

## 1 HOUSE BILL NO. 335

2 INTRODUCED BY E. STAFMAN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO ABOLISHING THE  
5 DEATH PENALTY AND REPLACING IT WITH LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE;  
6 REVISING ELIGIBILITY FOR BAIL; REVISING THE AFFIRMATIVE DEFENSE OF COMPULSION;  
7 AMENDING SECTIONS 2-15-201, 10-1-1402, 37-3-103, 37-8-103, 41-5-1602, 41-5-1604, 41-5-2510, 44-5-  
8 103, 44-6-101, 45-2-101, 45-2-212, 45-5-102, 45-5-303, 45-5-503, 46-1-401, 46-4-201, 46-9-102, 46-9-106, 46-  
9 16-115, 46-16-116, 46-16-122, 46-18-102, 46-18-115, 46-18-207, 46-18-219, 46-18-220, 46-19-101, 46-20-  
10 204, 46-21-201, 46-23-201, 46-23-210, 46-23-301, 46-23-315, 47-1-105, 47-1-121, 47-1-202, 47-1-301, AND  
11 53-9-103, MCA; REPEALING SECTIONS 45-3-109, 46-18-301, 46-18-302, 46-18-303, 46-18-304, 46-18-305,  
12 46-18-306, 46-18-307, 46-18-308, 46-18-309, 46-18-310, 46-19-103, 46-19-201, 46-19-202, 46-19-203, AND  
13 46-19-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE  
14 APPLICABILITY DATE."  
15

16 WHEREAS, life is the most valuable possession of a human being, so the state should exercise utmost  
17 care to protect its residents' lives from homicide, accident, or arbitrary or wrongful taking by the state; and

18 WHEREAS, the Legislature has a duty owing to Montanans to be fiscally responsible and to spend  
19 money and resources with great care and prudence, especially in times of increased budget pressures; and

20 WHEREAS, Montana's experience with the death penalty has been characterized by significant  
21 expenditures of money and time, and the financial costs of attempting to implement death penalty statutes may  
22 not be justifiable in light of the other needs of this state; and

23 WHEREAS, the implementation of a death sentence in Montana has not been carried out in practice  
24 since 2006; and

25 WHEREAS, almost all people who face the death penalty cannot afford their own attorney, forcing the  
26 state to appoint public defenders or court-appointed attorneys to represent them; and

27 WHEREAS, capital cases are far more complicated than noncapital cases, and ABA Standards and  
28 Montana practice require the appointment of two lawyers with expertise in death penalty work for each

1 defendant and are currently each paid about \$190 an hour, and there are currently less than 10 of these  
2 lawyers in Montana; and

3 WHEREAS, these cases take longer to go to trial involving extended pretrial detention and often  
4 require experts in many fields who are compensated by the state, including but not limited to investigators,  
5 mitigation specialists, paralegals, mental health specialists, forensic pathologists, toxicologists, and other  
6 forensic experts in which taxpayers bear the burden; and

7 WHEREAS, since 2006, the state has expended \$4,374,286 for defense costs alone on 10 capital  
8 cases, none of which resulted in a death sentence, so that these cases did not require additional defense costs  
9 associated with further hearings, trials, penalty phases, or the appellate or postconviction processes, nor does  
10 this amount include significant nonitemized costs, such as county attorney costs, attorney general costs, jails,  
11 and court times; and

12 WHEREAS, in a recent Richland county case, there were two codefendants for which the state paid  
13 defense costs of \$587,323.95 and \$1,095,545.02, respectively, for a total of \$1,682,868.97, the sum of which  
14 does not include other significant nonitemized costs expended on this case, such as county attorney costs,  
15 attorney general costs, jails, and court times, and despite these expenditures, neither codefendant was  
16 sentenced to death; and

17 WHEREAS, capital trials take much longer in court than other trials, requiring attorney and juror  
18 compensation, in addition to court personnel and related costs; and

19 WHEREAS, to minimize mistakes, capital cases require special appeals and collateral state and federal  
20 proceedings, well beyond what occurs in noncapital cases; and

21 WHEREAS, in addition to defense costs, the prosecution also bears substantially increased costs,  
22 including time of county attorneys and their staff, law enforcement personnel, and resources matching the  
23 resources of the defendant, all of which are borne by Montana counties or the state; and

24 WHEREAS, after paying these substantially increased costs, few cases result in a death sentence and  
25 fewer yet are carried out, so that these expenses could have been avoided; and

26 WHEREAS, imprisoning an inmate on death row requires higher security and therefore higher costs;  
27 and

28 WHEREAS, studies have been undertaken on the costs of the death penalty in at least 14 states,

1 including Oklahoma, New Mexico, Oregon, Nebraska, Pennsylvania, Indiana, Washington, Nevada, Kansas,  
2 California, North Carolina, Maryland, Tennessee, and Florida, all of which are summarized at  
3 <https://deathpenaltyinfo.org/policy-issues/costs/summary-of-states-death-penalty>, and these studies have all  
4 concluded that the cost of a death penalty case is hundreds of thousands of dollars or even millions of dollars  
5 more expensive than a noncapital case: Oklahoma (3.2 times more expensive. \$700,000 more on average for  
6 each case), New Mexico (\$607,000 to \$1.3 million a case), Oregon (\$900,000 more a case), Nebraska (\$1.5  
7 million more a case), Pennsylvania (\$2 million higher a case, but does not include cases where the death  
8 penalty was sought but not imposed), Indiana (\$2.77 million higher for a capital case vs. a life without parole  
9 case), Washington (\$1 million more a capital case), Nevada (2014 study found a capital case costs between  
10 \$228,000 to \$525,000 more than a life without parole case), Kansas (2014 study found a cost differential of  
11 \$300,000 a case; Kansas Supreme Court said each case took 20 hours more of court time, and DOC said it  
12 costs twice as much to house a death row prisoner as the general population), California (total cost to the state  
13 is \$1.94 billion), North Carolina (abolition of death penalty would save the state \$11 million annually), Maryland  
14 (\$41.9 million more a case), Tennessee (48% higher for capital cases over life without parole cases), Florida  
15 (\$51 million annual savings by abolishing the death penalty); and

16 WHEREAS, in addition to the above studies, which consider prosecution and defense costs, other  
17 states have also studied the time costs of capital cases and concluded that they require significantly greater  
18 courtroom time, such as Colorado (147.6 days vs. 24.5 days), and appeal time, such as Idaho (Appellate Public  
19 Defender spent 44 times more time on a typical death penalty appeal than a life sentence appeal); and

20 WHEREAS, the execution of an innocent person by the state would be a grave and irreversible  
21 injustice, and the death penalty carries the inherent risk of executing an innocent person; and

22 WHEREAS, since 1973, more than 170 persons who had been wrongfully convicted and sentenced to  
23 death in the United States have been subsequently exonerated; and

24 WHEREAS, in Montana, 15 people have been wrongly convicted and subsequently exonerated in  
25 noncapital cases, and the same factors that resulted in those wrongful convictions are also present in capital  
26 cases; and

27 WHEREAS, the possibility of a mistake in the death penalty process may undermine public confidence  
28 in our criminal justice system; and

1           WHEREAS, there is no established link between the presence or absence of the death penalty in a  
2 state and murder rates, and states with the death penalty tend to have higher murder rates than states without  
3 a death penalty, according to [https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-](https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states)  
4 [death-penalty-states-compared-to-non-death-penalty-states](https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states); and

5           WHEREAS, deterrence is based on the certainty of apprehension, not punishment, so that freeing  
6 money for additional law enforcement promotes deterrence; and

7           WHEREAS, in order for the state to protect its moral and ethical integrity, the application of the death  
8 penalty must be impartial, uncorrupted, equitable, competent, and in line with evolving standards of decency,  
9 but there is a lack of any meaningful procedure to ensure uniform application of the death penalty in each  
10 county throughout the state; and

11           WHEREAS, there is public concern that racial and socioeconomic factors influence the decisions to  
12 seek or impose the death penalty; and

13           WHEREAS, studies consistently show that factors such as race, geography, and the quality of counsel  
14 disproportionately determine who is sentenced to death, according to [https://deathpenaltyinfo.org/policy-](https://deathpenaltyinfo.org/policy-issues/arbitrariness)  
15 [issues/arbitrariness](https://deathpenaltyinfo.org/policy-issues/arbitrariness); and

16           WHEREAS, many Montana residents may favor life in prison without parole as an alternative to the  
17 death penalty.

18

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

20

21           **Section 1.** Section 2-15-201, MCA, is amended to read:

22           **"2-15-201. Powers and duties of governor.** (1) In addition to the duties prescribed by the  
23 constitution, the governor shall:

24           (a) supervise the official conduct of all executive and ministerial officers;

25           (b) ensure that all offices are filled and that the duties of the offices are performed or, in default of the  
26 performance, apply a remedy that the law allows. If the remedy is imperfect, the governor shall acquaint the  
27 legislature with the issue at its next session.

28           (2) (a) The governor shall make the appointments and fill the vacancies as required by law. When a

1 vacancy in a position on a council, board, commission, or committee has occurred or is expected to occur and  
2 must be filled by gubernatorial appointment, the governor shall have posted in a conspicuous place in the state  
3 capitol a notice:

- 4 (i) announcing the actual or anticipated vacancy in the position;
- 5 (ii) describing the qualifications for the position, if any; and
- 6 (iii) describing the procedure for applying for appointment to the position.

7 (b) A copy of the notice required under subsection (2)(a) must be sent to the lieutenant governor who  
8 may publish the notice in an appropriate publication.

9 (3) The governor is the sole official organ of communication between the government of this state and  
10 the government of any other state or of the United States.

11 (4) Whenever any suit or legal proceeding is pending against this state that may affect the title of this  
12 state to any property or that may result in any claim against the state, the governor may direct the attorney  
13 general to appear on behalf of the state and may employ additional counsel that the governor may judge  
14 expedient.

15 (5) The governor may require the attorney general or the county attorney of any county to inquire into  
16 the affairs or management of any corporation existing under the laws of this state.

17 (6) The governor may require the attorney general to aid the county attorney in the discharge of the  
18 county attorney's duties.

19 (7) The governor may offer rewards not exceeding \$1,000 each, payable out of the general fund, for  
20 the apprehension of any convict who has escaped from the state prison or any person who has committed or is  
21 charged with an offense punishable by ~~death~~ life imprisonment without possibility of parole.

22 (8) The governor shall perform the duties respecting fugitives from justice that are prescribed by Title  
23 46, chapter 30.

24 (9) The governor shall issue land warrants and patents, as prescribed in 77-2-342.

25 (10) The governor may require any officer or board to make special reports, ~~upon~~on demand, in  
26 writing.

27 (11) The governor shall discharge the duties of a member of the board of examiners, of a nonvoting ex  
28 officio member of the state board of education, and of a member of the board of land commissioners.

1           (12) The governor has the other powers and shall perform the other duties that are devolved ~~upon~~on  
2 the governor by this section or any other law of this state."

3

4           **Section 2.** Section 10-1-1402, MCA, is amended to read:

5           **"10-1-1402. Legislative intent.** It is the intent of the legislature that:

6           (1) the youth challenge program assist youth between 16 and 18 years of age to achieve a quality  
7 education and develop the skills and abilities necessary to become productive citizens;

8           (2) the youth challenge program focus on the physical, emotional, and educational needs of youth  
9 within a voluntary, highly structured environment;

10           (3) eligible participants be drug-free, not be on conditional release or probation for other than juvenile-  
11 status offenses, not have been indicted for or charged with an offense other than a juvenile-status offense, and  
12 not have been convicted of a felony or ~~capital~~ offense punishable by life imprisonment without possibility of  
13 parole;

14           (4) recruiting for the youth challenge program treat all eligible youth equitably and seek representation  
15 from different genders, ethnic groups, and geographic locations;

16           (5) the youth challenge program conduct structured training consisting of a residential phase and a  
17 postresidential phase with curriculum that focuses on academic excellence, including the successful completion  
18 of the tests for a high school equivalency diploma, on the opportunity to pursue a high school diploma from the  
19 student's resident district based on the student's proficiency and at the discretion of the resident district  
20 trustees, and on physical fitness, job skills, service to the community, health and hygiene, responsible  
21 citizenship, leadership, how to follow directions, and life-coping skills; and

22           (6) the youth challenge program be conducted in cooperation with other community programs for at-  
23 risk youth."

24

25           **Section 3.** Section 37-3-103, MCA, is amended to read:

26           **"37-3-103. Exemptions from licensing requirements.** (1) This chapter does not prohibit or require a  
27 license with respect to any of the following acts:

28           (a) the gratuitous rendering of services in cases of emergency or catastrophe;

1 (b) the rendering of services in this state by a physician lawfully practicing medicine in another state  
2 or territory. However, if the physician does not limit the services to an occasional case or if the physician has  
3 any established or regularly used hospital connections in this state or maintains or is provided with, for the  
4 physician's regular use, an office or other place for rendering the services, the physician must possess a  
5 license to practice medicine in this state.

6 (c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

7 (d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

8 (e) the practice of optometry under the conditions and limitations defined by the laws of this state;

9 (f) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

10 (g) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

11 (h) the practice of medicine by a physician licensed in another state and employed by the federal  
12 government;

13 (i) the rendering of nursing services by registered or other nurses in the lawful discharge of their  
14 duties as nurses or of midwife services by registered nurse-midwives under the conditions and limitations  
15 defined by law;

16 (j) the rendering of services by interns or resident physicians in a hospital or clinic in which they are  
17 training, subject to the conditions and limitations of this chapter;

18 (k) the rendering of services by a surgical or medical technician or medical assistant, as provided in  
19 37-3-104, under the appropriate amount and type of supervision of a person licensed under the laws of this  
20 state to practice medicine, but this exemption does not extend the scope of the individuals listed in this  
21 subsection (1)(k);

22 (l) the rendering of services by a physician assistant in accordance with Title 37, chapter 20;

23 (m) the practice by persons licensed under the laws of this state to practice a limited field of the  
24 healing arts, including physical therapists and other licensees not specifically designated, under the conditions  
25 and limitations defined by law;

26 ~~(n) the execution of a death sentence pursuant to 46-19-103;~~

27 ~~(n)~~ (n) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry  
28 midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or

1 the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or  
 2 administer a prescription drug, as those terms are defined in 37-7-101.

3 ~~(p)~~(o) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

4 (2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts  
 5 shall confine themselves to the field for which they are licensed or registered and to the scope of their  
 6 respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title  
 7 "M.D.", "D.O.", or any word or abbreviation to indicate or to induce others to believe that they are engaged in  
 8 the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or disorder of mind except  
 9 to the extent and under the conditions expressly provided by the law under which they are licensed."  
 10

10

11 **Section 4.** Section 37-8-103, MCA, is amended to read:

12 **"37-8-103. Exemptions -- limitations on authority conferred.** (1) This chapter may not be  
 13 construed as prohibiting:

14 (a) gratuitous nursing by friends or members of the family;

15 (b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

16 (c) nursing assistance in the case of an emergency;

17 (d) the practice of nursing by students enrolled in approved nursing education programs;

18 (e) the practice of nursing in this state by any legally qualified nurse of another state whose  
 19 engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the  
 20 period of one engagement not to exceed 6 months in length, provided that person does not represent to the  
 21 public that the person is a nurse licensed to practice in this state;

22 (f) the practice of any legally qualified nurse of another state who is employed by the United States  
 23 government or any bureau, division, or agency of the United States while in the discharge of that nurse's official  
 24 duties;

25 (g) nursing or care of the sick, with or without compensation, when done in connection with the  
 26 practice of the religious tenets of any well-established religion or denomination by adherents of the religion or  
 27 denomination;

28 (h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent that



1 the care may be provided by a parent or guardian;

2 ~~(i) the execution of a death sentence pursuant to 46-19-103;~~

3 ~~(j)(i)~~ nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by  
4 the board; and

5 ~~(k)(i)~~ the provision of nutrition, inclusive of supplements and medications prescribed by a physician,  
6 an advanced practice registered nurse, or a physician assistant, to be administered to an individual through a  
7 gastrostomy or jejunostomy tube by a parent, guardian, foster parent, surrogate parent, other family member, or  
8 individual, regardless of compensation, who is authorized and trained by the individual receiving the nutrition,  
9 inclusive of supplements and prescribed medications, or who is authorized and trained by a parent, guardian,  
10 foster parent, surrogate parent, or other adult family member. The exemption in this subsection ~~(4)(k)~~ (1)(i)  
11 does not apply to provision of nutrition, inclusive of supplements and prescribed medications, in a licensed  
12 facility that provides skilled nursing care as provided in Title 50, chapter 5.

13 (2) This chapter may not be construed:

14 (a) as conferring any authority to practice medicine, surgery, or any combination of medicine or  
15 surgery;

16 (b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in the  
17 state of Montana; or

18 (c) to permit any person to undertake the treatment of disease by any of the methods employed in the  
19 healing arts unless the licensee has been qualified under the applicable law or laws licensing the practice of  
20 those professions or healing arts in the state of Montana.

21 (3) (a) This chapter may not be construed to apply to a personal assistant performing health  
22 maintenance activities and acting at the direction of a person with a disability.

23 (b) The following definitions apply to this subsection:

24 (i) "Health care professional" means an individual licensed pursuant to Title 37 as a physician  
25 assistant, advanced practice registered nurse, registered nurse, or occupational therapist or a medical social  
26 worker working as a member of a case management team for the purposes of the home and community-based  
27 services program of the department of public health and human services.

28 (ii) "Health maintenance activities" includes urinary systems management, bowel treatments,

1 administration of medications, and wound care if the activities in the opinion of the physician or other health  
 2 care professional for the person with a disability could be performed by the person if the person were physically  
 3 capable and if the procedure may be safely performed in the home.

4 (iii) "Physician" means an individual licensed pursuant to Title 37, chapter 3."  
 5

6 **Section 5.** Section 41-5-1602, MCA, is amended to read:

7 **"41-5-1602. Extended jurisdiction juvenile prosecution -- designation.** (1) A youth court case  
 8 involving a youth alleged to have committed an offense that would be a felony if committed by an adult, except  
 9 an offense punishable by ~~death or life imprisonment~~ or life imprisonment without possibility of parole or when a  
 10 sentence of 100 years could be imposed, is an extended jurisdiction juvenile prosecution if:

11 (a) the youth was at least 14 years of age at the time of the alleged offense, the county attorney  
 12 requests that the case be designated an extended jurisdiction juvenile prosecution, a hearing is held under 41-  
 13 5-1603, and the court designates the case as an extended jurisdiction juvenile prosecution;

14 (b) the county attorney designates in the delinquency petition that the proceeding is an extended  
 15 jurisdiction juvenile prosecution and the youth is alleged to have committed:

16 (i) an offense that is listed under 41-5-206, except an offense punishable by ~~death or life~~  
 17 imprisonment or life imprisonment without possibility of parole or when a sentence of 100 years could be  
 18 imposed; or

19 (ii) any offense that would be a felony if committed by an adult, except an offense punishable by ~~death~~  
 20 ~~or life imprisonment~~ or life imprisonment without possibility of parole or when a sentence of 100 years could be  
 21 imposed, in which the youth allegedly used a firearm, if the youth was at least 12 years of age at the time of the  
 22 alleged offense; or

23 (c) after a hearing ~~upon~~ on a motion for transfer of the matter of prosecution to the district court under  
 24 41-5-206, the court designates the case as an extended jurisdiction juvenile prosecution.

25 (2) To enforce the court's disposition in an extended jurisdiction juvenile prosecution, the court shall  
 26 retain jurisdiction as provided in 41-5-205."  
 27

28 **Section 6.** Section 41-5-1604, MCA, is amended to read:

1           **"41-5-1604. Disposition in extended jurisdiction juvenile prosecutions.** (1) (a) After designation  
2 as an extended jurisdiction juvenile prosecution, the case must proceed with an adjudicatory hearing, as  
3 provided in 41-5-1502. If a youth in an extended jurisdiction juvenile prosecution admits to or is adjudicated to  
4 have committed an offense that would be a felony if committed by an adult, except an offense punishable by  
5 ~~death or life imprisonment~~ or life imprisonment without possibility of parole or when a sentence of 100 years  
6 could be imposed, the court shall, subject to subsection (1)(b), impose a single judgment consisting of:

7           (i) one or more juvenile dispositions under 41-5-1512 or 41-5-1513; and

8           (ii) any sentence allowed by the statute that establishes the penalty for the offense of which the youth  
9 is convicted and that would be permissible if the offender were an adult. The execution of the sentence  
10 imposed under this subsection must be stayed on the condition that the youth not violate the provisions of the  
11 disposition order and not commit a new offense.

12           (b) The combined period of time of a juvenile disposition under subsection (1)(a)(i) plus an adult  
13 sentence under subsection (1)(a)(ii) may not exceed the maximum period of imprisonment that could be  
14 imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the  
15 youth court. This subsection does not limit the power of the department to enter into a conditional release  
16 agreement with the youth pursuant to 52-5-126.

17           (2) If a youth prosecuted as an extended jurisdiction juvenile after designation by the county attorney  
18 in the delinquency petition under 41-5-1602(1)(b) admits to or is adjudicated to have committed an offense that  
19 would be a felony if committed by an adult that is not an offense described in 41-5-1602(1)(b), except an  
20 offense punishable by ~~death or life imprisonment~~ or life imprisonment without possibility of parole or when a  
21 sentence of 100 years could be imposed, the court shall adjudicate the youth delinquent and order a disposition  
22 under 41-5-1513.

23           (3) If a youth in an extended jurisdiction juvenile prosecution admits to or is adjudicated to have  
24 committed an offense that would not be a felony if committed by an adult, the court shall impose a disposition  
25 as provided under subsection (1)(a)."  
26

27           **Section 7.** Section 41-5-2510, MCA, is amended to read:

28           **"41-5-2510. Sentence review hearing.** (1) When a youth has been convicted as an adult pursuant to

1 the provisions of 41-5-206, except for offenses punishable by ~~death or life imprisonment~~ or life imprisonment  
2 without possibility of parole or when a sentence of 100 years could be imposed, the county attorney, defense  
3 attorney, or youth may, at any time before the youth reaches the age of 21, request a hearing to review the  
4 sentence imposed on the youth. The department shall notify the court of the youth's impending birthday no later  
5 than 90 days before the youth's 21st birthday.

6 (2) After reviewing the status report and ~~upon~~ on motion for a hearing, the court shall determine  
7 whether to hold a criminally convicted youth sentence review hearing. If the court, in its discretion, determines  
8 that a sentence review hearing is warranted or is required under 41-5-2503, the hearing must be held within 90  
9 days after the filing of the request or determination. The sentencing court or county attorney shall notify the  
10 victim of the offense pursuant to Title 46, chapter 24.

11 (3) The sentencing court shall review the department's records, formal youth court records, victim  
12 statements, and any other pertinent information.

13 (4) The sentencing court, after considering the criminal, social, psychological, and any other records  
14 of the youth; any evidence presented at the hearing; and any statements by the victim and by the parent or  
15 parents or guardian of the youth and any other advocates for the youth shall determine whether the criminally  
16 convicted youth has been substantially rehabilitated based upon a preponderance of the evidence.

17 (5) ~~In the event that~~ If the sentencing court determines that the youth has been substantially  
18 rehabilitated, the court shall determine whether to:

19 (a) suspend all or part of the remaining portion of the sentence, impose conditions and restrictions  
20 pursuant to 46-18-201, and place the youth on probation under the direction of the department, unless  
21 otherwise specified;

22 (b) impose all or part of the remaining sentence and make any additional recommendations to the  
23 department regarding the placement and treatment of the criminally convicted youth; or

24 (c) impose a combination of options allowed under subsections (5)(a) and (5)(b), not to exceed the  
25 total sentence remaining.

26 (6) The sentencing court may revoke a suspended sentence of a criminally convicted youth pursuant  
27 to 46-18-203."

28

1           **Section 8.** Section 44-5-103, MCA, is amended to read:

2           **"44-5-103. Definitions.** As used in this chapter, the following definitions apply:

3           (1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice  
4 information maintained by criminal justice agencies.

5           (2) "Administration of criminal justice" means the performance of any of the following activities:  
6 detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional  
7 supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification  
8 activities and the collection, storage, and dissemination of criminal justice information.

9           (3) "Confidential criminal justice information" means:

10           (a) criminal investigative information;

11           (b) criminal intelligence information;

12           (c) fingerprints and photographs;

13           (d) criminal justice information or records made confidential by law; and

14           (e) any other criminal justice information not clearly defined as public criminal justice information.

15           (4) (a) "Criminal history record information" means information about individuals collected by criminal  
16 justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of  
17 complaints, indictments, or informations and dispositions arising from complaints, indictments, or informations;  
18 sentences; correctional status; and release. ~~†~~The term includes identification information, such as fingerprint  
19 records or photographs, unless the information is obtained for purposes other than the administration of  
20 criminal justice.

21           (b) ~~Criminal history record information~~The term does not include:

22           (i) records of traffic offenses maintained by the department of justice; or

23           (ii) court records.

24           (5) (a) "Criminal intelligence information" means information associated with an identifiable individual,  
25 group, organization, or event compiled by a criminal justice agency:

26           (i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting  
27 potential criminal operation, or producing an estimate of future major criminal activities; or

28           (ii) in relation to the reliability of information, including information derived from reports of informants or

1 investigators or from any type of surveillance.

2 (b) ~~Criminal intelligence information~~The term does not include information relating to political  
3 surveillance or criminal investigative information.

4 (6) (a) "Criminal investigative information" means information associated with an individual, group,  
5 organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a  
6 crime or crimes. It includes information about a crime or crimes derived from reports of informants or  
7 investigators or from any type of surveillance.

8 (b) The term does not include criminal intelligence information.

9 (7) "Criminal justice agency" means:

10 (a) any court with criminal jurisdiction;

11 (b) any federal, state, or local government agency designated by statute or by a governor's executive  
12 order to perform as its principal function the administration of criminal justice, including a governmental fire  
13 agency organized under Title 7, chapter 33, or a fire marshal who conducts criminal investigations of fires;

14 (c) any local government agency not included under subsection (7)(b) that performs as its principal  
15 function the administration of criminal justice pursuant to an ordinance or local executive order; or

16 (d) any agency of a foreign nation that has been designated by that nation's law or chief executive  
17 officer to perform as its principal function the administration of criminal justice and that has been approved for  
18 the receipt of criminal justice information by the Montana attorney general, who may consult with the United  
19 States department of justice.

20 (8) (a) "Criminal justice information" means information relating to criminal justice collected,  
21 processed, or preserved by a criminal justice agency.

22 (b) The term does not include the administrative records of a criminal justice agency.

23 (9) "Criminal justice information system" means a system, automated or manual, operated by foreign,  
24 federal, regional, state, or local governments or governmental organizations for collecting, processing,  
25 preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and  
26 agreements.

27 (10) (a) "Disposition" means information disclosing that criminal proceedings against an individual  
28 have terminated and describing the nature of the termination or information relating to sentencing, correctional

1 supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal  
 2 proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to  
 3 bring charges or if criminal proceedings have been concluded, abandoned, or indefinitely postponed.

4 (b) Particular dispositions include but are not limited to:

5 (i) conviction at trial or on a plea of guilty;

6 (ii) acquittal;

7 (iii) acquittal by reason of mental disease or disorder;

8 (iv) acquittal by reason of mental incompetence;

9 (v) the sentence imposed, including all conditions attached to the sentence by the sentencing judge;

10 (vi) deferred imposition of sentence with any conditions of deferral;

11 (vii) nolle prosequi;

12 (viii) a nolo contendere plea;

13 (ix) deferred prosecution or diversion;

14 (x) bond forfeiture;

15 ~~(xi)~~ death;

16 ~~(xii)~~(xi) release as a result of a successful collateral attack;

17 ~~(xiii)~~(xii) dismissal of criminal proceedings by the court with or without the commencement of a civil

18 action for determination of mental incompetence or mental illness;

19 ~~(xiv)~~(xiii) a finding of civil incompetence or mental illness;

20 ~~(xv)~~(xiv) exercise of executive clemency;

21 ~~(xvi)~~(xv) correctional placement on probation or parole or release; or

22 ~~(xvii)~~(xvi) revocation of probation or parole.

23 (c) A single arrest of an individual may result in more than one disposition.

24 (11) "Dissemination" means the communication or transfer of criminal justice information to individuals  
 25 or agencies other than the criminal justice agency that maintains the information. It includes confirmation of the  
 26 existence or nonexistence of criminal justice information.

27 (12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.

28 (13) "Public criminal justice information" means:

- 1 (a) information made public by law;
- 2 (b) information of court records and proceedings;
- 3 (c) information of convictions, deferred sentences, and deferred prosecutions;
- 4 (d) information of postconviction proceedings and status;
- 5 (e) information originated by a criminal justice agency, including:
- 6 (i) initial offense reports;
- 7 (ii) initial arrest records;
- 8 (iii) bail records; and
- 9 (iv) daily jail occupancy rosters;
- 10 (f) information considered necessary by a criminal justice agency to secure public assistance in the
- 11 apprehension of a suspect; or
- 12 (g) statistical information.

13 (14) "State repository" means the recordkeeping systems maintained by the department of justice

14 pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and

15 disseminated.

16 (15) "Statistical information" means data derived from records in which individuals are not identified or

17 identification is deleted and from which neither individual identity nor any other unique characteristic that could

18 identify an individual is ascertainable."

19

20 **Section 9.** Section 44-6-101, MCA, is amended to read:

21 **"44-6-101. Definitions.** As used in this part, the following definitions apply:

22 (1) "Biological sample" means cheek cells removed by using a buccal swab of a type authorized by

23 the department or a vial or other container of blood.

24 (2) "Department" means the department of justice provided for in 2-15-2001.

25 (3) "DNA" means deoxyribonucleic acid.

26 (4) "DNA identification index" means the DNA identification record system established under 44-6-

27 102.

28 (5) "DNA record" means DNA identification information stored in the DNA identification index for



1 purposes of establishing identification in connection with law enforcement investigations or supporting statistical  
2 interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a  
3 DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital  
4 image of autoradiographs, and discrete allele assignment numbers.

5 (6) "DNA testing" means DNA analysis of materials derived from the human body for the purposes of  
6 identification consistent with this part.

7 (7) "Felony offense" means any offense under the Montana Code Annotated for which the maximum  
8 potential sentence under statute is ~~death or~~ imprisonment in a state prison for a term exceeding 1 year.

9 (8) "Forensic DNA laboratory" means any laboratory operated by state government that performs  
10 DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for  
11 purposes of identification.

12 (9) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA type,  
13 and has the specific meaning given to the word by department rule, which must take into account the meaning  
14 generally given to the word for forensic typing by DNA technologists.

15 (10) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

16 (11) "Violent offense" has the meaning contained in 46-23-502."

17

18 **Section 10.** Section 45-2-101, MCA, is amended to read:

19 **"45-2-101. General definitions.** Unless otherwise specified in the statute, all words must be taken in  
20 the objective standard rather than in the subjective, and unless a different meaning plainly is required, the  
21 following definitions apply in this title:

22 (1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of  
23 communication, and when relevant, a failure or omission to take action.

24 (2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on  
25 a record or documentation prescribed by law or in which a law or a regulation is particularized in its application  
26 to an individual.

27 (3) "Another" means a person or persons other than the offender.

28 (4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or

1 advantage, including benefit to another person or entity in whose welfare the beneficiary is interested.

2 (b) ~~Benefit~~The term does not include an advantage promised generally to a group or class of voters  
3 as a consequence of public measures that a candidate engages to support or oppose.

4 (5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes  
5 mental illness or impairment.

6 (6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different  
7 age is specified.

8 (7) "Cohabit" means to live together under the representation of being married.

9 (8) "Common scheme" means a series of acts or omissions resulting in a pecuniary loss to the victim  
10 of at least \$1,500, or \$1,500 in value, motivated by a purpose to accomplish a single criminal objective or by a  
11 common purpose or plan that results in the repeated commission of the same offense or that affects the same  
12 person or the same persons or the property of the same person or persons.

13 (9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by  
14 the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage,  
15 software, or communication facilities that are connected or related to that device in a system or network.

16 (10) "Computer network" means the interconnection of communication systems between computers or  
17 computers and remote terminals.

18 (11) "Computer program" means an instruction or statement or a series of instructions or statements,  
19 in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or  
20 computer system and causes it to perform specified functions.

21 (12) "Computer services" ~~include~~includes but ~~are~~is not limited to computer time, data processing, and  
22 storage functions.

23 (13) "Computer software" means a set of computer programs, procedures, and associated  
24 documentation concerned with the operation of a computer system.

25 (14) "Computer system" means a set of related, connected, or unconnected devices, computer  
26 software, or other related computer equipment.

27 (15) "Conduct" means an act or series of acts and the accompanying mental state.

28 (16) "Conviction" means a judgment of conviction and sentence entered ~~upon~~on a plea of guilty or

1 nolo contendere or ~~upon~~on a verdict or finding of guilty of an offense rendered by a legally constituted jury or  
2 by a court of competent jurisdiction authorized to try the case without a jury.

3 (17) "Correctional institution" means a state prison, detention center, multijurisdictional detention  
4 center, private detention center, regional correctional facility, private correctional facility, or other institution for  
5 the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence  
6 for offenses.

7 (18) "Deception" means knowingly to:

8 (a) create or confirm in another an impression that is false and that the offender does not believe to  
9 be true;

10 (b) fail to correct a false impression that the offender previously has created or confirmed;

11 (c) prevent another from acquiring information pertinent to the disposition of the property involved;

12 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other  
13 legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a  
14 matter of official record; or

15 (e) promise performance that the offender does not intend to perform or knows will not be performed.  
16 Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

17 (19) "Defamatory matter" means anything that exposes a person or a group, class, or association to  
18 hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or ~~its~~entity's business  
19 or occupation.

20 (20) "Deprive" means:

21 (a) to withhold property of another:

22 (i) permanently;

23 (ii) for such a period as to appropriate a portion of its value; or

24 (iii) with the purpose to restore it only upon payment of reward or other compensation; or

25 (b) to dispose of the property of another and use or deal with the property so as to make it unlikely  
26 that the owner will recover it.

27 (21) "Deviate sexual relations" means any form of sexual intercourse with an animal.

28 (22) "Document" means, with respect to offenses involving the medicaid program, any application,

1 claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or  
2 other form.

3 (23) "Felony" means an offense in which the sentence imposed upon conviction is ~~death or~~  
4 imprisonment in a state prison for a term exceeding 1 year.

5 (24) "Forcible felony" means a felony that involves the use or threat of physical force or violence  
6 against any individual.

7 (25) A "frisk" is a search by an external patting of a person's clothing.

8 (26) "Government" includes a branch, subdivision, or agency of the government of the state or a  
9 locality within it.

10 (27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected,  
11 including loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

12 (28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly  
13 carried on by one or more persons under the control, management, or supervision of another.

14 (29) "Human being" means a person who has been born and is alive.

15 (30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the  
16 possession of a person subject to official detention.

17 (31) "Inmate" means a person who is confined in a correctional institution.

18 (32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and  
19 an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by  
20 volume.

21 (b) ~~Intoxicating substance~~ The term does not include dealcoholized wine or a beverage or liquid  
22 produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of  
23 alcohol by volume.

24 (33) An "involuntary act" means an act that is:

25 (a) a reflex or convulsion;

26 (b) a bodily movement during unconsciousness or sleep;

27 (c) conduct during hypnosis or resulting from hypnotic suggestion; or

28 (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either

1 conscious or habitual.

2 (34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in  
3 this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or  
4 proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a  
5 prospective juror.

6 (35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a  
7 statute defining an offense when the person is aware of the person's own conduct or that the circumstance  
8 exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense  
9 when the person is aware that it is highly probable that the result will be caused by the person's conduct. When  
10 knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person  
11 is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have  
12 the same meaning.

13 (36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

14 (37) "Medicaid agency" has the meaning in 53-6-155.

15 (38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a  
16 recipient under the medicaid program.

17 (39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or  
18 other form:

19 (i) that is used to claim specific services or items as payable or reimbursable under the medicaid  
20 program; or

21 (ii) that states income, expense, or other information that is or may be used to determine entitlement to  
22 or the rate of payment under the medicaid program.

23 (b) The term includes related documents submitted as a part of or in support of the claim.

24 (40) "Mentally disordered" means that a person suffers from a mental disease or disorder that renders  
25 the person incapable of appreciating the nature of the person's own conduct.

26 (41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or  
27 controlling the person's own conduct as a result of the influence of an intoxicating substance.

28 (42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is

1 imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment  
2 in a state prison for a term of 1 year or less.

3 (43) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by  
4 a statute defining an offense when the person consciously disregards a risk that the result will occur or that the  
5 circumstance exists or when the person disregards a risk of which the person should be aware that the result  
6 will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a  
7 gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.  
8 "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms,  
9 such as "negligent" and "with negligence", have the same meaning.

10 (44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges  
11 against the defendant and neither admits nor denies the charge or charges.

12 (45) "Obtain" means:

13 (a) in relation to property, to bring about a transfer of interest or possession, whether to the offender  
14 or to another; and

15 (b) in relation to labor or services, to secure the performance of the labor or ~~service~~ services.

16 (46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale,  
17 conveyance, or transfer of title to, interest in, or possession of property.

18 (47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or  
19 night lodging of persons or for carrying on business, whether or not a person is actually present, including any  
20 outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually  
21 used for personal use or employment. Each unit of a building consisting of two or more units separately  
22 secured or occupied is a separate occupied structure.

23 (48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or  
24 punished for a public offense.

25 (49) "Offense" means a crime for which a sentence of ~~death or of imprisonment~~ or a fine is authorized.  
26 Offenses are classified as felonies or misdemeanors.

27 (50) (a) "Official detention" means imprisonment resulting from a conviction for an offense,  
28 confinement for an offense, confinement of a person charged with an offense, detention by a peace officer

1 pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection  
2 of the welfare of the person detained or for the protection of society.

3 (b) ~~Official detention~~ The term does not include supervision of probation or parole, constraint incidental  
4 to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical  
5 force, or a weapon to escape.

6 (51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a  
7 judicial, an administrative, or another governmental agency or official authorized to take evidence under oath,  
8 including any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition  
9 in connection with the proceeding.

10 (52) "Other state" means a state or territory of the United States, the District of Columbia, and the  
11 Commonwealth of Puerto Rico.

12 (53) "Owner" means a person other than the offender who has possession of or other interest in the  
13 property involved, even though the interest or possession is unlawful, and without whose consent the offender  
14 has no authority to exert control over the property.

15 (54) "Party official" means a person who holds an elective or appointive post in a political party in the  
16 United States by virtue of which the person directs or conducts or participates in directing or conducting party  
17 affairs at any level of responsibility.

18 (55) "Peace officer" means a person who by virtue of the person's office or public employment is  
19 vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope  
20 of the person's authority.

21 (56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything  
22 else the primary significance of which is economic gain.

23 (57) "Person" includes an individual, business association, partnership, corporation, government, or  
24 other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of  
25 government.

26 (58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to  
27 communicate unwillingness to act.

28 (59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

- 1 (60) "Premises" includes any type of structure or building and real property.
- 2 (61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:
- 3 (a) real estate;
- 4 (b) money;
- 5 (c) commercial instruments;
- 6 (d) admission or transportation tickets;
- 7 (e) written instruments that represent or embody rights concerning anything of value, including labor
- 8 or services, or that are otherwise of value to the owner;
- 9 (f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;
- 10 (g) electricity, gas, and water;
- 11 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;
- 12 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,
- 13 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models
- 14 thereof;
- 15 (j) other articles, materials, devices, substances, and whole or partial copies, descriptions,
- 16 photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret
- 17 scientific, technical, merchandising, production, or management information or a secret designed process,
- 18 procedure, formula, invention, or improvement; and
- 19 (k) electronic impulses, electronically processed or produced data or information, commercial
- 20 instruments, computer software or computer programs, in either machine- or human-readable form, computer
- 21 services, any other tangible or intangible item of value relating to a computer, computer system, or computer
- 22 network, and copies thereof.
- 23 (62) "Property of another" means real or personal property in which a person other than the offender
- 24 has an interest that the offender has no authority to defeat or impair, even though the offender may have an
- 25 interest in the property.
- 26 (63) "Public place" means a place to which the public or a substantial group has access.
- 27 (64) (a) "Public servant" means an officer or employee of government, including but not limited to
- 28 legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator,



1 executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected  
2 or designated to become a public servant.

3 (b) The term does not include witnesses.

4 (65) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute  
5 defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When  
6 a particular purpose is an element of an offense, the element is established although the purpose is conditional,  
7 unless the condition ~~negatives~~ negates the harm or evil sought to be prevented by the law defining the offense.  
8 Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

9 (66) (a) "Serious bodily injury" means bodily injury that:

10 (i) creates a substantial risk of death;

11 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process  
12 of a bodily member or organ; or

13 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or  
14 protracted loss or impairment of the function or process of a bodily member or organ.

15 (b) The term includes serious mental illness or impairment.

16 (67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another,  
17 directly or through clothing, in order to knowingly or purposely:

18 (a) cause bodily injury to or humiliate, harass, or degrade another; or

19 (b) arouse or gratify the sexual response or desire of either party.

20 (68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the  
21 penis of another person, penetration of the vulva or anus of one person by a body member of another person,  
22 or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another  
23 person to knowingly or purposely:

24 (i) cause bodily injury or humiliate, harass, or degrade; or

25 (ii) arouse or gratify the sexual response or desire of either party.

26 (b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

27 (69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to  
28 commit an offense.

1 (70) "State" or "this state" means the state of Montana, all the land and water in respect to which the  
2 state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

3 (71) "Statute" means an act of the legislature of this state.

4 (72) "Stolen property" means property over which control has been obtained by theft.

5 (73) A "stop" is the temporary detention of a person that results when a peace officer orders the  
6 person to remain in the peace officer's presence.

7 (74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted  
8 alterations in its existing condition, or deposit refuse ~~upon~~ on it.

9 (75) "Telephone" means any type of telephone, including but not limited to a corded, uncoded,  
10 cellular, or satellite telephone.

11 (76) "Threat" means a menace, however communicated, to:

12 (a) inflict physical harm on the person threatened or any other person or on property;

13 (b) subject any person to physical confinement or restraint;

14 (c) commit a criminal offense;

15 (d) accuse a person of a criminal offense;

16 (e) expose a person to hatred, contempt, or ridicule;

17 (f) harm the credit or business repute of a person;

18 (g) reveal information sought to be concealed by the person threatened;

19 (h) take action as an official against anyone or anything, withhold official action, or cause the action or  
20 withholding;

21 (i) bring about or continue a strike, boycott, or other similar collective action if the person making the  
22 threat demands or receives property that is not for the benefit of groups that the person purports to represent;

23 or

24 (j) testify or provide information or withhold testimony or information with respect to another's legal  
25 claim or defense.

26 (77) (a) "Value" means the market value of the property at the time and place of the crime or, if the  
27 market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a  
28 reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value

1 must be determined as follows:

2 (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory  
3 note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness  
4 less any portion of the indebtedness that has been satisfied.

5 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any  
6 valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the  
7 instrument might reasonably suffer by virtue of the loss of the instrument.

8 (iii) The value of electronic impulses, electronically produced data or information, computer software or  
9 programs, or any other tangible or intangible item relating to a computer, computer system, or computer  
10 network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by  
11 virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to  
12 consideration of the value of the owner's right to exclusive use or disposition of the item.

13 (b) When it cannot be determined if the value of the property is more or less than \$1,500 by the  
14 standards set forth in subsection (77)(a), its value is considered to be an amount less than \$1,500.

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

17 (78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with  
18 provision for transport of an operator.

19 (79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is  
20 readily capable of being used to produce death or serious bodily injury.

21 (80) "Witness" means a person whose testimony is desired in an official proceeding, in any  
22 investigation by a grand jury, or in a criminal action, prosecution, or proceeding."  
23

24 **Section 11.** Section 45-2-212, MCA, is amended to read:

25 "**45-2-212. Compulsion.** A person is not guilty of an offense, ~~other than an offense punishable with~~  
26 ~~death,~~ by reason of conduct that the person performs under the compulsion of threat or menace of the  
27 imminent infliction of death or serious bodily harm if the person reasonably believes that death or serious bodily  
28 harm will be inflicted ~~upon~~ on the person if the person does not perform the conduct."

1

2           **Section 12.** Section 45-5-102, MCA, is amended to read:

3           **"45-5-102. Deliberate homicide.** (1) A person commits the offense of deliberate homicide if:

4           (a) the person purposely or knowingly causes the death of another human being;

5           (b) the person attempts to commit, commits, or is legally accountable for the attempt or commission of  
6 robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious  
7 escape, assault with a weapon, aggravated assault, or any other forcible felony and in the course of the forcible  
8 felony or flight thereafter, the person or any person legally accountable for the crime causes the death of  
9 another human being; or

10           (c) the person purposely or knowingly causes the death of a fetus of another with knowledge that the  
11 woman is pregnant.

12           (2) A person convicted of the offense of deliberate homicide shall be punished by ~~death as provided~~  
13 ~~in 46-18-301 through 46-18-310, unless the person is less than 18 years of age at the time of the commission~~  
14 ~~of the offense, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years~~  
15 ~~or more than 100 years, or by life imprisonment without possibility of parole,~~ except as provided in 46-18-219  
16 and 46-18-222."

17

18           **Section 13.** Section 45-5-303, MCA, is amended to read:

19           **"45-5-303. Aggravated kidnapping.** (1) A person commits the offense of aggravated kidnapping if  
20 the person knowingly or purposely and without lawful authority restrains another person by either secreting or  
21 holding the other person in a place of isolation or by using or threatening to use physical force, with any of the  
22 following purposes:

23           (a) to hold for ransom or reward or as a shield or hostage;

24           (b) to facilitate commission of any felony or flight thereafter;

25           (c) to inflict bodily injury on or to terrorize the victim or another;

26           (d) to interfere with the performance of any governmental or political function; or

27           (e) to hold another in a condition of involuntary servitude.

28           (2) Except as provided in 46-18-219 and 46-18-222, a person convicted of the offense of aggravated

1 kidnapping shall be punished by ~~death or life imprisonment, as provided in 46-18-301 through 46-18-310 or be~~  
2 ~~imprisoned by imprisonment~~ in the state prison for a term of not less than 2 years or more than 100 years, or by  
3 life imprisonment without possibility of parole and may be fined not more than \$50,000, unless the person has  
4 voluntarily released the victim alive, in a safe place, and with no serious bodily injury, in which event the person  
5 shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be  
6 fined not more than \$50,000."

7

8 **Section 14.** Section 45-5-503, MCA, is amended to read:

9 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse  
10 with another person without consent or with another person who is incapable of consent commits the offense of  
11 sexual intercourse without consent. A person may not be convicted under this section based on the age of the  
12 person's spouse, as provided in 45-5-501(1)(b)(iv).

13 (2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment  
14 or by imprisonment in the state prison for a term of not more than 20 years and may be fined not more than  
15 \$50,000, except as provided in 46-18-219, 46-18-222, and subsections (3), (4), and (5) of this section.

16 (3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim  
17 or if the offender inflicts bodily injury on anyone in the course of committing sexual intercourse without consent,  
18 the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less  
19 than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219  
20 and 46-18-222.

21 (b) If two or more persons are convicted of sexual intercourse without consent with the same victim in  
22 an incident in which each offender was present at the location where another offender's offense occurred during  
23 a time period in which each offender could have reasonably known of the other's offense, each offender shall  
24 be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or  
25 more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

26 (c) If the offender was previously convicted of an offense under this section or of an offense under the  
27 laws of another state or of the United States that if committed in this state would be an offense under this  
28 section and if the offender inflicted serious bodily injury on a person in the course of committing each offense,

1 the offender shall be:

2 (i) ~~punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18~~  
3 ~~years of age at the time of the commission of the offense; or~~

4 (ii) ~~be~~ punished as provided in 46-18-219.

5 (4) (a) If the victim was 12 years of age or younger and the offender in the course of committing a  
6 violation of this section was 18 years of age or older at the time of the offense, the offender:

7 (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not  
8 suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this  
9 subsection (4)(a)(i) except as provided in 46-18-222(1) through (5), and during the first 25 years of  
10 imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.

11 (ii) may be fined an amount not to exceed \$50,000; and

12 (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and  
13 behavioral phase of a sexual offender treatment program provided or approved by the department of  
14 corrections.

15 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is  
16 subject to supervision by the department of corrections for the remainder of the offender's life and shall  
17 participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

18 (5) If the victim is at least 14 years of age and the offender is 18 years of age or younger, the offender  
19 may be punished by imprisonment in the state prison for a term of not more than 5 years and may be fined not  
20 more than \$10,000 if:

21 (a) the offender has not previously been found to have committed or been adjudicated for a sexual  
22 offense as defined in 46-23-502;

23 (b) a psychosexual evaluation of the offender has been prepared and the court finds that registration  
24 is not necessary for protection of the public and that relief from registration is in the public's best interest; and

25 (c) the court finds that the alleged conduct was consensual as indicated by words or overt actions  
26 indicating a freely given agreement to have sexual intercourse or sexual contact.

27 (6) In addition to any sentence imposed under subsection (2) or (3), after determining the financial  
28 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require

1 the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense.  
 2 The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-  
 3 244.

4 (7) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without  
 5 consent" includes an attempt to commit the offense or the act of flight after the attempt or commission.

6 (8) If as a result of sexual intercourse without consent a child is born, the offender who has been  
 7 convicted of an offense under this section and who is the biological parent of the child resulting from the sexual  
 8 intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401  
 9 have been followed."

10

11 **Section 15.** Section 46-1-401, MCA, is amended to read:

12 **"46-1-401. Penalty enhancement -- pleading, proof, and mental state requirements.** (1) A court  
 13 may not impose a penalty enhancement specified in Title 45, Title 46, or any other provision of law unless:

14 (a) the enhancing act, omission, or fact was charged in the information, complaint, or indictment, with  
 15 a reference to the statute or statutes containing the enhancing act, omission, or fact and the penalty for the  
 16 enhancing act, omission, or fact;

17 (b) if the case was tried before a jury, the jury unanimously found in a separate finding that the  
 18 enhancing act, omission, or fact occurred beyond a reasonable doubt;

19 (c) if the case was tried to the court without a jury, the court finds beyond a reasonable doubt that the  
 20 enhancing act, omission, or fact occurred; and

21 (d) a defendant who knowingly and voluntarily pleaded guilty to an offense also admitted to the  
 22 enhancing act, omission, or fact.

23 (2) The enhancement issue may be submitted to a jury on a form separate from the verdict form or  
 24 may be separately stated on the verdict form. The jury must be instructed that it is to reach a verdict on the  
 25 offense charged in the information, complaint, or indictment before the jury can consider whether the enhancing  
 26 act, omission, or fact occurred.

27 (3) An enhancing act, omission, or fact is an act, omission, or fact, whether stated in the statute  
 28 defining the charged offense or stated in another statute, that is not included in the statutory definition of the

1 elements of the charged offense and that allows or requires a sentencing court to add to, as provided by  
 2 statute, a penalty provided by statute for the charged offense ~~or to impose the death penalty instead of a~~  
 3 ~~statutory incarceration period provided by statute for the charged offense. Except as provided in subsection (4),~~  
 4 ~~the aggravating circumstances contained in 46-18-303 are enhancing acts, omissions, or facts.~~

5 (4) Use of the fact of one or more prior convictions for the same type of offense or for one or more  
 6 other types of offenses to enhance the penalty for a charged offense is not subject to the requirements of this  
 7 section."

8

9 **Section 16.** Section 46-4-201, MCA, is amended to read:

10 **"46-4-201. Inquest -- definition -- when held -- how conducted.** (1) An inquest is a formal inquiry  
 11 into the causes of and circumstances surrounding the death of a person and is conducted by the coroner before  
 12 a coroner's jury.

13 (2) The coroner may hold an inquest only if requested to do so by the county attorney of the county in  
 14 which death occurred or by the county attorney of the county in which the acts or events causing death  
 15 occurred. However, the county attorney shall order the coroner to hold an inquest if the death of a person  
 16 occurs:

17 (a) in a prison, jail, or other correctional facility and is not caused by the terminal condition, as defined  
 18 in 50-9-102, ~~of, or the execution of a death penalty upon,~~ the person while the person is incarcerated in the  
 19 prison, jail, or other correctional facility because of conviction of a criminal offense. This subsection (2)(a)  
 20 applies to a death caused by a terminal condition only if the person was under medical care at the time of  
 21 death.

22 (b) while a person is being taken into custody or is in the custody of a peace officer or if the death is  
 23 caused by a peace officer, except when criminal charges have been or will be filed.

24 (3) If an inquest is held, the proceedings are public. The coroner shall conduct the inquest with the aid  
 25 and assistance of the county attorney. The coroner shall, and the county attorney may, examine each witness,  
 26 after which the witness may be examined by the jurors. The inquest must be held in accordance with this part.

27 (4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a  
 28 person who:



1 (i) died in a prison, jail, or other correctional facility;

2 (ii) died while in the custody of a peace officer; or

3 (iii) was killed by a peace officer.

4 (b) If a coroner is disqualified under subsection (4)(a), the county attorney shall request a qualified  
5 coroner of a neighboring county to conduct the inquest. The expenses of a coroner fulfilling the request,  
6 including salary, must be paid by the requesting county."  
7

8 **Section 17.** Section 46-9-102, MCA, is amended to read:

9 **"46-9-102. Bailable offenses.** ~~(1) All persons shall be are bailable before conviction, except when~~  
10 ~~death is a possible punishment for the offense charged and the proof is evident or the presumption great that~~  
11 ~~the person is guilty of the offense charged.~~

12 ~~(2) On the hearing of an application for admission to bail made before or after indictment or~~  
13 ~~information for a capital offense, the burden of showing that the proof is evident or the presumption great that~~  
14 ~~the defendant is guilty of the offense is on the state."~~

15

16 **Section 18.** Section 46-9-106, MCA, is amended to read:

17 **"46-9-106. Release or detention of defendant pending trial.** Before a verdict has been rendered,  
18 the court shall:

19 (1) authorize the release of the defendant upon reasonable conditions that ensure the appearance of  
20 the defendant and protect the safety of the community or of any person; or

21 (2) detain the defendant when there is probable cause to believe that the defendant committed an  
22 offense for which ~~death~~ life imprisonment without possibility of parole is a possible punishment and adequate  
23 safeguards are not available to ensure the defendant's appearance and the safety of the community."  
24

25

26 **Section 19.** Section 46-16-115, MCA, is amended to read:

27 **"46-16-115. Challenges for cause.** (1) Each party may challenge jurors for cause, and each  
28 challenge must be tried by the court.

(2) A challenge for cause may be taken for all or any of the following reasons or for any other reason

1 that the court determines:

2 (a) having consanguinity or relationship to the defendant or to the person who is alleged to be injured  
3 by the offense charged or on whose complaint the prosecution was instituted;

4 (b) standing in the relation of guardian and ward, attorney and client, master and servant, landlord  
5 and tenant, or debtor and creditor with or being a member of the family or in the employment of the defendant  
6 or the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was  
7 instituted;

8 (c) being a party adverse to the defendant in a civil action or having complained against or been  
9 accused by the defendant in a criminal prosecution;

10 (d) having served on the grand jury that found the indictment or on a coroner's jury that inquired into  
11 the death of a person whose death is the subject of the indictment or information;

12 (e) having served on a trial jury that tried another person for the offense charged or a related offense;

13 (f) having been a member of a jury formerly sworn to try the same charge, the verdict of which was  
14 set aside or which was discharged without verdict after the case was submitted to it;

15 (g) having served as a juror in a civil action brought against the defendant for the act charged as an  
16 offense;

17 ~~(h) if the offense charged is punishable with death, having any conscientious opinions concerning the  
18 punishment as would preclude finding the defendant guilty, in which case the person must neither be permitted  
19 nor compelled to serve as a juror;~~

20 ~~(h)~~ having a belief that the punishment fixed by law is too severe for the offense charged; or

21 ~~(i)~~ having a state of mind in reference to the case or to either of the parties that would prevent the  
22 juror from acting with entire impartiality and without prejudice to the substantial rights of either party.

23 (3) An excuse from service on a jury is not a cause of challenge but the privilege of the person  
24 excused."

25

26 **Section 20.** Section 46-16-116, MCA, is amended to read:

27 **"46-16-116. Peremptory challenges.** (1) Each defendant is allowed ~~eight~~six peremptory challenges  
28 in ~~capital cases and six in all other cases~~ a case tried in the district court before a 12-person jury. There may

1 not be additional challenges for separate counts charged in the indictment or information.

2 ~~(2) If the indictment or information charges a capital offense as well as lesser offenses in separate~~  
 3 ~~counts, the maximum number of challenges is eight.~~

4 ~~(3)(2)~~ The state is allowed the same number of peremptory challenges as all of the defendants.

5 ~~(4)(3)~~ In a criminal case tried before a six-person jury, the prosecution and all the defendants are  
 6 allowed three peremptory challenges each.

7 ~~(5)(4)~~ When the parties in a criminal case in the district court agree upon a jury consisting of a  
 8 number of persons other than 6 or 12, they shall also agree in writing upon the number of peremptory  
 9 challenges to be allowed."

10

11 **Section 21.** Section 46-16-122, MCA, is amended to read:

12 **"46-16-122. Absence of defendant from trial.** (1) In a misdemeanor case, if the defendant fails to  
 13 appear in person, either at the time set for the trial or at any time during the course of the trial and if the  
 14 defendant's counsel is authorized to act on the defendant's behalf, the court shall proceed with the trial unless  
 15 good cause for continuance exists.

16 (2) If the defendant's counsel is not authorized to act on the defendant's behalf as provided in  
 17 subsection (1) or if the defendant is not represented by counsel, the court, in its discretion, may do one or more  
 18 of the following:

19 (a) order a continuance;

20 (b) order bail forfeited;

21 (c) issue an arrest warrant; or

22 (d) proceed with the trial after finding that the defendant had knowledge of the trial date and is  
 23 voluntarily absent.

24 (3) After the trial of a felony offense has commenced in the defendant's presence, the absence of the  
 25 defendant during the trial may not prevent the trial from continuing up to and including the return of a verdict if  
 26 the defendant:

27 (a) has been removed from the courtroom for disruptive behavior after receiving a warning that

28 removal will result if the defendant persists in conduct that is so disruptive that the trial cannot be carried on

1 with the defendant in the courtroom; or

2 (b) is voluntarily absent and the offense is not one that is punishable by ~~death~~ life imprisonment  
3 without possibility of parole.

4 (4) Nothing in this section limits the right of the court to order the defendant to be personally present  
5 at the trial for purposes of identification unless defense counsel stipulates to the issue of identity."  
6

7 **Section 22.** Section 46-18-102, MCA, is amended to read:

8 **"46-18-102. Rendering judgment and pronouncing sentence -- use of two-way electronic audio-**  
9 **video communication.** (1) The judgment must be rendered in open court. For purposes of this section, a  
10 judgment rendered through the use of two-way electronic audio-video communication, allowing all of the  
11 participants to be heard in the courtroom by all present and allowing the party speaking to be seen, is  
12 considered to be a judgment rendered in open court. Audio-video communication may be used if neither party  
13 objects and the court agrees to its use and has informed the defendant that the defendant has the right to  
14 object to its use. The audio-video communication must operate as provided in 46-12-201.

15 (2) If the verdict or finding is not guilty, judgment must be rendered immediately and the defendant  
16 must be discharged from custody or from the obligation of a bail bond.

17 (3) (a) ~~Except as provided in 46-18-301, if~~ If the verdict or finding is guilty, sentence must be  
18 pronounced and judgment rendered within a reasonable time.

19 (b) When the sentence is pronounced, the judge shall clearly state for the record the reasons for  
20 imposing the sentence."  
21

22 **Section 23.** Section 46-18-115, MCA, is amended to read:

23 **"46-18-115. Sentencing hearing -- use of two-way electronic audio-video communication.**  
24 Before imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or  
25 finding of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

26 (1) The court shall afford the parties an opportunity to be heard on any matter relevant to the  
27 disposition, including the imposition of a sentence enhancement penalty and the applicability of mandatory  
28 minimum sentences, persistent felony offender status, or an exception to these matters.

1           ~~(2)~~ If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided by  
2 46-18-301.

3           ~~(3)~~(2) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address the  
4 defendant personally to ascertain whether the defendant wishes to make a statement and to present any  
5 information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant  
6 wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so. For  
7 purposes of this section, the requirement that the court address the defendant personally may be satisfied by  
8 the use of two-way electronic audio-video communication. Audio-video communication may be used if neither  
9 party objects and the court agrees to its use and has informed the defendant that the defendant has the right to  
10 object to its use. The audio-video communication must operate as provided in 46-12-201.

11           ~~(4)~~(3) (a) The court shall permit the victim to present a statement concerning the effects of the crime  
12 on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and  
13 the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present the statement  
14 in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

15           (b) The court shall give copies of any written statements of the victim to the prosecutor and the  
16 defendant prior to imposing sentence.

17           (c) The court shall consider the victim's statement along with other factors. However, if the victim's  
18 statement includes new material facts upon which the court intends to rely, the court shall allow the defendant  
19 adequate opportunity to respond and may continue the sentencing hearing if necessary.

20           ~~(5)~~(4) The court shall impose sentence or make any other disposition authorized by law.

21           ~~(6)~~(5) In felony cases, the court shall specifically state all reasons for the sentence, including  
22 restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment."  
23

24           **Section 24.** Section 46-18-207, MCA, is amended to read:

25           "**46-18-207. Sexual offender treatment.** (1) Upon sentencing a person convicted of a sexual offense,  
26 as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-  
27 509.

28           (2) (a) Except as provided in subsection (2)(b), the court shall order an offender convicted of a sexual

1 offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to  
2 imprisonment in a state prison to:

3 (i) enroll in and successfully complete the educational phase of the prison's sexual offender treatment  
4 program;

5 (ii) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in  
6 and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment  
7 program; and

8 (iii) if the person is sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-  
9 603(2)(b), or 45-5-625(4) and is released on parole, remain in an outpatient sexual offender treatment program  
10 for the remainder of the person's life.

11 (b) A person who has been sentenced to life imprisonment without possibility of ~~release~~ parole may  
12 not participate in treatment provided pursuant to this section.

13 (3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's  
14 sexual offender treatment program is not eligible for parole unless that phase of the program has been  
15 successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

16 (4) (a) Except for an offender sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-  
17 602(3), 45-5-603(2)(b) or (2)(c), or 45-5-625(4), during an offender's term of commitment to the department of  
18 corrections or a state prison, the department may place the person in a residential sexual offender treatment  
19 program approved by the department under 53-1-203.

20 (b) If the person successfully completes a residential sexual offender treatment program approved by  
21 the department of corrections, the remainder of the term must be served on probation unless the department  
22 petitions the sentencing court to amend the original sentencing judgment.

23 (5) If, following a conviction for a sexual offense as defined in 46-23-502, any portion of a person's  
24 sentence is suspended, during the suspended portion of the sentence the person:

25 (a) shall abide by the standard conditions of probation established by the department of corrections;

26 (b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is  
27 financially able to pay those costs;

28 (c) may have no contact with the victim or the victim's immediate family unless approved by the victim

1 or the victim's parent or guardian, the person's therapists, and the person's probation officer;

2 (d) shall comply with all requirements and conditions of sexual offender treatment as directed by the  
3 person's sex offender therapist;

4 (e) may not enter an establishment where alcoholic beverages are sold for consumption on the  
5 premises or where gambling takes place;

6 (f) may not consume alcoholic beverages;

7 (g) shall enter and remain in an aftercare program as directed by the person's probation officer;

8 (h) shall submit to random or routine drug and alcohol testing;

9 (i) may not possess pornographic material or access pornography through the internet; and

10 (j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or  
11 continuous satellite monitoring.

12 (6) The sentencing of a sexual offender is subject to 46-18-202(2) and 46-18-219.

13 (7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a  
14 sexual offender to impose any part of a sentence that was previously suspended."

15

16 **Section 25.** Section 46-18-219, MCA, is amended to read:

17 **"46-18-219. ~~Life sentence without possibility of release~~ Enhanced penalty for repeat offenses.**

18 (1) (a) Except as provided in subsection (3), if an offender convicted of one of the following offenses was  
19 previously convicted of one of the following offenses or of an offense under the laws of another state or of the  
20 United States that, if committed in this state, would be one of the following offenses, the offender must be  
21 sentenced to life in prison, ~~unless the death penalty is applicable and imposed:~~

22 (i) 45-5-102, deliberate homicide;

23 (ii) 45-5-303, aggravated kidnapping;

24 (iii) 45-5-625, sexual abuse of children;

25 (iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; or

26 (v) 45-5-508, aggravated sexual intercourse without consent.

27 (b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was  
28 previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection

1 (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States  
2 that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the  
3 offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:

- 4 (i) 45-5-103, mitigated deliberate homicide;
- 5 (ii) 45-5-202, aggravated assault;
- 6 (iii) 45-5-215, strangulation of a partner or family member;
- 7 (iv) 45-5-302, kidnapping;
- 8 (v) 45-5-401, robbery; or
- 9 (vi) 45-5-603(2)(b), aggravated promotion of prostitution of a child.

10 (2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under  
11 subsection (1):

- 12 (a) shall serve the entire sentence;
- 13 (b) shall serve the sentence in prison;
- 14 (c) may not for any reason, except a medical reason, be transferred for any length of time to another  
15 type of institution, facility, or program;
- 16 (d) may not be paroled; and
- 17 (e) may not be given time off for good behavior or otherwise be given an early release for any reason.

18 (3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1),  
19 pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this  
20 section do not apply to the offender's present sentence.

21 (4) The imposition or execution of the sentences prescribed by this section may not be deferred or  
22 suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this  
23 section prevails.

24 (5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are  
25 locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private  
26 contractor.

27 (b) Prison does not include a work release center, prerelease center, boot camp, or any other type of  
28 facility that does not provide secure detention."



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**Section 26.** Section 46-18-220, MCA, is amended to read:

**"46-18-220. Sentences for certain offenses committed in official detention -- ~~death penalty.~~** An offender convicted of having committed attempted deliberate homicide, aggravated assault, or aggravated kidnapping while in official detention, as defined in 45-2-101, shall, if the provisions of 46-1-401 have been complied with, be sentenced to ~~death or life imprisonment as provided in 46-18-301 through 46-18-310~~ or life imprisonment without possibility of parole."

**Section 27.** Section 46-19-101, MCA, is amended to read:

**"46-19-101. Commitment of defendant -- transfer of information in possession of sheriff. (1)** Upon oral pronouncement of a sentence imposing punishment of imprisonment, commitment to the department of corrections, placement in a prerelease center, community corrections facility, or other place of confinement, ~~or death,~~ the court shall commit the defendant to the custody of the sheriff, who shall deliver the defendant to the place of confinement, or commitment, ~~or execution~~ and give that place an order, which must be signed by the sentencing judge on the date of oral pronouncement of sentence, stating that the defendant is sentenced to that place for imprisonment, commitment, or placement, ~~or execution,~~ as the case may be. The order is authority for that place to hold the defendant pending receipt by that place of a copy of the written judgment.

(2) When a sheriff delivers the defendant to the place of confinement, or commitment, ~~or execution,~~ the sheriff shall deliver at the same time all information in the possession of the sheriff regarding the physical and mental health of the defendant, including health information contained in a presentence investigation report."

**Section 28.** Section 46-20-204, MCA, is amended to read:

**"46-20-204. Stay of execution and relief Relief pending appeal.** ~~(1) If an appeal is taken, a sentence of death must be stayed by order of the trial court until final order by the supreme court.~~

~~(2)~~(1) If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment must be stayed by the trial court.

~~(3)~~(2) If an appeal is taken, a sentence to pay a fine or a fine and costs must be stayed by the trial

1 court or by the reviewing court.

2 ~~(4)~~(3) If an appeal is taken and the accused was admitted to probation, the accused shall remain on  
3 probation or post bail."  
4

5 **Section 29.** Section 46-21-201, MCA, is amended to read:

6 **"46-21-201. Proceedings on petition.** (1) (a) Unless the petition and the files and records of the  
7 case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to  
8 be sent to the county attorney in the county in which the conviction took place and to the attorney general and  
9 order that a responsive pleading be filed. The attorney general shall determine whether the attorney general will  
10 respond to the petition and, if so, whether the attorney general will respond in addition to or in place of the  
11 county attorney. Following its review of the responsive pleading, the court may dismiss the petition as a matter  
12 of law for failure to state a claim for relief or it may proceed to determine the issue.

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

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

21 ~~(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice~~  
22 ~~require, the court shall order the office of state public defender, provided for in 2-15-1029, to assign counsel for~~  
23 ~~a petitioner who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana~~  
24 ~~Public Defender Act, Title 47, chapter 1.~~

25 ~~(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the~~  
26 ~~sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and~~  
27 ~~wishes to file a petition under this chapter, the court will order the office of state public defender to assign~~  
28 ~~counsel who meets the Montana supreme court's standards and the office of state public defender's standards~~

1 ~~for competency of assigned counsel in proceedings under this chapter for an indigent person sentenced to~~  
2 ~~death.~~

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

5 ~~(i) order the office of state public defender to assign counsel to represent the person pending a~~  
6 ~~determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that~~  
7 ~~the person either has accepted the offer of assigned counsel or is unable to competently decide whether to~~  
8 ~~accept the offer of assigned counsel;~~

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

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

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

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

19 ~~(e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of~~  
20 ~~state public defender.~~

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

22 ~~(4)(3)~~ The court, for good cause, may grant leave to either party to use the discovery procedures  
23 available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the  
24 manner that the court has ordered or to which the parties have agreed.

25 ~~(5)(4)~~ The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its  
26 discretion, the court may order the petitioner brought before the court for the hearing.

27 ~~(6)(5)~~ If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the  
28 judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial,

1 custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition  
2 must be dismissed."

3

4 **Section 30.** Section 46-23-201, MCA, is amended to read:

5 **"46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in  
6 subsections (2) through (4) and the parole criteria in 46-23-208, the board may release on nonmedical parole  
7 by appropriate order any person who is:

8 (a) confined in a state prison;

9 (b) sentenced to the state prison and confined in a prerelease center;

10 (c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a youth correctional facility;

11 (d) sentenced to be committed to the custody of the director of the department of public health and

12 human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana

13 developmental center, or the Montana mental health nursing care center.

14 (2) Persons ~~under sentence of death, persons~~ sentenced to the department who have been placed by  
15 the department in a state prison temporarily for assessment or sanctioning, persons sentenced to life  
16 imprisonment without possibility of parole, and persons serving sentences imposed under 46-18-202(2) or 46-  
17 18-219 may not be granted a nonmedical parole.

18 (3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has  
19 served at least one-fourth of the prisoner's full term.

20 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has  
21 served 30 years.

22 (5) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years if the prisoner is  
23 confined for a sexual or violent offense, as defined in 46-23-502, or up to 1 year if the prisoner is confined for  
24 any other offense before a hearing panel conducts another hearing or review."

25

26 **Section 31.** Section 46-23-210, MCA, is amended to read:

27 **"46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order any  
28 person confined in a state prison or adult community corrections facility or any person sentenced to a state

1 prison and confined in a prerelease center who:

2 (a) is not under ~~sentence of death or~~ sentence of life imprisonment without possibility of ~~release~~  
3 parole;

4 (b) is unlikely to pose a detriment to the person, victim, or community; and

5 (c) (i) has a medical condition requiring extensive medical attention; or

6 (ii) has been determined by a physician to have a medical condition that will likely cause death within 6  
7 months or less.

8 (2) A person designated ineligible for parole under 46-18-202(2) must have approval of the  
9 sentencing judge before being eligible for medical parole. If the court does not respond within 30 days to a  
10 written request from the department, the person is considered to be approved by the court for medical parole.  
11 The provisions of this subsection do not apply to a person who is ineligible for medical parole under subsection  
12 (1)(a).

13 (3) Medical parole may be requested by the board, the department, an incarcerated person, or an  
14 incarcerated person's spouse, parent, child, grandparent, or sibling by submitting a completed application to the  
15 administrator of the correctional institution in which the person is incarcerated. The application must include a  
16 detailed description of the person's proposed placement and medical care and an explanation of how the  
17 person's medical care will be financed if the person is released on medical parole. The application must include  
18 a report of an examination and written diagnosis by a physician licensed under Title 37 to practice medicine.  
19 The physician's report must include:

20 (a) a description of the medical attention required to treat the person's medical condition;

21 (b) a description of the person's medical condition, any diagnosis, and any physical incapacity; and

22 (c) a prognosis addressing the likelihood of the person's recovery from the medical condition or  
23 diagnosis and the extent of any potential recovery. The prognosis may include whether the person has a  
24 medical condition causing the likelihood of death within 6 months.

25 (4) The application must be reviewed and accepted by the department before the board may consider  
26 granting a medical parole.

27 (5) ~~Upon~~ On receiving the application from the department, a hearing panel shall hold a hearing. Any  
28 interested person or the interested person's representative may submit written or oral statements, including

1 written or oral statements from a victim. A victim's statement may be kept confidential.

2 (6) The hearing panel shall require as a condition of medical parole that the person agree to  
 3 placement in an environment approved by the department during the parole period, including but not limited to  
 4 a hospital, nursing home, hospice facility, or prerelease center, to intensive supervision, to some other  
 5 appropriate community corrections facility or program, or to a family home. The hearing panel may require as a  
 6 condition of parole that the person agree to periodic examinations and diagnoses at the person's expense.  
 7 Reports of each examination and diagnosis must be submitted to the board and department by the examining  
 8 physician. If either the board or department determines that the person's medical condition has improved to the  
 9 extent that the person no longer requires extensive medical attention or is likely to pose a detriment to the  
 10 person, victim, or community, a hearing panel may revoke the parole and return the person to the custody of  
 11 the department.

12 (7) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

13 (8) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to  
 14 medical parole."  
 15

16 **Section 32.** Section 46-23-301, MCA, is amended to read:

17 **"46-23-301. Cases of executive clemency -- application for clemency -- definitions.** (1) (a)  
 18 "Clemency" means kindness, mercy, or leniency that may be exercised by the governor toward a convicted  
 19 person. The governor may grant clemency in the form of:

- 20 (i) the remission of fines or forfeitures;  
 21 (ii) the commutation of a sentence to one that is less severe;  
 22 (iii) respite; or  
 23 (iv) pardon.

24 (b) "Pardon" means a declaration of record that an individual is to be relieved of all legal  
 25 consequences of a prior conviction.

26 (2) A person convicted of a crime need not exhaust judicial or administrative remedies before filing an  
 27 application for clemency, ~~except that an application may not be filed with respect to a sentence of death while~~  
 28 ~~an automatic review proceeding is pending before the Montana supreme court under 46-18-307 through 46-18-~~

1 340. The board shall consider cases of executive clemency only upon application. All applications for executive  
2 clemency must be made to the board. ~~An application for executive clemency in capital cases may be filed with~~  
3 ~~the board no later than 10 days after the district court sets a date of execution.~~ Applications may be filed only by  
4 the person convicted of the crime, by the person's attorney acting on the person's behalf and with the person's  
5 consent, or by a court-appointed next friend, guardian, or conservator acting on the person's behalf.

6 (3) (a) After a hearing panel has considered an application for executive clemency and has by  
7 majority vote favored a hearing, the hearing panel shall cause an investigation to be made of and base any  
8 recommendation it makes on:

9 (i) all the circumstances surrounding the crime for which the applicant was convicted;

10 (ii) the applicant's criminal record; and

11 (iii) the individual circumstances relating to social conditions of the applicant prior to commission of the  
12 crime, at the time the offense was committed, and at the time of the application for clemency.

13 (b) If the hearing panel does not favor a hearing by majority vote, the hearing panel shall transmit the  
14 application to the governor. The governor shall review the application and determine whether a hearing is  
15 appropriate. If the governor determines that a hearing is appropriate, the governor shall transmit the application  
16 back to the hearing panel. The hearing panel shall cause an investigation to be made of and base any  
17 recommendation it makes on the factors set forth in subsection (3)(a).

18 (4) A hearing panel may recommend that clemency be granted or denied. The hearing panel shall  
19 transmit the application and either a recommendation that clemency be granted or a recommendation that  
20 clemency be denied to the governor. The governor is not bound by any recommendation of the hearing panel,  
21 but the governor shall review the record of the hearing and the hearing panel's recommendation before granting  
22 or denying clemency. The governor has the final authority to grant or deny clemency. An appeal may not be  
23 taken from the governor's decision to grant or deny clemency.

24 (5) (a) A hearing panel may not recommend clemency if the applicant:

25 (i) is related or connected to the governor by consanguinity within the fourth degree or by affinity  
26 within the second degree as provided in 1-1-219; or

27 (ii) works or has worked in the office of the governor since the governor took office.

28 (b) The governor may not grant clemency to an applicant described in subsection (5)(a)."

1

2           **Section 33.** Section 46-23-315, MCA, is amended to read:

3           **"46-23-315. Authority of governor to grant respite -- application.** The governor has the power to  
4 grant respites after conviction and judgment for any offenses committed against the criminal laws of the state  
5 for the time that the governor thinks proper. The governor may grant a respite upon application of a person  
6 authorized to apply for executive clemency and prior to any review or recommendation by the board of pardons  
7 and parole. A respite must be of temporary duration for a definite period of time. ~~Any respite that is granted that~~  
8 ~~stays the execution of a death warrant has the effect of postponing the execution of the warrant. In that case, if~~  
9 ~~clemency is not granted, the death warrant is again in effect at the expiration of the period of respite and the~~  
10 ~~execution must take place on the date of expiration of the respite."~~

11

12           **Section 34.** Section 47-1-105, MCA, is amended to read:

13           **"47-1-105. Director -- duties -- report -- rules.** (1) The director shall supervise and direct the system.  
14 In addition to other duties assigned pursuant to this chapter, the director shall:

15           (a) establish the qualifications, duties, and compensation of the public defender division administrator  
16 provided for in 47-1-201, hire the public defender division administrator after considering qualified applicants,  
17 and regularly evaluate the performance of the public defender division administrator;

18           (b) establish the qualifications, duties, and compensation of the appellate defender division  
19 administrator provided for in 47-1-301, hire the appellate defender division administrator after considering  
20 qualified applicants, and regularly evaluate the performance of the appellate defender division administrator;

21           (c) establish the qualifications, duties, and compensation of the conflict defender division  
22 administrator provided for in 47-1-401, hire the conflict defender division administrator after considering  
23 qualified applicants, and regularly evaluate the performance of the conflict defender division administrator; and

24           (d) establish the qualifications, duties, and compensation of the central services division administrator  
25 provided for in 47-1-119, hire the central services division administrator after considering qualified applicants,  
26 and regularly evaluate the performance of the central services division administrator.

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



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

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

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

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

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

10 (e) practice standards;

11 (f) performance criteria; and

12 (g) performance evaluation protocols.

13 (3) The director shall also:

14 (a) review and approve the strategic plan and budget based on proposals submitted by the public  
15 defender division administrator, the central services division administrator, the appellate defender division  
16 administrator, and the conflict defender division administrator;

17 (b) review and approve any proposal to create permanent staff positions;

18 (c) establish policies and procedures for handling excess caseloads;

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

21 (e) examine workloads and workload standards for all levels within the office of state public defender  
22 and include its findings in the biennial report provided for in 47-1-125.

23 (4) The office of state public defender shall adopt administrative rules pursuant to the Montana  
24 Administrative Procedure Act to implement the provisions of this chapter."  
25

26 **Section 35.** Section 47-1-121, MCA, is amended to read:

27 **"47-1-121. Contracted services.** (1) The director shall establish standards for a statewide contracted  
28 services program to be managed by the central services division provided for in 47-1-119. The director shall

1 ensure that contracting for public defender services is done fairly and consistently statewide and within each  
2 public defender region.

3 (2) There is a contract manager position in the central services division hired by the central services  
4 division administrator. The contract manager is responsible for the administrative oversight of contracting for  
5 attorney and nonattorney support for units of the office of state public defender.

6 (3) All contracting pursuant to this section is exempt from the Montana Procurement Act as provided  
7 in 18-4-132.

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

10 (5) Contracting for attorney services must be done through a competitive process that must, at a  
11 minimum, involve the following considerations:

12 (a) attorney qualifications necessary to provide effective assistance of counsel;

13 ~~(b) attorney qualifications necessary to provide effective assistance of counsel that meets the~~  
14 ~~standards issued by the Montana supreme court for counsel for indigent persons in capital cases;~~

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

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

17 ~~(e)~~(d) reporting protocols and caseload monitoring processes;

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

19 ~~(g)~~(f) a process for conflict resolution;

20 ~~(h)~~(g) continuing education requirements; and

21 ~~(i)~~(h) cost of the services.

22 (6) The public defender division administrator, deputy public defenders, appellate defender division  
23 administrator, and conflict defender division administrator shall supervise the personnel contracted for their  
24 respective offices and ensure compliance with the standards established in the contract.

25 (7) The director shall establish reasonable compensation for attorneys contracted to provide public  
26 defender and appellate defender services and for others contracted to provide nonattorney services.

27 (8) Contract attorneys may not take any money or benefit from an appointed client or from anyone for  
28 the benefit of the appointed client.

1 (9) The director shall limit the number of contract attorneys so that all contracted attorneys may be  
2 meaningfully evaluated.

3 (10) The director shall ensure that there are procedures for conducting an evaluation of every contract  
4 attorney on a biennial basis by the contract manager based on written evaluation criteria."  
5

6 **Section 36.** Section 47-1-202, MCA, is amended to read:

7 **"47-1-202. Public defender division administrator -- duties.** (1) In addition to the duties provided in  
8 47-1-201 and subject to approval by the director, the public defender division administrator shall:

9 (a) develop and implement a regional strategic plan for the delivery of public defender services;

10 (b) ensure that administrative management procedures for regional offices are consistent with the  
11 policies and procedures provided by the central services division established in 47-1-119;

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

16 ~~(d) establish policies and procedures for assigning counsel in capital cases that are consistent with~~  
17 ~~standards issued by the Montana supreme court for counsel for indigent persons in capital cases;~~

18 ~~(e)~~(d) work with the training coordinator provided for in 47-1-120 to establish and supervise a training  
19 and performance evaluation program for attorneys and nonattorney staff members and contractors;

20 ~~(f)~~(e) work with the central services division to establish procedures to handle complaints about public  
21 defender performance; and

22 ~~(g)~~(f) perform all other duties assigned by the director pursuant to this chapter.

23 (2) The public defender division administrator may not maintain a client caseload."  
24

25 **Section 37.** Section 47-1-301, MCA, is amended to read:

26 **"47-1-301. Appellate defender division -- division administrator.** (1) There is an appellate  
27 defender division. The appellate defender division must be located in Helena, Montana.

28 (2) (a) The director shall hire and supervise the appellate defender division administrator to manage

1 and supervise the appellate defender division.

2 (b) The appellate defender division administrator must be an attorney licensed to practice law in the  
3 state.

4 (3) Subject to approval by the director, the appellate defender division administrator shall:

5 (a) direct, manage, and supervise all public defender services provided by the appellate defender  
6 division;

7 (b) ensure that when a court orders the appellate defender division to assign an appellate lawyer or  
8 when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made  
9 promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or  
10 petitioner when necessary;

11 ~~(c) ensure that appellate defender assignments comply with the provisions of 47-1-202(1)(c) and~~  
12 ~~standards for counsel for indigent persons in capital cases issued by the Montana supreme court;~~

13 ~~(d)~~(c) hire and supervise the work of appellate defender division personnel;

14 ~~(e)~~(d) contract for services as provided in 47-1-121 and as authorized by the director according to the  
15 strategic plan for the delivery of public defender services;

16 ~~(f)~~(e) keep a record of appellate defender services and expenses of the appellate defender division  
17 and submit records and reports to the central services division provided for in 47-1-119;

18 ~~(g)~~(f) implement standards and procedures established by the director for the appellate defender  
19 division;

20 ~~(h)~~(g) maintain a minimum client caseload as determined by the director;

21 ~~(i)~~(h) confer with the director on budgetary issues and submit budgetary requests and information for  
22 the reports required by law or by the governor; and

23 ~~(j)~~(i) perform all other duties assigned to the appellate defender division administrator by the director."  
24

25 **Section 38.** Section 53-9-103, MCA, is amended to read:

26 **"53-9-103. Definitions.** As used in this part, the following definitions apply:

27 (1) "Claimant" means any of the following claiming compensation under this part:

28 (a) a victim;

1 (b) a dependent of a deceased victim; or

2 (c) an authorized person acting on behalf of any of them.

3 (2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for  
4 economic loss otherwise compensable under this part that the claimant has received or that is readily available  
5 to the claimant from:

6 (a) the offender;

7 (b) the government of the United States or any agency thereof, a state or any of its political  
8 subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages  
9 makes them excess or secondary to benefits under this part;

10 (c) social security, medicare, and medicaid;

11 (d) workers' compensation;

12 (e) wage continuation programs of any employer;

13 (f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of  
14 the criminally injurious conduct;

15 (g) a contract, including an insurance contract, providing hospital and other health care services or  
16 benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for  
17 benefits under the contract or that the contract is a secondary source of benefits and benefits under this part  
18 are a primary source.

19 (h) a crime victims compensation program operated by the state in which the victim was injured or  
20 killed that compensates residents of this state injured or killed in that state; or

21 (i) any other third party.

22 (3) "Criminally injurious conduct" means conduct that:

23 (a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C.  
24 2331, committed outside of the United States against a resident of this state;

25 (b) results in bodily injury or death or involves domestic violence in a home where minor children were  
26 present; and

27 (c) is punishable by a fine, fine or imprisonment, or death or would be so punishable except that the  
28 person engaging in the conduct lacked capacity to commit the crime under the laws of this state; however,

1 ~~criminally injurious conduct~~ the term does not include conduct arising out of the ownership, maintenance, or use  
 2 of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in  
 3 Title 45 that requires the mental state of purposely as an element of the offense or the injury or death was  
 4 inflicted by the driver of a motor vehicle who is found by the office, by a preponderance of the evidence, to have  
 5 been operating the motor vehicle while under the influence, as that term is defined in 61-8-401; or

6 (d) is committed in a state without a crime victims compensation program that covers a resident of  
 7 this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

8 (4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or  
 9 partially dependent upon the victim for care or support and includes a child of the victim conceived before the  
 10 victim's death but born after the victim's death, including a child that is conceived as a result of the criminally  
 11 injurious conduct.

12 (5) "Office" means the office of victims services established in 2-15-2016.

13 (6) "Victim" means:

14 (a) a person who suffers bodily injury or death as a result of:

15 (i) criminally injurious conduct;

16 (ii) the person's good faith effort to prevent criminally injurious conduct; or

17 (iii) the person's good faith effort to apprehend a person reasonably suspected of engaging in  
 18 criminally injurious conduct; or

19 (b) a minor child present in a home where domestic violence occurred."  
 20

21 **NEW SECTION. Section 39. Repealer.** The following sections of the Montana Code Annotated are  
 22 repealed:

23 45-3-109. Execution of death sentence.

24 46-18-301. Hearing on imposition of death penalty.

25 46-18-302. Evidence that may be received.

26 46-18-303. Aggravating circumstances.

27 46-18-304. Mitigating circumstances.

28 46-18-305. Effect of aggravating and mitigating circumstances.

- 1 46-18-306. Specific written findings of fact.  
2 46-18-307. Automatic review of sentence.  
3 46-18-308. Time for review -- consolidation with appeal.  
4 46-18-309. Transmission of transcript and record of trial.  
5 46-18-310. Supreme court's determination as to sentence.  
6 46-19-103. Execution of death sentence.  
7 46-19-201. When and how mental fitness of defendant determined.  
8 46-19-202. Proceedings following determination regarding fitness.  
9 46-19-203. Procedure for determining if woman is pregnant.  
10 46-19-204. Proceedings following determination regarding pregnancy.

11

12 **NEW SECTION. Section 40. Effective date.** [This act] is effective on passage and approval.

13

14 **NEW SECTION. Section 41. Retroactive applicability.** (1) [This act] applies retroactively, within the  
15 meaning of 1-2-109, to offenses that occurred prior to [the effective date of this act].

16 (2) A person who is under sentence of death must be resentenced by the court in which the person  
17 was convicted to life imprisonment without possibility of parole.

18

- END -