or a regional office to provide public defender services for the statewide public defender system.

(3) "Court" means the supreme court, district court, youth court, justices's court, municipal court, or city court.

(4) "Indigent" means that a person who has been determined under the provisions of [section 6] to be indigent or partially

indigent and financially unable to retain private counsel.

(5) "Office" means the office of state public defender established in [section 8].

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

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

NEW SECTION. **Section 3. Purpose.** The purpose of [sections 1 through 14] is to:

(1) establish a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons entitled by law to assistance of counsel at public expense;

(2) ensure that the system is free from undue political interference;

(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) ensures that public funding of the statewide public defender system is provided and managed in a fiscally responsible

manner.

NEW SECTION. **Section 4. Public defender commission -- members -- procedures.** (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 and 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 Indian Child Welfare Act; and

(iii) one attorney who represents an association of criminal defense lawyers; and

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

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

(ii) one 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, pursuant to 2-15-121. However, the commission may hire its own personnel, including a chief public defender, and is otherwise exempt from 2-15-121 as provided in [section 7(2)] and [section 8(9)].

(6) A member of the commission may not while serving a term on the commission serve as a judge, public defender employed by or under contract with the office of state public defender established in [section 8], 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 5. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1)**

There is a statewide public defender system which shall 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 develop a strategic plan for service delivery and divide the state into not more than 11

public defender regions. Each region may contain a staffed public defender office to service the region, as provided in [section 11].

(3) Except as provided in subsection (5), when a person is entitled by law to assistance of counsel at public expense and counsel is assigned by a court, the assignment must be made to the office rather than to a specific public defender and is subject to the provisions of [sections 1 through 14].

(4) Assistance of counsel under [sections 1 through 14] must be provided:

(a) in cases in which a person is entitled to assistance of counsel at public expense if determined to be indigent, as provided in [section 6], as follows:

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

(iii) for an indigent parent, guardian, or other person with physical or legal custody of a child named in a petition initiating a child abuse and neglect proceeding under 41-3-422, as provided in [section 15];

(iv) for an indigent youth in a proceeding under the 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;

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

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

(vii) for an indigent 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;

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

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

(x) for an indigent party in any proceeding listed in subsection (4) (b);

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

(i) for a party in a proceeding under the federal Indian Child Welfare Act;

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

(iii) 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;

(iv) 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;

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

(vi) 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;

(vii) 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 appellant in an appeal of a proceeding listed in this subsection (4) if the appellee was or would have been eligible for public defender services in the initial proceeding.

(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 Youth Court Act provided in Title 41, chapter 5 or an abuse and neglect proceeding under Title 41, chapter 3.

(b) However, a contractor 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 outside the scope of the public defender system and does not result in a conflict of interest.

**NEW SECTION. Section 6. Eligibility -- indigence and**



**partial indigence determination -- processing fee --**

**contributions -- rules.** (1) When the court, in its discretion, determines that assignment of counsel is in the best interest of justice, the court shall assign counsel prior to a determination under this section. As provided in [section 5(3)], the assignment must be made to the office rather than to a specific public defender. However, if the person for whom counsel was assigned is determined pursuant to this section to be ineligible for public defender services, the office shall notify the court so that the assignment may be rescinded. A person for whom counsel is assigned prior to a determination under this section is entitled to the full benefit of public defender services until the court's assignment is rescinded. 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 shall 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 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 if 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.

(3) An applicant is eligible for public defender services if the applicant is a person described in [section 5(4)]. If, pursuant to [section 5(4)(a)], the person must be indigent to be eligible, the person must be determined to be indigent as provided in subsection (4) or partially indigent as provided in subsection (5). However, to be determined to be indigent or partially indigent pursuant to this section, an applicant must first demonstrate, in accordance with rules adopted by the commission, that the applicant made a good faith effort to retain competent private counsel.

(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 applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or 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 applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the applicant's household.

(6) (a) An applicant determined to be partially indigent under subsection (5) must 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 in rule by the commission. 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 applicant's household.

(c) The court may find that failure to make the contribution required under this subsection 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 the eligibility determination process is fair and consistent statewide;

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

(c) may authorize 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;

(d) to avoid unnecessary duplication of processes, must provide that:

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

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

(e) 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 to the account established in [section

13].

NEW SECTION. **Section 7. Commission -- duties -- report -- rules.** (1) The commission shall supervise and direct the system. In addition to other duties assigned pursuant to [sections 1 through 14], the commission shall:

(a) establish the qualifications, duties, and compensation of the chief public defender, as provided in [section 8], appoint a chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender;

(b) establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that assistance of counsel provided at public expense is provided by competent counsel and is provided in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(i) 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 offenses, and other case types to ensure the effective assistance of counsel;

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

(iii) 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;

(iv) continuing education requirements of public defenders and support staff;

(v) performance criteria; and

(vi) performance evaluation protocols.

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

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

(e) 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;

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

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

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

(i) submit a biennial report to the governor, to the supreme court, and to 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 each state, county, and city court and recommendations, if any, for amending the cost allocation factors provided for in [section 14] to include a cost allocation factor based on actual caseload and the associated workload.

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

(a) the commission and chief public defender shall hire its own staff, except for any support staff provided by the department of administration for centralized services, such as payroll, human resource, 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 budget requests must be prepared and presented to the legislature and the governor independently of the department. However, nothing in this subsection prohibits the department from providing administrative support to the process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.

**NEW SECTION. Section 8. State public defender office -- chief 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 all other personnel necessary to perform the function of the office and to implement the provisions of [sections 1 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) deputy public defenders, as provided in [section 11];

(v) a training coordinator, appointed as provided in [section 10]; and

(b) assistant public defenders; and

(c) other administrative and professional support staff.

(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) The following expenses are payable by the office if the expense is incurred by 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 provided in 3-5-604.

(6) If 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 to the account provided for in [section 13].

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

(9) The administrative director, with the chief public defender's recommendations, shall prepare and present budget requests for the statewide system to the legislature in accordance with the provisions of 17-7-111 and independently of the department. However, nothing in this subsection (9) prohibits the department from providing administrative support to the process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.

**NEW SECTION. Section 9. Chief public defender -- duties.**

In addition to the duties provided in [section 8], 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 14];
- (3) develop and present for the commission's approval a regional strategic plan for the delivery of public defender services;
- (4) hire a training coordinator and supervise the training program provided in [section 10];
- (5) 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;
- (6) establish processes and procedures to ensure that office and contract personnel correctly and consistently use information technology and caseload management systems that ensure that detailed expenditure and caseload data is accurately recorded, collected, and reported;
- (7) establish management procedures for regional offices;
- (8) establish organizational structures and procedures for managing caseloads and assigning cases in a manner that ensures 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;
- (9) establish and supervise a training and performance

evaluation program for nonattorney staff members and contractors;

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

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

(13) perform all other duties assigned by the commission pursuant to [sections 1 through 14].

**NEW SECTION. Section 10. Training program -- coordinator.**

(1) There is within the office a position of training coordinator for public defenders. The position is exempt, as provided in [section 8 (3) (a)].

(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) provide local 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

defense services are provided consistently throughout the state;

(c) consolidate present and past information on important aspects of public defense and providing a pool of official opinions, legal briefs, and other relevant information;

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

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

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

**NEW SECTION. Section 11. Regional offices -- deputy public defenders -- office space.** (1) The chief public defender may, subject to the commission's approval, establish one staffed regional office in each region established by the commission under [section 5] or provide for contracted services in the region. The chief public defender shall hire, assign, and supervise a deputy public defender to manage and supervise each staffed regional office and the provision of public defender services within the region.

(2) Each deputy public defender shall:

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

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

(c) contract for services as provided in [section 12] and authorized by the chief public defender according to the

strategic plan developed by the commission;

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

(e) implement the standards and procedures established by the commission for the region;

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

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

(3) Expenses for office space required for staffed regional offices, including rent, utilities, and maintenance, must be paid by the office.

NEW SECTION. **Section 12. Contracting -- rules.** (1) The commission shall establish standards for a statewide contracting program that ensures that contracting for public defender services is done fairly and consistently statewide and within each public defender region.

(2) 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 non-attorney, and other services necessary to deliver public defender services within each public defender region in the state. All contracting pursuant to this section is exempt from the Montana Procurement Act provided in Title 18, chapter 4.

(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 within 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 each deputy public defender shall provide for contract oversight and enforcement to ensure compliance with established standards.

(6) The commission shall adopt rules to establish reasonable compensation provisions for contractors and others contracted to provide non-attorney services.

NEW SECTION. **Section 13. Public defender account.** (1)

There is a public defender account in the state special revenue fund. Money in the account may be used only for the operation of the system.

(2) Money to be deposited in the account 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 6];

(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) contributions for public defender costs ordered pursuant the Montana Youth Court Act;

(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; and

(f) gifts, grants, or donations made to support the system.

**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) 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 from federal sources, must equal 77.7%;

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

(c) total city funding must equal 6.7%.

(4) Each county shall annually appropriate and forward to the state for deposit in the account established in [section 13] the amount calculated as provided in this subsection (4).

(a) Specific allocation factors must be calculated as follows:

(i) a population allocation factor 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 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 must be calculated by dividing the total number of index crimes, as defined by the Montana board of crime control provided 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.

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

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

(5) Each city with a city or municipal court shall annually appropriate and forward to the state for deposit in the account established in [section 13] the amount calculated as provided in this subsection (5).

(a) Specific allocation factors must be calculated as follows:

(i) a population allocation factor 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 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.

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

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

(6) The formulas used in subsections (4) and (5) must be recalculated each biennium only.

(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) If a city or county does not make payment within 90 days of the invoice date, 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 to cover the amount required does not relieve the city or county from its funding obligation pursuant to this section.

NEW SECTION. **Section 15. Right to counsel.** (1) A respondent named in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) If the respondent requests a public defender because of financial inability to retain private counsel, the court shall assign a public defender pursuant to the Montana Public Defender Act provided in [sections 1 through 14].

**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; and

(21) chief public defender appointed by the public defender commission pursuant to the Montana Public Defender Act provided in [sections 1 through 14] and the employees in the positions listed in [section 8 (3)(a)], who are appointed by the chief public defender."

{Internal References to 2-18-103:  
x2-18-101          x2-18-201          x2-18-301          x32-1-211  
x44-4-101}

**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 3], and witnesses called in a civil 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 civil 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.

(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 8]."

{ *Internal References to 3-5-511:*  
x3-5-510 }

**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 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 by the office of the attorney general.

~~(4)~~ (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~~

**Unofficial Draft Copy**

As of: September 13, 2004 (8:24am)

LC0214

~~pursuant to Title 41, chapter 3, part 4 or 6, is unable to pay for a transcript a public defender requests a transcript, it the transcript must be furnished to the party public defender and paid for by the state office of state public defender, as provided in ~~3-5-901~~ [section 8].~~

(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."

{ Internal References to 3-5-604:  
a3-5-901 }

**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 8 (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, cost of the examination only, as provided in 46-202(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 8(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 8(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 8(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;~~

~~(g) (f) except as provided in [section 8(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 8(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 57 ~~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 the 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) (e):~~
  - ~~(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 or youth court office and courtroom space; or~~
- ~~(f) (c) charges incurred against a county by virtue of any provision of Title 7 or 46."~~

{ Internal References to 3-5-901:

x3-1-1601	a3-5-511	x3-5-602	a3-5-604
a3-5-604	x3-5-902	x3-5-902	x3-15-204
x3-15-204	r7-6-4023	x40-4-215	x40-4-226
r46-8-201	r46-8-202	x46-11-319	a46-14-202
a53-21-116	}		

**Section 20.** 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 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 receive any per diem when testifying in a criminal proceeding, and no witness shall receive fees in any more than one criminal case on the same day."

{ Internal References to 26-2-501:  
x69-14-113 }

**Section 21.** Section 26-2-505, MCA, is amended to read:

**"26-2-505. Expert witnesses -- authorization for additional compensation.** ~~An~~ (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."

{ Internal References to 26-2-505: None. }

**Section 22.** 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 8(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 where 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."

{Internal References to 26-2-506: None.}

**Section 23.** 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; and any 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."

{ Internal References to 26-2-508:  
x26-2-510 }

**Section 24.** 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].~~"

{ Internal References to 26-2-510: None. }

**Section 25.** 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 counsel~~ assign the office of state public defender pursuant to the Montana Public Defender Act provided in [sections 1 through 14] 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 3-5-605(4)."

{ *Internal References to 40-6-119:*  
x40-5-236 }

**Section 26.** 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 an attorney~~ assign a public defender under the provisions of the Montana Public Defender Act provided in [sections 1 through 14], 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) The respondent in the proceeding 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 to request the appointment of counsel if the person is indigent or if appointment 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."

{ Internal References to 41-3-422:  
x41-3-302      x41-3-427      x41-3-433      x41-3-437  
x41-3-437      x41-3-442      x41-3-607 }

**Section 27.** 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 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."

{ Internal References to 41-3-607:  
x41-3-422            x41-3-439            x41-3-442            x41-3-444 }

**Section 28.** 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~~ assigned by the court for a party, pursuant to the Montana Public Defender Act provided in [sections 1 through 14] must be paid by the office of state public defender established in [section 8].

(2) ~~the expenses of~~ Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses and other ~~like~~ 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 by the office of court administrator pursuant to 3-5-901.; and

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

{ Internal References to 41-5-111:  
a3-5-901 }

**Section 29.** 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 paid to the account established in [section 13].

(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."

{*Internal References to 41-5-112: None.*}

**Section 30.** Section 41-5-1413, MCA, is amended to read:

**"41-5-1413. Right to counsel -- assignment of counsel if indigent.** 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, counsel must be ~~appointed~~ assigned for the youth if the parents or guardian and the youth are unable to provide counsel, unless the right to ~~appointed~~ assigned counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication. Counsel assigned pursuant to this



section must be assigned under the provisions of the Montana Public Defender Act provided in [sections 1 through 14]."

{ Internal References to 41-5-1413:  
x41-5-1607 }

**Section 31.** 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) A public defender, as defined in [section 2], may be assigned to provide legal counsel pursuant to this section if the minor parent is indigent, as defined in [section 2]."

{ Internal References to 42-2-405:  
x42-4-301 }

**Section 32.** 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 counsel, is unable to employ counsel, and is entitled to have counsel assigned, the court shall assign counsel ~~to the defendant without unnecessary delay under the provisions of the Montana Public Defender Act provided in [sections 1 through 14].~~

~~(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."~~

{ Internal References to 46-8-101:  
x46-7-102 }

**Section 33.** Section 46-8-104, MCA, is amended to read:

**"46-8-104. Appointment after trial.** Any court of record may assign counsel under the provisions of the Montana Public Defender Act provided in [sections 1 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."

{ Internal References to 46-8-104: None. }

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

"46-8-114. **Time and method of payment.** When, pursuant to 46-8-113, a defendant is sentenced to pay the costs of court-appointed counsel, 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 established in [section 8] and deposited in the state special revenue account established in [section 13]."

{Internal References to 46-8-114: None.}

**Section 35.** 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."

{ Internal References to 46-14-202:  
x46-14-213      x46-14-311 }

**Section 36.** 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 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 in 3-5-901."

{Internal References to 46-14-221: None.}

**Section 37.** 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 defendant 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 the defendant is represented by a public defender, as defined in [section 2], satisfactory showing under subsection (1) means that the defendant had been determined to be indigent, as defined in [section 2].

(2)(3) If a defendant is indigent and not being 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."

{Internal References to 46-15-115: None.}

**Section 38.** 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 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."

{ Internal References to 46-15-116:



a3-5-901 }

**Section 39.** 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~~ assign counsel under the provisions of the Montana Public Defender Act provided in [sections 1 through 14] for a petitioner who qualifies for the appointment of counsel under Title 46, chapter 8, part 1.

(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 and wishes to file a petition under this chapter, the court ~~will appoint counsel~~ shall assign counsel under the provisions of the Montana Public Defender Act provided in [sections 1 through 14] who meets the Montana supreme court's standards for competency of appointed 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~~ assign counsel under the provisions of the Montana Public Defender Act as provided in [sections 1 through 14], to represent the person if ~~the court finds that the person is determined to be~~ indigent pursuant to [section 6] and either has accepted the offer of ~~appointment~~ assignment or is unable to competently decide whether to accept the offer of ~~appointed~~ assigned counsel;

(ii) if the offer 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 pursuant to [section 6], deny ~~appointment~~ assignment of counsel.

(c) ~~The court may not appoint counsel~~ Counsel who has previously represented the person at any stage in the case may not be assigned unless the person and the counsel expressly agree to the appointment.

(d) If a petitioner entitled to counsel under this subsection (3) is not indigent at the time that the ~~court's~~ determination is made under subsection (3)(b) but thereafter becomes indigent at any stage of the proceedings, the court shall ~~appoint~~ assign 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, established in [section 8].

(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."

{*Internal References to 46-21-201: None.*}

**Section 40.** 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 counsel for the charged person. Proceeds for payment of court-assigned counsel must be deposited in the account established in [section 13].

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."

{ *Internal References to 53-9-104:*  
x50-16-530 }

**Section 41.** 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~~ A public defender, as defined in [section 2], must be ~~appointed~~ assigned for the minor at the minor's request or at any time that the minor is faced with potential legal proceedings for involuntary commitment."

{ Internal References to 53-21-112:  
x53-21-113 }

**Section 42.** 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 at any hearing or trial. If the person is determined to be indigent pursuant to [section 6], the judge

shall ~~appoint~~ assign counsel under the provisions of the Montana Public Defender Act provided in [sections 1 through 14] 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)."

{ Internal References to 53-21-116:

x41-5-1504\*      x53-20-112\*      x53-21-140 }

**Section 43.** 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 judge shall consider the petition, and if the judge finds no probable cause, it must be dismissed. If the judge finds probable cause, counsel must be immediately ~~appointed~~ assigned for the respondent under the provisions of the Montana Public Defender Act provided in [sections 1 through 14], 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~~ the public defender, as defined in [section 2].

(3) If a judge is not available in the county, 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~~ assigning 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 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. The justice of the peace shall ascertain the desires of the respondent with respect to the ~~appointment~~ assignment of counsel, and this information must be immediately communicated to the resident judge. The resident judge may ~~appoint~~ assign other counsel, subject to the provisions of the Montana Public Defender Act provided in [sections 1 through 14], 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."

{*Internal References to 53-21-122:*  
x53-21-114\*      x53-21-129\*      x53-21-140 }

**Section 44.** 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 counsel ~~appointed~~ assigned by the court ~~or provided by the court under the provisions of the Montana Public Defender Act provided in [sections 1 through 14]~~ if the person wants the assistance of counsel and is ~~unable to obtain counsel~~ indigent, as defined in [section 2]. If the court believes that the person needs the assistance of counsel, the court shall require, by ~~appointment~~ assignment under the provisions of the Montana Public Defender Act provided [sections 1 through 14] if necessary, 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."

{ *Internal References to 53-24-302:*  
x53-24-207\* }

**Section 45.** 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 be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if he is 14 or more years of age;

(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 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 may ~~appoint an attorney~~ assign a public defender under the provisions of the Montana Public Defender Act provided in [sections 1 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."

{*Internal References to 72-5-225: None.*}

**Section 46.** 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, may petition for removal of a guardian on the ground that removal would be in the best interest 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~~ assign a public defender under the provisions of the Montana Public Defender Act provided in [sections 1 through 14] to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age."

{Internal References to 72-5-234: None.}

**Section 47.** 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~~ assign a public defender under the provisions of the Montana Public Defender Act provided in [sections 1 through 14] to represent ~~him~~ the person in the proceeding, who shall have the powers and duties of a guardian ad litem.

(3) The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit

his report in writing to the court and 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 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."

{ Internal References to 72-5-315:  
x72-5-304\* }

**Section 48.** 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 may ~~appoint an attorney~~ assign a public defender under the provisions of the Montana Public Defender Act provided in [sections 1 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 to represent~~ public defender representing a minor 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~~ assign a public defender under the provisions of the Montana Public Defender Act in [sections 1 through 14] to represent ~~him who then~~ the person. The public defender representing the person 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."

{*Internal References to 72-5-408: None.*}

**NEW SECTION. Section 49. Implementation.** (1) The governor shall appoint the members of the public defender commission established pursuant to [this act] by no later than July 1, 2005.

(2) The department of administration shall provide staff support to the commission beginning July 1, 2005, 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 [this act].

(4) Standards and procedures required to implement the provisions of [this act] must be established, and the office 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 the member spends conducting the official business of the commission.

(6) The department of administration shall assist the commission to develop a public defender information technology system that utilizes existing resources to the extent possible and that interfaces with state executive branch, judicial branch, and local computer systems to the extent necessary and practical to ensure that data required to effectively manage public defender caseloads and track costs can be efficiently collected and analyzed.

**NEW SECTION. Section 50. Transition -- transfer of county and city employees to state employment -- rights.** (1) Employees of staffed 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 by [this act]. 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 8(2) and 8(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 by 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 act] 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 employment to state employment under [this act] 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 51. Transition of appellate defender commission and office.** (1) The terms of members of the appellate defender commission established in 2-15-1020 terminate on July 1, 2006.

(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 [this act]. The transfer must be effective July 1, 2006, at which time the position of chief appellate defender becomes exempt from the classification and pay plan pursuant to [section 8(3)(a)(ii)] and 2-18-103. 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 is 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 4], 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 act].



A member serving on both commissions simultaneously is entitled to the compensation provided for the public defender commission in [section 49(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 52. 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 staffed 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 [this act] 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 53. Interim report.** During fiscal year 2007, the public defender commission established in [section 4] 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 54. {standard} Repealer.** Sections 7-6-4023, 2-15-1020, 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.

{*Internal References to 7-6-4023: None.*  
*Internal References to 46-8-111: None.*  
*Internal References to 46-8-201: 46-21-201*  
*Internal References to 46-8-202: None.*  
*Internal References to 46-8-210: 46-8-210\**  
*Internal References to 46-8-211: 2-15-1020 46-8-210\**  
*Internal References to 46-8-212: 2-15-1020 46-8-210\**  
*Internal References to 46-8-213: 46-8-210 }*

NEW SECTION. **Section 55. {standard} Codification instruction.** (1) [Sections 1 through 3 and 5 through 14] are intended to be codified as a new Title in the Montana Code Annotated.

(2) [Section 4] 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 4].

(2) [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 56. {standard} 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 section].

NEW SECTION. **Section 57. {standard} Effective dates.** (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Section 13] is effective on July 1, 2005.

(3) [Section 6, 8(5) and (6), 11, 13(2)(a) through (e), 14, 15(2), 17 through 48, and 54] are effective July 1, 2006.

- END -

{Name : Sheri S. Heffelfinger  
Title : Research Analyst  
Agency : Legislative Services Division  
Phone : 444-3596  
E-Mail : sheffelfinger@mt.gov}