



Montana Legislative Services Division
Legal Services Office

TO: Task Force on State Public Defender Operations

FROM: Julie Johnson, Legal Services Office

DATE: January 25, 2016

RE: Information and Analysis Requested by the Task Force

OVERVIEW

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

TAB	Subject
A	<u>In re the Rules of Professional Conduct</u> and potential application
B	Inconsistent Guardian Ad Litem Statutes and Draft Bill to Resolve
C	Stackable and Non-Stackable Offenses Tables
D	2015 Legislation to Reduce the Number of Crimes and Misdemeanors with the Potential for Jail Time
E	Discussion of Independent Contractor v. Employee Laws

TAB A: In re the Rules of Professional Conduct and Potential Application on OPD

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

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

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

1. Whether an attorney can agree to billing rules or policies that restrict, limit, or direct the attorney's scope of representation?
2. Whether an attorney can disclose detailed descriptions of professional services to third party auditors without a release from the attorney's client?

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

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

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

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

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

¹ Rule 1.8(f) currently provides:

A lawyer shall not accept compensation for representing a client from one other than the client unless: (1) the client gives written informed consent; (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and (3) information relating to representation of a client is protected as required by Rule 1.6.

check" to escalate litigation costs nor that defense counsel need not even consult with insurers. Under Rule 1.5 M.R.Prof.Conduct, for example, and attorney must charge reasonable fees. Nor, finally, should our holding be taken to signal that defense counsel cannot be held accountable for their work.

In re the Rules, ¶ 39.

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

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

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

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

In re the Rules, ¶ 78.

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

² Rule 1.6 was amended in 2003, after the decision in Rules. Subsection (b) now provides four exceptions to subsection (a), none of which alter the holding in Rules.

TAB B: Inconsistent Guardian Ad Litem Statutes and Draft Bill to Resolve

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

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

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

(Emphasis added).

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

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

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

. . . the court shall immediately appoint the office of state public defender to assign counsel for: . . .

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

LC 7777 is drafted to remove section 41-3-425(2)(b), MCA, to eliminate the inconsistency.

Unofficial Draft Copy

As of: January 25, 2016 (11:25am)

LC7777

**** Bill No. ****

Introduced By *****

By Request of the *****

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

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

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

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

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

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

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

~~(c)~~(b) any party entitled to counsel at public expense

Unofficial Draft Copy

As of: January 25, 2016 (11:25am)

LC7777

under the federal Indian Child Welfare Act.

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

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

{*Internal References to 41-3-425:*

41-3-422 x 41-3-422 x 41-3-422 x 41-3-423 x
41-3-432 x 47-1-104 x 47-1-104 x}

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

- END -

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TAB C:**STACKABLE OFFENSES**

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

Stackable Offense	Code Section	Maximum Jail Time for First Offense
Partner Family Member Assault	45-5-206	imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours (second offense: imprisoned in the county jail not less than 72 hours or more than 1 year)
Assault on a Minor (under 36 months, no serious bodily injury)	45-5-212	imprisoned in a state prison for a term not to exceed 10 years
Stalking	45-5-220	imprisoned in the county jail for a term not to exceed 1 year
Surreptitious Visual Observation	45-5-223	incarcerated in the county jail for a term not to exceed 6 months (second offense: incarcerated for a term not to exceed 1 year)
Sexual Assault (age of victim is 16 or older)	45-5-502	imprisoned in the county jail for a term not to exceed 6 months (second conviction: imprisoned in the county jail for a term not to exceed 1 year)
Sexual Intercourse Without Consent	45-5-503	imprisonment in the state prison for a term of not less than 2 years/4 years or more than 100 years
Indecent Exposure	45-5-504	imprisoned in the county jail for a term of not more than 6 months (second conviction: imprisoned in the county jail for a term of not more than 1 year)
Prostitution (Patron)	45-5-601	imprisoned for a term not to exceed 1 year

Stackable Offense	Code Section	Maximum Jail Time for First Offense
Unlawful Transactions with Children	45-5-623	imprisoned in the county jail for any term not to exceed 6 months
Possession (of alcohol) (18 years of age or older)	45-5-624	For a <u>third</u> offense, at discretion of court, imprisoned in the county jail for a term not to exceed 6 months.
Violation of Order of Protection	45-5-626	imprisoned in the county jail for a term not to exceed 6 months
Theft (less than \$1,500 in value) SB 90	45-6-301, -302, -305	imprisoned in the county jail for a term not to exceed 6 months (second offense: imprisoned in the county jail for a term not to exceed 6 months) (third offense: imprisoned in the county jail for a term of not less than 30 days or more than 6 months)
Criminal Distribution (drugs)	45-9-101	imprisoned in the state prison for a term of not less than 2 years or more than life
Criminal Possession (drugs)	45-9-102	marijuana or its derivatives less than 60 grams of marijuana or 1 gram of hashish, imprisonment in the county jail for not more than 6 months
Fraudulently Obtaining Dangerous Drugs	45-9-104, -106	imprisoned in the state prison for a term of not less than 1 year or more than 5 years
Driving Without a License SB 90	61-5-102	imprisonment of not more than 6 months
Driving While License or Suspended or Revoked SB 90	61-5-212	imprisonment for not less than 2 days or more than 6 months
DUI	61-8-714	imprisonment for not less than 24 consecutive hours or more than 6 months (if passengers over 16)

Stackable Offense	Code Section	Maximum Jail Time for First Offense
Reckless Driving	61-8-715	imprisonment for a term of not more than 90 days (second or subsequent conviction, imprisonment for a term of not less than 10 days or more than 6 months)
Excessive Alcohol Concentration or THC Levels	61-8-722, -731	imprisonment for not more than 6 months (second offense: imprisonment for not less than 5 days or more than 1 year)
Driving Without Insurance SB 90	61-6-301, -302, -304	Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by imprisonment in the county jail for not more than 10 days. (second conviction: imprisonment in the county jail for not more than 10 days) (third or subsequent conviction: imprisonment in the county jail for not more than 6 months)

**Non-Stackable Offenses for Which the Maximum
Amount of Jail Time is No More Than One Year**

Non-Stackable Offense	Code Section	Maximum Jail Time
Assault (Non aggravated - no Serious Bodily Injury "SBI")	45-5-201	imprisoned in the county jail for any term not to exceed 6 months
Negligent Vehicular Assault (no SBI)	45-5-205	incarcerated in a county jail for a term not to exceed 1 year
Negligent Endangerment	45-5-208	imprisoned in the county jail for a term not to exceed 1 year
Violation of No Contact Order	45-5-209	imprisoned in the county jail for a term not to exceed 6 months
Assault on a Sports Official	45-5-211	imprisoned in the county jail for any term not to exceed 6 months
Assault With a Bodily Fluid	45-5-214	incarcerated in a county jail or a state prison for a term not to exceed 1 year
Bigamy	45-5-611	imprisoned in the county jail for any term not to exceed 6 months
Marrying a Bigamist	45-5-612	imprisoned in the county jail for any period not to exceed 6 months
Nonsupport	45-5-621	imprisoned in the county jail for a term not to exceed 6 months
Criminal Mischief (less than \$1,500 in damage)	45-6-101	imprisoned in the county jail for any term not to exceed 6 months
Negligent Arson	45-6-102	imprisoned in the county jail for any term not to exceed 6 months
Desecration (less than \$1,500 in damage)	45-6-104	incarcerated for any term not to exceed 6 months

Non-Stackable Offense	Code Section	Maximum Jail Time
Criminal Destruction of Communication Device	45-6-105	imprisoned in the county jail for any term not to exceed 6 months
Criminal Mischief Damage to Rental Property	45-6-106	imprisoned in the county jail for any term not to exceed 6 months
Criminal Trespass to Vehicle	45-6-202	imprisoned in the county jail for any term not to exceed 6 months
Criminal Trespass to Property	45-6-203	imprisoned in the county jail for any term not to exceed 6 months
Possession of Burglary Tools	45-6-205	imprisoned in the county jail for any term not to exceed 6 months
Issuing a Bad Check (value less than \$1,500) SB 90	45-6-316	imprisoned in the county jail for any term not to exceed 6 months
Forgery (less than \$1,500)	45-6-325	imprisoned in the county jail for any term not to exceed 6 months
Disorderly Conduct SB 90	45-8-101	imprisoned in the county jail for any term not to exceed 10 days
Failure to Disperse	45-8-102	imprisoned in the county jail for a term not to exceed 10 days
Public Nuisance SB 90	45-8-111	imprisoned in the county jail for a term not to exceed 6 months
Altering Labels on Dangerous Drugs	45-9-105, -106	imprisoned in the county jail for any term not to exceed 6 months
Criminal Possession (inhalants)	45-9-121	imprisoned in the county jail for any term not to exceed 6 months
Criminal Possession of Drug Paraphernalia	45-10-103	imprisoned in the county jail for not more than 6 months
Manufacture or Delivery of Drug Paraphernalia	45-10-104	imprisoned in the county jail for not more than 6 months

Non-Stackable Offense	Code Section	Maximum Jail Time
Advertisement of Drug Paraphernalia	45-10-106	imprisoned in the county jail for not more than 6 months

Other Examples of Non-Stackable Offenses

Aggravated assault	45-5-202
Assault on a Peace Officer	45-5-210
Assault on a Minor (3+)	45-5-212
Assault with a Weapon	45-5-213
Criminal Endangerment	45-5-207
Custodial Interference	45-5-304
Incest	45-5-507
Intimidation	45-5-203
Involuntary Servitude	45-5-703
Kidnapping	45-5-302,-303
Malicious Intimidation	45-5-221
Mistreating prisoners	45-5-204
Negligent Vehicular Assault (causing SBI)	45-5-205
Promoting Prostitution	45-5-602, -603
Robbery	45-5-401
Sexual Abuse of Children	45-5-625
Sexual Servitude	45-5-704
Trafficking of Persons	45-5-702

TAB D: SB 90 of 2015 Legislative Session

Attached is Senate Bill 90 as introduced by Senator Swandal in the 2015 Legislative Session. The bill passed Senate Judiciary by 11 to 1. It passed second reading in the Senate by 48 to 1 and third reading by 46 to 1. The bill was tabled in House Judiciary and never reached the House of Representatives for a vote by the Committee of the Whole.

It reduced or eliminated jail time for the following offenses:

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

SENATE BILL NO. 90

INTRODUCED BY N. SWANDAL

BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 owner of the property; or

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

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

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

8 (b) a fraudulent scheme or device.

9 (5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or
10 helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter
11 71, by means of:

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

13 (b) deception or other fraudulent action.

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

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

17 or

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

21 (7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive
22 the owner of the property, the person:

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

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

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

1 subsequent offense shall be fined \$1,500 and be imprisoned in the county jail for a term of not less than 30 days
2 or more than 6 months.

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

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

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

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

19

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

21 **"45-6-302. Theft of lost or mislaid property.** (1) A person who obtains control over lost or mislaid
22 property commits the offense of theft when the person:

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

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

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

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

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

29 (ii) exceeding \$1,500 in value shall be fined an amount not to exceed \$500 or be imprisoned in the county
30 jail for a period not to exceed 6 months.

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

3
 4 **Section 3.** Section 45-6-305, MCA, is amended to read:
 5 **"45-6-305. Theft of labor or services or use of property.** (1) A person commits the offense of theft
 6 when the person obtains the temporary use of property, labor, or services of another that are available only for
 7 hire, by means of threat or deception or knowing that the use is without the consent of the person providing the
 8 property, labor, or services.

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

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

15
 16 **Section 4.** Section 45-6-316, MCA, is amended to read:
 17 **"45-6-316. Issuing a bad check.** (1) A person commits the offense of issuing a bad check when the
 18 person issues or delivers a check or other order upon a real or fictitious depository for the payment of money
 19 knowing that it will not be paid by the depository.

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

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

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

29
 30 **Section 5.** Section 45-8-101, MCA, is amended to read:

1 **"45-8-101. Disorderly conduct.** (1) A person commits the offense of disorderly conduct if the person
2 knowingly disturbs the peace by:
3 (a) quarreling, challenging to fight, or fighting;
4 (b) making loud or unusual noises;
5 (c) using threatening, profane, or abusive language;
6 (d) rendering vehicular or pedestrian traffic impassable;
7 (e) rendering the free ingress or egress to public or private places impassable;
8 (f) disturbing or disrupting any lawful assembly or public meeting;
9 (g) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence
10 would endanger human life;
11 (h) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose;
12 or
13 (i) transmitting a false report or warning of an impending explosion in a place where its occurrence would
14 endanger human life.
15 (2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall
16 be fined an amount not to exceed \$100 or be imprisoned in the county jail for a term not to exceed ~~10 days~~ 1 day,
17 or both.
18 (3) A person convicted of a violation of subsection (1)(i) shall be fined an amount not to exceed \$1,000
19 or be imprisoned in the county jail for a term not to exceed 1 year, or both."
20

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

22 **"45-8-111. Public nuisance.** (1) "Public nuisance" means:

23 (a) a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of
24 property so as to interfere with the comfortable enjoyment of life or property by an entire community or
25 neighborhood or by any considerable number of persons;
26 (b) any premises where persons gather for the purpose of engaging in unlawful conduct; or
27 (c) a condition that renders dangerous for passage any public highway or right-of-way or waters used
28 by the public.
29 (2) A person commits the offense of maintaining a public nuisance if the person knowingly creates,
30 conducts, or maintains a public nuisance.

1 (3) Any act that affects an entire community or neighborhood or any considerable number of persons,
 2 as specified in subsection (1)(a), is no less a nuisance because the extent of the annoyance or damage inflicted
 3 upon individuals is unequal.

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

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

11 (6) A person convicted of maintaining a public nuisance shall be fined an amount not to exceed \$500
 12 ~~or be imprisoned in the county jail for a term not to exceed 6 months, or both.~~ Each day of the conduct constitutes
 13 a separate offense."
 14

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

16 **"61-5-102. Drivers to be licensed -- penalties.** (1) (a) Except as provided in 61-5-104, a person may
 17 not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A
 18 person may not receive a Montana driver's license until the person surrenders to the department all valid driver's
 19 licenses issued by any other jurisdiction. A person may not have in the person's possession or under the person's
 20 control more than one valid Montana driver's license at any time.

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

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

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

30 (ii) A motorcycle endorsement is not required for the operation of a low-speed electric vehicle or a

1 motorcycle that is propelled by an electric motor or other device that transforms stored electrical energy into the
2 motion of the vehicle, has a fully enclosed cab, is equipped with three wheels in contact with the ground, and is
3 equipped with a seat and seatbelts.

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

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

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

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

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

14

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

16 **"61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving**
17 **without valid license or licensing exemption -- seizure of vehicle or rendering vehicle inoperable.** (1) (a)

18 A person commits the offense of driving a motor vehicle without a valid license or without statutory exemption or
19 during a suspension or revocation period if the person drives:

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

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

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

27 (b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor
28 vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving
29 during a suspension or revocation period shall be ~~punished by imprisonment for not less than 2 days or more than~~
30 ~~6 months and may be~~ fined not more than \$500.

1 (ii) If the reason for the suspension or revocation was that the person was convicted of a violation of
2 61-8-401, 61-8-406, or 61-8-411 or a similar offense under the laws of any other state or the suspension was
3 under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs
4 requested by a peace officer who believed that the person might be driving under the influence, the person shall
5 be punished by imprisonment for a term of not less than 2 days or more than 6 months or a fine not to exceed
6 \$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

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

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

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

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

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

26 (6) A court may not suspend or defer imposition of penalties provided by this section."
27

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

29 **"61-6-302. Proof of compliance.** (1) The registration receipt required by 61-3-322 must contain a
30 statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle

1 without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond,
2 as required by 61-6-301.

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

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

14 (a) personally; or

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

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

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

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

24

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

26 **"61-6-304. Penalties.** (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a
27 fine of not less than \$250 or more than \$500 ~~or by imprisonment in the county jail for not more than 10 days, or~~
28 ~~both.~~ A second conviction is punishable by a fine of \$350 ~~or by imprisonment in the county jail for not more than~~
29 ~~10 days, or both.~~ A third or subsequent conviction is punishable by a fine of \$500 ~~or by imprisonment in the~~
30 ~~county jail for not more than 6 months, or both.~~

1 (2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall
2 order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of
3 the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate
4 family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall
5 report the surrender of the registration receipt and license plates to the department, which shall immediately
6 suspend the vehicle's registration. The vehicle's registration status may not be reinstated until proof of compliance
7 with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is
8 entitled to register the vehicle. The surrendered license plates must be recycled or destroyed by the court unless
9 the court decides to retain the license plates for the owner until the registration suspension has been completed
10 or the requirements for a restricted registration receipt have been met. Upon proof of compliance with 61-6-301
11 and payment of fees required under 61-3-333 for replacement license plates and registration decal and under
12 61-3-341 for a replacement registration receipt, during the period of 90 days from the date of a second conviction
13 or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration
14 receipt to the offender. A restricted registration receipt limits the use of the motor vehicle operated at the time of
15 the offense to use solely for employment purposes until the date indicated on the restricted registration receipt.

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

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

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

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

28

29 NEW SECTION. **Section 11. Effective date.** [This act] is effective July 1, 2015.

30

Tab E: Discussion of Independent Contractor v. Employee Laws

To be provided at meeting.

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