

HOUSE BILL NO. 698

INTRODUCED BY MEYER, HEMSTAD, FABREGA, PISTORIA,  
MOORE, BERGENE, O'CONNELL, MENAHAN, KEEDY,  
YARDLEY, HUENNEKENS, SIVERTSEN, KEYSER

IN THE HOUSE

February 10, 1981	Introduced and referred to committee on Judiciary.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.
February 23, 1981	Second reading, do pass.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading, passed. Ayes, 95; Noes, 3. Transmitted to Senate.

IN THE SENATE

March 3, 1981	Introduced and referred to Committee on Judiciary.
March 23, 1981	Committee recommend bill be concurred in. Report adopted.
March 24, 1981	Motion pass consideration.
March 25, 1981	Second reading, concurred in as amended.
March 27, 1981	Third reading, concurred in as amended. Ayes, 50; Noes, 0.

IN THE HOUSE

March 28, 1981

Returned from Senate with amendments.

April 8, 1981

Second reading, amendments concurred in.

April 9, 1981

Third reading, amendments concurred in. Ayes, 94; Noes, 1. Sent to enrolling.

Reported correctly enrolled.

1 *Meyer* HOUSE BILL NO. *698* *Toni Bergme*  
 2 INTRODUCED BY *Meyer* *Amended* *to change history*  
 3 *Connell* *Mohrman* *Reedy* *Smith* *Hennelien*  
 4 *Amortson* *Hoyle*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A  
 5 DEFENDANT WHO IS PROVIDED WITH COURT-APPOINTED COUNSEL MAY  
 6 BE REQUIRED UPON CONVICTION TO REPAY THE COSTS OF COUNSEL AS  
 7 A PART OF OR A CONDITION UNDER THE SENTENCE; AMENDING  
 8 SECTIONS 46-8-101 AND 46-18-201, MCA."

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

11 Section 1. Section 46-8-101, MCA, is amended to read:  
 12 "46-8-101. Right to counsel. (1) Every defendant  
 13 brought before the court must be informed by the court that  
 14 it is his right to have counsel before proceeding and must  
 15 be asked if he desires the aid of counsel.

16 (2) The defendant, if charged with a felony, must be  
 17 advised that counsel will be furnished at state expense if  
 18 he is unable to employ counsel as determined under the  
 19 provisions of [section 2]. If the offense charged is a  
 20 felony and if the defendant desires counsel and is unable to  
 21 employ counsel, a court of record must assign counsel to  
 22 defend him.

23 (3) If the offense charged is a misdemeanor and if the  
 24 defendant desires counsel and is unable to employ counsel, a  
 25 court of record in the interest of justice may assign

1 counsel to defend him."

2 **NEW SECTION.** Section 2. Eligibility for  
 3 court-appointed counsel. (1) Any defendant who desires  
 4 counsel and is unable to employ counsel shall submit under  
 5 oath to the court at the time of his initial appearance a  
 6 verified financial statement showing his financial inability  
 7 to obtain counsel.

8 (2) Appointed counsel may not be denied to any person  
 9 merely because his friends or relatives have the resources  
 10 to retain counsel or because he has deposited or is capable  
 11 of depositing security for his release. Counsel shall be  
 12 provided to any person who is financially unable to obtain  
 13 representation without substantial hardship in providing  
 14 necessities to himself or his family.

15 **NEW SECTION.** Section 3. Informing defendant regarding  
 16 false swearing of oath on financial statement -- repayment  
 17 of costs of counsel. The court of record shall inform the  
 18 defendant that:

19 (1) if he makes a false statement under oath regarding  
 20 his financial inability to obtain counsel, he may be charged  
 21 with the additional offense of false swearing;

22 (2) he may be required to pay all or a portion of the  
 23 compensation and expenses incurred by his court-appointed  
 24 counsel as a part of or a condition under his sentence  
 25 should he be convicted of an offense.

INTRODUCED BILL  
 -2- HB 698

1        NEW SECTION. Section 4. Payment of costs of  
 2 court-appointed counsel by defendant -- condition of  
 3 sentence. (1) Under the provisions of 46-18-201, the court  
 4 may require a convicted defendant to pay the costs of  
 5 court-appointed counsel as a part of or a condition under  
 6 his sentence.

7        (2) Costs must be limited to reasonable compensation  
 8 and costs incurred by the court-appointed counsel in the  
 9 criminal proceeding. Costs may not include expenses inherent  
 10 in providing a constitutionally guaranteed jury trial or  
 11 expenditures in connection with the maintenance and  
 12 operation of government agencies that must be made by the  
 13 public irrespective of specific violations of law.

14        (3) The court may not sentence a defendant to pay the  
 15 costs of court-appointed counsel unless the defendant is or  
 16 will be able to pay them. In determining the amount and  
 17 method of payment of costs, the court shall take account of  
 18 the financial resources of the defendant and the nature of  
 19 the burden that payment of costs will impose.

20        (4) A defendant who has been sentenced to pay costs  
 21 and who is not in contumacious default in the payment  
 22 thereof may at any time petition the court that sentenced  
 23 him for remission of the payment of costs or of any unpaid  
 24 portion thereof. If it appears to the satisfaction of the  
 25 court that payment of the amount due will impose manifest

1 hardship on the defendant or his immediate family, the court  
 2 may remit all or part of the amount due in costs or modify  
 3 the method of payment.

4        NEW SECTION. Section 5. Time and method of payment of  
 5 costs. When a defendant is sentenced to pay the costs of  
 6 court-appointed counsel, the court may order payment to be  
 7 made within a specified period of time or in specified  
 8 installments. Such payments shall be made to the clerk of  
 9 the district court. The clerk of the district court shall  
 10 disburse the payments to the county or state agency  
 11 responsible for the expenses of court-appointed counsel as  
 12 provided for in 46-8-201.

13        NEW SECTION. Section 6. Effect of nonpayment of  
 14 costs. (1) When a defendant who is sentenced to pay the  
 15 costs of court-appointed counsel defaults in payment thereof  
 16 or of any installment, the court on motion of the county  
 17 attorney or on its own motion may require him to show cause  
 18 why his default should not be treated as contempt of court  
 19 and may issue a show cause citation or a warrant of arrest  
 20 for his appearance.

21        (2) Unless the defendant shows that his default was  
 22 not attributable to an intentional refusal to obey the order  
 23 of the court or to a failure on his part to make a good  
 24 faith effort to make the payment, the court may find that  
 25 his default constitutes contempt and may order him

1 imprisoned until the payment, or a specified part thereof,  
2 is made.

3 (3) The term of imprisonment for contempt for  
4 nonpayment of the costs of court-appointed counsel shall be  
5 set forth in the judgment and may not exceed 1 day for each  
6 \$25 of the payment, 30 days if the order for payment of  
7 costs was imposed upon conviction of a misdemeanor, or 1  
8 year in any other case, whichever is the shorter period. A  
9 person committed for nonpayment of costs must be given  
10 credit toward payment for each day of imprisonment at the  
11 rate specified in the judgment.

12 (4) If it appears to the satisfaction of the court  
13 that the default in the payment of costs is not contempt,  
14 the court may enter an order allowing the defendant  
15 additional time for payment, reducing the amount of the  
16 payment or of each installment, or revoking the order for  
17 payment or the unpaid portion thereof in whole or in part.

18 (5) A default in the payment of costs or any  
19 installment thereof may be collected by any means authorized  
20 by law for the enforcement of a judgment. The writ of  
21 execution for the collection of costs may not discharge a  
22 defendant committed to imprisonment for contempt until the  
23 amount of the payment for costs has actually been collected.

24 Section 7. Section 46-18-201, MCA, is amended to read:  
25 "46-18-201. Sentences that may be imposed. (1)

1 Whenever a person has been found guilty of an offense upon a  
2 verdict or a plea of guilty, the court may:

3 (a) defer imposition of sentence, excepting sentences  
4 for driving under the influence of alcohol or drugs, for a  
5 period not exceeding 1 year for any misdemeanor or for a  
6 period not exceeding 3 years for any felony. The sentencing  
7 judge may impose upon the defendant any reasonable  
8 restrictions or conditions during the period of the deferred  
9 imposition. Such reasonable restrictions or conditions may  
10 include:

- 11 (i) jail base release;
- 12 (ii) jail time not exceeding 90 days;
- 13 (iii) conditions for probation;
- 14 (iv) restitution;
- 15 ~~(v) payment of costs of court-appointed counsel as~~  
16 ~~provided under [section 4];~~
- 17 ~~(v+)(vi) any other reasonable conditions considered~~  
18 ~~necessary for rehabilitation or for the protection of~~  
19 ~~society; or~~
- 20 ~~(v+)(viii) any combination of the above;~~

21 (b) suspend execution of sentence up to the maximum  
22 sentence allowed for the particular offense. The sentencing  
23 judge may impose on the defendant any reasonable  
24 restrictions or conditions during the period of suspended  
25 sentence. Such reasonable restrictions or conditions may

1 include any of those listed in subsections (1)(a)(i) through  
2 ~~(1)(e)(vii) (1)(a)(viii).~~

3 (c) impose a fine as provided by law for the offense;

4 ~~(d) require payment of costs of court-appointed~~  
5 ~~counsel as provided in [section 4];~~

6 ~~(e)~~ commit the defendant to a correctional  
7 institution with or without a fine as provided by law for  
8 the offense;

9 ~~(f)~~ impose any combination of subsections (1)(b)  
10 ~~(1)(e), and (1)(d) through (1)(s).~~

11 (2) If any restrictions or conditions imposed under  
12 subsection (1)(a) or (1)(b) are violated, any elapsed time,  
13 except jail time, is not a credit against the sentence  
14 unless the court orders otherwise.

15 (3) Except as provided in 46-18-222, the imposition or  
16 execution of the first 2 years of a sentence of imprisonment  
17 imposed under the following sections may not be deferred or  
18 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),  
19 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)  
20 and (3), 45-9-102(3), and 45-9-103(2).

21 (4) Except as provided in 46-18-222, the imposition or  
22 execution of the first 10 years of a sentence of  
23 imprisonment imposed under 45-5-102(2) may not be deferred  
24 or suspended.\*

25 Section 8. Codification instruction. Sections 2

1 through 6 are intended to be codified as an integral part of  
2 Title 46, chapter 8, and the provisions of Title 46, chapter  
3 8, apply to sections 2 through 6.

-End-

Approved by Committee  
on Judiciary

HOUSE BILL NO. 698

INTRODUCED BY MEYER, HEMSTAD, FABREGA, PISTORIA,

MOORE, BERGENE, O'CONNELL, MENAHAN, KEEDY,

YARDLEY, HUENNEKENS, SIVERTSEN, KEYSER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A  
DEFENDANT WHO IS PROVIDED WITH COURT-APPOINTED COUNSEL MAY  
BE REQUIRED UPON CONVICTION TO REPAY THE COSTS OF COUNSEL AS  
A PART OF OR A CONDITION UNDER THE SENTENCE; AMENDING  
SECTIONS 46-8-101 AND 46-18-201, MCA."

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

Section 1. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) Every defendant  
brought before the court must be informed by the court that  
it is his right to have counsel before proceeding and must  
be asked if he desires the aid of counsel.

(2) The defendant, if charged with a felony, must be  
advised that counsel will be furnished at state expense if  
he is unable to employ counsel as determined under the  
provisions of [section 2]. If the offense charged is a  
felony and if the defendant desires counsel and is unable to  
employ counsel, a court of record must assign counsel to  
defend him.

(3) If the offense charged is a misdemeanor and if the

defendant desires counsel and is unable to employ counsel, a  
court of record in the interest of justice may assign  
counsel to defend him."

NEW SECTION. Section 2. Eligibility for  
court-appointed counsel. (1) Any defendant who desires  
counsel and is unable to employ counsel shall submit under  
oath to the court at the time of his initial appearance a  
verified financial statement showing his financial inability  
to obtain counsel.

(2) Appointed counsel may not be denied to any person  
merely because his friends or relatives have the resources  
to retain counsel or because he has deposited or is capable  
of depositing security for his release. Counsel shall be  
provided to any person who is financially unable to obtain  
representation without substantial hardship in providing  
necessities to himself or his family.

NEW SECTION. Section 3. Informing defendant regarding  
false swearing of oath on financial statement -- repayment  
of costs of counsel. The court of record shall inform the  
defendant that:

(1) if he makes a false statement under oath regarding  
his financial inability to obtain counsel, he may be charged  
with the additional offense of false swearing;

(2) he may be required to pay all or a portion of the  
compensation and expenses incurred by his court-appointed

1 counsel as a part of or a condition under his sentence  
2 should he be convicted of an offense.

3 NEW SECTION. Section 4. Payment of costs of  
4 court-appointed counsel by defendant -- condition of  
5 sentence. (1) Under the provisions of 46-18-201, the court  
6 may require a convicted defendant to pay the costs of  
7 court-appointed counsel as a part of or a condition under  
8 his sentence.

9 (2) Costs must be limited to reasonable compensation  
10 and costs incurred by the court-appointed counsel in the  
11 criminal proceeding. Costs may not include expenses inherent  
12 in providing a constitutionally guaranteed jury trial or  
13 expenditures in connection with the maintenance and  
14 operation of government agencies that must be made by the  
15 public irrespective of specific violations of law.

16 (3) The court may not sentence a defendant to pay the  
17 costs of court-appointed counsel unless the defendant is or  
18 will be able to pay them. In determining the amount and  
19 method of payment of costs, the court shall take account of  
20 the financial resources of the defendant and the nature of  
21 the burden that payment of costs will impose.

22 (4) A defendant who has been sentenced to pay costs  
23 and who is not in contumacious default in the payment  
24 thereof may at any time petition the court that sentenced  
25 him for remission of the payment of costs or of any unpaid

1 portion thereof. If it appears to the satisfaction of the  
2 court that payment of the amount due will impose manifest  
3 hardship on the defendant or his immediate family, the court  
4 may remit all or part of the amount due in costs or modify  
5 the method of payment.

6 NEW SECTION. Section 5. Time and method of payment of  
7 costs. When a defendant is sentenced to pay the costs of  
8 court-appointed counsel, the court may order payment to be  
9 made within a specified period of time or in specified  
10 installments. Such payments shall be made to the clerk of  
11 the district court. The clerk of the district court shall  
12 disburse the payments to the county or state agency  
13 responsible for the expenses of court-appointed counsel as  
14 provided for in 46-8-201.

15 NEW SECTION. Section 6. Effect of nonpayment of  
16 costs. (1) When a defendant who is sentenced to pay the  
17 costs of court-appointed counsel defaults in payment thereof  
18 or of any installment, the court on motion of the county  
19 attorney or on its own motion may require him to show cause  
20 why his default should not be treated as contempt of court  
21 and may issue a show cause citation or a warrant of arrest  
22 for his appearance.

23 (2) Unless the defendant shows that his default was  
24 not attributable to an intentional refusal to obey the order  
25 of the court or to a failure on his part to make a good



1 faith effort to make the payment, the court may find that  
 2 his default constitutes CIVIL contempt and--may--order--him  
 3 imprisoned--until--the-payment--or--a--specified--part--thereof  
 4 is--made.

5 (3) The term of imprisonment for contempt for  
 6 nonpayment of the costs of court-appointed counsel shall be  
 7 set forth in the judgment and may not exceed 1 day for each  
 8 \$25 of the payment, 30 days if the order for payment of  
 9 costs was imposed upon conviction of a misdemeanor, or 1  
 10 year in any other case, whichever is the shorter period. A  
 11 person committed for nonpayment of costs must be given  
 12 credit toward payment for each day of imprisonment at the  
 13 rate specified in the judgment.

14 (4) If it appears to the satisfaction of the court  
 15 that the default in the payment of costs is not contempt,  
 16 the court may enter an order allowing the defendant  
 17 additional time for payment, reducing the amount of the  
 18 payment or of each installment, or revoking the order for  
 19 payment or the unpaid portion thereof in whole or in part.

20 (5) A default in the payment of costs or any  
 21 installment thereof may be collected by any means authorized  
 22 by law for the enforcement of a judgment. The writ of  
 23 execution for the collection of costs may not discharge a  
 24 defendant committed to imprisonment for contempt until the  
 25 amount of the payment for costs has actually been collected.

1 Section 7. Section 46-18-201, MCA, is amended to read:  
 2 "46-18-201. Sentences that may be imposed. (1)

3 Whenever a person has been found guilty of an offense upon a  
 4 verdict or a plea of guilty, the court may:

5 (a) defer imposition of sentence, excepting sentences  
 6 for driving under the influence of alcohol or drugs, for a  
 7 period not exceeding 1 year for any misdemeanor or for a  
 8 period not exceeding 3 years for any felony. The sentencing  
 9 judge may impose upon the defendant any reasonable  
 10 restrictions or conditions during the period of the deferred  
 11 imposition. Such reasonable restrictions or conditions may  
 12 include:

- 13 (i) jail base release;
- 14 (ii) jail time not exceeding 90 days;
- 15 (iii) conditions for probation;
- 16 (iv) restitution;
- 17 (v) payment of costs of court-appointed counsel as
- 18 provided under [section 4];

19 (vi) any other reasonable conditions considered  
 20 necessary for rehabilitation or for the protection of  
 21 society; or

22 (vii) any combination of the above;

23 (b) suspend execution of sentence up to the maximum  
 24 sentence allowed for the particular offense. The sentencing  
 25 judge may impose on the defendant any reasonable

1 restrictions or conditions during the period of suspended  
2 sentence. Such reasonable restrictions or conditions may  
3 include any of those listed in subsections (1)(a)(i) through  
4 ~~(1)(a)(vi)~~ (1)(a)(vii).

5 (c) impose a fine as provided by law for the offense;

6 (d) require payment of costs of court-appointed  
7 counsel as provided in [section 4];

8 ~~(e)~~ commit the defendant to a correctional  
9 institution with or without a fine as provided by law for  
10 the offense;

11 ~~(f)~~ impose any combination of subsections (1)(b),  
12 ~~(1)(c)~~ and (1)(d) through (1)(e).

13 (2) If any restrictions or conditions imposed under  
14 subsection (1)(a) or (1)(b) are violated, any elapsed time,  
15 except jail time, is not a credit against the sentence  
16 unless the court orders otherwise.

17 (3) Except as provided in 46-18-222, the imposition or  
18 execution of the first 2 years of a sentence of imprisonment  
19 imposed under the following sections may not be deferred or  
20 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),  
21 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)  
22 and (3), 45-9-102(3), and 45-9-103(2).

23 (4) Except as provided in 46-18-222, the imposition or  
24 execution of the first 10 years of a sentence of  
25 imprisonment imposed under 45-5-102(2) may not be deferred

1 or suspended.\*

2 Section 8. Codification instruction. Sections 2  
3 through 6 are intended to be codified as an integral part of  
4 Title 46, chapter 8, and the provisions of Title 46, chapter  
5 8, apply to sections 2 through 6.

-End-

## 1 HOUSE BILL NO. 698

2 INTRODUCED BY MEYER, HEMSTAD, FABREGA, PISTORIA,

3 MOORE, BERGENE, O'CONNELL, MENAHAN, KEEDY,

4 YARDLEY, HUENNEKENS, SIVERTSEN, KEYSER

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A  
7 DEFENDANT WHO IS PROVIDED WITH COURT-APPOINTED COUNSEL MAY  
8 BE REQUIRED UPON CONVICTION TO REPAY THE COSTS OF COUNSEL AS  
9 A PART OF OR A CONDITION UNDER THE SENTENCE; AMENDING  
10 SECTIONS 46-8-101 AND 46-18-201, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 46-8-101, MCA, is amended to read:

14 "46-8-101. Right to counsel. (1) Every defendant  
15 brought before the court must be informed by the court that  
16 it is his right to have counsel before proceeding and must  
17 be asked if he desires the aid of counsel.

18 (2) The defendant, if charged with a felony, must be  
19 advised that counsel will be furnished at state expense if  
20 he is unable to employ counsel as determined under the  
21 provisions of [section 2]. If the offense charged is a  
22 felony and if the defendant desires counsel and is unable to  
23 employ counsel, a court of record must assign counsel to  
24 defend him.

25 (3) If the offense charged is a misdemeanor and if the

1 defendant desires counsel and is unable to employ counsel, a  
2 court of record in the interest of justice may assign  
3 counsel to defend him."

4 NEW SECTION. Section 2. Eligibility for  
5 court-appointed counsel. (1) Any defendant who desires  
6 counsel and is unable to employ counsel shall submit under  
7 oath to the court at the time of his initial appearance a  
8 verified financial statement showing his financial inability  
9 to obtain counsel.

10 (2) Appointed counsel may not be denied to any person  
11 merely because his friends or relatives have the resources  
12 to retain counsel or because he has deposited or is capable  
13 of depositing security for his release. Counsel shall be  
14 provided to any person who is financially unable to obtain  
15 representation without substantial hardship in providing  
16 necessities to himself or his family.

17 NEW SECTION. Section 3. Informing defendant regarding  
18 false swearing of oath on financial statement — repayment  
19 of costs of counsel. The court of record shall inform the  
20 defendant that:

21 (1) if he makes a false statement under oath regarding  
22 his financial inability to obtain counsel, he may be charged  
23 with the additional offense of false swearing;

24 (2) he may be required to pay all or a portion of the  
25 compensation and expenses incurred by his court-appointed

1 counsel as a part of or a condition under his sentence  
2 should he be convicted of an offense.

3 NEW SECTION. Section 4. Payment of costs of  
4 court-appointed counsel by defendant -- condition of  
5 sentence. (1) Under the provisions of 46-18-201, the court  
6 may require a convicted defendant to pay the costs of  
7 court-appointed counsel as a part of or a condition under  
8 his sentence.

9 (2) Costs must be limited to reasonable compensation  
10 and costs incurred by the court-appointed counsel in the  
11 criminal proceeding. Costs may not include expenses inherent  
12 in providing a constitutionally guaranteed jury trial or  
13 expenditures in connection with the maintenance and  
14 operation of government agencies that must be made by the  
15 public irrespective of specific violations of law.

16 (3) The court may not sentence a defendant to pay the  
17 costs of court-appointed counsel unless the defendant is or  
18 will be able to pay them. In determining the amount and  
19 method of payment of costs, the court shall take account of  
20 the financial resources of the defendant and the nature of  
21 the burden that payment of costs will impose.

22 (4) A defendant who has been sentenced to pay costs  
23 and who is not in contumacious default in the payment  
24 thereof may at any time petition the court that sentenced  
25 him for remission of the payment of costs or of any unpaid

1 portion thereof. If it appears to the satisfaction of the  
2 court that payment of the amount due will impose manifest  
3 hardship on the defendant or his immediate family, the court  
4 may remit all or part of the amount due in costs or modify  
5 the method of payment.

6 NEW SECTION. Section 5. Time and method of payment of  
7 costs. When a defendant is sentenced to pay the costs of  
8 court-appointed counsel, the court may order payment to be  
9 made within a specified period of time or in specified  
10 installments. Such payments shall be made to the clerk of  
11 the district court. The clerk of the district court shall  
12 disburse the payments to the county or state agency  
13 responsible for the expenses of court-appointed counsel as  
14 provided for in 46-8-201.

15 NEW SECTION. Section 6. Effect of nonpayment of  
16 costs. (1) When a defendant who is sentenced to pay the  
17 costs of court-appointed counsel defaults in payment thereof  
18 or of any installment, the court on motion of the county  
19 attorney or on its own motion may require him to show cause  
20 why his default should not be treated as contempt of court  
21 and may issue a show cause citation or a warrant of arrest  
22 for his appearance.

23 (2) Unless the defendant shows that his default was  
24 not attributable to an intentional refusal to obey the order  
25 of the court or to a failure on his part to make a good

1 faith effort to make the payment, the court may find that  
 2 his default constitutes CIVIL contempt and ~~may order him~~  
 3 ~~imprisoned until the payment or a specified part thereof~~  
 4 ~~is made.~~

5 (3) The term of imprisonment for contempt for  
 6 nonpayment of the costs of court-appointed counsel shall be  
 7 set forth in the judgment and may not exceed 1 day for each  
 8 \$25 of the payment, 30 days if the order for payment of  
 9 costs was imposed upon conviction of a misdemeanor, or 1  
 10 year in any other case, whichever is the shorter period. A  
 11 person committed for nonpayment of costs must be given  
 12 credit toward payment for each day of imprisonment at the  
 13 rate specified in the judgment.

14 (4) If it appears to the satisfaction of the court  
 15 that the default in the payment of costs is not contempt,  
 16 the court may enter an order allowing the defendant  
 17 additional time for payment, reducing the amount of the  
 18 payment or of each installment, or revoking the order for  
 19 payment or the unpaid portion thereof in whole or in part.

20 (5) A default in the payment of costs or any  
 21 installment thereof may be collected by any means authorized  
 22 by law for the enforcement of a judgment. The writ of  
 23 execution for the collection of costs may not discharge a  
 24 defendant committed to imprisonment for contempt until the  
 25 amount of the payment for costs has actually been collected.

1 Section 7. Section 46-18-201, MCA, is amended to read:  
 2 "46-18-201. Sentences that may be imposed. (1)  
 3 Whenever a person has been found guilty of an offense upon a  
 4 verdict or a plea of guilty, the court may:

5 (a) defer imposition of sentence, excepting sentences  
 6 for driving under the influence of alcohol or drugs, for a  
 7 period not exceeding 1 year for any misdemeanor or for a  
 8 period not exceeding 3 years for any felony. The sentencing  
 9 judge may impose upon the defendant any reasonable  
 10 restrictions or conditions during the period of the deferred  
 11 imposition. Such reasonable restrictions or conditions may  
 12 include:

- 13 (i) jail base release;
- 14 (ii) jail time not exceeding 90 days;
- 15 (iii) conditions for probation;
- 16 (iv) restitution;
- 17 (v) payment of costs of court-appointed counsel as  
 18 provided under [section 4];

19 ~~(vi)~~ (vi) any other reasonable conditions considered  
 20 necessary for rehabilitation or for the protection of  
 21 society; or

22 ~~(vi)~~ (vii) any combination of the above;

23 (b) suspend execution of sentence up to the maximum  
 24 sentence allowed for the particular offense. The sentencing  
 25 judge may impose on the defendant any reasonable

1 restrictions or conditions during the period of suspended  
 2 sentence. Such reasonable restrictions or conditions may  
 3 include any of those listed in subsections (1)(a)(i) through  
 4 ~~(1)(a)(vi)~~ (1)(a)(vii).

5 (c) impose a fine as provided by law for the offense;  
 6 (d) require payment of costs of court-appointed  
 7 counsel as provided in [section 4];

8 ~~(d)(e)~~ commit the defendant to a correctional  
 9 institution with or without a fine as provided by law for  
 10 the offense;

11 ~~(e)(f)~~ impose any combination of subsections (1)(b)  
 12 ~~(1)(c)~~ and (1)(d) through (1)(e).

13 (2) If any restrictions or conditions imposed under  
 14 subsection (1)(a) or (1)(b) are violated, any elapsed time,  
 15 except jail time, is not a credit against the sentence  
 16 unless the court orders otherwise.

17 (3) Except as provided in 46-18-222, the imposition or  
 18 execution of the first 2 years of a sentence of imprisonment  
 19 imposed under the following sections may not be deferred or  
 20 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),  
 21 ~~45-5-303(2)~~, ~~45-9-401(2)~~, 45-5-503(2) and (3), 45-9-101(2)  
 22 and (3), 45-9-102(3), and 45-9-103(2).

23 (4) Except as provided in 46-18-222, the imposition or  
 24 execution of the first 10 years of a sentence of  
 25 imprisonment imposed under 45-5-102(2) may not be deferred

1 or suspended."

2 Section 8. Codification instruction. Sections 2  
 3 through 6 are intended to be codified as an integral part of  
 4 Title 46, chapter 8, and the provisions of Title 46, chapter  
 5 8, apply to sections 2 through 6.

-End-

HOUSE BILL NO. 698

INTRODUCED BY MEYER, HEMSTAD, FABREGA, PISTORIA,

MOORE, BERGENE, O'CONNELL, MENAHAN, KEEDY,

YARDLEY, HUENNEKENS, SIVERTSEN, KEYSER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A  
DEFENDANT WHO IS PROVIDED WITH COURT-APPOINTED COUNSEL MAY  
BE REQUIRED UPON CONVICTION TO REPAY THE COSTS OF COUNSEL AS  
A PART OF OR A CONDITION UNDER THE SENTENCE; AMENDING  
SECTIONS 46-8-101 AND 46-18-201, MCA."

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

Section 1. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) Every defendant brought before the court must be informed by the court that it is his right to have counsel before proceeding and must be asked if he desires the aid of counsel.

(2) The defendant, if charged with a felony, must be advised that counsel will be furnished at state expense if he is unable to employ counsel as determined under the provisions of [section 2]. If the offense charged is a felony and if the defendant desires counsel and is unable to employ counsel, a court of-record must assign counsel to defend him.

(3) If the offense charged is a misdemeanor and if the

defendant desires counsel and is unable to employ counsel, a court of-record in the interest of justice may assign counsel to defend him."

NEW SECTION. Section 2. Eligibility for court-appointed counsel. (1) Any defendant who desires counsel and is unable to employ counsel shall submit under oath to the court at the time of his initial appearance a verified financial statement showing his financial inability to obtain counsel.

(2) Appointed counsel may not be denied to any person merely because his friends or relatives have the resources to retain counsel or because he has deposited or is capable of depositing security for his release. Counsel shall be provided to any person who is financially unable to obtain representation without substantial hardship in providing necessities to himself or his family.

NEW SECTION. Section 3. Informing defendant regarding false swearing of oath on financial statement -- repayment of costs of counsel. The court of-record shall inform the defendant that:

(1) if he makes a false statement under oath regarding his financial inability to obtain counsel, he may be charged with the additional offense of false swearing;

(2) he may be required to pay all or a portion of the compensation and expenses incurred by his court-appointed

1 counsel as a part of or a condition under his sentence  
2 should he be convicted of an offense.

3 NEW SECTION. Section 4. Payment of costs of  
4 court-appointed counsel by defendant -- condition of  
5 sentence. (1) Under the provisions of 46-18-201, the court  
6 may require a convicted defendant to pay the costs of  
7 court-appointed counsel as a part of or a condition under  
8 his sentence.

9 (2) Costs must be limited to reasonable compensation  
10 and costs incurred by the court-appointed counsel in the  
11 criminal proceeding. Costs may not include expenses inherent  
12 in providing a constitutionally guaranteed jury trial or  
13 expenditures in connection with the maintenance and  
14 operation of government agencies that must be made by the  
15 public irrespective of specific violations of law.

16 (3) The court may not sentence a defendant to pay the  
17 costs of court-appointed counsel unless the defendant is or  
18 will be able to pay them. In determining the amount and  
19 method of payment of costs, the court shall take account of  
20 the financial resources of the defendant and the nature of  
21 the burden that payment of costs will impose.

22 (4) A defendant who has been sentenced to pay costs  
23 and who is not in contumacious default in the payment  
24 thereof may at any time petition the court that sentenced  
25 him for remission of the payment of costs or of any unpaid

1 portion thereof. If it appears to the satisfaction of the  
2 court that payment of the amount due will impose manifest  
3 hardship on the defendant or his immediate family, the court  
4 may remit all or part of the amount due in costs or modify  
5 the method of payment.

6 NEW SECTION. Section 5. Time and method of payment of  
7 costs. When a defendant is sentenced to pay the costs of  
8 court-appointed counsel, the court may order payment to be  
9 made within a specified period of time or in specified  
10 installments. Such payments shall be made to the clerk of  
11 the district court. The clerk of the district court shall  
12 disburse the payments to the county or state agency  
13 responsible for the expenses of court-appointed counsel as  
14 provided for in 46-8-201.

15 NEW SECTION. Section 6. Effect of nonpayment of  
16 costs. (1) When a defendant who is sentenced to pay the  
17 costs of court-appointed counsel defaults in payment thereof  
18 or of any installment, the court on motion of the county  
19 attorney or on its own motion may require him to show cause  
20 why his default should not be treated as contempt of court  
21 and may issue a show cause citation or a warrant of arrest  
22 for his appearance.

23 (2) Unless the defendant shows that his default was  
24 not attributable to an intentional refusal to obey the order  
25 of the court or to a failure on his part to make a good



1 faith effort to make the payment, the court may find that  
 2 his default constitutes CIVIL contempt ~~and--may--order--him~~  
 3 ~~imprisoned--until--the--payment--or--a--specified--part--thereof~~  
 4 ~~is--made.~~

5 (3) The term of imprisonment for contempt for  
 6 nonpayment of the costs of court-appointed counsel shall be  
 7 set forth in the judgment and may not exceed 1 day for each  
 8 \$25 of the payment, 30 days if the order for payment of  
 9 costs was imposed upon conviction of a misdemeanor, or 1  
 10 year in any other case, whichever is the shorter period. A  
 11 person committed for nonpayment of costs must be given  
 12 credit toward payment for each day of imprisonment at the  
 13 rate specified in the judgment.

14 (4) If it appears to the satisfaction of the court  
 15 that the default in the payment of costs is not contempt,  
 16 the court may enter an order allowing the defendant  
 17 additional time for payment, reducing the amount of the  
 18 payment or of each installment, or revoking the order for  
 19 payment or the unpaid portion thereof in whole or in part.

20 (5) A default in the payment of costs or any  
 21 installment thereof may be collected by any means authorized  
 22 by law for the enforcement of a judgment. The writ of  
 23 execution for the collection of costs may not discharge a  
 24 defendant committed to imprisonment for contempt until the  
 25 amount of the payment for costs has actually been collected.

1 Section 7. Section 46-18-201, MCA, is amended to read:  
 2 "46-18-201. Sentences that may be imposed. (1)  
 3 Whenever a person has been found guilty of an offense upon a  
 4 verdict or a plea of guilty, the court may:

5 (a) defer imposition of sentence, excepting sentences  
 6 for driving under the influence of alcohol or drugs, for a  
 7 period not exceeding 1 year for any misdemeanor or for a  
 8 period not exceeding 3 years for any felony. The sentencing  
 9 judge may impose upon the defendant any reasonable  
 10 restrictions or conditions during the period of the deferred  
 11 imposition. Such reasonable restrictions or conditions may  
 12 include:

- 13 (i) jail base release;
- 14 (ii) jail time not exceeding 90 days;
- 15 (iii) conditions for probation;
- 16 (iv) restitution;
- 17 (v) payment of costs of court-appointed counsel as  
 18 provided under [section 4];

19 ~~(vi)~~ (vi) any other reasonable conditions considered  
 20 necessary for rehabilitation or for the protection of  
 21 society; or

22 ~~(vii)~~ (vii) any combination of the above;

23 (b) suspend execution of sentence up to the maximum  
 24 sentence allowed for the particular offense. The sentencing  
 25 judge may impose on the defendant any reasonable

1 restrictions or conditions during the period of suspended  
 2 sentence. Such reasonable restrictions or conditions may  
 3 include any of those listed in subsections (1)(a)(i) through  
 4 ~~(1)(a)(vii)~~ (1)(a)(vii).

5 (c) impose a fine as provided by law for the offense;

6 (d) require payment of costs of court-appointed  
 7 counsel as provided in [section 4];

8 ~~(d)(e)~~ commit the defendant to a correctional  
 9 institution with or without a fine as provided by law for  
 10 the offense;

11 ~~(e)(f)~~ impose any combination of subsections (1)(b) ~~▼~~  
 12 ~~(1)(c) and (1)(d)~~ through (1)(e).

13 (2) If any restrictions or conditions imposed under  
 14 subsection (1)(a) or (1)(b) are violated, any elapsed time,  
 15 except jail time, is not a credit against the sentence  
 16 unless the court orders otherwise.

17 (3) Except as provided in 46-18-222, the imposition or  
 18 execution of the first 2 years of a sentence of imprisonment  
 19 imposed under the following sections may not be deferred or  
 20 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),  
 21 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)  
 22 and (3), 45-9-102(3), and 45-9-103(2).

23 (4) Except as provided in 46-18-222, the imposition or  
 24 execution of the first 10 years of a sentence of  
 25 imprisonment imposed under 45-5-102(2) may not be deferred

1 or suspended."

2 Section 8. Codification instruction. Sections 2  
 3 through 6 are intended to be codified as an integral part of  
 4 Title 46, chapter 8, and the provisions of Title 46, chapter  
 5 8, apply to sections 2 through 6.

-End-

March 25, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendments to House Bill 698, third reading copy, as follows:

1. Page 1, line 23.  
Strike: "of record"
2. Page 2, line 2.  
Strike: "of record"
3. Page 2, line 19.  
Strike: "of record"