

LEGISLATIVE UPDATE
By Legislative Services Division
Spring Judge's Conference
Billings, Montana
May 16, 2013

I. CIVIL PROCEDURE

1. **House Bill No. 555.** Revises the law regarding mediation in family law cases, allowing a district court to authorize mediation if the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party if each of the parties provides written, informed consent to participate in the mediation.
 - a. Amends sections 45-5-106, 46-16-130, 46-18-201, 46-18-236, 50-46-320, 61-2-302, 61-5-205, 61-5-208, 61-5-212, 61-5-231, 61-8-401, 61-8-402, 61-8-404, 61-8-405, 61-8-408, 61-8-421, 61-8-442, 61-8-465, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, 61-8-741, and 61-11-101, MCA. New section in Title 61, chapter 8, section 4, MCA.
 - b. Effective October 1, 2013.
2. **House Bill No. 224.** . Revises the law regarding appeal bonds in civil cases to provide that a bond to stay execution on a judgment during appellate review may not exceed \$50 million, regardless of the judgment amount.
 - a. New section in Title 25, chapter 12, MCA.
 - b. Effective April 5, 2013.

II. CRIMES AND CRIMINAL PROCEDURE

1. **House Bill No. 104.** Creating criminal offenses involving the death of a fetus of another and providing exceptions for consensual abortion, medical treatment for the pregnant woman or fetus and a woman with respect for her fetus.
 - a. Amends section 45-5-102 and 45-5-103, MCA and adds new sections in Title 45, chapter 5, MCA.
 - b. Effective October 1, 2013.
2. **House Bill No. 168.** Revising laws relating to driving under the influence of alcohol or drugs to provide a legal limit for the amount of THC allowed present in a person's blood while operating a motor vehicle.
 - a. Amends sections 45-5-106, 46-16-130, 46-18-201, 46-18-236, 50-46-320, 61-2-302, 61-5-205, 61-5-208, 61-5-212, 61-5-231, 61-8-401, 61-8-402, 61-8-404, 61-8-405, 61-8-408, 61-8-421, 61-8-442, 61-8-465, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, 61-8-741, and 61-11-101, MCA and adds a new section in Title 61, chapter 8, part 4, MCA.
 - b. Effective October 1, 2013.

3. **House Bill No. 335.** Providing authority to district courts to designate sex offenders as level 1, 2, or 3 when those sex offenders do not have a designation.
 - a. Amends section 46-23-509, MCA.
 - b. Effective October 1, 2013.
 - c. Applies to proceedings begun on or after October 1, 2013.

4. **House Bill No. 355.** Revising laws regarding alcohol- and drug-related driving offenses; raising the 5-year look back provision for certain alcohol- and drug-related driving offenses to 10 years and providing that all prior convictions are counted for determining the number of convictions in the case of a third or subsequent DUI.
 - a. Amends sections 61-8-465 and 61-8-734, MCA.
 - b. Effective April 26, 2013.
 - c. Applies to offenses committed on or after April 26, 2013.
 - d. For the purpose of determining the number of convictions for prior offenses referred to in 61-8-465, 61-8-714, 61-8-722, or 61-8-731, [this act] applies retroactively, within the meaning of 1-2-109, to convictions that occurred before April 26, 2013.

5. **House Bill No. 433.** Revising laws related to registration of sexual or violent offenders; providing that offenders must register when they are located in a county that is not their county of residence for more than 10 days; requiring offenders to register in any county where they remain for 24 hours until they return to their county of residence.
 - a. Amends section 46-23-505, MCA.
 - b. Effective April 24, 2013.

6. **House Bill No. 446.** Revising the offense of disorderly conduct; providing that discharging firearms is not disorderly conduct.
 - a. Amends section 45-8-101, MCA
 - b. Effective October 1, 2013.

7. **House Bill No. 463.** Revising the definition of "salvage metal dealer"; creating a misdemeanor and felony offense of theft of nonferrous metal; providing penalties.
 - a. Amends section 30-22-101, MCA, and a new section in Title 45, chapter 6, part 3, MCA.
 - b. Effective October 1, 2013.
 - c. Applies to offenses committed on or after October 1, 2013.

8. **House Bill No. 478.** Revising laws regarding trafficking of persons for commercial sexual activity; revising prostitution laws; revising certain penalties; establishing the offenses of sexual servitude of a child and patronizing a child.
 - a. Amends sections 45-5-305, 45-5-306, 45-5-601, 45-5-602, 45-5-603, 46-18-111, 46-18-201, 46-18-203, 46-18-205, 46-18-207, 46-18-222, 46-18-231, 46-23-502, and 46-23-1011, MCA, and new sections in Title 45, chapter 5, part 3, MCA.
 - b. Effective July 1, 2013.
 - c. Applies to offenses committed on or after July 1, 2013.

9. **House Bill No. 488.** Requiring the Department of Justice to create a poster to provide information regarding the national human trafficking resource center hotline; providing that the department establish by rule persons and entities that should receive copies of the poster for display; and requiring the Department of Transportation to display the poster.
 - a. New section in Title 44, chapter 4, MCA, and Title 60, chapter 2, part 2, MCA.
 - b. Effective October 1, 2013.
10. **Senate Bill No. 107.** Revising the definition of "deviate sexual conduct".
 - a. Amends sections 27-2-216, 41-3-102, 45-1-205, 45-2-101, 45-5-505, 46-1-502, and 52-3-803, MCA.
 - b. Effective October 1, 2013.
11. **Senate Bill No. 134.** Revising the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act; clarifying the definition of "older person"; eliminating the requirement in prosecutions that an older person be unable to provide personal protection due to mental or physical impairment or frailties or dependencies brought about by advanced age; providing for a minimum prison sentence in certain circumstances.
 - a. Amends sections 52-3-803 and 52-3-825, MCA.
 - b. Effective April 5, 2013.
 - c. Applies to offenses committed on or after April 5, 2013.
12. **Senate Bill No. 160.** Creating the offense of criminal child endangerment; providing that a person commits the offense of criminal child endangerment if the person purposely, knowingly, or negligently causes substantial risk of death or serious bodily injury to a child under 14 years of age.
 - a. New section in Title 45, chapter 5, part 6, MCA.
 - b. Effective April 25, 2013.
 - c. Applies to offenses committed on or after April 25, 2013.
13. **Senate Bill No. 189.** Revising partner or family member assault laws; providing that a conviction in another state for an offense related to domestic violence between partners or family members, as those terms are defined in Montana, is a conviction for purposes of determining the number of prior convictions for the offense of partner or family member assault; providing that a conviction for aggravated assault, if the offender was a partner or family member of the victim, is a prior conviction for purposes of partner or family member assault.
 - a. Amends section 45-5-206, MCA.
 - b. Effective April 5, 2013.
14. **Senate Bill No. 196.** Limiting the use of unmanned aerial vehicles by law enforcement; and prohibiting the use of unlawfully obtained information as evidence in court.
 - a. New section in Title 46, chapter 5, part 1, MCA.
 - b. Effective October 1, 2013.

15. **Senate Bill No. 198.** Providing for increased penalties for assault on a minor under 36 months of age.
 - a. Amends sections 45-5-212 and 46-18-111, MCA.
 - b. Effective October 1, 2013.
 - c. Applies to proceedings begun after October 1, 2013.
16. **Senate Bill No. 213.** Requiring certain sex offenders to provide a DNA sample for entry into the Montana DNA database.
 - a. Amends sections 44-6-103 and 46-23-504, MCA.
 - b. Effective October 1, 2013.
17. **Senate Bill No. 259.** Allowing a court to vacate certain convictions when the offender was a victim of trafficking for commercial sexual activity.
 - a. New section in Title 46, chapter 18, MCA.
 - b. Effective October 1, 2013.
18. **Senate Bill No. 267.** Clarifying that pleas of nolo contendere may be accepted with the consent of the court and the prosecutor.
 - a. Amends sections 46-16-105 and 46-17-203, MCA.
 - b. Effective October 1, 2013.
 - c. Applies to proceedings begun after October 1, 2013.
19. **Senate Bill No. 306.** Revising the definition of "partners" under the offense of partner or family member assault.
 - a. Amends section 45-5-206, MCA.
 - b. Effective April 18, 2013.
 - c. Applies to offenses committed on or after April 18, 2013.
20. **Senate Bill No. 326.** Providing that a person convicted of sexual intercourse without consent who is the biological parent of a child resulting from the act forfeits all parental rights under certain circumstances.
 - a. Amends section 45-5-503, MCA.
 - b. Effective October 1, 2013.
21. **Senate Bill No. 351.** Providing for criminal background checks of residents in homes where a potential emergency placement may be made; providing requirements for emergency placement of a child in a home; providing requirements for conducting background checks; and providing rulemaking authority.
 - a. New section in Title 41, chapter 3, part 3, MCA.
 - b. Effective October 1, 2013.

III. CORRECTIONS

1. **House Bill No. 61.** Adding gambling dependence for purposes of addiction counselor licensure laws.
 - a. Amends section 37-35-102, MCA.
 - b. Effective October 1, 2013.
2. **House Bill No. 68.** Establishing a statewide multiagency reentry task force for released offenders at high risk of recidivism; specifying department of corrections duties.
 - a. New sections in Title 46, chapter 23, MCA.
 - b. Effective July 1, 2013.
3. **House Bill No. 137.** Clarifying application of parole eligibility restrictions for juvenile offenders.
 - a. Amends section 46-18-222, MCA.
 - b. Effective February 19, 2013.
4. **Senate Bill No. 73.** Abolishing the drug abuse resistance education (D.A.R.E.) program; abolishing the D.A.R.E. trust fund account, the voluntary income tax checkoff, and program administration through the Montana Board of Crime Control; providing for the transfer of funds remaining in the trust fund account to the general fund.
 - a. Repealing sections 44-2-701, 44-2-702, 44-2-703, 44-2-704, and 44-2-705, MCA.
 - b. Effective February 27, 2013.

IV. FAMILY LAW, MINORS

1. **House Bill No. 42.** Revising the amount of actual damages, from \$2,500 to \$6,900, that may be recovered from the parents of a minor who destroys property.
 - a. Amends sections 40-6-237 and 40-6-238, MCA.
 - b. Effective October 1, 2013.
2. **House Bill No. 330.** Revises laws related to dissolution proceedings by requiring that certain information produced during a dissolution proceeding remain sealed (applies to qualified domestic relations orders as defined by the IRC with certain exceptions for the pension plan administrator, the child support enforcement division, the parties, and each party's counsel of record).
 - a. Amends sections 40-4-105, 40-4-121, 40-4-201, 40-4-202, 40-4-203, 40-4-204, 40-4-205, 40-4-215, 40-4-219, and 40-4-220, MCA.
 - b. Effective October 1, 2013.
 - c. Applicable to proceedings after October 1, 2013.
3. **Senate Bill No. 160.** Creates the offense of criminal child endangerment, which applies to children under 14 years of age and includes failing provide proper nutrition for a child that results in a medical diagnosis of nonorganic failure to thrive.
 - a. New section codified in Title 45, chapter 5, part 6.
 - b. Effective April 25, 2013.

4. **Senate Bill No. 198.** Provides for increased penalties for assault on a minor under the age of 36 months of age.
 - a. Amends section 45-5-212 and 46-18-111, MCA.
 - b. Effective October 1, 2013.
 - c. Applicable to proceedings after October 1, 2013.
5. **Senate Bill No. 326.** Provides that an offender forfeits all parental rights to a child that results from the offense of sexual intercourse without consent.
 - a. Amends section 45-5-503,MCA.
 - b. Effective October 1, 2013.
6. **Senate Joint Resolution No. 22.** Interim study by the legislature to evaluate current court procedures in family law cases.

V. JUDGES AND JUSTICES, COURTS

1. **House Bill No. 71.** Revises the law with respect to restorative justice by creating a restorative justice grant program and eliminating the office of restorative justice.
 - a. Amends sections 2-15-2012, 2-15-2013, and 46-15-411, MCA.
 - b. Effective July 1, 2013.
2. **House Bill No. 72.** Revises the law to provide that a judge may require, as a condition of a deferred or suspended sentence, an offender to participate in a restorative justice program in certain cases.
 - a. Amends sections 46-18-104 and 46-18-201, MCA.
 - b. Effective April 12, 2013.
3. **House Bill No. 92.** Removes public defenders from the list of members of drug treatment court teams (the law will apply to defense attorneys generally).
 - a. Amends sections 46-1-1103 and 46-1-1203, MCA.
 - b. Effective October 1, 2013.
4. **House Bill No. 107.** Revises the law regarding counsel assignments in abuse or neglect proceedings by requiring a determination of eligibility for counsel assignments and requiring the appointment of counsel at the court's expense in certain cases (e.g. the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to section 41-3-422).
 - a. Amends section 41-3-425,MCA.
 - b. Effective July 1, 2013.
5. **House Bill No. 172.** Allows an attorney who is a member of the state bar to serve as a judge pro temp when a municipal court judge is sick, disqualified, or unable to act.
 - a. Amends section 3-6-204,MCA.
 - b. Effective October 1, 2013.

6. **House Bill No. 206.** Increases civil filing fees in Justice’s court and small claims court.
 - a. Amends sections 25-31-112 and 25-35-608, MCA.
 - b. Effective July 1, 2013.
 - c. Applicable to proceedings after July 1, 2013.

7. **House Bill No. 252.** Revises notary public journal storage to secretary of state’s office.
 - a. Amends sections 1-5-419 and 1-5-420 ,MCA.
 - b. Effective October 1, 2013.
 - c. Within 60 days of [the effective date of this act], every county clerk and recorder shall transfer any notary journals received in accordance with 1-5-419 to the office of the secretary of state

8. **House Bill No. 403.** Revises fees collected by district court clerks; establishing fees for providing copies by facsimile, e-mail, or other electronic means; establishing fees for filing a pleading by facsimile or e-mail.
 - a. Amends sections 7-4-2516, 25-1-201, 25-10-404, and 25-10-405, MCA .
 - b. Effective July 1, 2013.

9. **Senate Bill No. 337.** Clarifies standing in water court proceedings.
 - a. Amends section 85-2-233, MCA.
 - b. Effective October 1, 2013.
 - c. Vetoed by Governor Bullock – legislative poll in progress.

10. **Senate Bill No. 355.** Creates a petition process to judiciary determine claims for existing water rights that were exempt from filing for the adjudication of water rights.
 - a. Amending sections 85-2-222, 85-2-233, and 85-2-234, MCA.
 - b. Effective October 1, 2013.

VI. LAW ENFORCEMENT

1. **House Bill No. 74.** Requiring the release or disclosure of records of child abuse or neglect to certain law enforcement, prosecutorial, and child welfare entities and individuals; requiring the Department of Public Health and Human Services to adopt an implementing rule.
 - a. Amends sections 41-3-205 and 41-3-208, MCA.
 - b. Effective October 1, 2013.

2. **House Bill No. 132.** Prohibiting the use of a highway patrol uniform or title to solicit support for or opposition to certain political committees and elections.
 - a. Amends section 2-2-121, MCA.
 - b. Effective October 1, 2013.

3. **House Bill No. 139.** Revising laws governing the law enforcement communications system; clarifying terms; revising billing procedures; revising terms for nonpayment.

- a. Amends sections 44-2-301, 44-2-302, 44-2-303, 44-2-304, 44-2-311, 44-2-312, 44-2-313, 44-2-314, and 44-2-315, MCA; and repealing section 44-2-316, MCA.
 - b. Effective October 1, 2013.
4. **House Bill No. 233.** Revising the 24/7 sobriety program; expanding the 24/7 sobriety program to include other crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; expanding use of the 24/7 program to additional local law enforcement agencies; requiring the statewide program to meet certain standards; authorizing any court to utilize the program.
- a. Amends sections 44-4-1201, 44-4-1202, 44-4-1203, 44-4-1204, 44-4-1205, 44-4-1206, 46-18-201, 61-8-422, and 61-8-733, MCA.
 - b. Effective April 26, 2013.
5. **Senate Bill No. 194.** Providing that strip searches and body cavity searches may be done only when reasonable suspicion exists.
- a. New section in Title 46, chapter 5, MCA.
 - b. Effective October 1, 2013.

VII. MENTAL ILLNESS OR INCAPACITY

1. **House Bill No. 16.** Revising the statutes related to involuntary commitments; revising when the right of the respondent to be physically present at a hearing may be waived; allowing emergency detention of a person in certain cases.
- a. Amends sections 53-21-102, 53-21-119, and 53-21-129, MCA.
 - b. Effective October 1, 2013.
2. **House Bill No. 84.** Establishing in statute the 72-hour presumptive eligibility program for adult crisis stabilization services that is provided for in administrative rule; revising the rule requirements in order to allow reimbursement for two psychiatric diagnostic interviews in a 72-hour period; providing rulemaking authority.
- a. New sections in Title 53, chapter 21, MCA.
 - b. Effective July 1, 2013.
3. **House Bill No. 583.** Creating the Montana suicide review team; establishing membership requirements; establishing a process for obtaining and reviewing information related to suicides; providing confidentiality; providing penalties; providing an appropriation.
- a. Amends sections 50-16-522, 50-16-525, 50-16-804, 50-16-805, and 53-21-1102, MCA. New sections in Title 53, chapter 21.
 - b. Effective July 1, 2013.
 - c. Terminates June 30, 2016.
4. **Senate Bill No. 11.** Generally revising criminal justice system laws related to offenders with mental illness; revising requirements for parole and probation officers and members of the Board of Pardons and Parole; revising laws related to conditions of

release, bail, and parole of offenders with mental illness; revising the definition of "mental disease or defect".

- a. Amending sections 2-15-2302, 46-9-108, 46-9-301, 46-14-101, 46-23-201, and 46-23-1003, MCA.
- b. Effective October 1, 2013.
- c. Applies to appointments of Board of Pardons and Parole made on or after January 1, 2014.

VIII. PRIVACY

1. **House Bill No. 459.** Prohibits a health care provider or health care facility from refusing to provide health care to a person because the person declines to answer questions about the person's ownership, possession, or use of a firearm.
 - a. New sections in Title 50, chapter 16, MCA.
 - b. Effective October 1, 2013.
2. **House Bill No. 603.** Revises the law to require a governmental entity to obtain a search warrant prior to obtaining location information from an electronic device.
 - a. New sections in Title 46, chapter 5, MCA.
 - b. Effective October 1, 2013.
3. **Senate Bill No. 145.** Requires all information on an application for a concealed weapons permit to remain confidential.
 - a. Amending section 45-8-322, MCA.
 - b. Effective October 1, 2013.

IX. TRUSTS AND ESTATES

1. **House Bill No. 89.** Revises the law to allow the department of revenue to refund unclaimed property to a successor of the decedent pursuant to the provisions of Title 70, chapter 9, part 8, if the value of the unclaimed property is \$5,000 or less, regardless of the value of the estate.
 - a. Amends sections 72-3-1101, MCA.
 - b. Effective October 1, 2013.
2. **Senate Bill No. 251.** Replaces the trust code with the Montana Uniform Trust Code. (Applies to express trusts, charitable or non-charitable trusts, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. Does not affect the law relating to constructive or resulting trusts).
 - a. Amending sections 31-2-209, 32-1-102, 32-3-506, 35-2-118, 72-1-103, 72-1-310, 72-1-311, 72-1-312, 72-6-206, 72-6-214, 72-16-1001, 72-34-424, 72-34-446, 72-36-206, 77-1-219, 77-1-229, 77-2-364, and 82-1-304, MCA.
 - b. Repeals and replaces numerous sections in Title 72, MCA.
 - c. Effective October 1, 2013.

- d. Provides applicability to existing relationships.