



ESTABLISHING A MONTANA JUDICIAL PERFORMANCE EVALUATION SYSTEM; CREATING A JUDICIAL PERFORMANCE EVALUATION COMMISSION AND PROVIDING FOR DUTIES AND MEMBERS; ALLOCATING THE COMMISSION TO THE DEPARTMENT OF JUSTICE FOR ADMINISTRATIVE PURPOSES; REQUIRING THE COMMISSION TO PERFORM EVALUATIONS FOR DISTRICT COURT JUDGES AND SUPREME COURT JUSTICES; REQUIRING THE COMMISSION TO CONTRACT FOR A SURVEY; PROVIDING THE COMMISSION RULEMAKING AUTHORITY; PROVIDING RULEMAKING AUTHORITY; PROVIDING A TRANSITION; PROVIDING A ONE-TIME-ONLY APPROPRIATION; PROVIDING REPORTING REQUIREMENTS; AMENDING SECTION 3-1-1124, MCA; AND PROVIDING A TERMINATION DATE.

WHEREAS, the Montana Legislature finds that it is necessary to provide a comprehensive evaluation system of judicial performance to provide Montana citizens with fair, responsible, and useful information about the judicial performance of supreme court justices and district court judges; and

WHEREAS, providing information to the people of Montana regarding the performance of judges and justices is a matter of public interest and statewide concern; and

WHEREAS, the information provided by a comprehensive evaluation system of judicial performance will provide judges and justices with useful information about their own performances; and

WHEREAS, the Montana Legislature has decided to establish an independent office on judicial performance evaluation with authority to implement an evaluation process and conduct and publicize evaluations.

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

Section 1. Judicial performance evaluation commission -- appointment -- members --

rulemaking. (1) There is a judicial performance evaluation commission. The commission consists of 11 members as follows:

- (a) one member appointed by the president of the senate and one member appointed by the senate minority leader;
 - (b) one member appointed by the speaker of the house of representatives and one member appointed by the house minority leader;
 - (c) four members appointed by the governor, including only one member currently or formerly licensed to practice law in Montana; and
 - (d) three members appointed by the chief justice of the supreme court, including only one member currently or formerly licensed to practice law in Montana.
- (2) A person currently serving as a legislator or a judge may not be appointed to the commission.
- (3) (a) A commission member appointed under subsection (1) serves a 4-year term. Terms of the commission members must be staggered.
- (b) A member may not serve more than three consecutive terms.
- (c) When a vacancy arises in the commission, the replacement must be appointed for the unexpired term by the same appointing authority that appointed the member whose departure created the vacancy.
- (4) The commission shall elect a presiding officer from among its members.
- (5) The commission shall provide recommendations to the legislature regarding the commission's budget and if the judicial performance evaluation program should be expanded to other courts.
- (6) The commission may adopt rules to implement the provisions of [sections 4 through 8].

Section 2. Judicial performance evaluation commission -- salary and expenses -- staff -- administrative attachment. (1) A judicial performance evaluation commission member may not receive compensation or benefits for the member's service. A commission member may receive per diem and travel expenses as provided in Title 2, chapter 18, part 5.

(2) The commission shall employ an executive director and may employ additional staff as necessary within budgetary constraints.

(3) The commission is allocated to the department of justice for administrative purposes only as prescribed in 2-15-121, except that the provisions of 2-15-121(2)(d) do not apply.

Section 3. Definitions. As used in [sections 3 through 8], unless the context requires otherwise, the following definitions apply:

- (1) "Bias" means prejudice displayed by using epithets, slurs, demeaning nicknames, or threatening, intimidating, or hostile acts or body language that creates an appearance of bias or prejudice.
- (2) "Commission" means the judicial performance evaluation commission established in [section 1].
- (3) "Court administrator" means the position established in 3-1-701.
- (4) "Impartiality" means the absence of prejudice in favor of or against particular parties or classes of parties as well as the maintenance of an open mind when considering issues that may come before a judge.
- (5) "Judge" means a district court judge or a supreme court justice.
- (6) "Open-mindedness" means a judge shall interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

Section 4. Judicial performance evaluations. (1) Beginning in 2026, the commission shall prepare:

- (a) a midterm performance evaluation for each district court judge during the third year of the judge's term;
 - (b) a final performance evaluation for each district court judge during the fifth year of the judge's term;
 - (c) a midterm performance evaluation for each justice of the Montana supreme court during the third year of the justice's term;
 - (d) a final performance evaluation for each supreme court justice during the seventh year of the justice's term; and
 - (e) a final performance evaluation for each judge appointed to a vacancy during the year prior to the last year of the judge's current term.
- (2) The performance evaluation for a judge under subsection (1) may consider only the information

listed in subsections (3) and (4). The performance evaluation must give primary emphasis to information gathered since the judge's election or appointment to the judge's current term in office.

(3) The information a performance evaluation must consider is as follows:

(a) the results of the judge's most recent judicial performance survey conducted in accordance with [section 5];

(b) information acquired by observation of the judge's conduct in the courtroom;

(c) the judge's judicial disciplinary record, if any;

(d) public comment solicited by the commission;

(e) information from any earlier judicial performance evaluation of the judge, except that the commission shall rely primarily on information gathered subsequent to the last judicial election; and

(f) any other factor the commission considers relevant to evaluating the judge's performance and previously authorized as a permissible factor by rule.

(4) The commission shall make rules governing the conduct of courtroom observation. The rules must specify:

(a) who may perform the courtroom observation;

(b) whether the courtroom observation must be performed in person or may be performed by electronic means; and

(c) the standards used to evaluate the behavior observed.

(5) Prior to issuing the judicial performance evaluation, the commission shall allow a judge who is the subject of a judicial performance evaluation to appear and speak at any commission meeting during which the judge's judicial performance evaluation is being considered. Information disclosed during this meeting is confidential.

(6) The commission may meet in a closed meeting to discuss a judge's judicial performance evaluation by complying with Title 2, chapter 3, part 2.

(7) A judge may provide a written statement, not to exceed 200 words, that must be included in the judge's performance evaluation report.

Section 5. Judicial performance survey. (1) A third party under contract with the commission shall

conduct a judicial performance survey. The third party may not be affiliated with a legal firm or a legal professional.

(2) (a) Each judicial performance survey must survey respondents in each of the following classifications:

(i) attorneys who have appeared before the judge as counsel either pro hac vice or while licensed to practice law in Montana;

(ii) jurors who have served in one or more cases before the judge; and

(iii) court staff who have worked with the judge.

(b) Only a respondent under subsection (2)(a)(i) who is admitted to practice law in the state and in good standing with the state bar of Montana may evaluate a judge's legal ability under subsection (7)(a).

(3) The commission may establish by rule additional classifications that the commission considers helpful to voters.

(4) All survey responses are confidential, including added comments.

(5) If the commission provides information to a judge or the court administrator, it must do so in a manner that protects the anonymity of survey respondents.

(6) A survey must be provided to a juror respondent no more than 30 days after the completion of the case in which the juror served.

(7) Surveys must include questions inquiring into the judge's:

(a) legal ability, including the following:

(i) understanding of the substantive law and rules of procedure and evidence;

(ii) attentiveness to factual and legal issues;

(iii) adherence to precedent and ability to justify clearly any departures from precedent;

(iv) appreciation of the practical impact on the parties of the judge's rulings, including rulings that cause delay or increased litigation expense;

(v) clarity in writing; and

(vi) clarity in explaining the bases for judicial opinions;

(b) judicial conduct, including the following:

(i) courtesy toward attorneys, court staff, witnesses, and others interacting with the judge's court;

- (ii) appropriate courtroom decorum;
- (iii) demeanor and personal attributes that promote public trust and confidence in the judicial system;
- (iv) preparedness;
- (v) avoidance of impropriety or the appearance of impropriety;
- (vi) avoidance of bias and conflicts of interest;
- (vii) fairness, open-mindedness, and impartiality;
- (viii) ability to communicate clearly, including the ability to explain the basis for written rulings, court procedures, and decisions; and
- (ix) compliance with 2-2-121 and 2-2-122 and the applicable rules of judicial conduct;
- (c) administrative performance, including the following:
 - (i) workload management;
 - (ii) sharing proportionally the workload within the court or district; and
 - (iii) issuance of opinions and orders without unnecessary delay; and
 - (d) fidelity to:
 - (i) the Montana constitution, including Article III, section 1; and
 - (ii) 1-2-101 and 1-2-102.
- (8) If the commission determines that a survey question is not appropriate for a respondent category, the commission may omit the question from the survey provided to that respondent group.
- (9) (a) The survey must allow respondents to indicate responses either on a numerical scale from one to five or in the affirmative or negative, with an option for an inability to respond in the affirmative or negative.
- (b) The commission may allow respondents to provide written comments other than those that could, if used in a hiring process, trigger a violation of federal or state employment law.
- (10) The commission shall compile and make available to each judge that judge's survey results.

Section 6. Midterm reports. (1) The commission shall compile a midterm report for each judge relying on that judge's midterm evaluation. The midterm report may also be based on further information the

commission considers useful for purposes of judicial evaluation or self-improvement.

(2) The commission shall provide the midterm report to the evaluated judge, the Montana supreme court, and the court administrator.

(3) (a) The commission may publish a partial midterm report for a judge whose appointment date precludes the collection of complete midterm evaluation data. For a newly appointed judge, a midterm report is considered partial when the midterm evaluation is missing a respondent group.

(b) The commission's webpage must identify each judge receiving a partial midterm report.

(c) Prior to a partial midterm report, the commission shall inform the court administrator of judges who will receive a partial report.

Section 7. Final reports. (1) The commission shall compile a final report for each judge relying on that judge's final evaluation. The final report may also be based on further information the commission considers useful for purposes of judicial evaluation or self-improvement.

(2) The commission shall provide the final report to the evaluated judge, the Montana supreme court, and the court administrator.

(3) (a) The commission may publish a partial final report for a judge whose appointment date precludes the collection of complete final evaluation data. For a newly appointed judge, a final report is considered partial when the final evaluation is missing a respondent group.

(b) The commission's webpage must identify each judge receiving a partial final report.

(4) Prior to a partial final report, the commission shall inform the court administrator of the judges who will receive partial reports.

Section 8. Publication of judicial performance reports. (1) (a) The commission shall provide each judge with the judge's reports in a timely manner. If a report is based on a final evaluation, it must be provided at least 45 days before the last day on which the judge may file a declaration of the judge's candidacy in the next election.

(b) Each report, together with the information collected for the report, must remain confidential unless the judge who is the subject of the report files a declaration of candidacy in the ensuing election. In that

event, the report becomes public record on the day following the last day on which the judge may file a declaration of candidacy.

(2) The report must include:

(a) a summary of the results of the judicial performance survey and tabulations of the responses to each question;

(b) information concerning any public discipline that a judge has received and is not subject to restrictions on disclosure under Title 3, chapter 1, part 11;

(c) a narrative describing the judge's performance with, at the option of the commission, an overall score on a numerical scale from one to five;

(d) at the option of the judge evaluated, a written statement not to exceed 200 words submitted by the judge within 15 days of receiving a copy of the report; and

(e) any other information the commission considers necessary to include in the report.

(3) The report may not refer to information from a judge's earlier judicial performance report.

(4) The commission shall make each report publicly available on the internet.

(5) The commission shall provide the court administrator with each report that becomes public record.

Section 9. Section 3-1-1124, MCA, is amended to read:

"3-1-1124. Disclosure for judicial selection -- appointment or assignment -- judicial performance evaluation. (1) If in connection with the selection or appointment of a judge, any state or federal agency seeks information or written materials from the commission concerning that judge, information must be divulged in accordance with procedures prescribed by the commission, including reasonable notice to the judge affected.

(2) If in connection with the assignment of a retired judge to judicial duties, any appropriate authority seeks information or written materials from the commission about that judge, information must be divulged in accordance with procedures prescribed by the commission, including reasonable notice to the judge affected.

(3) If in connection to the conduct of a judicial performance evaluation required by [section 4], the

judicial performance evaluation commission established in [section 1] seeks information or written materials from the judicial standards commission about that judge, information must be divulged in accordance with the procedures described by the judicial standards commission, including reasonable notice to the judge affected."

Section 10. Transition. (1) Within 30 days of [the effective date of this act], the appointing authorities in [section 1(1)] shall appoint the members of the judicial performance evaluation commission according to the schedule in subsection (2) of this section.

(2) (a) The member appointed by the president of the senate and the member appointed by the senate minority leader shall serve a 4-year term.

(b) The member appointed by the speaker of the house and the member appointed by the house minority leader shall serve a 2-year term.

(c) Of the four members appointed by the governor, two shall serve 2-year terms and two shall serve 4-year terms.

(d) Of the three members appointed by the chief justice of the supreme court, one shall serve a 2-year term and two shall serve 4-year terms.

(3) Members appointed pursuant subsection (2) who were appointed:

(a) to a 2-year term may be reappointed, and the 2-year term does not count against the term limits provided in [section 1(3)(b)]; and

(b) to a 4-year term may be reappointed, and the 4-year term counts toward the term limits provided in [section 1(3)(b)].

Section 11. Reporting to legislative committees. The commission shall provide a written report on its activities and implementation of [this act] to present in person to the following legislative committees during the interim following the 69th legislative session:

(1) the judicial branch, law enforcement, and justice interim budget committee established in 5-12-501; and

(2) the law and justice committee established in 5-5-226.

Section 12. Appropriation. (1) The following amounts are appropriated from the general fund to the department of justice for implementing the provisions of [this act]:

- (a) \$500,000 for the fiscal year beginning July 1, 2025; and
- (b) \$500,000 for the fiscal year beginning July 1, 2026.
- (2) The legislature intends that these are one-time-only appropriations.

Section 13. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [sections 1 and 2].

(2) [Sections 3 through 8] are intended to be codified as a new part in Title 3, chapter 1, and the provisions of Title 3, chapter 1, apply to [sections 3 through 8].

Section 14. Termination. [This act] terminates June 30, 2035.

- END -

I hereby certify that the within bill,
SB 45, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2025.

Speaker of the House

Signed this _____ day
of _____, 2025.

SENATE BILL NO. 45

INTRODUCED BY T. MCGILLVRAY

BY REQUEST OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM
ESTABLISHING A MONTANA JUDICIAL PERFORMANCE EVALUATION SYSTEM; CREATING A JUDICIAL
PERFORMANCE EVALUATION COMMISSION AND PROVIDING FOR DUTIES AND MEMBERS;
ALLOCATING THE COMMISSION TO THE DEPARTMENT OF JUSTICE FOR ADMINISTRATIVE PURPOSES;
REQUIRING THE COMMISSION TO PERFORM EVALUATIONS FOR DISTRICT COURT JUDGES AND
SUPREME COURT JUSTICES; REQUIRING THE COMMISSION TO CONTRACT FOR A SURVEY;
PROVIDING THE COMMISSION RULEMAKING AUTHORITY; PROVIDING RULEMAKING AUTHORITY;
PROVIDING A TRANSITION; PROVIDING A ONE-TIME-ONLY APPROPRIATION; PROVIDING REPORTING
REQUIREMENTS; AMENDING SECTION 3-1-1124, MCA; AND PROVIDING A TERMINATION DATE.