

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 9, 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 *House* HOUSE BILL NO. 698 *Toni Bergene*  
 2 *Introduced by Meyer, Hamstad, George Hyatt*  
 3 *Compell, Madsen, Reedy, Sandly, Swanson*  
 4 *General Tolson*

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A  
 6 DEFENDANT WHO IS PROVIDED WITH COURT-APPOINTED COUNSEL MAY  
 7 BE REQUIRED UPON CONVICTION TO REPAY THE COSTS OF COUNSEL AS  
 8 A PART OF OR A CONDITION UNDER THE SENTENCE; AMENDING  
 9 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  
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  
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 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  
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 5     set forth in the judgment and may not exceed 1 day for each  
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 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                 (vi) any other reasonable conditions considered  
 18                 necessary for rehabilitation or for the protection of  
 19                 society; or

20                 (vii) any combination of the above;  
 21                 (b) suspend execution of sentence up to the maximum  
 22     sentence allowed for the particular offense. The sentencing  
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 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 (l)(a)(i) through  
2 (l)(a)(vii).

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           **shall** commit the defendant to a correctional  
7 institution with or without a fine as provided by law for  
8 the offense;

9        ~~to~~<sup>if</sup> impose any combination of subsections (1)(b) through (11)(a).  
10      ~~(1)(c), and (1)(d)~~ through (11)(a).

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.\*

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.

-Eng-

Approved by Committee  
on Judiciary

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10   the offense;

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2       Section 8. Codification instruction. Sections 2  
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 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).

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) through (1)(e).

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

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

22 (4) Except as provided in 46-18-222, the imposition or  
 23 execution of the first 10 years of a sentence of  
 24 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-

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."

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.

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               ~~(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   11(a)(viii).

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) through (11)(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"