

SENATE BILL NO. 345

INTRODUCED BY

BY REQUEST OF THE OFFICE OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY CREATING A NEW DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; TRANSFERRING ALL PROGRAMS CURRENTLY ADMINISTERED BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE NEW DEPARTMENT; TRANSFERRING ALL PROGRAMS CURRENTLY ADMINISTERED BY THE DEPARTMENT OF FAMILY SERVICES TO THE NEW DEPARTMENT, WITH THE EXCEPTION OF JUVENILE CORRECTIONS PROGRAMS; TRANSFERRING JUVENILE CORRECTIONS PROGRAMS TO THE DEPARTMENT OF CORRECTIONS; TRANSFERRING THE MENTAL HEALTH PROGRAMS, SUBSTANCE ABUSE PROGRAMS, AND DEVELOPMENTAL DISABILITIES PROGRAMS AND ASSOCIATED PROGRAMS AND SUPPORT STAFF CURRENTLY ADMINISTERED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO THE NEW DEPARTMENT; TRANSFERRING ALL HEALTH SERVICES PROGRAMS CURRENTLY ADMINISTERED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO THE NEW DEPARTMENT, EXCEPT FOR LABORATORY SERVICES; ABOLISHING THE EXISTING DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE EXISTING DEPARTMENT OF FAMILY SERVICES; CONTINGENTLY ABOLISHING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AND TRANSFERRING ITS DUTIES TO THE NEW DEPARTMENT; CHANGING THE NAME OF THE BOARD OF SOCIAL AND REHABILITATION APPEALS TO THE BOARD OF PUBLIC ASSISTANCE; CHANGING THE NAME OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO THE DEPARTMENT OF CORRECTIONS; CHANGING THE NAME OF THE BOARD OF PARDONS TO THE BOARD OF PARDONS AND PAROLE; CHANGING THE NAME OF THE WOMEN'S CORRECTIONAL CENTER TO THE WOMEN'S CORRECTIONAL SYSTEM; AMENDING SECTIONS 2-4-102, 2-15-104, 2-15-211, 2-15-225, 2-15-231, 2-15-232, 2-15-1845, 2-15-1875, 2-15-2109, 2-15-2201, 2-15-2203, 2-15-2204, 2-15-2205, 2-15-2210, 2-15-2212, 2-15-2301, 2-15-2302, 2-15-2402, 2-18-103, 2-18-303, 3-10-601, 7-4-2913, 7-6-2427, 7-13-4502, 7-22-2151, 7-32-2222, 7-32-2242, 7-33-2402, 7-34-2301, 7-34-2412, 10-2-401, 10-2-402, 10-2-403, 10-2-404, 10-2-416, 10-2-417, 13-2-402, 15-6-201, 15-6-209, 15-25-121, 15-25-122, 15-30-128, 15-30-303, 15-60-101, 15-60-201, 16-1-404, 16-1-408, 16-1-411, 16-11-119, 17-3-1001, 17-3-1002, 17-4-105, 17-5-430, 17-5-432, 17-8-303, 18-2-301, 18-4-133, 18-4-313, 18-5-402, 20-5-321, 20-5-402, 20-6-621, 20-6-624, 20-7-404, 20-7-436, 20-8-116, 20-25-421, 20-25-604, 20-26-1407, 23-1-302, 23-1-303, 23-1-312, 23-5-112, 27-1-718, 27-6-206, 27-32-302, 31-3-141, 33-22-702, 33-22-705, 33-22-1202, 37-2-104, 37-2-301, 37-7-103, 37-9-101, 37-14-322, 37-21-101, 37-27-320, 37-27-321, 37-30-307, 37-30-412, 37-30-422, 37-31-204, 37-31-308, 37-31-331, 37-41-104, 39-30-103, 39-30-106, 39-30-107, 39-71-743, 39-71-744, 39-71-1003, 39-71-1004, 39-71-1011, 39-71-1014, 39-71-1031, 39-71-2001, 40-1-107, 40-1-203, 40-1-204, 40-1-206, 40-1-208, 40-1-209, 40-4-204, 40-4-205, 40-4-208.

1 40-4-209, 40-4-215, 40-4-218, 40-5-103, 40-5-143, 40-5-158, 40-5-161, 40-5-162, 40-5-164, 40-5-165, 40-5-173,
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9 46-14-222, 46-14-301, 46-14-302, 46-14-303, 46-14-304, 46-14-312, 46-18-101, 46-18-105, 46-18-111,
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12 46-23-503, 46-23-1001, 46-23-1024, 49-3-204, 49-4-502, 49-4-507, 50-1-101, 50-1-102, 50-1-103, 50-1-104,
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17 50-16-102, 50-16-602, 50-16-701, 50-16-1003, 50-17-102, 50-18-102, 50-18-103, 50-18-104, 50-18-105,
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24 52-2-733, 52-2-735, 52-3-101, 52-3-102, 52-3-103, 52-3-111, 52-3-202, 52-3-302, 52-3-401, 52-3-502, 52-3-603,
25 52-3-605, 52-3-804, 52-3-805, 52-3-811, 52-3-813, 52-4-101, 52-4-202, 52-4-204, 52-4-205, 52-5-101, 52-5-102,
26 52-5-103, 52-5-107, 52-5-108, 52-5-109, 52-5-110, 52-5-111, 52-5-112, 52-5-113, 52-5-120, 52-5-121, 52-5-126,
27 52-5-127, 52-5-128, 52-5-129, 52-6-101, 52-6-102, 52-6-103, 52-6-104, 53-1-101, 53-1-105, 53-1-106, 53-1-201,
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31 53-4-222, 53-4-242, 53-4-244, 53-4-246, 53-4-702, 53-4-719, 53-5-401, 53-6-101, 53-6-104, 53-6-106, 53-6-107,
32 53-6-108, 53-6-110, 53-6-111, 53-6-112, 53-6-113, 53-6-114, 53-6-115, 53-6-116, 53-6-117, 53-6-131, 53-6-132,
33 53-6-133, 53-6-134, 53-6-142, 53-6-143, 53-6-150, 53-6-401, 53-7-101, 53-7-202, 53-7-301, 53-9-105, 53-10-501,
34 53-18-101, 53-18-103, 53-19-102, 53-20-102, 53-20-104, 53-20-106, 53-20-125, 53-20-128, 53-20-133,

53-20-161, 53-20-163, 53-20-202, 53-20-213, 53-20-214, 53-20-302, 53-20-303, 53-20-304, 53-20-305,
53-20-306, 53-20-307, 53-20-504, 53-20-505, 53-21-102, 53-21-106, 53-21-138, 53-21-139, 53-21-145,
53-21-165, 53-21-201, 53-21-202, 53-21-204, 53-21-212, 53-21-402, 53-21-411, 53-21-412, 53-21-413,
53-21-601, 53-22-102, 53-22-104, 53-24-103, 53-24-204, 53-30-101, 53-30-102, 53-30-105, 53-30-106,
53-30-110, 53-30-111, 53-30-131, 53-30-132, 53-30-133, 53-30-141, 53-30-303, 53-30-401, 61-8-714, 61-8-722,
69-3-1002, 69-3-1006, 72-16-217, 72-17-102, 75-2-103, 75-5-103, 75-6-102, 75-10-103, 75-10-203, 75-10-403,
75-10-501, 75-10-903, 75-10-921, 75-10-950, 75-11-203, 75-20-104, 75-20-202, 75-20-205, 75-20-208,
75-20-211, 75-20-216, 75-20-225, 75-20-302, 75-20-303, 75-20-304, 75-20-1202, 76-2-411, 76-2-412, 80-15-102,
81-2-106, 81-9-202, 81-9-233, 81-21-103, 81-22-208, 81-22-209, 81-22-404, 81-22-414, 81-22-421, 81-23-101,
81-23-103, 87-1-226, 87-1-303, 87-2-802, 90-4-201, 90-4-202, 90-4-215, AND 90-7-220, MCA; REPEALING
SECTIONS 2-15-2104, 2-15-2401, 50-1-301, 50-1-302, 50-70-106, 52-1-105, AND 53-1-101, MCA; AND PROVIDING
AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Department of social and rehabilitation services abolished -- functions transferred to department of public health and human services. (1) The department of social and rehabilitation services is abolished, and its functions are transferred to the department of public health and human services, as established in 2-15-2201.

(2) Unless inconsistent with [sections 1 through 569], any reference in the Montana Code Annotated or in legislation enacted by the 1995 legislature to the "department of social and rehabilitation services" or "department" (of social and rehabilitation services) or "director of social and rehabilitation services" or "director" (of social and rehabilitation services) or "board of social and rehabilitation appeals" or "board" (of social and rehabilitation appeals) is changed to the "department of public health and human services", "department" (of public health and human services), "director of public health and human services", "director" (of public health and human services), "board of public assistance", or "board" (of public assistance), as appropriate. The code commissioner shall conform internal references and grammar to these changes.

NEW SECTION. Section 2. Department of family services abolished -- functions transferred. (1) The department of family services is abolished, and its functions are transferred to the department of public health and human services, as established in 2-15-2201, except juvenile corrections division programs, which are transferred to the department of corrections.

(2) Unless inconsistent with [sections 1 through 569], any reference in the Montana Code Annotated or in legislation enacted by the 1995 legislature to the "department of family services" or "department" (of family services)

or "director of family services" or "director" (of family services) is changed to:

(a) the "department of public health and human services", "department" (of public health and human services), "director of public health and human services", or "director" (of public health and human services), as appropriate; or

(b) the "department of corrections", "department" (of corrections), "director of corrections", or "director" (of corrections), as appropriate. The code commissioner shall conform internal references and grammar to these changes.

NEW SECTION. Section 3. Certain functions of director and department of health and environmental sciences transferred to director or department of public health and human services -- board of health and environmental sciences abolished. (1) The public health functions of the director and department of health and environmental sciences are transferred to the director or department of public health and human services, established in 2-15-2201, as appropriate, relating to and including but not limited to the following:

(a) preventive health services, including the chronic disease prevention and health promotion program, surveillance and control of communicable diseases, immunizations, epidemiology services, and support for rape crisis programs;

(b) family and maternal and child health programs, including the women, infants, and children program, the child nutrition and child food care program, family planning services, perinatal services, and children's special health services;

(c) health services, including planning and implementation of a statewide emergency medical system and development of a state health plan;

(d) food and consumer safety programs, including:

(i) administration of food programs and nutrition services under Title 50, chapter 49;

(ii) regulation of food establishments under Title 50, chapter 50;

(iii) regulation of hotels, motels, and roominghouses under Title 50, chapter 51;

(iv) regulation of tourist campgrounds and trailer courts under Title 50, chapter 52; and

(v) regulation of public swimming pools and swimming areas under Title 50, chapter 53.

(e) records and statistics services;

(f) administration of the certificate of need program; and

(g) health facility regulation, including licensing, medicaid certification, approval of health facility renovation, and new construction.

(2) Unless inconsistent with [sections 1 through 569] and with respect to public health functions, any reference in the Montana Code Annotated or in legislation enacted by the 1995 legislature to the "department of health and environmental sciences" or "department" (of health and environmental sciences) or "director of health and environmental sciences" or "director" (of health and environmental sciences) is changed to the "department of public health and human services", "department" (of public health and human services), "director of public health and human

1 services", or "director" (of public health and human services), as appropriate. The code commissioner shall conform
2 internal references and grammar to these changes.

3 (3) The board of health and environmental sciences is abolished.

4
5 **NEW SECTION. Section 4. Certain functions of director and department of corrections and human services**
6 **transferred to director or department of public health and human services.** (1) The human services functions of the
7 director and department of corrections and human services are transferred to the director or department of public health
8 and human services, established in 2-15-2201, as appropriate, relating to and including but not limited to the following:

9 (a) developmental disabilities services, including institutional and residential care, pursuant to Title 53, chapter
10 20, provided at the Montana developmental center and Eastmont human services center;

11 (b) mental health services, including the care and treatment of the mentally ill, pursuant to Title 53, chapter
12 21, provided at the Montana state hospital and the Montana center for the aged and through community-based services
13 at private, nonprofit regional mental health centers;

14 (c) chemical dependency services pursuant to Title 53, chapter 24; and

15 (d) veterans' long-term care services, including those provided at the Montana veterans' home and eastern
16 Montana veterans' home at Glendive.

17 (2) Unless inconsistent with [sections 1 through 569] and with respect to human services functions, any
18 reference in the Montana Code Annotated or in legislation enacted by the 1995 legislature to the "department of
19 corrections and human services" or "department" (of corrections and human services) or "director of corrections and
20 human services" or "director" (of corrections and human services) is changed to the "department of public health and
21 human services", "department" (of public health and human services), "director of public health and human services",
22 or "director" (of public health and human services), as appropriate. The code commissioner shall conform internal
23 references and grammar to these changes.

24
25 **NEW SECTION. Section 5. Department and director of corrections and human services -- names changed.**
26 Except as provided in [section 4] and with respect to functions that are not related to human services, the names of
27 the department and the director of corrections and human services are changed to the department and director of
28 corrections, respectively. Unless inconsistent with [sections 1 through 569], any reference in the Montana Code
29 Annotated or in legislation enacted by the 1995 legislature to the "department of corrections and human services" or
30 "department" (of corrections and human services) or "director of corrections and human services" or "director" (of
31 corrections and human services) is changed to the "department of corrections", "department" (of corrections), "director
32 of corrections", or "director" (of corrections), as appropriate. The code commissioner shall conform internal references
33 and grammar to these changes.

Section 6. Section 2-4-102, MCA, is amended to read:

"2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter

14.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the Administrative Rules of Montana and the Montana Administrative Register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works.

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing ~~herein~~ in this chapter may be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(9) "Register" means the Montana Administrative Register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

Section 7. Section 2-15-104, MCA, is amended to read:

"2-15-104. Structure of executive branch. (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

(a) department of administration;

(b) department of military affairs;

(c) department of revenue;

(d) state board of education;

(e) department of labor and industry;

(f) department of commerce;

(g) department of justice;

(h) department of ~~health and~~ environmental sciences;

(i) department of ~~social and rehabilitation~~ public health and human services;

(j) department of corrections ~~and human services~~;

(k) department of transportation;

(l) department of public service regulation;

- (m) department of agriculture;
- (n) department of livestock;
- (o) department of state lands;
- (p) department of natural resources and conservation;
- (q) department of fish, wildlife, and parks;
- ~~(r) department of family services.~~

(2) For its internal structure, each department shall adhere to the following standard terms:

- (a) The principal unit of a department is a division. Each division is headed by an administrator.
- (b) The principal unit of a division is a bureau. Each bureau is headed by a chief.
- (c) The principal unit of a bureau is a section. Each section is headed by a supervisor."

Section 8. Section 2-15-211, MCA, is amended to read:

"2-15-211. Mental disabilities board of visitors -- composition -- allocation. (1) The governor shall appoint a mental disabilities board of visitors.

(2) The board shall consist of five persons representing but not limited to consumers, doctors of medicine, and the behavioral sciences, at least three of whom may not be professional persons and at least one of whom ~~shall~~ must be a representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled. No one may be a member of the board who is a full-time agent or employee of the department of ~~corrections~~ public health and human services or a mental health facility affected by Title 53, chapter 20, part 1, and chapter 21, part 1, except this prohibition does not affect any employee of a state college or university.

(3) The mental disabilities board of visitors ~~shall be~~ is attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in Title 53, chapter 20, part 1, and chapter 21, part 1."

Section 9. Section 2-15-225, MCA, is amended to read:

"2-15-225. Interagency coordinating council for state prevention programs. (1) There is an interagency coordinating council for state prevention programs consisting of the following ~~10~~ seven members:

- ~~(a) the director of the department of family services provided for in 2-15-2401;~~
- ~~(b) the director of the department of health and environmental sciences provided for in 2-15-2101;~~
- ~~(c) the director of the department of corrections and human services provided for in 2-15-2301;~~
- ~~(d)~~ (a) the attorney general provided for in 2-15-501;
- ~~(e)~~ (b) the director of the department of ~~social and rehabilitation~~ public health and human services provided for in 2-15-2201;

- 1 ~~(c)~~ the superintendent of public instruction provided for in 2-15-701;
- 2 ~~(d)~~ the presiding officer of the Montana children's trust fund board;
- 3 ~~(e)~~ two persons appointed by the governor who have experiences related to the private or nonprofit
- 4 provision of prevention programs and services; and
- 5 ~~(f)~~ the administrator of the board of crime control provided for in 2-15-2006.
- 6 (2) The coordinating council shall perform the following duties:
- 7 (a) develop through interagency planning efforts a comprehensive and coordinated prevention program delivery
- 8 system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and
- 9 communities;
- 10 (b) develop appropriate interagency prevention programs and services that address the problems of at-risk
- 11 children and families and that can be provided in a flexible manner to meet the needs of those children and families;
- 12 (c) study various financing options for prevention programs and services;
- 13 (d) ensure that a balanced and comprehensive range of prevention services is available to children and families
- 14 with specific or multiagency needs; and
- 15 (e) assist in development of cooperative partnerships among state agencies and community-based public and
- 16 private providers of prevention programs.
- 17 (3) The coordinating council shall cooperate with and report to any standing or interim legislative committee
- 18 that is assigned to study the policies and funding for prevention programs or other state programs and policies related
- 19 to children and families.
- 20 (4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions
- 21 of 2-15-122.
- 22 (5) The coordinating council is attached for administrative purposes only to the governor's office, which may
- 23 assist in providing staff and budgetary, administrative, and clerical services to the council as the council or its presiding
- 24 officer requests.
- 25 (6) Staffing and other resources may be provided to the coordinating council only from state and nonstate
- 26 resources donated to the council and from direct appropriations by each legislature."
- 27

28 **Section 10.** Section 2-15-231, MCA, is amended to read:

29 **"2-15-231. Office of aging.** (1) There is an office of aging, headed by a coordinator of aging. The office is

30 in the department of ~~family public health and human~~ services.

31 (2) The governor shall appoint an advisory council on aging. The council is composed of 11 members, a

32 majority of whom must be 60 years of age or older. Members shall serve staggered 3-year terms and until their

33 successors are appointed. Vacancies must be filled by appointment for the unexpired term. The council is allocated to

34 the department of ~~family public health and human~~ services for administrative purposes only."

1 **Section 11.** Section 2-15-232, MCA, is amended to read:

2 **"2-15-232. Duties and assistance.** (1) The coordinator of aging shall, with the advice of the advisory council
3 on aging, assist the governor and the department of ~~family~~ public health and human services in planning, coordination,
4 and operation of programs within state government that affect senior citizens of the state.

5 (2) The coordinator shall meet with senior citizens and the general public to gather information on the needs
6 of senior citizens and the effectiveness of state programs in meeting those needs.

7 (3) The coordinator shall advise the governor and the director of the department of ~~family~~ public health and
8 human services as to ways to improve the effectiveness of programs that affect senior citizens."

9
10 **Section 12.** Section 2-15-1845, MCA, is amended to read:

11 **"2-15-1845. Board of nursing home administrators.** (1) There is a board of nursing home administrators.

12 (2) The board consists of five voting members appointed by the governor with the consent of the senate. No
13 more than two members ~~shall~~ may be nursing home administrators. One member shall represent the public at large and
14 must be 55 years of age or older at the time of appointment. The other two members ~~shall~~ must be representatives
15 of professions or institutions concerned with the care of chronically ill and infirm aged patients and may not be from
16 the same profession or have a financial interest in a nursing home.

17 (3) ~~The director of the department of health and environmental sciences or his designee and the director of~~
18 ~~the department of social and rehabilitation~~ public health and human services or ~~his~~ the director's designee ~~are~~ is an ex
19 officio, nonvoting ~~members~~ member of the board.

20 (4) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an
21 appointive member ~~shall~~ must be filled by the governor for the unexpired term.

22 (5) Appointive members may be removed by the governor only for cause.

23 (6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

24
25 **Section 13.** Section 2-15-1875, MCA, is amended to read:

26 **"2-15-1875. Board of plumbers.** (1) There is a board of plumbers.

27 (2) The board consists of nine members appointed by the governor with the consent of the senate. The
28 members are:

29 (a) two master plumbers and two journeyman plumbers who are at least 18 years old, who have been
30 residents of this state for more than 1 year, and who have been duly licensed master or journeyman plumbers at least
31 5 out of the last 8 years immediately preceding their appointment;

32 (b) one registered professional engineer qualified in mechanical engineering;

33 (c) three representatives of the public who are not engaged in the business of installing or selling plumbing
34 equipment;

(d) one appointed representative of the department of public health and environmental sciences human services, who ~~shall~~ must be a sanitary engineer and who is secretary of the board.

(3) The appointed members of the board shall serve for ~~a term~~ terms of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 14. Section 2-15-2109, MCA, is amended to read:

"2-15-2109. MIAMI project advisory council. (1) There is a Montana initiative for the abatement of mortality in infants (MIAMI) project advisory council.

(2) The council is composed of eight members appointed by the governor as follows:

(a) one person from the department who is involved in providing preventative health services for women and children;

(b) one person from the department of ~~social and rehabilitation~~ public health and human services who administers or supervises services under the Montana medicaid program;

(c) one person from a local health department;

(d) one person from among local service providers;

(e) one person representing a nonprofit child health organization;

(f) one private physician who specializes in obstetric or pediatric care;

(g) one person involved in children's issues or programs who is a representative of a parents' organization; and

(h) one person who is an enrolled member of a recognized Indian tribe and who is knowledgeable and involved in health services to Indians as a consumer, provider, or advocate.

(3) The council is allocated to the department for administrative purposes only as provided in 2-15-121.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members."

Section 15. Section 2-15-2201, MCA, is amended to read:

"2-15-2201. Department of ~~social and rehabilitation~~ public health and human services -- head. There is a department of ~~social and rehabilitation~~ public health and human services. The department head is a director of ~~social and rehabilitation~~ public health and human services appointed by the governor in accordance with 2-15-111."

Section 16. Section 2-15-2203, MCA, is amended to read:

"2-15-2203. Board of ~~social and rehabilitation appeals~~ public assistance -- allocation -- quasi-judicial. (1) There is a board of ~~social and rehabilitation appeals~~ public assistance.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The board consists of three members appointed by the governor as prescribed in 2-15-124, except that

1 ~~be an~~ employee of the department of ~~social and rehabilitation~~ public health and human services may not be appointed
2 to the board.

3 (4) The board is designated as a quasi-judicial board for purposes of 2-15-124. For purposes of that section,
4 a majority ~~shall be~~ is considered as one."

5
6 **Section 17.** Section 2-15-2204, MCA, is amended to read:

7 **"2-15-2204. Developmental disabilities planning and advisory council.** (1) The governor shall appoint a
8 developmental disabilities planning and advisory council in accordance with the provisions of this section.

9 (2) The council is composed of at least ~~24~~ 23 but no more than ~~26~~ 25 members and consists of the following:

10 (a) ~~the directors of the departments of social and rehabilitation services, health and environmental sciences,~~
11 ~~corrections and human services, and family services or their designees~~ a representative of the program of services
12 provided under the authority of the Rehabilitation Act of 1973, 29 U.S.C. 701, et seq.;

13 (b) a representative of the program of services provided under the authority of the Older Americans Act of
14 1965, 42 U.S.C. 3001, et seq.;

15 (c) a representative of the program of services for persons with developmental disabilities provided under the
16 authority of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq.;

17 ~~(b)(d)~~ the superintendent of public instruction or a designee a representative of the program of services
18 provided under the authority of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.;

19 ~~(e)~~ (e) two recognized professionals, one each in the disciplines of medicine and law;

20 ~~(d)(f)~~ (f) one member of the state senate;

21 ~~(e)(g)~~ (g) one member of the state house of representatives;

22 ~~(f)(h)~~ (h) seven persons, each of whom has a developmental disability or who is an immediate family member or
23 guardian of a person with a developmental disability;

24 ~~(g)(i)~~ (i) one member of each of the five regional councils provided for in 53-20-207, who has a developmental
25 disability or is an immediate family member or guardian of a person with a developmental disability;

26 ~~(h)(j)~~ (j) the director of the university-affiliated or satellite program on developmental disabilities, created pursuant
27 to 42 U.S.C. 6031, or a designee of the director;

28 ~~(i)(k)~~ (k) the director of the state protection and advocacy system, created pursuant to 42 U.S.C. 6012, or a
29 designee of the director; and

30 ~~(j)(l)~~ (l) a representative of a statewide developmental disabilities service provider organization whose member
31 agencies provide direct services to persons with developmental disabilities.

32 (3) (a) Each member ~~or his designee~~ who serves on the council pursuant to subsection (2)(a), (2)(b), ~~(2)(h),~~
33 ~~or (2)(i)~~ (2)(c), or (2)(d) shall serve for a term concurrent with ~~his~~ the respective term ~~as a~~ of the director ~~or the~~
34 ~~superintendent of public instruction, as the case may be~~ of the agency that administers the program that the member

1 ~~represents. Upon his the removal of an agency director from office, his or his designee's the representative's term as~~
 2 ~~a member of the council is automatically terminated and his successor in office or his successor's designee is~~
 3 ~~automatically a member of the council.~~

4 (b) Each member who serves on the council pursuant to subsection ~~(2)(d)(2)(f)~~ or ~~(2)(e)(2)(g)~~ shall must be
 5 appointed or reappointed annually by the governor.

6 (c) Eight of the members serving on the council pursuant to subsection ~~(2)(c)(2)(e), (2)(f)(2)(h), (2)(g)(2)(i),~~
 7 ~~(2)(j)(2)(l),~~ or (3)(d) shall must be appointed by the governor to serve for terms concurrent with the gubernatorial term
 8 and until their successors are appointed. The remaining members serving on the council pursuant to subsection
 9 ~~(2)(c)(2)(e), (2)(f)(2)(h), (2)(g)(2)(i), (2)(j)(2)(l),~~ or (3)(d) shall must be appointed by the governor to serve for terms
 10 ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

11 (d) Representatives named to the council pursuant to this section, in addition to fulfilling the requirements
 12 listed in subsections (2)(a) through ~~(2)(j)(2)(l)~~, may also be selected to represent the following areas: psychology, social
 13 work, special education, and minority groups, including Native Americans with developmental disabilities. A minimum
 14 of one member of the council shall must represent each of these areas. In the event that the persons listed in
 15 subsections (2)(a) through ~~(2)(j)(2)(l)~~ do not represent all of the areas of psychology, social work, special education,
 16 and minority groups, including Native Americans with developmental disabilities, up to two representatives may be
 17 added to the membership of the council to represent not more than two of these groups.

18 (4) The council is allocated to the department for administrative purposes only and, unless inconsistent with
 19 the provisions of ~~this section and 53-20-206~~ and this section, the provisions of 2-15-121 apply."

21 **Section 18.** Section 2-15-2205, MCA, is amended to read:

22 **"2-15-2205. Division of visual services.** There is a division of visual services within the department of ~~social~~
 23 ~~and rehabilitation~~ public health and human services. The division head is an administrator appointed by the director of
 24 the department of ~~social and rehabilitation~~ public health and human services in accordance with classification
 25 requirements. The division is responsible for administration of rehabilitative and other services for blind and visually
 26 handicapped persons."

28 **Section 19.** Section 2-15-2210, MCA, is amended to read:

29 **"2-15-2210. State advisory council on food and nutrition.** (1) There is a state advisory council on food and
 30 nutrition.

31 (2) The council is composed of 11 members appointed by the governor as follows:

32 (a) one person from the department of ~~social and rehabilitation~~ public health and human services who
 33 supervises or administers services under the food stamp program;

34 (b) one person from the department of ~~health and environmental sciences~~ public health and human services

1 who supervises or administers supplemental food programs for women, infants, and children;

2 (c) one person from the office of public instruction who is responsible for administration of school food
3 programs under the National School Lunch Act;

4 (d) one person from a statewide organization active in food, nutrition, and hunger issues;

5 (e) one person representing local food bank programs;

6 (f) one person from among local, private operators of food and nutrition programs for the elderly;

7 (g) one person representing the general public who is knowledgeable and active in food, nutrition, and hunger
8 issues;

9 (h) one person who is an agent in the Montana cooperative extension service;

10 (i) one Native American; and

11 (j) one member of the house of representatives and one member of the senate, who must be paid their
12 compensation and expenses as provided in 5-2-302 while engaged in advisory council business.

13 (3) The council is allocated to the department of ~~health and environmental sciences~~ public health and human
14 services for administrative purposes only as provided in 2-15-121.

15 (4) The provisions of 2-15-122(5) through (8) apply to the council and its members."
16

17 **Section 20.** Section 2-15-2212, MCA, is amended to read:

18 **"2-15-2212. Committee on telecommunications services for the handicapped -- composition -- allocation.** (1)

19 There is a committee on telecommunications services for the handicapped.

20 (2) The committee consists of 11 members appointed by the governor as follows:

21 (a) four members who are handicapped, two of whom must be deaf or hard-of-hearing;

22 (b) two members who are not handicapped, one of whom must be engaged in a business other than a
23 business in the telecommunications industry and one of whom must be a senior citizen;

24 (c) one member from the department of ~~social and rehabilitation~~ public health and human services;

25 (d) one member from the largest local exchange company in Montana;

26 (e) one member from an independent local exchange company;

27 (f) one member from an interLATA interexchange carrier; and

28 (g) one member from the public service commission.

29 (3) The committee is allocated to the department of ~~social and rehabilitation~~ public health and human services
30 for administrative purposes only as provided in 2-15-121."
31

32 **Section 21.** Section 2-15-2301, MCA, is amended to read:

33 **"2-15-2301. Department of corrections and human services -- head.** There is a department of corrections and
34 ~~human services~~. The department head is a director of corrections and ~~human services~~ appointed by the governor in

1 accordance with 2-15-111."

2
3 **Section 22.** Section 2-15-2302, MCA, is amended to read:

4 **"2-15-2302. Board of pardons and parole -- composition -- allocation -- quasi-judicial.** (1) There is a board
5 of pardons and parole.

6 (2) The board consists of three members and an auxiliary member, at least one of whom shall have particular
7 knowledge of Indian culture and problems. Members of the board, including the auxiliary member, shall possess
8 academic training which has qualified them for professional practice in a field such as criminology, education,
9 psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas
10 listed may be substituted for these educational requirements.

11 (3) The auxiliary member shall attend any meeting that a regular board member is unable to attend, and at
12 that time the auxiliary member has all the rights and responsibilities of a regular board member.

13 (4) One member and the auxiliary member shall serve terms concurrent with the governor. The remaining
14 members shall serve staggered 4-year terms.

15 (5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.
16 However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

17 (6) The board, including the auxiliary member, is designated as a quasi-judicial board for purposes of
18 2-15-124, except board members ~~shall~~ must be compensated as provided by legislative appropriation and the terms
19 of board members ~~shall~~ must be staggered as provided in subsection (4)."

20
21 **Section 23.** Section 2-15-2402, MCA, is amended to read:

22 **"2-15-2402. Montana children's trust fund board.** (1) There is a Montana children's trust fund board,
23 consisting of seven members appointed by the governor and serving 3-year terms. Two board members must be chosen
24 from state government agencies involved in education and social work relating to children. The governor shall ensure
25 geographic distribution of appointees.

26 (2) The board is allocated to the department of ~~family~~ public health and human services for administrative
27 purposes only, as provided in 2-15-121. The board may employ staff to carry out its duties as described in Title 41,
28 chapter 3, part 7."

29
30 **Section 24.** Section 2-18-103, MCA, is amended to read:

31 **"2-18-103. Officers and employees excepted.** Parts 1 and 2 do not apply to the following positions in state
32 government:

33 (1) elected officials;

34 (2) county assessors and their chief deputy;

- 1 (3) officers and employees of the legislative branch;
- 2 (4) judges and employees of the judicial branch;
- 3 (5) members of boards and commissions appointed by the governor, the legislature, or other elected state
- 4 officials;
- 5 (6) officers or members of the militia;
- 6 (7) agency heads appointed by the governor;
- 7 (8) academic and professional administrative personnel with individual contracts under the authority of the
- 8 board of regents of higher education;
- 9 (9) academic and professional administrative personnel and live-in houseparents who have entered into
- 10 individual contracts with the state school for the deaf and blind under the authority of the state board of public
- 11 education;
- 12 (10) teachers under the authority of the department of corrections ~~and human services~~ or ~~family~~ the
- 13 department of public health and human services;
- 14 (11) investment officer, assistant investment officer, executive director, and three professional staff positions
- 15 of the board of investments;
- 16 (12) four professional staff positions under the board of oil and gas conservation;
- 17 (13) assistant director for security of the Montana state lottery;
- 18 (14) executive director and senior investment officer of the Montana board of science and technology
- 19 development;
- 20 (15) executive director and employees of the state compensation insurance fund;
- 21 (16) state racing stewards employed by the executive secretary of the Montana board of horseracing;
- 22 (17) executive director of the Montana wheat and barley committee; and
- 23 (18) commissioner of banking and financial institutions."
- 24

25 **Section 25.** Section 2-18-303, MCA, is amended to read:

26 **"2-18-303. Procedures for utilizing pay schedules.** (1) The pay schedules provided in 2-18-312 must be

27 implemented as follows:

28 (a) The pay schedules provided in 2-18-312 indicate the entry salary and market salary ~~for the fiscal years~~

29 ~~ending June 30, 1994, and June 30, 1995,~~ for each grade for positions classified under the provisions of part 2 of this

30 chapter.

31 (b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided

32 in subsections (6) and (7).

33 (c) ~~Except as provided in subsection (1)(a), on the first day of the first complete pay period in fiscal year 1994,~~

34 ~~each employee hired before July 1, 1993, is entitled to the amount of the employee's base salary as it was on June~~

1 ~~30, 1993.~~

2 ~~(d) Except as provided in subsection (1)(e), on the first day of the first complete pay period in January 1995,~~
3 ~~each employee hired before January 1, 1995, is entitled to the amount of the employee's base salary as it was on~~
4 ~~December 31, 1994, plus 1.5%.~~

5 ~~(e)~~ An employee's base salary may be no less than the entry salary for the employee's assigned grade.

6 ~~(f)(d)~~ An employee's base salary may not exceed the maximum salary for the employee's grade. The salary
7 of an employee may not be reduced because of this provision.

8 ~~(g)(e)~~ The maximum salary for each grade is determined by subtracting the entry salary from the market salary
9 and adding that amount to the market salary.

10 (2) The pay schedules provided in 2-18-312 and the provisions of subsection (1) do not apply to those
11 teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in
12 2-18-313 through 2-18-315.

13 (3) The pay schedules provided in 2-18-313 through 2-18-315 must be implemented as follows:

14 (a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for the contracted school
15 term for teachers employed under the authority of the department of corrections ~~and human services~~ or the department
16 of family public health and human services ~~for fiscal years 1994 and 1995.~~

17 ~~(ii) The compensation of each teacher on the first day of the first pay period in July 1993 is determined by the~~
18 ~~teacher's level of academic achievement and years of experience.~~

19 ~~(iii)~~ On the first day of the first complete pay period of each fiscal year, each teacher shall advance one step
20 on the appropriate pay schedule adopted in 2-18-313.

21 ~~(iv)(iii)~~ On the first day of the first complete pay period of each fiscal year, each teacher employed by the
22 Montana school for the deaf and blind shall advance one step on the teacher pay matrix used by the school.

23 (b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation ~~for fiscal years~~
24 ~~ending June 30, 1994, and June 30, 1995,~~ for those employees in liquor store occupations who have collectively
25 bargained separate classification and pay plans.

26 (ii) The compensation of each employee ~~on the first day of the first pay period in fiscal year 1994 or 1995~~ is
27 that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

28 (c) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation ~~for fiscal years~~
29 ~~ending June 30, 1994, and June 30, 1995,~~ for employees in apprentice trades and crafts and other blue-collar
30 occupations recognized in the state blue-collar classification plan who are members of units that have collectively
31 bargained separate classification and pay plans.

32 (ii) The compensation of each employee on the first day of the first pay period ~~in fiscal year 1994 or 1995~~ is
33 that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

34 (4) The current wage or salary of an employee may not be reduced by the implementation of the pay

1 schedules provided for in 2-18-312 through 2-18-315.

2 (5) The department may authorize a separate pay schedule for medical doctors if the rates provided in
3 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

4 (6) The department may develop programs that enable the department to mitigate problems associated with
5 difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to
6 employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

7 (7) The department shall review the competitiveness of the compensation provided to all occupations under
8 this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate
9 salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay
10 or classification to mitigate the problems. Insofar as these adjustments may apply to employees within a collective
11 bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."

12
13 **Section 26.** Section 3-10-601, MCA, is amended to read:

14 **"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each justice of the peace
15 shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county
16 in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general
17 fund of the county.

18 (2) All fines, penalties, and forfeitures that this code requires to be imposed, collected, or paid in a justice's
19 court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month
20 to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided
21 in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

22 (3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under
23 subsection (2) as follows:

24 (a) 50% to the state treasurer; and

25 (b) 50% to the county general fund.

26 (4) The state treasurer shall distribute money received under subsection (3) as follows:

27 (a) 44.81% to the state general fund;

28 (b) 9.09% to the fish and game account in the state special revenue fund;

29 (c) 11.76% to the state highway account in the state special revenue fund;

30 (d) 16.93% to the traffic education account in the state special revenue fund;

31 (e) 0.57% to the department of livestock account in the state special revenue fund;

32 (f) 15.9% to the crime victims compensation account in the state special revenue fund; and

33 (g) 0.94% to the department of ~~family~~ public health and human services special revenue account for the
34 battered spouses and domestic violence grant program."

1 **Section 27.** Section 7-4-2913, MCA, is amended to read:

2 **"7-4-2913. Payment of costs of inquest.** Whenever an inquest is held because of the death of an individual
3 confined in the state prison, the county clerk of the county where the inquest is held shall make out a statement of
4 all the costs incurred by the county in the inquest, properly certified by the coroner of the county. This statement ~~shall~~
5 must be sent to the department of corrections ~~and human services~~ for approval, and after approval, the department
6 shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the
7 county where the inquest was held."

8
9 **Section 28.** Section 7-6-2427, MCA, is amended to read:

10 **"7-6-2427. (Temporary) Special provisions for certain charges related to criminal prosecutions.** (1)
11 Notwithstanding 7-6-2426, all costs of a criminal prosecution, including attorney fees, of an offense committed in the
12 state prison are not charges against the county in which the state prison is located. The costs must be paid by the
13 department of corrections ~~and human services~~.

14 (2) If a criminal action is removed before trial, the costs accruing upon removal and trial must be a charge
15 against the county in which the indictment was found or information filed, subject to reimbursement as provided in
16 3-5-901. (Terminates June 30, 1995--sec. 1, Ch. 217, L. 1993.)

17 **7-6-2427. (Effective July 1, 1995) Special provisions for certain charges related to criminal prosecutions.** (1)
18 Notwithstanding 7-6-2426, all costs of a criminal prosecution, including attorneys' fees, of an offense committed in
19 the state prison are not charges against the county in which the state prison is located. ~~Such~~ The costs ~~shall~~ must be
20 paid by the department of corrections ~~and human services~~.

21 (2) If a criminal action is removed before trial, the costs accruing upon ~~such~~ removal and trial must be a
22 charge against the county in which the indictment was found or information filed, subject to partial or total
23 reimbursement as provided in 3-5-901."

24
25 **Section 29.** Section 7-13-4502, MCA, is amended to read:

26 **"7-13-4502. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions
27 apply:

28 (1) "Board of directors" means the board of directors provided for in 7-13-4516 or a joint board of directors
29 provided for in 7-13-4527.

30 ~~(2) "Board of health and environmental sciences" as used in this part means the board of health and~~
31 ~~environmental sciences as provided in 2-15-2104.~~

32 ~~(3)(2)~~ "Commissioners" means the board of county commissioners or the governing body of a city-county
33 consolidated government.

34 ~~(4)(3)~~ "Family residential unit" means a single-family dwelling.

1 ~~(6)(4)~~ "Fee-assessed units" means all real property with improvements, including taxable and tax-exempt
2 property as shown on the property assessment records maintained by the county, and mobile homes as defined in
3 15-24-201.

4 ~~(6)(5)~~ "Local water quality district" means an area established with definite boundaries for the purpose of
5 protecting, preserving, and improving the quality of surface water and ground water in the district as authorized by this
6 part."

7
8 **Section 30.** Section 7-22-2151, MCA, is amended to read:

9 **"7-22-2151. Cooperative agreements.** (1) Any state agency controlling land within a district, including the
10 department of transportation; the department of state lands; the department of fish, wildlife, and parks; the department
11 of corrections ~~and human services~~; the department of natural resources and conservation; and the university system,
12 shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for noxious
13 weed management on state-owned or state-controlled land within the district.

14 (2) The board and the governing body of each incorporated municipality within the district shall enter into a
15 written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the
16 municipality. The board may implement management procedures described in the plan within the boundaries of the
17 municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of
18 the governing body of the municipality, as specified in 7-22-4101.

19 (3) A board may develop and carry out its noxious weed management program in cooperation with boards
20 of other districts, with state and federal governments and their agencies, or with any person within the district. The
21 board may enter into cooperative agreements with any of these parties."

22
23 **Section 31.** Section 7-32-2222, MCA, is amended to read:

24 **"7-32-2222. Health and safety of prisoners.** (1) Each detention center must comply with state and local fire
25 codes for correctional occupancy and with sanitation, safety, and health codes.

26 (2) Designated exits must permit prompt evacuation of inmates and detention center staff in an emergency.

27 (3) When there is good reason to believe that the inmates may be injured or endangered, the detention center
28 administrator must remove them to a safe and convenient place and confine them there as long as necessary to avoid
29 the danger.

30 (4) (a) If in the opinion of the detention center administrator an inmate under ~~his~~ the administrator's jurisdiction
31 requires medication, medical services, or hospitalization, the expense must be borne by the arresting agency when the
32 arresting agency is not the county in which the inmate is confined, except as provided in subsection (4)(b).

33 (b) If a city or town commits a person to the detention center of the county in which the city or town is
34 located for a reason other than detention pending trial for or detention for service of a sentence for violating an

1 ordinance of that city or town, the expense must be paid by the county. If the department of corrections ~~and human~~
2 ~~services~~ is the arresting agency and the inmate is a probation violator, the expense must be paid by the county in which
3 the district court that retains jurisdiction over the inmate is located.

4 (c) The county attorney shall initiate proceedings to collect from the inmate any charges arising from the
5 medical services or hospitalization for the inmate involved if ~~he~~ the county attorney determines the inmate is financially
6 able to pay."

7
8 **Section 32.** Section 7-32-2242, MCA, is amended to read:

9 **"7-32-2242. Use of detention center -- payment of costs.** (1) Local government, state, and federal law
10 enforcement and correctional agencies may use any detention center for the confinement of arrested persons and the
11 punishment of offenders, under conditions imposed by law and with the consent of the governing body responsible for
12 the detention center.

13 (2) (a) If a person is confined in a detention center by an arresting agency not responsible for the operation
14 of the detention center, the costs of holding the person in confinement must be paid by the arresting agency at a rate
15 that is agreed upon by the arresting agency and the detention center and that covers the reasonable costs of
16 confinement, excluding capital construction costs, except as provided in subsection (2)(b).

17 (b) If a city or town commits a person to the detention center of the county in which the city or town is
18 located for a reason other than detention pending trial for or detention for service of a sentence for violating an
19 ordinance of that city or town, the costs must be paid by the county. If the department of corrections ~~and human~~
20 ~~services~~ is the arresting agency and the inmate is a probation violator, the costs must be paid by the county in which
21 the district court that retains jurisdiction over the inmate is located.

22 (c) Payments must be made to the government unit responsible for the detention center or to the administrator
23 operating a private detention center under an agreement provided for in 7-32-2201, upon presentation of a claim to
24 the arresting agency.

25 (3) If a person is a fugitive from justice from an out-of-state jurisdiction, the costs, including medical expenses,
26 of holding the person in a detention center pending extradition must be paid by the out-of-state jurisdiction."

27
28 **Section 33.** Section 7-33-2402, MCA, is amended to read:

29 **"7-33-2402. Area services.** A fire service area created pursuant to 7-33-2401 may provide residents of the
30 area with adequate and standard:

31 (1) (a) fire and emergency response equipment, personnel, facilities, and maintenance, for a fire service
32 agency providing service to the area; or

33 (b) fire protection by contracting for the services of a fire service agency; and

34 (2) emergency medical services and equipment, licensed by the department of public health and environmental

1 ~~sciences~~ human services, and related personnel, facilities, and maintenance."

2
3 **Section 34.** Section 7-34-2301, MCA, is amended to read:

4 **"7-34-2301. Construction and operation of county boarding or nursing home authorized.** The board of county
5 commissioners may erect, equip, maintain, and operate a boarding home or nursing home for the aged, subject to
6 standards established by the department of public health and ~~environmental sciences~~ human services ."

7
8 **Section 35.** Section 7-34-2412, MCA, is amended to read:

9 **"7-34-2412. Applicability.** The authority granted under 7-34-2411 through 7-34-2418 is available only to
10 counties in which no hospital exists or in which the only existing hospital has been ordered closed or cannot be
11 reasonably brought into compliance with the standards established by the department of public health and
12 ~~environmental sciences~~ human services under Title 50, chapter 5, parts 1, 2, and 3."

13
14 **Section 36.** Section 10-2-401, MCA, is amended to read:

15 **"10-2-401. Location and function of homes -- persons admitted.** The institutions at Columbia Falls and in
16 eastern Montana are the Montana veterans' homes, and their primary function is to provide a home and subsistence
17 for veterans. The department of ~~corrections~~ public health and human services may also admit spouses or surviving
18 spouses of veterans to the homes if space allows."

19
20 **Section 37.** Section 10-2-402, MCA, is amended to read:

21 **"10-2-402. Superintendent to be given veterans' preference.** In the selection of the superintendent of each
22 of the Montana veterans' homes, the department of ~~corrections~~ public health and human services shall apply the
23 preference granted to veterans and disabled veterans under 39-29-102, but not the preference granted to other persons
24 under 39-29-102 or Title 39, chapter 30."

25
26 **Section 38.** Section 10-2-403, MCA, is amended to read:

27 **"10-2-403. Eligibility for residence in home.** To be eligible for residence in a Montana veterans' home under
28 rules prescribed by the department of ~~corrections~~ public health and human services, a person must be a veteran or the
29 spouse or surviving spouse of a veteran. Consideration must also be given to:

- 30 (1) the person's age;
31 (2) the person's physical and mental status;
32 (3) the person's ability or inability to locate suitable alternative accommodations;
33 (4) the person's term of residence in Montana;
34 (5) the person's gender as it relates to availability of appropriate living space;

1 (6) the ability of the Montana veterans' home to meet the person's needs; and

2 (7) other admission requirements established by the department."

3
4 **Section 39.** Section 10-2-404, MCA, is amended to read:

5 **"10-2-404. Acceptance and deposit of federal money.** The department of ~~corrections~~ public health and human
6 services may accept money from the federal government that becomes available to the state as a result of operating
7 the Montana veterans' homes and shall deposit ~~such the~~ money in the state treasury for the benefit of the homes. If
8 a resident of a home is transferred to another institution, ~~as defined in 53-1-101,~~ the department of ~~corrections~~ public
9 health and human services shall continue to draw from the federal government any money available for the maintenance
10 of the former resident."

11
12 **Section 40.** Section 10-2-416, MCA, is amended to read:

13 **"10-2-416. Pledge to continue operation and maintenance.** Pursuant to 38 U.S.C. 641 and 5035(a)(6), the
14 state shall appropriate funds either from the general fund or from funds generated under 16-11-111 to the department
15 of ~~corrections~~ public health and human services financial support necessary to provide for continued operation and
16 maintenance of the state home for veterans in eastern Montana. The department of ~~corrections~~ public health and
17 human services may contract with a private vendor to provide for the operation of the eastern Montana veterans' home
18 and may charge the contract vendor a rental fee for the maintenance and upkeep of the facility."

19
20 **Section 41.** Section 10-2-417, MCA, is amended to read:

21 **"10-2-417. Use of funds generated by taxation on cigarettes.** (1) Revenue generated by 16-11-119 and
22 allocated to the department of ~~corrections~~ public health and human services must be used to support the operation and
23 maintenance of the Montana veterans' homes programs.

24 (2) The legislature shall appropriate from the account established in 16-11-119 the funds required for the
25 operation and maintenance of the Montana veterans' homes."

26
27 **Section 42.** Section 13-2-402, MCA, is amended to read:

28 **"13-2-402. Other reasons for cancellation.** The election administrator shall cancel the registration of any
29 elector:

30 (1) at the written request of the registered elector;

31 (2) if a certificate of the death of any elector is filed or if an elector is reported as deceased by the department
32 of public health and environmental sciences human services in the department's reports submitted to the county under
33 72-16-217;

34 (3) if the elector is of unsound mind as established by a court;

- 1 (4) if the incarceration of an elector in a penal institution for a felony conviction is legally established;
2 (5) if a certified copy of a court order directing the cancellation is filed with the election administrator;
3 (6) if an elector is successfully challenged and not allowed to vote at an election upon determination of an
4 election judge; or
5 (7) if a notice is received from another county or state that the elector has registered in that county or state."
6

7 **Section 43.** Section 15-6-201, MCA, is amended to read:

8 **"15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

- 9 (a) except as provided in 15-24-1203, the property of:
10 (i) the United States, except:
11 (A) if congress passes legislation that allows the state to tax property owned by the federal government or
12 an agency created by congress; or
13 (B) as provided in 15-24-1103;
14 (ii) the state, counties, cities, towns, and school districts;
15 (iii) irrigation districts organized under the laws of Montana and not operating for profit;
16 (iv) municipal corporations;
17 (v) public libraries; and
18 (vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;
19 (b) buildings, with land they occupy and furnishings in the buildings, owned by a church and used for actual
20 religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use
21 of the buildings;
22 (c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for
23 nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and environmental
24 ~~sciences~~ human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the
25 department of public health and environmental sciences human services and organized under Title 35, chapter 2 or 3,
26 is not exempt.
27 (d) property that meets the following conditions:
28 (i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;
29 (ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and
30 improvement fund has been established as provided for in Title 35, chapter 20, part 3; and
31 (iii) is not maintained and operated for private or corporate profit;
32 (e) property owned by institutions of purely public charity and directly used for purely public charitable
33 purposes;
34 (f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit, and property owned and used by an organization owning and operating facilities for the care of the retired, aged, or chronically ill, which are not operated for gain or profit;

(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) ~~beginning January 1, 1994,~~ timber as defined in 15-44-102; and

(v) all trailers and semitrailers with a licensed gross weight of 26,000 pounds or more. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

1 (i) designed and used only for carrying property;

2 (ii) designed and used to be drawn by a motor vehicle; and

3 (iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some
4 part of its weight and the weight of its load rests upon or is carried by another vehicle.

5 (2) (a) The term "institutions of purely public charity" includes any organization that meets the following
6 requirements:

7 (i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal
8 Revenue Code, as amended.

9 (ii) The organization accomplishes its activities through absolute gratuity or grants; ~~however~~ However, the
10 organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or
11 entertainment or by other similar types of fundraising activities.

12 (b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories"
13 means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display
14 or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property
15 reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased
16 for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and
17 personal property owned by other persons is exempt if it is:

18 (i) actually used by the governmental entity or nonprofit organization as a part of its public display;

19 (ii) held for future display; or

20 (iii) used to house or store a public display.

21 (3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a
22 recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in
23 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

24 (a) \$20,000 in the case of a single-family residential dwelling;

25 (b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

26
27 **Section 44.** Section 15-6-209, MCA, is amended to read:

28 **"15-6-209. Community services buildings exempt.** (1) The building and appurtenant land, not exceeding 1
29 acre, owned by a nonprofit community service organization is exempt from property taxation, except as provided in
30 subsections (3) and (4), if ~~such~~ the organization:

31 (a) is a lodge of a nationally recognized fraternal organization and does not sell food or beverages under license
32 from the state of Montana;

33 (b) furnishes services to senior citizens in the form of daytime or evening educational or recreational activities
34 and does not furnish living accommodations to ~~such~~ senior citizens or sell food or beverages under license from the

1 state of Montana; services qualifying under this provision must be recognized in the state plan on aging adopted by
2 the department of ~~family~~ public health and human services; or

3 (c) primarily furnishes facilities without charge, except that a minimal fee may be charged for janitorial
4 services, for public meetings and entertainments.

5 (2) An applicant for exemption under this section shall demonstrate that it has been an active community
6 service organization continuously from January 1, 1981.

7 (3) A building and lot exempted under this section ~~shall~~ must be appraised, assessed, and subject to levies
8 for any special improvement district if the special improvement directly benefits the building or lot.

9 (4) The exemption provided under this section may not be extended to any property owned by a community
10 service organization described ~~herein~~ in this section which is leased in whole or in part to any person for business or
11 profitmaking purposes."

12
13 **Section 45.** Section 15-25-121, MCA, is amended to read:

14 "15-25-121. **Accounts.** (1) There is an evaluation special revenue account within the state treasury, for use
15 by the department of ~~family~~ public health and human services. One-third of the taxes collected under 15-25-122 ~~shall~~
16 must be deposited in the account.

17 (2) There is a chemical abuse assessment special revenue account within the state treasury, for use by the
18 department of justice. One-third of the taxes collected under 15-25-122 ~~shall~~ must be deposited in the account."

19
20 **Section 46.** Section 15-25-122, MCA, is amended to read:

21 "15-25-122. **Disposition of proceeds.** The department shall, in accordance with the provisions of 15-1-501(6),
22 transfer all taxes collected pursuant to this chapter, less the administrative fee authorized in 15-25-111(1), as follows:

23 (1) one-third of the tax to the credit of the department of ~~family~~ public health and human services to be used
24 for the youth evaluation program and chemical abuse aftercare programs; and

25 (2) the remaining two-thirds of the tax proceeds as follows:

26 (a) one-half to the department of justice to be used:

27 (i) for grants to youth courts to fund chemical abuse assessments; and

28 (ii) for grants to counties to fund services for the detention of juvenile offenders in facilities separate from adult
29 jails, as authorized in 41-5-1002; and

30 (b) one-half to the account created by 44-12-206(3) if a state government law enforcement agency seized
31 the drugs. If a local government law enforcement agency seized the drugs, then that amount must be credited to the
32 treasurer or finance officer of the local government, be deposited in its general fund, and be used to enforce drug
33 laws."

1 **Section 47.** Section 15-30-128, MCA, is amended to read:

2 **"15-30-128. Credit for expense of caring for certain elderly family members.** (1) There is a credit against the
3 tax imposed by this chapter for qualified elderly care expenses paid by an individual for the care of a qualifying family
4 member during the taxable year.

5 (2) A qualifying family member is an individual who:

6 (a) is related to the taxpayer by blood or marriage;

7 (b) (i) is at least 65 years of age; or

8 (ii) has been determined to be disabled by the social security administration; and

9 (c) has a family income of \$15,000 or less for an unmarried individual and \$30,000 or less for a married
10 individual for the taxable year.

11 (3) For purposes of this section, "family income" means, in the case of an individual who is not married, the
12 gross income, including all nontaxable income, of the individual or, in the case of a married individual, the gross income,
13 including all nontaxable income, of the individual and the individual's spouse.

14 (4) Qualified elderly care expenses include:

15 (a) payments by the taxpayer for home health agency services, personal care attendant services and care in
16 a long-term ~~health~~ care facility, as defined in 50-5-101, that is licensed by the department of public health and
17 ~~environmental sciences~~ human services, homemaker services, adult day care, respite care, or health care equipment
18 and supplies:

19 (i) provided to the qualifying family member;

20 (ii) provided by an organization or individual not related to the taxpayer or the qualifying family member; and

21 (iii) not compensated for by insurance or otherwise;

22 (b) premiums paid for long-term care insurance coverage for a qualifying family member.

23 (5) The percentage amount of credit allowable under this section is:

24 (a) for a taxpayer whose adjusted gross income does not exceed \$25,000, 30% of qualified elderly care
25 expenses; or

26 (b) for a taxpayer whose adjusted gross income exceeds \$25,000, the greater of:

27 (i) 20% of qualified elderly care expenses; or

28 (ii) 30% of qualified elderly care expenses, less 1% for each \$2,000 or fraction ~~thereof~~ of \$2,000 by which
29 the adjusted gross income of the taxpayer for the taxable year exceeds \$25,000.

30 (6) The dollar amount of credit allowable under this section is:

31 (a) reduced by \$1 for each dollar of the adjusted gross income over \$50,000 for a taxpayer whose adjusted
32 gross income exceeds \$50,000;

33 (b) limited to \$5,000 per qualifying family member in a taxable year and to \$10,000 total for two or more
34 family members in a taxable year;

1 (c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the same
2 qualified family member in a taxable year in the same proportion that their contributions bear to the total qualified
3 elderly care expenses paid by those taxpayers for that qualified family member.

4 (7) A deduction or credit is not allowed under any other provision of this chapter with respect to any amount
5 for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a
6 carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

7 (8) In the case of a married individual filing a separate return, the percentage amount of credit under
8 subsection (5) and the dollar amount of credit under subsection (6) are limited to one-half of the figures indicated in
9 those subsections."

10
11 **Section 48.** Section 15-30-303, MCA, is amended to read:

12 **"15-30-303. Confidentiality of tax records.** (1) Except as provided in subsections (7) and (8) or in accordance
13 with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

14 (a) the amount of income or any particulars set forth or disclosed in any individual report or individual return
15 required under this chapter or any other information secured in the administration of this chapter; or

16 (b) any federal return or federal return information disclosed on any return or report required by rule of the
17 department or under this chapter.

18 (2) (a) The officers charged with the custody of the reports and returns may not be required to produce them
19 or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

20 (i) to which the department is a party under the provisions of this chapter or any other taxing act; or

21 (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when
22 the reports or facts shown by the reports are directly involved in the action or proceedings.

23 (b) The court may require the production of and may admit in evidence only as much of the reports or of the
24 facts shown by the reports as are pertinent to the action or proceedings.

25 (3) This section does not prohibit:

26 (a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or
27 report filed in connection with the taxpayer's tax;

28 (b) the publication of statistics classified to prevent the identification of particular reports or returns and the
29 items of particular reports or returns; or

30 (c) the inspection by the attorney general or other legal representative of the state of the report or return of
31 any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an
32 action or proceeding has been instituted in accordance with the provisions of 15-30-311.

33 (4) Reports and returns must be preserved for at least 3 years and may be preserved until the department
34 orders them to be destroyed.

1 (5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000 or by
2 imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee of
3 the state, the offender must be dismissed from office and may not hold any public office in this state for a period of
4 1 year after dismissal.

5 (6) This section may not be construed to prohibit the department from providing information from employers'
6 payroll withholding reports to:

7 (a) the department of labor and industry to prevent and detect fraud and abuse under the unemployment
8 compensation program; or

9 (b) the state fund to prevent and detect fraud and abuse under the workers' compensation program.

10 (7) The department may permit the commissioner of internal revenue of the United States or the proper officer
11 of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect
12 the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the
13 return of income of any individual or supply the officer with information concerning an item of income contained in a
14 return or disclosed by the report of an investigation of the income or return of income of an individual, but the
15 permission may be granted or information furnished only if the statutes of the United States or of the other state grant
16 substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

17 (8) The department shall furnish:

18 (a) to the department of justice all information necessary to identify those persons qualifying for the additional
19 exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer
20 the provisions of 61-5-105;

21 (b) to the department of ~~social and rehabilitation~~ public health and human services information acquired under
22 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of
23 public assistance fraud and abuse, provided notice to the applicant has been given;

24 (c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse
25 in and eligibility for benefits under the unemployment compensation and workers' compensation programs information
26 on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an
27 employee, an independent contractor, or self-employed;

28 (d) to the department of fish, wildlife, and parks specific information that is available from income tax returns
29 and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

30 (e) to the board of regents information required under 20-26-1111;

31 (f) to the legislative fiscal analyst and the office of budget and program planning individual income tax
32 information as provided in 5-12-303. The information provided to the office of budget and program planning must be
33 the same as the information provided to the legislative fiscal analyst.

34 (g) to the department of transportation the ratio of gross farm income to total gross income based on the most

1 recent income tax return filed by an applicant applying for a refund under 15-70-223, provided that notice to the
2 applicant has been given as provided in 15-70-223. The information obtained by the department of transportation is
3 subject to the same restrictions on disclosure as are individual income tax returns."

4
5 **Section 49.** Section 15-60-101, MCA, is amended to read:

6 **"15-60-101. Definitions.** For purposes of this chapter, unless the context requires otherwise, the following
7 definitions apply:

8 (1) (a) "Bed day" means each whole 24-hour period that a resident of a nursing facility is present in the facility
9 and receiving skilled nursing care or intermediate nursing care or in which a bed is held for a resident while the resident
10 is on temporary leave from the facility.

11 (b) The term includes all periods of 24 hours described in subsection (1)(a) regardless of the source of
12 payment. The term also includes the day of a resident's admission to a nursing facility and the day of the resident's
13 death, even though the resident is present less than a whole 24-hour period on these days.

14 (2) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30,
15 or December 31.

16 (3) "Department" means the department of revenue.

17 (4) "Nursing facility" or "facility" means a health care facility licensed by the department of public health and
18 ~~environmental sciences~~ human services as a nursing facility to provide skilled nursing care or intermediate nursing care.
19 The term includes nursing facilities, whether they are:

20 (a) operated as nonprofit or for-profit facilities;

21 (b) freestanding or part of another health care facility; or

22 (c) publicly or privately operated.

23 (5) "Skilled nursing care" and "intermediate nursing care" have the same meaning as those terms are defined
24 in 50-5-101.

25 (6) "Report" means the report of bed days required in 15-60-201.

26 (7) "Utilization fee" or "fee" means the fee required to be paid for each bed day in a nursing facility, as
27 provided in 15-60-102."

28
29 **Section 50.** Section 15-60-201, MCA, is amended to read:

30 **"15-60-201. Reporting and collection of fee.** (1) A nursing facility shall report to the department of revenue,
31 following the end of each calendar quarter, the number of bed days in the facility during the quarter. The report must
32 be in the form prescribed by the department and is due on or before the last day of the month following the close of
33 each calendar quarter. The report must be accompanied by a payment in an amount equal to the fee required to be paid
34 under 15-60-102.

1 (2) The department of public health and ~~environmental sciences~~ human services shall provide the department
2 at the end of each calendar quarter with a list of facilities as defined in 15-60-101(4)."

3
4 **Section 51.** Section 16-1-404, MCA, is amended to read:

5 **"16-1-404. License tax on liquor -- amount -- distribution of proceeds.** (1) The department shall collect at the
6 time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

7 (a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured,
8 distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar
9 year preceding imposition of the tax pursuant to this section;

10 (b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that
11 manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor
12 nationwide in the calendar year preceding imposition of the tax pursuant to this section.

13 (2) The license tax must be charged and collected on all liquor brought into the state and taxed by the
14 department. The retail selling price must be computed by adding to the cost of the liquor the state markup as
15 designated by the department. The license tax must be figured in the same manner as the state excise tax and is in
16 addition to the state excise tax. The department shall retain in a separate account the amount of the license tax
17 received. Thirty percent of these revenues are statutorily appropriated, as provided in 17-7-502, to the department and
18 must, in accordance with the provisions of 15-1-501(6), be allocated to the counties according to the amount of liquor
19 purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (3). Four
20 and one-half percent of these revenues are statutorily appropriated, as provided in 17-7-502, and must, in accordance
21 with the provisions of 15-1-501(6), be allocated to the counties according to the amount of liquor purchased in each
22 county, and this money may be used for county purposes. The remaining revenues must, in accordance with the
23 provisions of 15-1-501(6), be deposited in the state special revenue fund to the credit of the department of ~~corrections~~
24 public health and human services for the treatment, rehabilitation, and prevention of alcoholism. In the case of
25 purchases of liquor by a retail liquor licensee for use in the licensee's business, the department shall make regulations
26 as are necessary to apportion that proportion of license tax so generated to the county where the licensed
27 establishment is located, for use as provided in 16-1-405. That proportion of the license tax is statutorily appropriated,
28 as provided in 17-7-502, to the department, which shall pay quarterly to each county treasurer the proportion of the
29 license tax due each county, in accordance with the provisions of 15-1-501(6), to be allocated to the incorporated cities
30 and towns of the county.

31 (3) The license tax proceeds allocated to the county under subsection (2) for use by cities and towns must
32 be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the
33 department. The distribution of funds to the cities and towns must be based on the proportion that the gross sale of
34 liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.

(4) The license tax proceeds that are allocated to the department of ~~corrections~~ public health and human services for the treatment, rehabilitation, and prevention of alcoholism must be credited quarterly to the department of ~~corrections~~ public health and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder must be distributed as provided in 53-24-206."

Section 52. Section 16-1-408, MCA, is amended to read:

"**16-1-408. Additional tax.** An additional tax of \$1.30 per barrel is levied and imposed as provided by 16-1-406. One dollar of the additional tax must, in accordance with the provisions of 15-1-501(6), be deposited, notwithstanding 16-1-306 and 16-1-410 or any other provision, with the state treasurer to the credit of the department of ~~corrections~~ public health and human services each quarter for the treatment, rehabilitation, and prevention of alcoholism as approved by the state, and 30 cents of the additional tax must be deposited in the general fund."

Section 53. Section 16-1-411, MCA, is amended to read:

"**16-1-411. Tax on wine.** (1) A tax of 27 cents per liter is imposed on table wine imported by a table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor must be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department must be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) must, in accordance with the provisions of 15-1-501(6), be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) 8.34 cents to the state special revenue fund to the credit of the department of ~~corrections~~ public health and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(iii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section "based on population" means:

(a) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-410(2); and

(b) for cities, the distribution described in 16-1-410."

Section 54. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes -- retirement of bonds. The amount of 11.11% of the cigarette tax collected under the provisions of 16-11-111 on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of ~~corrections~~ public health and human services for the operation and maintenance of state veterans' nursing homes. All remaining revenue collected under the provisions of 16-11-111, less the expense of collecting the taxes, must, in accordance with the provisions of 15-1-501(6), be deposited as follows: ~~79.25%~~ 79.75% in the long-range building program fund in the debt service fund type and 20.25% in the long-range building program fund in the capital projects fund type."

Section 55. Section 17-3-1001, MCA, is amended to read:

"17-3-1001. State institutions which may take by gift, bequest, or grant. (1) The state of Montana, units of the Montana university system, the Montana school for the deaf and blind, all institutions in the department of corrections and the department of public health and human services, and any institutions now created or established or which may ~~hereafter~~ be created or established and supported in whole or in part by the state for any purpose may accept gifts, donations, grants, devises, or bequests of real or personal property from any source. Gifts, donations, grants, bequests, or devises may be made directly to the state, in the name of any of the institutions, to any officer or board of the institutions, or to any person in trust for the institutions.

(2) In the event it is made directly to any institution or to any officer or board of any institution, the gift, donation, grant, devise, or bequest is a gift, donation, grant, devise, or bequest to the state and ~~shall~~ must be administered and used by the state for the particular purpose for which it was given, donated, granted, bequeathed, or devised. In the event that ~~no~~ a particular purpose is not mentioned in the gift, grant, devise, or bequest, then it ~~shall~~ must be used for the general support, maintenance, or improvement of ~~such~~ the institution by the state."

Section 56. Section 17-3-1002, MCA, is amended to read:

"17-3-1002. Persons who may make gifts to state institutions. (1) A donation, gift, grant, bequest, devise, or testamentary disposition of property, real or personal, may be made by any person over the age of 18 years and of sound mind to the state, a unit of the Montana university system, the state school for deaf and blind, an institution in the department of corrections or the department of public health and human services, and any and all institutions now created or established or ~~which that~~ which may ~~hereafter~~ be created or established and supported, in whole or in part, by the

1 state for any purpose. Any person, corporation, or association of persons may make any gift, donation, or grant of
2 property, real or personal, to the state, or to any of the institutions ~~above named or~~ referred to in this section.

3 (2) In the event that any gift, donation, grant, devise, or bequest ~~shall be~~ is made to any ~~such~~ institution or
4 to any officer or board of any ~~such~~ institution, the same ~~shall~~ must be construed as a gift, donation, grant, devise, or
5 bequest to the state and ~~shall~~ must be administered and used for the state for the particular purpose for which the
6 same was given, donated, granted, bequeathed, or devised. In the event that ~~as~~ a particular purpose is not mentioned
7 in ~~such~~ the gift, grant, devise, or bequest, then the same ~~shall~~ must be used for the general support, maintenance, or
8 improvement of ~~such~~ the institution by the state."

9
10 **Section 57.** Section 17-4-105, MCA, is amended to read:

11 **"17-4-105. Authority to collect debt -- offsets.** (1) Once a debt of a state agency has been transferred to the
12 state auditor, the state auditor has the authority to collect it. The state auditor may contract with commercial collection
13 agencies for recovery of debts owed the state.

14 (2) The state auditor shall offset any amount due a state agency from a person or entity against any amount,
15 including refunds or taxes, owing the person or entity by any state agency, provided the state auditor may not exercise
16 this right of offset until the debtor has first been notified by the state auditor and been given an opportunity for a
17 hearing. An offset may not be made against any amount paid out as child support collected by the department of ~~social~~
18 ~~and rehabilitation~~ public health and human services. The state auditor shall deduct from the claim and draw warrants
19 for the amounts offset in favor of the respective state agencies to which due and for any balance in favor of the
20 claimant. Whenever insufficient to offset all amounts due state agencies, the amount available must be applied first
21 to debts owed by reason of the nonpayment of child support and then in the manner as the state auditor, in the state
22 auditor's discretion, determines.

23 (3) (a) The department retains the power to offset tax refunds due individuals against taxes owed the state,
24 provided the department may not exercise this right of offset until the taxpayer has been notified by the department
25 and been given the opportunity to request a review.

26 (b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability.
27 If a review is requested, the department shall conduct an informal review conference, which is not subject to the
28 contested case procedures of the Montana Administrative Procedure Act.

29 (c) Appeal from the decision of the department after the review conference may be taken to the state tax
30 appeal board.

31 (d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject
32 matter of any proceeding conducted for the purpose of determining its validity and any decision made as a result of
33 that proceeding has become final.

34 (4) (a) A debt owed to the department of ~~social and rehabilitation~~ public health and human services or being

collected by the department of ~~social and rehabilitation~~ public health and human services on behalf of any person or agency may be offset by the state auditor if the debt is being enforced or collected by the department of ~~social and rehabilitation~~ public health and human services under Title IV-D of the Social Security Act.

(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the state auditor for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and any decision made as a result of that proceeding has become final. The hearing must be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of ~~social and rehabilitation~~ public health and human services shall adopt rules necessary to determine the hearing procedures.

(5) If, in the discretion of the state auditor, the person or entity refuses or neglects to file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity; ~~if~~ if approved by the department of administration, ~~it shall have the claim has~~ the same force and effect as though filed by the person or entity. The amount due any person or entity from the state or any agency of the state is the net amount otherwise owing the person or entity after any offset as provided in this section."

Section 58. Section 17-5-430, MCA, is amended to read:

"17-5-430. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding \$6,460,000 for the projects described in section 9, Chapter 624, Laws of 1993, over and above the amount of general obligation long-range building program bonds outstanding on January 1, 1993, to be used in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds. The board may fund the ~~department of corrections and human services~~ projects authorized in section 9, Chapter 624, Laws of 1993, through the use of loans or bonds."

Section 59. Section 17-5-432, MCA, is amended to read:

"17-5-432. Agreement with department of ~~social and rehabilitation~~ public health and human services. For the proceeds of bonds and notes authorized and appropriated by Chapter 624, Laws of 1993, for the construction of a commodities warehouse, the board of examiners and the department of ~~social and rehabilitation~~ public health and human services may enter into an agreement under the terms of which the department shall pay the state treasurer,

1 for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient
2 to pay the principal and interest as due on the bonds and notes from which the appropriation was made and to
3 accommodate and maintain reserves required under the bonds. The agreement must further provide that income from
4 the investment of bond proceeds, unused principal, and the reserves not required for construction costs may be
5 credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves
6 during the first year the bonds are outstanding. Payment by the department must be made from available funds
7 ~~available therefor.~~"

8
9 **Section 60.** Section 17-8-303, MCA, is amended to read:

10 **"17-8-303. Warrants -- presentation and cancellation.** (1) State warrants must be presented for payment
11 within the time limits specified as follows:

12 (a) Except as provided in subsection (1)(b), all warrants drawn by the state auditor on the state treasury ~~shall~~
13 must be presented for payment within 6 months after the date of the issue thereof.

14 (b) Warrants issued for the department of ~~social and rehabilitation~~ public health and human services that are
15 funded to any extent with federal money ~~shall~~ must be presented for payment within 180 days after the date of issue.

16 (2) Should the payee or legal holder of any warrant fail to present it for payment within the time specified in
17 subsection (1), the state auditor shall enter the same as canceled on the books of ~~his~~ the state auditor's office and the
18 amount ~~shall~~ must be credited to a separate agency fund account administered by the state auditor. Should the payee
19 or legal owner of any canceled warrant present it for payment or present a claim for payment within 4 years from the
20 date of issue, the state auditor may, upon proper showing by affidavit, issue a new warrant ~~in lieu thereof.~~

21 (3) Three years and 6 months after cancellation, the warrant ~~shall~~ must be classed as unclaimed property
22 subject to the provisions of Title 70, chapter 9, parts 1 through 3. Should the payee or legal owner of any canceled
23 warrant present it for payment or present a claim for payment, ~~such~~ the presentation ~~shall~~ must be to the department
24 of revenue as provided in 70-9-310."

25
26 **Section 61.** Section 18-2-301, MCA, is amended to read:

27 **"18-2-301. Bids required -- advertising.** (1) It is unlawful for any offices, departments, institutions, or any
28 agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any contract for
29 the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for
30 the benefit of the state when the amount involved is \$25,000 or more without first advertising in at least one issue
31 each week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the
32 seat of government and the other in the county where the work is to be performed, calling for sealed bids to perform
33 the work and stating the time and place bids will be considered.

34 (2) All work may be done, caused to be done, or contracted for only after competitive bidding.

(3) If responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state.

(4) This section does not apply to work done by inmates at an institution in the department of corrections ~~and human services.~~"

Section 62. Section 18-4-133, MCA, is amended to read:

"18-4-133. Purchases exempt from general requirements. (1) Fresh fruits and vegetables, {other than potatoes}, ~~shall~~ may not be included in the supplies to be purchased as provided in this chapter. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account ~~shall~~ must be kept of these purchases, and the account ~~shall~~ must be furnished to the department.

(2) ~~Likewise, when~~ When immediate delivery of articles or performance of service is required by the public exigencies, the articles or service ~~so~~ required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(3) The department of administration may exempt the department of corrections and the department of public health and human services from the provisions of this chapter for the purchase of suitable clothing by the department of corrections and the department of public health and human services for residents of its institutions and community-based programs.

(4) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community."

Section 63. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts -- terms, extensions, and time limits. (1) Unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a longer period than 3 years; ~~however~~ However, the department may contract for the lease or purchase of telecommunications equipment and systems, data processing equipment, the department of revenue liquor agencies, and the department of ~~social and rehabilitation~~ public health and human services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise

1 promoting economies in state procurement.

2 (3) When funds are not appropriated or otherwise made available to support continuation of performance in
3 a subsequent fiscal period, the contract must be canceled."

4
5 **Section 64.** Section 18-5-402, MCA, is amended to read:

6 **"18-5-402. Definitions.** As used in this part, the following definitions apply:

7 (1) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with
8 correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision
9 in the better eye to such a degree that the widest diameter of the visual field subtends an angle no greater than 20
10 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

11 (2) "Blind vendor" means a person certified as a blind person for the purpose of this part and who is operating
12 a vending facility administered by the department.

13 (3) "Certified blind person" means a blind person whom the department has determined to be a blind person
14 as defined in this part who is in need of vocational opportunities, and who is qualified to operate a vending facility.

15 (4) "Department" means the department of ~~social and rehabilitation~~ public health and human services.

16 (5) "Federal property" means buildings or portions of buildings or other real property owned or leased by the
17 federal government excluding military reservations upon which the department may administer vending facilities by an
18 agreement entered into under the authority of the federal Randolph-Sheppard Act, as amended.

19 (6) "Other property" means all real property other than state or federal property as defined in this part.

20 (7) "State property" means those buildings or portions of buildings or other real property owned or leased
21 under a lease-purchase agreement, or in the case of a building, leased in its entirety by the state or agencies of the
22 state that are utilized in the conduct of state matters and occupied principally by state employees. State property for
23 the purpose of this part does not include vocational institutions or institutions of higher education.

24 (8) "Vending facility" means an area and equipment inclusive of vending machines on state property which
25 is or may be utilized in providing a food, beverage, or other service to employees and other persons present on the
26 property.

27 (9) "Vending machine" means a device for the dispensing of foodstuffs, liquids, or other products when money
28 is inserted into the device. Vending machine does not include postage stamp machines or coin-operated telephones.

29 (10) "Vocational rehabilitation programs" means those programs provided for under the federal
30 Randolph-Sheppard Act, as amended, and Title 53, chapter 7, part 3."

31
32 **Section 65.** Section 20-5-321, MCA, is amended to read:

33 **"20-5-321. Attendance with mandatory approval -- tuition and transportation.** (1) An out-of-district attendance
34 agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's

1 district of residence or in a public school district of a state or province that is adjacent to the county of the child's
2 residence is mandatory whenever:

3 (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school
4 the child would attend in the resident district and:

5 (i) the resident district does not provide transportation; or

6 (ii) the district of residence provides transportation and is not within the same county as the child's school
7 district of choice;

8 (b) the child resides in a location where, due to road or geographic conditions, it is impractical to attend the
9 school nearest the child's residence;

10 (c) the child is a member of a family that is required to send another child outside of the elementary district
11 to attend high school and the child of elementary age may more conveniently attend an elementary school where the
12 high school is located, provided that the child resides more than 3 miles from an elementary school in the resident
13 district or that the parent is required to move to the elementary district where the high school is located to enroll
14 another child in high school;

15 (d) the child has been adjudicated by a court of competent jurisdiction to be an abused, neglected, or
16 dependent child, as defined in 41-3-102, or a youth in need of supervision or a delinquent youth, as defined in
17 41-5-103, and has been placed in a licensed youth care facility that is approved by the department of family public
18 health and human services and, as a result of the placement, is required to attend school outside of the child's district
19 of residence; or

20 (e) the child is required to attend school outside of the district of residence as the result of a placement by
21 a state agency or parent in a group home licensed by the state or an order of a court of competent jurisdiction.

22 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child
23 attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an
24 out-of-district attendance agreement in consultation with an appropriate official of the district the child will attend.

25 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and
26 transportation as provided in 20-5-323 and Title 20, chapter 10.

27 (c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver must be
28 applied equally to all students.

29 (3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district
30 of choice shall approve the out-of-district attendance agreement and notify the county superintendent of schools of
31 the county of the child's residence of the approval of the agreement within 10 days. The county superintendent shall
32 approve the agreement for payment under 20-5-324(5).

33 (4) Unless the child is a child with disabilities who resides in the district, the trustees of the district where the
34 school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, due

1 to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance
2 of the child."

3
4 **Section 66.** Section 20-5-402, MCA, is amended to read:

5 **"20-5-402. Definitions.** For the purposes of this part, the following definitions apply:

6 (1) "Department" means the department of public health and environmental sciences human services provided
7 for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

8 (2) "Governing authority" means the board of trustees of a school district or the administrator of a private
9 school, preschool, or postsecondary school.

10 (3) "Immunization" means induction of a state of resistance to a disease through administration of an
11 immunizing agent.

12 (4) "Local health department" means a city, city-county, county, or district health department.

13 (5) "Local health officer" means a city, city-county, county, or district health officer.

14 (6) "Postsecondary school" means a vocational-technical center, a community college, a unit of the Montana
15 university system, or a private university or college.

16 (7) "Preschool" means a place or facility that provides, on a regular basis and as its primary purpose,
17 educational instruction designed for children 5 years of age or younger and that:

18 (a) serves no child under 5 years of age for more than 3 hours a day; and

19 (b) serves no child 5 years of age for more than 6 hours a day.

20 (8) "School" means a place or institution for the teaching of individuals, the curriculum of which is comprised
21 of the work of:

22 (a) any combination of kindergarten through grade 12;

23 (b) a postsecondary school; or

24 (c) a preschool."

25
26 **Section 67.** Section 20-6-621, MCA, is amended to read:

27 **"20-6-621. Selection of school sites, approval election, and lease of state lands.** (1) The trustees of any
28 district ~~shall have the authority to~~ may select the sites for school buildings or for other school purposes, but ~~such the~~
29 selection ~~shall~~ must first be approved by the qualified electors of the district before any contract for the purchase of
30 ~~such a~~ site is entered into by the trustees, except the trustees ~~shall have the authority to~~ may purchase or otherwise
31 acquire property contiguous to an existing site that is in use for school purposes without a site approval election.
32 ~~Furthermore, the~~ The trustees may take an option on a site prior to the site approval election.

33 (2) The election for the approval of a site ~~shall~~ must be called under the provisions of 20-20-201 and ~~shall~~
34 must be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site

election ~~shall~~ must be qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees shall ~~have the authority to~~ may purchase ~~such sites~~ the site. A site approval election ~~shall~~ is not ~~be~~ required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of ~~such~~ the site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees ~~shall~~ must:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of public health and environmental sciences human services of the state of Montana; and

(c) comply with the statewide building regulations, if any, promulgated by the department of commerce.

(4) The board of land commissioners ~~shall have the authority to~~ may sell, at the appraised value, or ~~to~~ lease for any period of time less than 99 years, at an amount of \$1 per year, to a district any tract of state land of not more than 10 acres to be used as a school site in ~~each~~ the district."

Section 68. Section 20-6-624, MCA, is amended to read:

"20-6-624. School building plans and specifications approval before payment. (1) The trustees of a district ~~shall~~ may not make any payment under any contract for the construction of school facilities until the plans and specifications for ~~each~~ the construction have been approved under the provisions of 20-6-622.

(2) Any contractor, architect, trustee, or any other person, firm, or corporation who ~~shall violate~~ violates the provisions of 20-6-622, this section, or any regulation promulgated by the ~~state board of health and environmental sciences~~ department of public health and human services or the department of justice ~~shall be deemed~~ is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$100 or more than \$500."

Section 69. Section 20-7-404, MCA, is amended to read:

"20-7-404. Cooperation of state agencies. The ~~state~~ department of public health and human services, ~~the department of family services~~, and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. ~~Nothing herein shall~~ This section may not be construed to interfere with the purpose and function of these state agencies."

Section 70. Section 20-7-436, MCA, is amended to read:

"20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

1 (ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the
2 health care financing administration, or other comparable accreditation.

3 (b) The term does not include programs for children and youth that have the treatment of chemical
4 dependency as the primary reason for treatment.

5 (2) "Eligible child" means a child or youth who is less than 19 years of age and is emotionally disturbed as
6 defined in 20-7-401 or 52-2-101 and whose emotional problem is so severe that the child or youth has been placed
7 in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

8 (3) (a) "Residential treatment facility" means a facility in the state that:

9 (i) provides services for children with emotional disturbances;

10 (ii) operates for the primary purpose of providing residential psychiatric care to persons under 21 years of age;

11 (iii) is licensed by the department of public health and environmental sciences human services; and

12 (iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric
13 services to individuals under 21 years of age; or

14 (v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need
15 from the department of public health and environmental sciences human services pursuant to Title 50, chapter 5, part
16 3, prior to January 1, 1993.

17 (b) The term does not include programs for children and youth who have the treatment of chemical
18 dependency as a primary reason for treatment."

19
20 **Section 71.** Section 20-8-116, MCA, is amended to read:

21 **"20-8-116. Employment placement -- continuing education.** (1) The superintendent shall gather and record
22 data and statistics to help ~~him~~ locate suitable employment for blind, deaf, and hard-of-hearing persons not in attendance
23 at ~~said the~~ school or for those who have been trained by the department of ~~social and rehabilitation~~ public health and
24 human services when ~~it is~~ the department requests ~~such~~ assistance. ~~He~~ The superintendent shall consult with various
25 county, state, and federal agencies and with the department of ~~social and rehabilitation~~ public health and human
26 services to secure employment for self-sustaining persons. ~~He~~ The superintendent shall coordinate ~~his~~ work with ~~such~~
27 federal agencies, such as social security and reemployment for those out of work, as required by this part.

28 (2) The superintendent may, within funding limitations, develop and offer continuing education programs of
29 a vocational nature for the visually impaired and hearing impaired that use the campus and facilities of the school during
30 the summer months and other times when the school's facilities are not being used by its students."

31
32 **Section 72.** Section 20-25-421, MCA, is amended to read:

33 **"20-25-421. Charges for tuition -- waivers.** The regents may:

34 (1) prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their

1 jurisdiction;

2 (2) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2%
3 of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary tuition may
4 be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any
5 WICHE-sponsored state reciprocal agreements which provide for the payment, where required, of the student support
6 fee by the reciprocal state;

7 (3) waive resident tuition for students at least 62 years of age;

8 (4) waive tuition and fees for:

9 (a) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1
10 year prior to enrollment in the Montana university system;

11 (b) persons designated by the department of ~~family services~~ corrections pursuant to 52-5-112;

12 (c) residents of Montana who served with the armed forces of the United States in any of its wars and who
13 were honorably discharged from military service;

14 (d) children of residents of Montana who served with the armed forces of the United States in any of its wars
15 and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of
16 the armed forces of the United States; or

17 (e) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing
18 in action;

19 (5) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course
20 and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance
21 requirements at the state university or college of ~~his~~ the person's choice and is the surviving spouse or child of any
22 of the following who were killed in the course and scope of employment:

23 (a) a paid or volunteer member of a municipal or rural fire department;

24 (b) a law enforcement officer as defined in 7-32-201; or

25 (c) a full-time highway patrol officer."
26

27 **Section 73.** Section 20-25-604, MCA, is amended to read:

28 **"20-25-604. Department in advisory capacity.** The department of public health and environmental sciences
29 human services shall act in an advisory capacity in establishing all courses required under this part, and ~~said~~ the courses
30 ~~shall~~ may be established only after consultation with and advice by the department."
31

32 **Section 74.** Section 20-26-1407, MCA, is amended to read:

33 **"20-26-1407. Montana student volunteer program committee -- terms of office.** (1) There is a Montana
34 student volunteer program committee.

(2) The committee consists of seven members, appointed as follows:

(a) a representative of the office of community service, appointed by the governor;

(b) a representative of the department of ~~family~~ public health and human services, appointed by the director;

(c) a member of the board of regents, appointed by majority vote of the board;

(d) a representative from either a participating or an eligible worksite, appointed by the governor;

(e) a full-time student enrolled in any unit of the Montana university system, appointed by the university system student body governments; and

(f) two representatives of the private sector, appointed by the governor.

(3) At least one member of the committee must be a Native American.

(4) A vacancy on the committee is for the unexpired term and must be filled in the same manner as the original appointment.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet at least twice yearly, once in July and once in January, beginning in July 1993. Additional meetings may be called by the presiding officer or the vice presiding officer.

(7) Members of the board serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503."

Section 75. Section 23-1-302, MCA, is amended to read:

"23-1-302. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Corps" means the Montana conservation corps.

(2) "Corps coordinator" means the person who acts as the corps administrative officer and employs the staff necessary to implement the provisions of this chapter.

(3) "Corpsmember" means a participant in the corps.

(4) "Crewleader" means a participant in the corps who supervises corpsmembers.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Division" means the parks division of the department of fish, wildlife, and parks.

(7) "State agencies" means the departments of fish, wildlife, and parks; ~~social and rehabilitation~~ public health and human services; labor and industry; state lands; ~~family services~~; and natural resources and conservation."

Section 76. Section 23-1-303, MCA, is amended to read:

"23-1-303. Powers and duties of the division. The division, in cooperation with the department, may:

(1) hire a corps coordinator;

(2) coordinate with state agencies to place eligible participants in work experience projects, including those

1 state general assistance (GA) and federal aid to families with dependent children (AFDC) recipients utilizing grant
2 diversion funding and youth under state supervision utilizing payments from the department of ~~family~~ public health and
3 human services;

4 (3) develop and approve work experience projects that meet the requirements of this part;

5 (4) ensure that work experience projects involve labor-intensive improvements to public lands or facilities that
6 will result in a public value and have a potential to yield revenue;

7 (5) execute contracts or cooperative agreements containing the terms and conditions necessary and desirable
8 for the employment of crewleaders and corpsmembers in approved work experience projects with federal, state, or local
9 agencies, persons, firms, partnerships, associations, or corporations;

10 (6) execute contracts or cooperative agreements with federal, state, or local agencies, persons, partnerships,
11 associations, or corporations for the purpose of administering the requirements of this part;

12 (7) develop procedures for awarding incentive vouchers;

13 (8) authorize use of the corps for emergency projects, including but not limited to natural disasters, fire
14 prevention and suppression, and rescue of lost or injured persons, and provide adequate training to corpsmembers prior
15 to participation in an emergency project;

16 (9) apply for and accept grants or contributions of services, funds, or lands from any public or private donors,
17 including the acceptance of federal funds appropriated by the legislature;

18 (10) purchase, rent, acquire, or obtain personal property, supplies, instruments, tools, or equipment necessary
19 to complete work experience projects; and

20 (11) adopt rules and guidelines necessary to implement the provisions of this part and to effectively administer
21 the program."

22
23 **Section 77.** Section 23-1-312, MCA, is amended to read:

24 **"23-1-312. Eligibility for employment in program -- referrals.** (1) To be eligible to participate in the Montana
25 conservation corps program, a person must:

26 (a) be a citizen of the state as defined in 1-1-402;

27 (b) be 18 years of age or older to qualify for the adult corps and at least 16 years of age and under 22 years
28 of age to qualify for the summer youth corps;

29 (c) be capable of performing labor-intensive work; and

30 (d) meet the requirement of the job service and the human resource development council, as defined in
31 53-10-501, for participation in job training programs, be assigned by the department of ~~family~~ public health and human
32 services as a youth under state supervision, be unemployed, or be accepted as an unpaid volunteer.

33 (2) Eligibility for corpsmembers must be determined by local job service offices and summer youth program
34 operators. If the number of corps positions is insufficient to place all eligible individuals who apply for participation in

the program, the job service may, upon approval by the applicant, provide the name of an eligible individual to private sector employers or to job training programs requesting referrals."

Section 78. Section 23-5-112, MCA, is amended to read:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

(11) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other

1 thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device
2 or gambling enterprise. The term does not mean conducting or participating in a promotional game of chance and does
3 not include amusement games regulated by Title 23, chapter 6, part 1.

4 (12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine,
5 instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

6 (13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or
7 agreement to provide gambling or a gambling device to the public.

8 (14) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be
9 awarded by purchasing or agreeing to purchase goods or services. The term does not mean:

10 (a) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and
11 rodeo associations may give away at public drawings at fairs and rodeos;

12 (b) a promotional game of chance; or

13 (c) an amusement game regulated under chapter 6 of this title.

14 (15) "Gross proceeds" means gross revenue received less prizes paid out.

15 (16) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules
16 of the department. The term includes:

17 (a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match
18 numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board,
19 pickle ticket, break-open, or jar game, except for one used under chapter 7 or under part 5 of this chapter or in a
20 promotional game of chance approved by the department; and

21 (b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in
22 conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table
23 or a slot machine except as provided in 23-5-153.

24 (17) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized
25 by a statute or a rule of the department. The term includes:

26 (a) a card game, by whatever name known, involving any bank or fund from which a participant may win
27 money or other consideration and that receives money or other consideration lost by the participant and includes the
28 card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

29 (b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one
30 or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160; and

31 (c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic
32 event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in chapter
33 4 of this title and parts 2, 5, and 8 of this chapter.

34 (18) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and

1 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at
2 random at least 20 numbers out of numbers between 1 and 80, inclusive.

3 (19) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the
4 order of the numbers drawn in live keno.

5 (20) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal
6 in Montana, sports tab card manufacturer, manufacturer of electronic live bingo or keno equipment, other manufacturer,
7 distributor, or route operator that is issued to a person by the department.

8 (21) "Licensee" means a person who has received a license from the department.

9 (22) "Live card game" or "card game" means a card game that is played in public between persons on the
10 premises of a licensed gambling operator or in a senior citizen center.

11 (23) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among
12 persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion
13 of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be
14 distributed or disposed of by lot or chance. The term does not mean lotteries authorized under chapter 7 of this title.

15 (24) "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of
16 equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly
17 to a licensed distributor, route operator, or operator.

18 (25) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic,
19 educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other
20 than to conduct a gambling activity.

21 (26) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates
22 or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 8 of this
23 chapter.

24 (27) "Permit" means approval from the department to make available for public play a gambling device or
25 gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

26 (28) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations,
27 associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

28 (29) "Premises" means the physical building or property within or upon which a licensed gambling activity
29 occurs, as stated on an operator's license application and approved by the department.

30 (30) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution
31 of property among persons who have not paid or are not expected to pay any valuable consideration or who have not
32 purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it,
33 or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1
34 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured

1 or intended for use for purposes other than gambling.

2 (31) "Public gambling" means gambling conducted in:

3 (a) a place, building, or conveyance to which the public has access or may be permitted to have access;

4 (b) a place of public resort, including but not limited to a facility owned, managed, or operated by a
5 partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization;
6 or

7 (c) a place, building, or conveyance to which the public does not have access if players are publicly solicited
8 or the gambling activity is conducted in a predominantly commercial manner.

9 (32) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to
10 become eligible to win a prize. Winners must be determined by a random selection process approved by department
11 rule.

12 (33) "Route operator" means a person who:

13 (a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in
14 a gambling activity;

15 (b) leases the equipment to a licensed operator for use by the public; and

16 (c) may sell to a licensed operator equipment that had previously been authorized to be operated on a
17 premises.

18 (34) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides
19 services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide
20 living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan
21 on aging adopted by the department of ~~family~~ public health and human services.

22 (35) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or
23 machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable
24 consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the
25 operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the
26 gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made
27 automatically from the machine or in any other manner. This definition does not apply to video gambling machines
28 authorized under part 6 of this chapter.

29 (36) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the
30 rules of the department."

31
32 **Section 79.** Section 27-1-718, MCA, is amended to read:

33 **"27-1-718. Civil penalty for shoplifting.** (1) An adult or emancipated minor, as defined in 20-25-501, who
34 takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile

1 establishment without the consent of the owner or seller and with the intention of converting the goods to ~~his~~ the
2 taker's own use without having paid the purchase price ~~thereof~~ of the goods is liable to the owner or seller for a
3 penalty, whether or not the goods have been returned undamaged, in the amount of the greater of \$100 or the retail
4 value of the goods, not to exceed \$500. This amount is in addition to actual damages.

5 (2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed or offered
6 for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention
7 of converting the goods to ~~his~~ the minor's own use without having paid the purchase price ~~thereof~~ of the goods, the
8 minor's parent or legal guardian having custody of the minor is liable to the owner or seller for a penalty, whether or
9 not the goods have been returned undamaged, equal to the greater of \$100 or the retail value of the goods, not to
10 exceed \$500. For the purposes of this subsection (2), liability may not be imposed upon any governmental or private
11 agency that has been assigned responsibility for the minor child pursuant to court order or action of the department
12 of corrections or family ~~the department of public health and human services~~.

13 (3) Judgments, but not claims, arising under this section may be assigned.

14 (4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil action under
15 this section."

16
17 **Section 80.** Section 27-6-206, MCA, is amended to read:

18 **"27-6-206. Funding.** (1) There is created a pretrial review fund to be administered by the director exclusively
19 for the purposes stated in this chapter. The fund and any income from it ~~shall~~ must be held in trust, deposited in an
20 account, and invested and reinvested by the director with the prior approval of the director of the Montana medical
21 association. The fund may not become a part of or revert to the general fund of this state but ~~shall~~ must be open to
22 auditing by the legislative auditor.

23 (2) To create the fund, an annual surcharge ~~shall~~ must be levied on all health care providers. The amount of
24 the assessment must be annually set by the director and must be apportioned among physicians, dentists, hospitals,
25 and other health care providers by group. As to the group of all physicians, the group of all dentists, the group of all
26 hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the
27 respective percentage of total health care providers brought before the panel that each group constitutes. The total
28 number and group of health care providers brought before the panel must be determined from the annual report of the
29 panel for the years preceding the year of assessment, as to all claims closed since April 19, 1977. The amount of the
30 assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each
31 hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of
32 the department of public health and environmental sciences ~~human services~~. The amount of the assessment for the
33 group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group
34 of all dentists must be equally assessed against all dentists. The amount of the assessment for the group of all other

1 health care facilities must be equally assessed against all other health care facilities. Surplus funds, if any, over and
2 above the amount required for the annual administration of the chapter ~~shall~~ must be retained by the director and used
3 to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual
4 assessment in subsequent years, commensurate with the proper administration of this chapter.

5 (3) The annual surcharge ~~shall~~ must be paid on or before the date physicians' and dentists' annual registration
6 or renewal fees are due under 37-3-313 and 37-4-307. All unpaid assessments bear a late charge fee equal to the
7 judgment rate of interest. The late charge fee is part of the annual surcharge. The director has the same powers and
8 duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has
9 under 37-3-313 and 37-4-307 in connection with physicians' and dentists' annual registration or renewal fees."

10
11 **Section 81.** Section 27-32-302, MCA, is amended to read:

12 "27-32-302. **Clerk to certify and file judgment.** The clerk of the court shall certify to two copies of ~~such a~~
13 judgment and file one with the department of public health and environmental sciences ~~human services~~, Helena, and
14 the other with the county clerk and recorder of the county in which the judgment was obtained."

15
16 **Section 82.** Section 31-3-141, MCA, is amended to read:

17 "31-3-141. **Actions available to consumer.** (1) A consumer may bring action in the nature of defamation,
18 invasion of privacy, or negligence with respect to the reporting of information against any person who fails to comply
19 with this part.

20 (2) A person who fails to delete information or incorporate into a report a consumer's statement of dispute
21 because ~~he~~ the person judges the dispute to be frivolous or irrelevant is liable to suit.

22 (3) A person, other than the department of ~~social and rehabilitation~~ public health and human services under
23 40-5-261, who furnishes information to a consumer reporting agency that is false or a person who furnishes the
24 information with malice or willful intent to injure the concerned consumer is liable to suit.

25 (4) A consumer who disputes the result of a reinvestigation conducted under 31-3-124 of the accuracy of
26 information provided by the department of ~~social and rehabilitation~~ public health and human services may petition for
27 an administrative hearing pursuant to 40-5-261."

28
29 **Section 83.** Section 33-22-702, MCA, is amended to read:

30 "33-22-702. **Definitions.** For purposes of this part, the following definitions apply:

31 (1) "Chemical dependency treatment center" means a treatment facility which:

32 (a) provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan
33 approved and monitored by a physician or chemical dependency counselor certified by the state; and

34 (b) is licensed or approved as a treatment center by the department of ~~corrections~~ public health and human

1 services under 53-24-208.

2 (2) "Inpatient benefits" are as set forth in 33-22-705.

3 (3) "Mental health treatment center" means a treatment facility organized to provide care and treatment for
4 mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored
5 by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and which
6 facility is also:

7 (a) licensed as a mental health treatment center by the state;

8 (b) funded or eligible for funding under federal or state law; or

9 (c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

10 (4) "Mental illness" means neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder.

11 (5) "Outpatient benefits" are as set forth in 33-22-705."

12
13 **Section 84.** Section 33-22-705, MCA, is amended to read:

14 **"33-22-705. Inpatient and outpatient benefits.** (1) "Inpatient benefits" are benefits payable for charges made
15 by a hospital or freestanding inpatient facility for the necessary care and treatment of mental illness, alcoholism, or drug
16 addiction furnished to a covered person while confined as an inpatient and, with respect to major medical policies or
17 contracts, also includes those benefits payable for charges made by a physician for the necessary care and treatment
18 of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient. Care and
19 treatment of alcoholism or drug addiction in a freestanding inpatient facility must be in a chemical dependency
20 treatment center that is approved by the department of ~~corrections~~ public health and human services under 53-24-208.

21 (2) "Outpatient benefits" are benefits payable for:

22 (a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism,
23 or drug addiction furnished to a covered person while not confined as an inpatient;

24 (b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment
25 for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

26 (c) reasonable charges made by a mental health or chemical dependency treatment center for the necessary
27 care and treatment of a covered person provided in the treatment center. The chemical dependency treatment center
28 must be approved by the department of ~~corrections~~ public health and human services under 53-24-208.

29 (d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, licensed professional
30 counselor, licensed social worker, or chemical dependency counselor certified by the department of ~~corrections~~ public
31 health and human services under 53-24-204."

32
33 **Section 85.** Section 33-22-1202, MCA, is amended to read:

34 **"33-22-1202. Limited benefit disability insurance policies authorized.** (1) Insurers and health service

corporations may issue limited benefit disability insurance policies that do not provide mandated health care coverage as required in 33-22-111, 33-22-114, 33-22-131, 33-22-229, 33-22-301, 33-22-302, 33-22-304, 33-22-504, 33-22-506, 33-22-509, 33-22-703, 33-22-1002, 33-30-1001, 33-30-1003, 33-30-1004, 33-30-1008, 33-30-1011, 33-30-1013, or any other provision enacted after January 1, 1991, unless the provision specifically mandates coverage for policies issued under this part.

(2) Limited benefit disability insurance policies may be issued only to the following persons:

(a) employers who:

(i) employ 20 or fewer employees working at least 20 hours per week; and

(ii) have been in business in the state for at least 12 months and have not contributed, within the preceding 12 months, to payment of any premiums for disability insurance on behalf of an employee;

(b) disabled or injured workers and their families;

(c) unemployed individuals and their families;

(d) self-employed individuals and their families; and

(e) a parent, or the department of ~~social and rehabilitation~~ public health and human services on behalf of the parent, who is ordered by a court or administrative authority of this or another state or who is required under 40-5-208(1)(b) to provide health insurance coverage for a child if health insurance coverage is not available through employment or a union. This subsection (e) applies only to orders or modifications of orders issued after July 1, 1991, by a court or administrative authority.

(3) The insurer or health service corporation may establish terms and conditions for copayments and deductibles.

(4) The insurer or health service corporation issuing a limited benefit disability insurance policy shall provide the insured individual with a written disclosure statement, separate from the insurance policy, certificate, or evidence of coverage, stating in clear and understandable language and format which mandatory coverages and providers are not covered by the policy and what coverage is provided by the policy.

(5) Limited benefit disability insurance policies must provide coverage in accordance with the minimum requirements set forth in 33-22-1203."

Section 86. Section 37-2-104, MCA, is amended to read:

"37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) ~~Nothing in this~~ This section prohibits ~~prohibits~~ does not prohibit:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical

1 practitioner;

2 (c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy
3 available to the patient;

4 (d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

5 (e) a medical practitioner from dispensing drug samples;

6 (f) the dispensing of factory prepackaged oral contraceptives by a registered nurse employed by a family
7 planning clinic under contract with the department of public health and environmental sciences human services if the
8 dispensing is in accordance with:

9 (i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

10 (ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

11 (g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The
12 clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or controlled substance. The contract
13 physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C.
14 353b."

15
16 **Section 87.** Section 37-2-301, MCA, is amended to read:

17 **"37-2-301. Duty to report cases of communicable disease.** (1) If a physician or other practitioner of the
18 healing arts examines or treats a person ~~whom he~~ who the physician or other practitioner believes has a communicable
19 disease or a disease declared reportable by the department of public health and environmental sciences human services,
20 ~~he the physician or other practitioner~~ shall immediately report the case to the local health officer. The report ~~shall~~ must
21 be in the form and contain information prescribed by the department.

22 (2) A person who violates the provisions of this section or rules adopted by the department under the
23 provisions of this section is guilty of a misdemeanor. On conviction, ~~he the person~~ shall be fined not less than \$10
24 or more than \$500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate
25 offense. Fines, except those collected by a justice's court, ~~shall~~ must be paid to the county treasurer of the county
26 in which the violation occurs."

27
28 **Section 88.** Section 37-7-103, MCA, is amended to read:

29 **"37-7-103. Exemptions.** Subject only to 37-7-401 and 37-7-402, this chapter does not:

30 (1) ~~nothing in this chapter subjects~~ subject a person duly licensed in this state to practice medicine, dentistry,
31 or veterinary medicine to inspection by the board ~~or prevents~~, prevent ~~such the~~ person from compounding or using
32 drugs, medicines, chemicals, or poisons in ~~his the person's~~ practice, ~~or prevents~~ prevent one duly licensed to practice
33 medicine from furnishing to a patient drugs, medicines, chemicals, or poisons as ~~he the person~~ considers proper in the
34 treatment of the patient;

(2) ~~nothing in this chapter prevents~~ prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) ~~nothing in this chapter prevents~~ prevent the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and ~~nothing in this chapter prevents~~ does not prevent the sale of common household preparations and other drugs, ~~provided if the~~ stores selling them are licensed under the terms of this chapter;

(4) ~~nothing in this chapter applies~~ apply to or ~~may~~ interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(5) ~~nothing in this chapter prevents~~ prevent a registered nurse employed by a family planning clinic under contract with the department of public health and environmental sciences human services from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and with the board of pharmacy's requirements for labeling, storage, and recordkeeping of drugs."

Section 89. Section 37-9-101, MCA, is amended to read:

"37-9-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1845.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

(4) "Long-term care facility" means any skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of public health and environmental sciences human services, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(5) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether ~~his~~ the individual's functions and duties are shared with one or more individuals."

Section 90. Section 37-14-322, MCA, is amended to read:

"37-14-322. Inspections. Inspections for compliance with the provisions of this chapter may be performed by:

(1) the board of radiologic technologists;

(2) the department of commerce;

(3) the department of public health and ~~environmental sciences~~ human services."

Section 91. Section 37-21-101, MCA, is amended to read:

"37-21-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Authorized agency" means a private agency or institution authorized by the department to establish academic, experience, and training qualifications for dietitians.

(2) "Department" means the department of public health and ~~environmental sciences~~ human services as provided in ~~2-15-2101~~ 2-15-2201."

Section 92. Section 37-27-320, MCA, is amended to read:

"37-27-320. Reports -- failure to report. (1) A licensed direct-entry midwife shall submit semiannually to the board, on forms supplied by the board, a summary report on each patient given care. The report must include vital statistics on each patient and information on the procedures and scope of care administered, including any transport of the patient to a hospital and physician referrals, but may not include information disclosing the identity of the patient.

(2) A licensed direct-entry midwife shall report within 72 hours to the board and to the department of public health and ~~environmental sciences~~ human services any maternal, fetal, or neonatal mortality or morbidity in patients for whom care has been given.

(3) Failure of a direct-entry midwife to submit required reports constitutes grounds to deny renewal of a license."

Section 93. Section 37-27-321, MCA, is amended to read:

"37-27-321. Filing of birth certificate. (1) When a birth occurs with a licensed direct-entry midwife in attendance, the direct-entry midwife shall prepare and file a birth certificate, as required by 50-15-201, with the department of public health and ~~environmental sciences~~ human services within 30 days of the birth of the newborn.

(2) Failure of a direct-entry midwife to prepare and file the birth certificate constitutes grounds for the suspension or revocation of a license granted under this chapter."

Section 94. Section 37-30-307, MCA, is amended to read:

"37-30-307. Fees -- handicapped persons exempted -- other fees prohibited. (1) The fee to be paid by an applicant for an examination to determine ~~his~~ the applicant's fitness to receive a certificate of registration to practice barbering and for the issuance of the certificate ~~shall~~ must be prescribed by the board.

(2) A person registered as a barber shall, before the expiration date established by rule of the department, annually pay a license fee, set by the board based on clerical and administrative costs, for the renewal of ~~his~~ the person's certificate of registration. If a barber fails to have the certificate renewed before the expiration date, the barber

1 shall on renewal of the certificate of registration pay a penalty prescribed by the board in addition to the regular renewal
2 fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled
3 to have the certificate of registration renewed or a new certificate of registration issued without first applying for and
4 taking the examination and paying the fees provided for in this section.

5 (3) However, physically handicapped persons trained for the barber profession by the department of ~~social~~
6 ~~and rehabilitation~~ public health and human services and certified by that department as having graduated from a barber
7 college licensed by the board are not required to pay fees and are for a period of 1 year immediately following their
8 training exempt from all except the sanitary provisions of this chapter.

9 (4) ~~No other~~ Another or an additional license or fee may not be imposed on barbers by a municipality or other
10 subdivision of this state."

11
12 **Section 95.** Section 37-30-412, MCA, is amended to read:

13 **"37-30-412. Barbershop owner's duty to monitor employees.** An owner or manager of a barbershop licensed
14 under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state
15 and that employees observe the sanitary rules of the department of public health and ~~environmental sciences~~ human
16 services and the department of commerce and shall report to the department of commerce the name of a person
17 practicing barbering ~~therein~~ in the barbershop who has a communicable disease."

18
19 **Section 96.** Section 37-30-422, MCA, is amended to read:

20 **"37-30-422. Maintenance of sanitary conditions.** Barbershops, barber schools, and barber colleges ~~shall~~ must
21 be operated and maintained in a sanitary condition in order to preserve the public health and prevent the spread of
22 disease. The board of barbers in consultation with the department of public health and ~~environmental sciences~~ human
23 services may adopt rules to preserve the public health and prevent the spread of disease."

24
25 **Section 97.** Section 37-31-204, MCA, is amended to read:

26 **"37-31-204. Sanitary rules.** The board, subject to the approval of the department of public health and
27 ~~environmental sciences~~ human services, shall prescribe sanitary rules it considers necessary, with particular reference
28 to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases."

29
30 **Section 98.** Section 37-31-308, MCA, is amended to read:

31 **"37-31-308. Examination -- reexamination -- exemption for handicapped persons.** (1) Examinations for a
32 license to practice cosmetology or manicuring or to teach cosmetology must be held at places and times specified by
33 the board. The examinations must be supervised by the board. The examinations may not be confined to a specific
34 method or system. The examinations must be conducted by persons who hold current licenses to practice in the

profession for which the applicant is being examined.

(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until the applicant has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring shall meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology shall wait 1 year before reapplying to take the examination. Upon reapplying, the applicant shall provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

(5) Physically handicapped persons trained for cosmetology or manicuring by the department of ~~social and rehabilitation~~ public health and human services are, for a period of 1 year immediately following their graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of ~~social and rehabilitation~~ public health and human services that a department of ~~social and rehabilitation~~ public health and human services beneficiary has successfully completed the required training in a cosmetology school or manicuring school, the department shall issue the person the necessary certificate or license to practice the profession in this state."

Section 99. Section 37-31-331, MCA, is amended to read:

"37-31-331. Refusal, revocation, or suspension of licenses -- grounds -- notice and hearing. (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a cosmetology salon, manicuring salon, school of cosmetology, or school of manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of public health and environmental sciences ~~human services~~ for the regulation of cosmetology salons, manicuring salons, schools of cosmetology, or schools of manicuring;

(c) gross malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(f) permitting a certificate of registration or license to be used where the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) However, the board may not refuse to authorize the department to issue or renew a license or revoke or suspend a license already issued until after notice and opportunity for a hearing."

1 **Section 100.** Section 37-41-104, MCA, is amended to read:

2 **"37-41-104. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following
3 definitions apply:

4 ~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

5 ~~(2)(1)~~ **"Department"** means the department of health and environmental sciences provided for in Title 2,
6 chapter 15, part 21.

7 ~~(3)(2)~~ **"Disposal"** means the discharge, injection, deposit, dumping, spilling, leaking, or placing of septage into
8 or onto the land or water.

9 ~~(4)(3)~~ **"Person"** means an individual, firm, partnership, association, corporation, city, town, local government
10 entity, or other government or private entity, whether organized for profit or not.

11 ~~(5)(4)~~ **"Septage"** means waste material from cesspools, septic tanks, or privies."
12

13 **Section 101.** Section 39-30-103, MCA, is amended to read:

14 **"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

15 (1) "Eligible spouse" means the spouse of a handicapped person determined by the department of ~~social and~~
16 ~~rehabilitation~~ public health and human services to have a 100% disability who is unable to use ~~his~~ an employment
17 preference because of ~~his~~ the disability.

18 (2) "Handicapped person" means an individual certified by the department of ~~social and rehabilitation~~ public
19 health and human services to have a physical or mental impairment that substantially limits one or more major life
20 activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain,
21 or advance in employment.

22 (3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of
23 the current employees of:

24 (i) a department, as defined in 2-15-102, for a position within the executive branch;

25 (ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative
26 auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

27 (iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state
28 law library, or similar office in a state district court for a position within the judicial branch;

29 (iv) a city or town for a municipal position, including a city or municipal court position; and

30 (v) a county for a county position, including a justice's court position.

31 (b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i)
32 through (a)(v) of this subsection (3), current employees in a reduction-in-force pool who have been laid off from a
33 specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (3), or current participants in a
34 federally authorized employment program is not an initial hiring.

(4) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(5) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

Section 102. Section 39-30-106, MCA, is amended to read:

"39-30-106. Adoption of rules. The department of administration shall adopt rules implementing this chapter

1 and shall consult with the department of ~~social and rehabilitation~~ public health and human services in adopting rules
2 governing certification of handicapped persons for purposes of this chapter. The department of administration's rules
3 apply to all public employers, local as well as state."

4
5 **Section 103.** Section 39-30-107, MCA, is amended to read:

6 **"39-30-107. Certification of handicapped persons.** The department of ~~social and rehabilitation~~ public health
7 and human services shall certify persons as handicapped for the purpose of employment preference as provided in this
8 chapter."

9
10 **Section 104.** Section 39-71-743, MCA, is amended to read:

11 **"39-71-743. Assignment or attachment of payments.** (1) ~~No payments~~ Payments under this chapter ~~shall~~ may
12 not be assignable, subject to attachment or garnishment, or be held liable in any way for debts, except:

13 (a) as provided in 71-3-1118; or

14 (b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due
15 child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of
16 a court of competent jurisdiction or by order rendered in an administrative process authorized by state law.

17 (2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as
18 follows:

19 (a) for any periodic payment, an amount up to the percentage amount established in the guidelines
20 promulgated by the department of ~~social and rehabilitation~~ public health and human services pursuant to 40-5-209;
21 or

22 (b) for any lump-sum award, an amount up to that portion of the award that is approved for payment on the
23 basis of a past-due child support obligation.

24 (3) After determination that the claim is covered under the Workers' Compensation Act or Occupational
25 Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers'
26 compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not payable by the injured worker for
27 treatment of injuries sustained if liability is accepted by the insurer."

28
29 **Section 105.** Section 39-71-744, MCA, is amended to read:

30 **"39-71-744. Benefits not due while claimant is incarcerated -- exceptions.** (1) Except as provided in
31 subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the claimant is
32 incarcerated in a correctional institution, such as the Montana state prison or the Montana women's correctional ~~center~~
33 system, as the result of conviction of a felony. The insurer remains liable for medical benefits. A time limit on benefits
34 otherwise provided in this chapter is not extended due to a period of incarceration.

(2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)."

Section 106. Section 39-71-1003, MCA, is amended to read:

"39-71-1003. Eligibility for vocational rehabilitation expenses. (1) Upon certification by the department of ~~social and rehabilitation~~ public health and human services, a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act.

(2) The appeal process provided for in 53-7-106 is the exclusive remedy for an injured worker aggrieved in the receipt of vocational rehabilitation services provided by the department of ~~social and rehabilitation~~ public health and human services."

Section 107. Section 39-71-1004, MCA, is amended to read:

"39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 ~~shall~~ must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account ~~shall~~ must be made on or before July 1 of each year as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding fiscal year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding fiscal year;

(c) by the department, an amount to be determined by the department, not exceeding 1% of the compensation paid to injured employees in Montana from the industrial insurance expendable trust fund and the occupational disease expendable trust fund for the preceding fiscal year.

(2) Separate accounts of the amounts collected and disbursements made from the industrial accident rehabilitation account in the state special revenue fund ~~shall~~ must be kept for each of the plans. If in any fiscal year the amount collected from the employers under any plan exceeds the amount of payments for employees of the employers under ~~such~~ the plan, the assessment against the employers under ~~such~~ the plan for the following year ~~shall~~ must be reduced.

(3) The payments ~~herein~~ provided for ~~shall~~ in this section must be made to the department, which shall credit

1 the sums paid to the industrial accident rehabilitation account ~~which shall be~~ in the custody of the state treasurer.
2 Disbursements from the account ~~shall must~~ be made after approval by the department of ~~social and rehabilitation~~ public
3 health and human services and upon audit and approval by the department of administration.

4 (4) ~~No part of the~~ The funds allocated or contributed as ~~herein~~ provided in this section and contemplated shall
5 may not be used ~~in for~~ payment of administrative expenses of the department or department of ~~social and rehabilitation~~
6 public health and human services."

7
8 **Section 108.** Section 39-71-1011, MCA, is amended to read:

9 **"39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

10 (1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that
11 is a member of the national commission for health certifying agencies and that is established to certify rehabilitation
12 practitioners.

13 (2) "Disabled worker" means one who has a medically determined restriction resulting from a work-related
14 injury that precludes the worker from returning to the job the worker held at the time of the injury.

15 (3) "Rehabilitation benefits" means benefits provided in 39-71-1003, 39-71-1025, and 39-71-2001.

16 (4) "Rehabilitation plan" means an individualized plan to assist a disabled worker in acquiring skills or aptitudes
17 to return to work through job placement, on-the-job training, education, training, or specialized job modification.

18 (5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation
19 certification and designated by the insurer to the department or a department of ~~social and rehabilitation~~ public health
20 and human services counselor when a worker has been certified by the department of ~~social and rehabilitation~~ public
21 health and human services under 39-71-1003.

22 (6) "Rehabilitation services" consists of a program of evaluation, planning, and delivery of goods and services
23 to assist a disabled worker to return to work."

24
25 **Section 109.** Section 39-71-1014, MCA, is amended to read:

26 **"39-71-1014. Rehabilitation services -- required and provided by insurers and the department of ~~social and~~**
27 **~~rehabilitation~~ public health and human services.** (1) Rehabilitation services are required for disabled workers and may
28 be initiated by:

29 (a) an insurer by designating a rehabilitation provider and notifying the department;
30 (b) the department by requiring the insurer to designate a rehabilitation provider; or
31 (c) a disabled worker through a request to the department. The department shall then require the insurer to
32 designate a rehabilitation provider.

33 (2) Rehabilitation services provided under this part must be delivered:

34 (a) through a rehabilitation counselor certified by the board of rehabilitation certification;

1 (b) by a vocational rehabilitation counselor employed by the department of ~~social and rehabilitation~~ public
2 health and human services; or

3 (c) by both.

4 (3) A disabled worker served by the department of ~~social and rehabilitation~~ public health and human services
5 may receive only those vocational rehabilitation services as provided in Title 53, chapter 7, parts 1 and 2."

6
7 **Section 110.** Section 39-71-1031, MCA, is amended to read:

8 **"39-71-1031. Exchange of information.** The department of ~~social and rehabilitation~~ public health and human
9 services, the insurer's designated rehabilitation provider, and the department shall provide to one another case
10 information as necessary to carry out the purposes of this part."

11
12 **Section 111.** Section 39-71-2001, MCA, is amended to read:

13 **"39-71-2001. Rehabilitation benefits.** (1) An injured worker is eligible for rehabilitation benefits if:

14 (a) the injury results in permanent partial disability or permanent total disability as defined in 39-71-116;

15 (b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the
16 time of the injury;

17 (c) a rehabilitation plan completed by a rehabilitation provider and designated by the insurer certifies that the
18 injured worker has reasonable vocational goals and a reemployment and wage potential with rehabilitation. The plan
19 must take into consideration the worker's age, education, training, work history, residual physical capacities, and
20 vocational interests.

21 (d) a rehabilitation plan between the injured worker and the insurer is filed with the department. If the plan
22 calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of ~~social and~~
23 ~~rehabilitation~~ public health and human services to use the funds.

24 (2) After filing the rehabilitation plan with the department, the injured worker is entitled to receive
25 rehabilitation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period
26 specified in the rehabilitation plan, not to exceed 104 weeks. Rehabilitation benefits must be paid during a reasonable
27 period, not to exceed 10 weeks, while the worker is waiting to begin the agreed-upon rehabilitation plan. Rehabilitation
28 benefits must be paid while the worker is satisfactorily completing the agreed-upon rehabilitation plan.

29 (3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the
30 worker in obtaining other employment and the worker is entitled to weekly benefits for a period not to exceed 8 weeks
31 at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to
32 proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited
33 against the maximum of 104 weeks of rehabilitation benefits provided in this section.

34 (4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of

1 injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to
2 the job held at the time of injury. If it is determined that the worker cannot return to the job held at the time of injury,
3 the worker is entitled to rehabilitation benefits and services as provided in subsection (2).

4 (5) A worker may not receive temporary total or biweekly permanent partial disability benefits and
5 rehabilitation benefits during the same period of time.

6 (6) The rehabilitation provider, as authorized by the insurer, shall continue to work with and assist the injured
7 worker until the rehabilitation plan is completed.

8 (7) A worker may not receive both wages and rehabilitation benefits without the written consent of the
9 insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty
10 of theft and may be prosecuted under 45-6-301."

11
12 **Section 112.** Section 40-1-107, MCA, is amended to read:

13 **"40-1-107. Form of application, license, marriage certificate, and consent.** (1) The director of the department
14 of public health and environmental sciences human services shall prescribe the form for an application for a marriage
15 license, which ~~shall~~ must include the following information:

16 (a) name, sex, address, date and place of birth of each party to the proposed marriage;

17 (b) if either party was previously married, ~~his~~ the party's name, and the date, place, and court in which the
18 marriage was dissolved or declared invalid or the date and place of death of the former spouse;

19 (c) name and address of the parents or guardian of each party;

20 (d) whether the parties are related to each other and, if so, their relationship; and

21 (e) the name and date of birth of any child of whom both parties are parents born prior to the making of the
22 application, unless their parental rights and the parent and child relationship with respect to the child have been
23 terminated.

24 (2) The director of the department of public health and environmental sciences human services shall prescribe
25 the forms for the marriage license, the marriage certificate, and the consent to marriage."

26
27 **Section 113.** Section 40-1-203, MCA, is amended to read:

28 **"40-1-203. Proof of age and medical certificate required.** (1) Before a person authorized by law to issue
29 marriage licenses may issue a marriage license, each applicant ~~therefor~~ shall exhibit ~~to him~~ a birth certificate or other
30 satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant,
31 unless exempted on medical grounds by rule of the department of public health and environmental sciences human
32 services, shall file with the license issuer a medical certificate from a physician, licensed to practice medicine and
33 surgery in any state or United States territory, or any other person authorized by rule of the department to make a
34 medical certificate. The certificate ~~shall~~ must state that the applicant has been given a standard serological test and

1 that the report of the results of the serological test has been exhibited to the applicant tested and that the other party
2 to the proposed marriage contract has examined the report of the serological test.

3 (2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any
4 examinations and tests required by this section. In submitting the blood specimen to the laboratory, the physician or
5 any other person authorized by the laws of Montana to make a medical certificate shall designate that it is a premarital
6 test."

7
8 **Section 114.** Section 40-1-204, MCA, is amended to read:

9 **"40-1-204. Contents and form of medical certificate.** (1) The medical certificate ~~shall~~ must contain a
10 statement from a physician or other person authorized by rule of the department of public health and environmental
11 ~~sciences human services~~ to make ~~such~~ the reports, setting forth:

12 (a) the name of the test;

13 (b) the name and address of the physician or other person authorized by rule of the department to sign the
14 certificate;

15 (c) the name and address of the laboratory performing the test; and

16 (d) the name of the person whose blood was tested.

17 (2) In the event that an error is discovered in the results of the test, ~~such~~ the results ~~will~~ must be expunged
18 from the records of the department of public health and environmental sciences human services.

19 (3) (a) The certificate and statement ~~shall~~ must be on a form to be provided and distributed, upon request,
20 by the department of public health and environmental sciences human services.

21 (b) This form is hereinafter referred to in 40-1-205 through 40-1-209 as the "certificate form".
22

23 **Section 115.** Section 40-1-206, MCA, is amended to read:

24 **"40-1-206. Premarital test -- approved laboratories -- rules.** (1) For the purpose of 40-1-203 through 40-1-209,
25 a standard serological test ~~shall be~~ is a test for rubella immunity ~~which~~ that is approved by the department of public
26 ~~health and environmental sciences human services~~.

27 (2) The standard serological test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is
28 performed by one of the following:

29 (a) the laboratory of the department of environmental sciences;

30 (b) a laboratory approved by the department of public health and human services;

31 (c) a laboratory operated by any other state; or

32 (d) a laboratory operated by the United States public health service or the United States armed forces.

33 (3) The standard serological test may be made on request at the laboratory of the department of health and
34 environmental sciences.

1 (4) The department of public health and ~~environmental sciences~~ human services shall adopt reasonable rules
2 for:

3 (a) reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the
4 certifying physician and the state; and

5 (b) exemptions, on medical grounds, from the premarital serological test."
6

7 **Section 116.** Section 40-1-208, MCA, is amended to read:

8 "40-1-208. **Penalties.** (1) An applicant for a marriage license, a physician or other person authorized by rule
9 of the department of public health and ~~environmental sciences~~ human services to make a medical certificate, or any
10 person in charge of or authorized to make reports or statements for a laboratory who misrepresents ~~his~~ the applicant's
11 identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205, any licensing
12 officer who issues a marriage license without having received the certificate form, if required, or who has reason to
13 believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage
14 license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a
15 misdemeanor and upon conviction shall be punished by a fine of not more than \$100.

16 (2) Medical certificates, laboratory statements or reports, and applications referred to in 40-1-203 through
17 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local
18 health officers or their representatives. A person who divulges ~~such~~ the information or opens to inspection ~~such~~ the
19 certificates, statements, reports, or applications, without authority, to any person not by law entitled to the same is
20 guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$100."
21

22 **Section 117.** Section 40-1-209, MCA, is amended to read:

23 "40-1-209. **Expenses.** The department of public health and ~~environmental sciences~~ human services shall
24 provide the necessary printing and pay the necessary expenses relative to the checking and approval of laboratories,
25 clerical and technical assistance involved in the administration of 40-1-203 through 40-1-209, and other expenditures
26 necessary in carrying out the provisions and purposes of 40-1-203 through 40-1-209. All claims for ~~such~~ the expenses
27 ~~shall must~~ be submitted for approval and audit to the department of public health and ~~environmental sciences~~ human
28 services and ~~shall must~~ be paid in accordance with law."
29

30 **Section 118.** Section 40-4-204, MCA, is amended to read:

31 "40-4-204. **Child support -- orders to address health insurance -- withholding of child support.** (1) In a
32 proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or
33 both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support,
34 without regard to marital misconduct.

1 (2) The court shall consider all relevant factors, including:

2 (a) the financial resources of the child;

3 (b) the financial resources of the custodial parent;

4 (c) the standard of living the child would have enjoyed had the marriage not been dissolved;

5 (d) the physical and emotional condition of the child and the child's educational and medical needs;

6 (e) the financial resources and needs of the noncustodial parent;

7 (f) the age of the child;

8 (g) the cost of day care for the child;

9 (h) any custody arrangement that is ordered or decided upon; and

10 (i) the needs of any person, other than the child, whom either parent is legally obligated to support.

11 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the
12 child support obligation by applying the standards in this section and the uniform child support guidelines adopted by
13 the department of ~~social and rehabilitation~~ public health and human services pursuant to 40-5-209. The guidelines must
14 be used in all cases, including cases in which the order is entered upon the default of a party and those in which the
15 parties have entered into an agreement regarding the support amount. A verified representation of the defaulting
16 parent's income, based on the best information available, may be used when a parent fails to provide financial
17 information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an
18 adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application
19 of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

20 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its
21 reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is
22 inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to
23 a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include
24 a statement of the amount of support that would have ordinarily been ordered under the guidelines.

25 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's
26 support, the court shall state its reasons for not ordering child support.

27 (4) Each district court judgment, decree, or order establishing a final child support obligation under this title
28 and each modification of a final order for child support must include a provision addressing health insurance coverage
29 in the following cases:

30 (a) If either party has available through an employer or other organization health insurance coverage for the
31 child or children for which the premium is partially or entirely paid by the employer or organization, the judgment,
32 decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

33 (b) In the event that health insurance required in a child support judgment, decree, or order becomes
34 unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in

1 the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the
2 requirement.

3 (c) All temporary child support orders must contain a provision requiring the party who has health insurance
4 in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

5 (d) The parties may by written agreement provide for the health care coverage required by this section, subject
6 to the approval of the court.

7 (e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition
8 to and not in substitution, in whole or in part, for the child support obligation.

9 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included
10 in the support order, a support obligation established by judgment, decree, or order under this section, whether
11 temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by
12 immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that
13 omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent
14 with this section is nevertheless subject to withholding for the payment of support without need for an amendment
15 to the support order or for any further action by the court.

16 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order must
17 include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be
18 subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement
19 in a judgment or order does not preclude the use of withholding procedures.

20 (c) ~~After October 1, 1993, if~~ If a support order subject to income withholding is expressed in terms of a
21 monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the
22 obligor's regular pay period.

23 (6) For the purposes of income withholding under subsection (5), every district court judgment, decree, or
24 order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to
25 pay support to inform the court and, if the department of ~~social and rehabilitation~~ public health and human services is
26 providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order,
27 the department, of the following:

28 (a) the name and address of the parent's current employer;

29 (b) whether the parent has access to health insurance through an employer or other group; and

30 (c) if insurance coverage is available, the health insurance policy information.

31 (7) If the department of ~~social and rehabilitation~~ public health and human services is providing or later provides
32 support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of
33 an order must contain a statement providing that the noncustodial parent, without further order of the court, is required
34 to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in

1 the judgment or order does not preclude the imposition of sanctions under 40-5-208.

2 (8) Each district court judgment, decree, or order establishing a final child support obligation under this part
3 and each modification of a final order for child support must contain a statement that the order is subject to review and
4 modification by the department of ~~social and rehabilitation~~ public health and human services upon the request of the
5 department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D
6 of the Social Security Act for the enforcement of the order.

7 (9) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must
8 include a provision requiring the child support to be paid to:

9 (i) the legal custodian of the minor child;

10 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child under a legal
11 assignment of rights; or

12 (B) the court for the benefit of the minor child;

13 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian;
14 or

15 (iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

16 (b) A judgment, decree, or order that omits the provision required by subsection (9)(a) is subject to the
17 requirements of subsection (9)(a) without need for an amendment to the judgment, decree, or order or for any further
18 action by the court."

19
20 **Section 119.** Section 40-4-205, MCA, is amended to read:

21 **"40-4-205. Representation of child.** The court may appoint an attorney to represent the interests of a minor
22 dependent child with respect to the child's support, custody, and visitation. The county attorney, a deputy county
23 attorney, if any, or the department of ~~family~~ public health and human services or any of its staff may not be appointed
24 for this purpose. The court shall enter an order for costs and fees in favor of the child's attorney. The order must be
25 made against either or both parents, except that if the responsible party is indigent, the costs must be waived."

26
27 **Section 120.** Section 40-4-208, MCA, is amended to read:

28 **"40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1)**
29 Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only
30 as to installments accruing subsequent to actual notice to the parties of the motion for modification.

31 (2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance
32 or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

33 (b) Whenever the decree proposed for modification contains provisions relating to maintenance or support,
34 modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable;

(ii) upon written consent of the parties; or

(iii) upon application by the department of ~~social and rehabilitation~~ public health and human services, whenever the department of ~~social and rehabilitation~~ public health and human services is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under 40-5-209. A modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Provisions for the support of a child are terminated by emancipation of the child or the child's graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event later than the child's 19th birthday, unless the termination date is extended or knowingly waived by written agreement or by an express provision of the decree. Provisions for the support of a child do not terminate upon the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."

Section 121. Section 40-4-209, MCA, is amended to read:

"40-4-209. Security or guaranty to secure support. (1) Upon a verified application that is made by a person authorized to enforce or collect a child support obligation ~~the department of family services or by the department of social and rehabilitation~~ public health and human services ~~showing and that shows~~ that a person obligated to pay child support or maintenance pursuant to court or administrative order is delinquent in an amount equal to the total of 6 months' support payments, the court may direct the obligated person to appear and show cause why an order should not be entered ordering that ~~he the obligated person~~ the obligated person post bond, give a mortgage, or provide other security or guaranty for the payment of the delinquency.

(2) If the court finds that a delinquency greater than the total of 6 months of support is owed and that the obligated person has the ability to post bond, give a mortgage, or provide security or other guaranty, the court may enter an order requiring ~~him~~ the obligated person to post bond, give a mortgage, or provide security or guaranty for so long as there is a support delinquency.

(3) The bond or other security may be in an amount up to the total support due for a 2-year period and must

1 be approved by the court. The bond must include the name and address of the issuer. Any person issuing a bond under
2 this section must, if the bond is cancelled, notify the court and the person or public agency entitled to receive payments
3 under the support order.

4 (4) If the person obligated to pay child support or maintenance fails to make payments as required by the court
5 or administrative order, the person or public agency entitled to receive payment may recover on the bond or other
6 security. The amount recovered on the bond or other security must first be applied toward satisfaction of any support
7 arrearages.

8 (5) The department of ~~social and rehabilitation~~ public health and human services shall adopt guidelines ~~which~~
9 that take into account the payment record of the obligated person, the availability of other remedies, and other
10 considerations which it determines relevant for determining whether the procedure provided in this section would carry
11 out the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after
12 application of the guidelines the department of ~~social and rehabilitation~~ public health and human services determines
13 an application for an order requiring security is not appropriate, it may not request the order."
14

15 **Section 122.** Section 40-4-215, MCA, is amended to read:

16 **"40-4-215. Investigations and reports.** (1) In contested custody proceedings and in other custody proceedings
17 if a parent or the child's custodian requests, the court may order an investigation and report concerning custodial
18 arrangements for the child. The department of ~~family~~ public health and human services may not be ordered to conduct
19 the investigation or draft a report unless the parent or the child's custodian requesting the investigation is a recipient
20 of aid to families with dependent children, ~~or food stamps, or general relief benefits,~~ and all reasonable options for
21 payment of the investigation, if conducted by a person not employed by the department, are exhausted. The
22 department may consult with any investigator and share information relevant to the child's best interests. The cost of
23 the investigation and report must be paid according to the final order.

24 (2) In preparing a report concerning a child, the investigator may consult any person who may have
25 information about the child and the child's potential custodial arrangements. Upon order of the court, the investigator
26 may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information
27 from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent
28 of the parent or the child's custodian, ~~but the~~ The child's consent must be obtained if the child has reached the age
29 of 16 unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) are
30 fulfilled, the investigator's report may be received in evidence at the hearing.

31 (3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at
32 least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented
33 by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the
34 investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the

investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing."

Section 123. Section 40-4-218, MCA, is amended to read:

"40-4-218. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including ~~his~~ the child's education, health care, and religious training, unless the court after hearing finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or ~~his~~ the child's emotional development significantly impaired.

(2) If both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or ~~his~~ the child's emotional development significantly impaired, the court may order the department of ~~family~~ public health and human services to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out."

Section 124. Section 40-5-103, MCA, is amended to read:

"40-5-103. Definitions. (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a child support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support":

(a) means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse; and

(b) includes an unsatisfied obligation to provide support.

(4) "Governor" includes an individual performing the functions of governor or the executive authority of any state covered by this part.

(5) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with a parent or person acting as parent. A period of temporary absence of a parent or person acting as parent is counted as part of the 6-month or other period.

(6) "Income" includes:

(a) earnings or other periodic entitlements to money from any source; and

(b) any other property subject to withholding for support under the law of this state.

(7) "Income-withholding order" means an order or other legal process directed to an obligor's employer, as

1 provided in Title 40, chapter 5, parts 3 and 4, or by a tribunal of another state to withhold support from the income
2 of the obligor.

3 (8) "Initiating state" means a state in which a proceeding pursuant to this part or a law substantially similar
4 to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of
5 Support Act, or a proceeding initiated by the department of ~~social and rehabilitation~~ public health and human services
6 under 40-5-263 is filed for forwarding to a responding state.

7 (9) "Initiating tribunal" means the authorized tribunal in an initiating state.

8 (10) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment
9 determining parentage.

10 (11) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining
11 parentage.

12 (12) "Law" includes decisional and statutory law and rules and regulations having the force of law.

13 (13) "Obligee" means:

14 (a) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has
15 been issued or a judgment determining parentage has been rendered;

16 (b) a state or political subdivision to which the rights under a duty of support or a support order have been
17 assigned or that has independent claims based on financial assistance provided to an individual obligee; or

18 (c) an individual seeking a judgment determining parentage of that individual's child.

19 (14) "Obligor" means an individual or the estate of a decedent:

20 (a) who owes or is alleged to owe a duty of support;

21 (b) who is alleged but has not been adjudicated to be a parent of a child; or

22 (c) who is liable under a support order.

23 (15) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce
24 criminal laws relating to the failure to provide for the support of any person.

25 (16) "Register" means to file a support order or judgment determining parentage in the registry of foreign
26 support orders.

27 (17) "Registering tribunal" means a tribunal in which a support order is registered.

28 (18) "Responding state" means a state to which a proceeding is forwarded under this part or a law
29 substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal
30 Enforcement of Support Act, or a proceeding initiated by the department of ~~social and rehabilitation~~ public health and
31 human services under 40-5-263.

32 (19) "Responding tribunal" means the authorized tribunal in a responding state.

33 (20) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

34 (21) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico,

1 or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian
2 tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders
3 that are substantially similar to the procedures under this part.

4 (22) (a) "Support enforcement agency" means a public official or agency authorized to seek:

5 (i) enforcement of support orders or laws relating to the duty of support;

6 (ii) establishment or modification of child support;

7 (iii) a determination of parentage; or

8 (iv) to locate obligors or their assets.

9 (b) Support enforcement agency includes:

10 (i) in cases brought under title IV-D of the Social Security Act, the department of ~~social and rehabilitation~~
11 public health and human services; and

12 (ii) in all other cases, the prosecuting attorney.

13 (23) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification,
14 that:

15 (a) is for the benefit of a child, a spouse or a former spouse, or a state or political subdivision;

16 (b) ~~that~~ provides for monetary support, health care, arrearages, or reimbursement; and ~~that~~

17 (c) may include related costs and fees, interest, income withholding, attorney fees, and other relief.

18 (24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce,
19 or modify support orders or to determine parentage."

20
21 **Section 125.** Section 40-5-143, MCA, is amended to read:

22 "**40-5-143. Tribunals of this state.** The district courts and the department of ~~social and rehabilitation~~ public
23 health and human services are the tribunals of this state."

24
25 **Section 126.** Section 40-5-158, MCA, is amended to read:

26 "**40-5-158. Proceedings under this part.** (1) Except as otherwise provided in this part, 40-5-158 through
27 40-5-166, 40-5 170 through 40-5-178, 40-5-180, and 40-5-183 apply to all proceedings under this part.

28 (2) This part provides for the following proceedings:

29 (a) establishment of an order for spousal support or child support pursuant to 40-5-179;

30 (b) enforcement of a support order and income-withholding order of another state without registration;

31 (c) registration of an order for spousal support or child support of another state for enforcement pursuant to
32 40-5-184 through 40-5-195;

33 (d) modification of an order for child support or spousal support issued by a tribunal of this state pursuant to
34 40-5-147 through 40-5-150;

(e) registration of an order for child support of another state for modification pursuant to 40-5-184 through 40-5-195;

(f) determination of parentage pursuant to 40-5-196; and

(g) assertion of jurisdiction over nonresidents pursuant to 40-5-145 and 40-5-146.

(3) If the tribunal is the department of ~~social and rehabilitation~~ public health and human services, this part includes the administrative remedies under this chapter.

(4) An individual or a support enforcement agency may commence a proceeding authorized under this part by filing a petition in an appropriate initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state that has or can obtain personal jurisdiction over the respondent."

Section 127. Section 40-5-161, MCA, is amended to read:

"40-5-161. Duties of initiating tribunal. (1) Upon the filing of a petition authorized by this part, an initiating tribunal shall forward three copies of the petition and its accompanying documents:

(a) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(b) if the identity of the responding tribunal is unknown, to the state information agency of the responding state, with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) The department of ~~social and rehabilitation~~ public health and human services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4, and 5. In all other cases, the district court is the initiating tribunal."

Section 128. Section 40-5-162, MCA, is amended to read:

"40-5-162. Duties and powers of responding tribunal. (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to 40-5-158(4), it shall cause the petition or pleading to be filed and notify the petitioner by first-class mail where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

(a) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(b) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) order income withholding;

(d) determine the amount of any arrearages and specify a method of payment;

(e) enforce orders by use of civil or criminal contempt, or both;

(f) set aside property for satisfaction of the support order;

(g) place liens and order execution on the obligor's property;

(h) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(j) order the obligor to seek appropriate employment by specified methods;

(k) award reasonable attorney fees and other fees and costs; and

(l) grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this part or in the documents accompanying the order the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this part upon a party's compliance with visitation provisions.

(5) If a responding tribunal of this state issues an order under this part, the tribunal shall send a copy of the order by first-class mail to the petitioner and the respondent and to the initiating tribunal, if any.

(6) The department of ~~social and rehabilitation~~ public health and human services is the responding tribunal for receipt of a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases, the district court is the responding tribunal."

Section 129. Section 40-5-164, MCA, is amended to read:

"40-5-164. Duties of support enforcement agency. (1) A support enforcement agency of this state, upon application, shall provide services to a petitioner in a proceeding under this part.

(2) A support enforcement agency that is providing services to the petitioner shall, as appropriate:

(a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(b) request an appropriate tribunal to set a date, time, and place for a hearing;

(c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) after receipt of a written notice from an initiating, responding, or registering tribunal, promptly send a copy of the notice by first-class mail to the petitioner;

(e) after receipt of a written communication from the respondent or the respondent's attorney, promptly send a copy of the communication by first-class mail to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This part does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

(4) For purposes of this part, the department of ~~social and rehabilitation~~ public health and human services is the support enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4, and 5. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency."

Section 130. Section 40-5-165, MCA, is amended to read:

"40-5-165. Duties of state information agency. (1) The department of ~~social and rehabilitation~~ public health and human services is designated as the state information agency under this part.

(2) The department shall:

(a) compile and maintain a current list, including addresses, of the tribunals in this state that have jurisdiction under this part and of any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(b) maintain a register of tribunals and support enforcement agencies of other states;

(c) forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides or in which the obligor's property is believed to be located all documents concerning a proceeding under this part received from an initiating tribunal or the state information agency of the initiating state; and

(d) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security."

Section 131. Section 40-5-173, MCA, is amended to read:

"40-5-173. Costs and fees. (1) The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part.

(2) If an obligee prevails, a responding tribunal may assess against an obligor the filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. Except as provided by other law, the tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of current support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under 40-5-184 through 40-5-195 or 40-5-271, a hearing is

1 presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without
2 change.

3 (4) The standardized schedule of fees established by the department of ~~social and rehabilitation~~ public health
4 and human services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under
5 subsection (2) that are not included in the standardized schedules are recoverable under subsection (2)."

6
7 **Section 132.** Section 40-5-185, MCA, is amended to read:

8 **"40-5-185. Procedure to register order for enforcement.** (1) A support order or income-withholding order of
9 another state may be registered in this state by sending the following documents and information to the department
10 of ~~social and rehabilitation~~ public health and human services pursuant to 40-5-263 or to the district court:

11 (a) a letter of transmittal to the tribunal to request registration and enforcement;

12 (b) two copies, including one certified copy, of all orders to be registered, including any modification of an
13 order;

14 (c) a sworn statement by the party seeking registration or a certified statement by the custodian of the
15 records, showing the amount of any arrearages;

16 (d) the name of the obligor and, if known:

17 (i) the obligor's address and social security number;

18 (ii) the name and address of the obligor's employer and any other source of income of the obligor; and

19 (iii) a description and the location of property of the obligor in this state that is not exempt from execution;
20 and

21 (e) the name and address of the obligee and, if applicable, the agency or person to whom support payments
22 are to be remitted.

23 (2) On receipt of a request for registration, the registering tribunal shall cause the order to be filed, together
24 with one copy of the documents and information, regardless of their form.

25 (3) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of
26 this state may be filed either at the same time as the request for registration or later. The pleading must specify the
27 grounds for the remedy sought."

28
29 **Section 133.** Section 40-5-196, MCA, is amended to read:

30 **"40-5-196. Proceeding to determine parentage.** (1) A tribunal of this state may serve as an initiating or
31 responding tribunal in a proceeding brought under this part or a law substantially similar to this part, the Uniform
32 Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine
33 whether the petitioner is a parent of a particular child or to determine whether a respondent is a parent of that child.

34 (2) In a proceeding to determine parentage, a responding tribunal of this state shall apply the rules of this state

1 on choice of law.

2 (3) A proceeding to determine parentage directed to:

3 (a) the department of ~~social and rehabilitation~~ public health and human services from an initiating state
4 pursuant to 40-5-263 and this part is subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6,
5 part 1, as applicable; and

6 (b) a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part 1."
7

8 **Section 134.** Section 40-5-201, MCA, is amended to read:

9 **"40-5-201. Definitions.** As used in this part, the following definitions apply:

10 (1) "Alleged father" means a ~~man~~ person who is alleged to have engaged in sexual intercourse with a child's
11 mother during a possible time of conception of the child or a ~~man~~ person who is presumed to be a child's father under
12 the provisions of 40-6-105.

13 (2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting,
14 married, or a member of the armed forces of the United States, any person under 19 years of age and still in high
15 school, or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th
16 birthday and for whom:

17 (i) support rights are assigned under 53-2-613;

18 (ii) a public assistance payment has been made;

19 (iii) the department is providing support enforcement services under 40-5-203; or

20 (iv) the department has received a referral for interstate services from an agency of another state under the
21 provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

22 (b) Child may not be construed to limit the ability of the department to enforce a support order according to
23 its terms when the order provides for support to extend beyond the child's 18th birthday.

24 (3) "Department" means the department of ~~social and rehabilitation~~ public health and human services.

25 (4) "Director" means the director of the department of ~~social and rehabilitation~~ public health and human
26 services or the director's authorized representative.

27 (5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

28 (6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for the
29 purposes of this chapter.

30 (7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child
31 or children.

32 (8) "Obligee" means:

33 (a) a person to whom a duty of support is owed and who is receiving support enforcement services under this
34 part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

(14) "Support order" means an order providing a determinable amount for temporary or final periodic payment of funds for the support of a child, that is issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(c) an administrative agency pursuant to proceedings under this part; or

(d) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated ~~thereunder~~ under the act.

Section 135. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of ~~social and rehabilitation~~ public health and human services -- powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to provide IV-D services if the department:

(a) receives a referral ~~from the department of social and rehabilitation services or the department of family services~~ on behalf of the child from an agency providing services to the child under the provisions of Title 41, Title 52, or Title 53;

(b) is providing child support enforcement services under 40-5-203; or

1 (c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act,
2 the Uniform Interstate Family Support Act, or an interstate action by a Title IV-D agency of another state.

3 (2) A verified statement, filed by the department, that it is providing services is prima facie evidence of its
4 authority to act. The department may initiate, participate in, or exercise any remedy available in a judicial or an
5 administrative action on the same basis as any other party.

6 (3) The department has the power of attorney to act in the name of any obligee to endorse and cash any and
7 all drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

8 (4) The department is a party to and must be afforded notice and an opportunity to participate in any
9 proceeding relating to paternity or to the establishment, enforcement, or modification of a support obligation, whether
10 initiated by the obligee, the obligor, or the child. A recipient of services may not act to prejudice the rights of the
11 department while the services are being provided.

12 (5) If child support enforcement services are being or have been provided under this part, an agreement
13 between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past,
14 present, or future support obligations either as settlement or prepayment may not act to reduce or terminate any rights
15 of the department to recover from the obligor for support debt provided unless the department has consented to the
16 agreement in writing.

17 (6) The department may petition a court or an administrative agency for modification of any order on the same
18 basis as a party to that action is entitled to do.

19 (7) The department is subrogated to the right of the child or obligee to maintain any civil action or execute
20 any administrative remedy available under the laws of this or any other state to collect a support debt. This right of
21 subrogation is in addition to and independent of the assignment under 53-2-613 and the support debt created by
22 40-5-221.

23 (8) If public assistance is being or has been paid, the department is subrogated to the debt created by a
24 support order and any money judgment is considered to be in favor of the department. This subrogation is an addition
25 to any assignment made under 53-2-613 and applies to the lesser of:

26 (a) the amount of public assistance paid; or

27 (b) the amount due under the support order.

28 (9) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

29 (10) The department, for the purposes mentioned in this part, through its director or the director's authorized
30 representatives, may administer oaths to certify official acts and records, issue subpoenas, and compel witnesses and
31 the production of books, accounts, documents, and evidence.

32 (11) ~~When~~ In addition to any other requirements for service under the Montana Rules of Civil Procedure, when
33 a person is required to give notice to, serve, or provide a written response to the department in a proceeding concerning
34 the establishment or enforcement of child support under this chapter, the notice, service, or response must be made

1 to the department's child support enforcement division."

2
3 **Section 136.** Section 40-5-235, MCA, is amended to read:

4 **"40-5-235. Effect of order establishing paternity -- birth records -- relief from order.** (1) An administrative order
5 of the department declaring the paternity of a child, docketed as provided in 40-5-227, establishes the legal existence
6 of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and
7 obligations.

8 (2) Upon the request of the mother or father of the child, the department shall ~~file a copy of its order with the~~
9 ~~department of health and environmental sciences, which shall~~ prepare a substitute certificate of birth, if necessary,
10 consistent with the administrative order. The substitute certificate of birth is subject to the provisions of 40-6-123, with
11 references to "court" taken to mean "department".

12 (3) Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an
13 administrative order establishing the paternity of a child upon the application of any affected party and upon a showing
14 of any of the grounds and within the time frames provided in Rule 60(b) of the Montana Rules of Civil Procedure.

15 (4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the provisions of
16 Title 2, chapter 4, part 7."

17
18 **Section 137.** Section 40-5-303, MCA, is amended to read:

19 **"40-5-303. Petition for income deduction -- who may initiate.** A petition for an income deduction for the
20 payment of delinquent child support payments may be made by:

21 (1) the person named as the recipient of the child support payments in the child support order;

22 (2) the child or the guardian of the child named in the child support order; or

23 (3) the department of ~~family services or the department of social and rehabilitation~~ public health and human
24 ~~services of the state of Montana.~~

25
26 **Section 138.** Section 40-5-315, MCA, is amended to read:

27 **"40-5-315. Immediate income deductions.** (1) Notwithstanding any provision in this part requiring a
28 delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2), the salaries and
29 wages of a person obligated to pay child support by an order of a district court issued after October 1, 1991, are
30 subject to an immediate deduction order under 40-5-308 on the effective date of the order, regardless of whether there
31 is a delinquency.

32 (2) An obligor's salaries and wages are not subject to deduction under this section in any case in which the
33 district court finds:

34 (a) that there is good cause not to require immediate deduction; or

(b) that there is an alternative arrangement between the parties for the payment of support that provides sufficient security to ensure compliance with the arrangement.

(3) (a) For the purposes of subsection (2), a finding of good cause not to require immediate deduction must, at a minimum, be based on:

(i) a written determination and explanation by the district court as to why implementation of immediate deductions is not in the best interests of the child; and

(ii) in cases involving the modification of support orders, proof of timely payment of previously ordered support.

(b) As used in subsection (2)(b), "alternative arrangement" means a written agreement that is signed by the obligor and obligee and, in cases in which there is an assignment of support rights under 53-2-613, signed by the department of ~~social and rehabilitation~~ public health and human services, and that has been approved and entered into the record by the district court that issued or modified the support order.

(4) The clerk of court shall administer immediate income deductions under this section. The clerk of court, at any time after docketing the support order or modification of a support order, at the request of the obligee, and without need for amendment to the support order or for any further action by the district court, shall issue the order for income deductions provided for by 40-5-308 for service upon the obligor's employer. The deduction order must direct the employer to promptly deliver the amount deducted to the clerk of court for distribution to the obligee.

(5) Wage deductions under this section may be terminated only when:

(a) the obligation to pay support has terminated and all arrearages are paid in full;

(b) the obligor requests termination and the obligee and obligor have entered into an alternative arrangement as set forth in subsection (2)(b); or

(c) the department has superseded the deduction order under authority of Title 40, chapter 5, part 4.

(6) If a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages occur prior to beginning the deductions, the arrearages may be added to the deduction order only after compliance with the notice of hearing requirements of 40-5-305.

(7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-184 or other law, the support order is subject to immediate orders to deduct income under this section.

(b) Withholding income under this section must be imposed when an obligor has wages or salaries derived from within this state and the support order was issued in another state.

(8) This section applies only to support orders that are not being enforced by the department under Title IV-D of the Social Security Act. The withholding of income for support orders being enforced by the department is provided for in Title 40, chapter 5, part 4, and those procedures, if applicable, supersede the provisions of this section."

Section 139. Section 40-5-402, MCA, is amended to read:

"40-5-402. Purpose -- applicability. (1) The purpose of this part is to provide a more effective and efficient

1 way to guarantee the support of dependent children by the person or persons primarily responsible for such support
2 by ensuring that the support of children is the highest priority in the allocation of a responsible parent's income.

3 (2) This part applies to all support obligations being enforced or collected by the department of ~~social and~~
4 ~~rehabilitation~~ public health and human services pursuant to Title IV-D of the Social Security Act.

5 (3) When the requirements of this part are met, an employer or other payor of income to a person having a
6 support obligation under a court or administrative order must be directed to withhold from the person's income in an
7 amount sufficient to meet the support obligation and to defray any arrearages that are due or may become due.

8 (4) Unless an exception under 40-5-411(4) is contained in a support order, withholding of income is required
9 under this part without need for any amendment to the support order involved or any action by the court or entity that
10 issued the support order even though the support order did not address withholding or the support order provided for
11 other payment arrangements.

12 (5) Withholding, once commenced, applies to all current and subsequent payors of income to a person
13 obligated to pay support until the withholding is terminated as provided by this part.

14 (6) The provisions for income withholding under this part take precedence over any other law or court order."
15

16 **Section 140.** Section 40-5-403, MCA, is amended to read:

17 **"40-5-403. Definitions.** As used in this part, the following definitions apply:

18 (1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and signed by
19 the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the
20 record of the court or administrative authority issuing or modifying the support order.

21 (2) "Department" means the department of ~~social and rehabilitation~~ public health and human services provided
22 for in 2-15-2201.

23 (3) "Income" means any form of periodic payment to a person, including earnings and wages. However,
24 income does not include:

25 (a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local
26 taxes and social security; and

27 (b) any amounts exempted from judgment, execution, or attachment by federal or state law.

28 (4) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another
29 state to which a person has assigned the right to receive current and accrued support payments.

30 (5) "Obligor" means a person who owes a duty to make payments under a support order.

31 (6) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm,
32 corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject
33 to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

34 (7) "Support order" means an order of the district court of the state of Montana, an order of a court of

1 appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of
2 this chapter, or an order established by administrative hearing process of an agency of another state with functions
3 similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for
4 temporary or final periodic payment of funds for the support of a child. Support order further includes the following:

5 (a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor
6 child;

7 (b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent
8 of a child for whom child support is awarded under the same order; and

9 (c) an order requiring payment of interest due on unpaid judgments for child support."

10
11 **Section 141.** Section 40-5-701, MCA, is amended to read:

12 **"40-5-701. Definitions.** As used in this part, the following definitions apply:

13 (1) (a) "Child" means:

14 (i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed
15 forces of the United States;

16 (ii) a person under 19 years of age who is still in high school;

17 (iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person
18 reaching 18 years of age; and

19 (iv) in IV-D cases, a person for whom:

20 (A) support rights are assigned under 53-2-613;

21 (B) a public assistance payment has been made;

22 (C) the department is providing support enforcement services under 40-5-203; or

23 (D) the department has received a referral for interstate services from an agency of another state under the
24 provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

25 (b) The term may not be construed to limit the ability of the department to enforce a support order according
26 to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

27 (2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater
28 than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

29 (3) "Department" means the department of ~~social and rehabilitation~~ public health and human services.

30 (4) "IV-D case" means a case in which the department is providing support enforcement services as a result
31 of:

32 (a) an assignment of support rights under 53-2-613;

33 (b) a payment of public assistance;

34 (c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(5) "License" means a license, certificate, registration, or authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, or profession or any other privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(8) "Obligor" means a person who owes a duty of support.

(9) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

(10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

(11) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child for whom the person awarded maintenance is the custodial parent.

(12) "Support enforcement entity" means:

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

(13) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

- 1 (c) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or
2 (d) an administrative agency of another state with a hearing function and process similar to those of the
3 department."

4
5 **Section 142.** Section 40-5-704, MCA, is amended to read:

6 **"40-5-704. Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of an order suspending a license,
7 a licensing authority shall implement the suspension of the license by:

- 8 (a) determining if it has issued a license to the obligor whose name appears on the order;
9 (b) entering the suspension on the appropriate records;
10 (c) reporting the suspension as appropriate; and
11 (d) if required by law, demanding surrender of the suspended license.

12 (2) An order issued by a support enforcement entity under 40-5-703 suspending a license must be processed
13 by the licensing authority without an additional review or hearing involving the licensing authority concerning
14 suspension of the license.

15 (3) Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial,
16 termination, or renewal of a license, an order issued by a support enforcement entity suspending a license must be
17 implemented by the licensing authority and continues until the support enforcement entity advises the licensing
18 authority that the suspension has been stayed or terminated.

19 (4) In the event that a license is suspended, any funds paid by the obligor to the licensing authority for costs
20 related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

21 (5) Unless an order staying suspension of a license is in effect, an obligor who continues to engage in the
22 business, occupation, profession, or other licensed activity while the license is suspended under this section is guilty
23 of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 or more than \$500 or by
24 imprisonment in the county jail for a term not to exceed 6 months, or both. Upon conviction of a second or subsequent
25 violation, the obligor shall be punished by a fine of not less than \$500 or more than \$2,000 or by imprisonment in the
26 county jail for a term not to exceed 1 year, or both. The support enforcement entity or the licensing authority may elect
27 the remedy under this section or any other remedy provided for engaging in a licensed activity without a license or
28 while the license is suspended.

29 (6) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with
30 this part.

31 (7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the
32 support enforcement entity suspending a license.

33 (8) To the extent that inconsistencies exist between this part and the procedural requirements for suspension
34 of a license issued by the department of health and environmental sciences, this part supersedes those requirements."

1 **Section 143.** Section 40-6-105, MCA, is amended to read:

2 **"40-6-105. Presumption of paternity.** (1) A ~~man~~ person is presumed to be the natural father of a child if:

3 (a) ~~he the presumed father~~ and the child's natural mother are or have been married to each other and the child
4 is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of
5 invalidity, or divorce or after a decree of separation is entered by a court;

6 (b) before the child's birth, ~~he the presumed father~~ and the child's natural mother have attempted to marry
7 each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be
8 declared invalid, and:

9 (i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted
10 marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

11 (ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the
12 termination of cohabitation;

13 (c) after the child's birth, ~~he the presumed father~~ and the child's natural mother have married or attempted
14 to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or
15 could be declared invalid, and:

16 (i) ~~he the presumed father~~ has acknowledged his paternity of the child in writing filed with the department
17 of public health and ~~environmental sciences~~ human services or with the district court for the county where ~~he the~~
18 presumed father resides; or

19 (ii) with ~~his~~ consent, ~~he the presumed father~~ is named as the child's father on the child's birth certificate; or

20 (iii) ~~he the presumed father~~ is obligated to support the child under a written voluntary promise or by court
21 order;

22 (d) while the child is under the age of majority, ~~he the presumed father~~ receives the child into ~~his the~~ home
23 and openly holds out the child as ~~his the presumed father's~~ natural child; or

24 (e) ~~he the presumed father~~ acknowledges ~~his~~ paternity of the child in a writing filed with the department of
25 public health and ~~environmental sciences~~ human services or with the district court of the county where ~~he the~~
26 presumed father resides, which court or department shall promptly inform the mother of the filing of the
27 acknowledgment, and ~~she the mother~~ does not dispute the acknowledgment within a reasonable time after being
28 informed ~~thereof~~, in a writing filed with the department of public health and ~~environmental sciences~~ human services
29 or with the district court of the county where the acknowledgment was filed. If another ~~man~~ person is presumed under
30 this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed
31 father or after the presumption has been rebutted.

32 (2) A presumption under this section may be rebutted in an appropriate action by a preponderance of the
33 evidence."
34

1 **Section 144.** Section 40-6-106, MCA, is amended to read:

2 **"40-6-106. Artificial insemination.** (1) If, under the supervision of a licensed physician and with the consent
3 of ~~her~~ the woman's husband, a wife is inseminated artificially with semen donated by a ~~man~~ person not her husband,
4 the husband is treated in law as if ~~he~~ the husband were the natural father of a child ~~thereby~~ conceived by the
5 insemination. The husband's consent must be in writing and signed by ~~him~~ the husband and ~~his~~ the wife. The
6 physician shall certify their signatures and the date of the insemination and file the husband's consent with the
7 department of public health and environmental sciences human services, where it ~~shall~~ must be kept confidential and
8 in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers
9 and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the
10 supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

11 (2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman
12 other than the donor's wife is treated in law as if ~~he~~ the donor were not the natural father of a child ~~thereby~~
13 by artificial insemination."

14
15 **Section 145.** Section 40-6-107, MCA, is amended to read:

16 **"40-6-107. Determination of father and child relationship -- who may bring action.** (1) Any interested party
17 may bring an action for the purpose of determining the existence or nonexistence of the father and child relationship
18 presumed pursuant to 40-6-105.

19 (2) An action to determine the existence of the father and child relationship with respect to a child who has
20 no presumed father under 40-6-105 may be brought by the child, the mother or personal representative of the child,
21 ~~the department of social and rehabilitation services or its appropriate local affiliate,~~ the department of family public
22 health and human services or its appropriate local affiliate, the personal representative or a parent of the mother if the
23 mother has died, a ~~man~~ person alleged or alleging ~~himself~~ to be the father, or the personal representative or a parent
24 of the alleged father if the alleged father has died or is a minor.

25 (3) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with
26 40-6-114(2), between an alleged or presumed father and the mother or child does not bar an action under this section.

27 (4) If an action under this section is brought before the birth of the child, all proceedings ~~shall~~ must be stayed
28 until after the birth, except service of process and the taking of depositions to perpetuate testimony."

29
30 **Section 146.** Section 40-6-110, MCA, is amended to read:

31 **"40-6-110. Parties.** The child must be made a party to the action. A minor must be represented by the minor's
32 general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child
33 as guardian or otherwise. The court may not appoint the department of family public health and human services or any
34 of its staff as guardian ad litem for the child. The natural mother, each ~~man~~ person presumed to be the father under

1 40-6-105, and each ~~man~~ person alleged to be the natural father must be made parties or, if not subject to the
2 jurisdiction of the court, must be given notice of the action in a manner prescribed by the court and must be given an
3 opportunity to be heard. The court may align the parties."

4
5 **Section 147.** Section 40-6-116, MCA, is amended to read:

6 **"40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or
7 nonexistence of the parent and child relationship is determinative for all purposes.

8 (2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order
9 that a substitute birth certificate be issued under 40-6-123.

10 (3) (a) The judgment or order may contain any other provision directed against the appropriate party to the
11 proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of
12 bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

13 (b) Except when the financial responsibility of a responsible parent is in the process of being determined
14 pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision
15 concerning the duty of child support.

16 (c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy
17 and confinement.

18 (4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

19 (b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu
20 of periodic payments of support.

21 (c) The court may limit the father's liability for past support of the child to the proportion of the expenses
22 already incurred that the court considers just.

23 (5) In determining the amount to be paid by a parent for support of the child and the period during which the
24 duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

25 (a) the needs of the child, including medical needs;

26 (b) the standard of living and circumstances of the parents;

27 (c) the relative financial means of the parents;

28 (d) the earning ability of the parents;

29 (e) the need and capacity of the child for education, including higher education;

30 (f) the age of the child;

31 (g) the financial resources and the earning ability of the child;

32 (h) the responsibility of the parents for the support of others;

33 (i) the value of services contributed by the custodial parent;

34 (j) the cost of day care for the child; and

1 (k) any custody arrangement that is ordered or decided upon.

2 (6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the
3 child support obligation by applying the standards in this section and the uniform child support guidelines adopted by
4 the department of ~~social and rehabilitation~~ public health and human services pursuant to 40-5-209. The guidelines must
5 be used in all cases, including cases in which the order is entered upon the default of a party and those in which the
6 parties have entered into an agreement regarding the support amount. A verified representation of a defaulting parent's
7 income, based on the best information available, may be used when a parent fails to provide financial information for
8 use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and
9 reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards
10 and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

11 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its
12 reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is
13 inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to
14 a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include
15 a statement of the amount of support that would have ordinarily been ordered under the guidelines.

16 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's
17 support, the court shall state its reasons for not ordering child support.

18 (7) The judgment or order concerning child support and each modification of a judgment or order for child
19 support must include a provision addressing health insurance coverage in the following cases:

20 (a) If either party has available through an employer or other organization health insurance coverage for the
21 child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or
22 order may contain a provision requiring that coverage for the child or children be continued or obtained.

23 (b) In the event that health insurance required in a child support judgment or order becomes unavailable to
24 the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of
25 an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

26 (c) The parties may by written agreement provide for the health care coverage required by this section, subject
27 to the approval of the court.

28 (d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition
29 to and not in substitution, in whole or in part, for the child support obligation.

30 (8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support
31 order, a support obligation established by judgment, decree, or order under this section, whether temporary or final,
32 and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or
33 delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the
34 exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to

1 withholding for the payment of support without need for an amendment to the support order or for any further action
2 by the court.

3 (b) ~~After October 1, 1993, if~~ If a support order subject to income withholding is expressed in terms of a
4 monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the
5 obligor's regular pay period.

6 (9) For the purposes of income withholding as provided in subsection (8), whenever the district court
7 establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the
8 parent obligated to pay support to inform the court and, if the department of ~~social and rehabilitation~~ public health and
9 human services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment,
10 decree, or order, the department, of the following:

11 (a) the name and address of the parent's current employer;

12 (b) whether the parent has access to health insurance through an employer or other group; and

13 (c) if insurance coverage is available, the health insurance policy information.

14 (10) If the department of ~~social and rehabilitation~~ public health and human services is providing or later
15 provides support enforcement services under Title IV-D of the Social Security Act, each district court order or
16 modification of an order must contain a statement providing that the noncustodial parent, without further order of the
17 court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a
18 warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

19 (11) Each district court judgment, decree, or order establishing a final child support obligation under this part
20 and each modification of a final order for child support must contain a statement that the order is subject to review and
21 modification by the department of ~~social and rehabilitation~~ public health and human services upon the request of the
22 department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D
23 of the Social Security Act for the enforcement of the order."

24
25 **Section 148.** Section 40-6-123, MCA, is amended to read:

26 "40-6-123. **Birth records.** (1) Upon order of a court of this state or upon request of a court of another state,
27 the department of public health and environmental sciences ~~environmental sciences~~ human services shall prepare a substitute certificate of birth
28 consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

29 (2) The fact that the father and child relationship was declared after the child's birth ~~shall~~ may not be
30 ascertainable from the new certificate but the actual place and date of birth ~~shall~~ must be shown.

31 (3) The evidence upon which the new certificate was made and the original birth certificate ~~shall~~ must be kept
32 in a sealed and confidential file and ~~shall be~~ is subject to inspection only upon consent of the court and all interested
33 persons or in exceptional cases only upon an order of the court for good cause shown."

1 **Section 149.** Section 40-6-126, MCA, is amended to read:

2 **"40-6-126. Notice of intent to claim paternity.** (1) Before the birth of a child born out of wedlock, a person
3 claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district
4 court in any county of this state. The form of the notice ~~shall~~ must be prescribed by the director of the department of
5 public health and ~~environmental sciences~~ human services and supplied to the clerks of the district courts. The notice
6 ~~shall must~~ include the claimant's address. On the next business day after receipt of the notice, the court shall transmit
7 the notice to the records and statistics bureau of the department of public health and ~~environmental sciences~~ human
8 services. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the
9 notice by first-class mail to the mother of the child at the stated address.

10 (2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with
11 40-6-105 ~~shall be~~ is presumed to be the father of the child for purposes of this part unless the mother denies that the
12 claimant is the father. ~~Such~~ The notice is admissible in a paternity proceeding under 40-6-107 and creates a rebuttable
13 presumption as to the paternity of that child for purposes of that section. ~~Such~~ The notice creates a rebuttable
14 presumption as to paternity of the child for purposes of a dependency or neglect proceeding under Title 41, chapter
15 3.

16 (3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges
17 paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the father of the child and any
18 hearing to determine or terminate ~~his~~ paternal rights to the child."

19
20 **Section 150.** Section 40-6-128, MCA, is amended to read:

21 **"40-6-128. Proceeding to determine father's identity and terminate rights.** (1) If a child is born out of wedlock
22 and the mother executes or proposes to execute a release terminating ~~her~~ rights to the child or if the child otherwise
23 becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be
24 relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate
25 the parental rights of the father, unless the father's relationship to the child has been previously terminated or
26 determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of
27 the father and to determine or terminate the rights of the father as provided in this section and in 40-6-129 and
28 40-6-130. This section is not applicable if the father is a person whose consent to adoption is not required under
29 40-8-111.

30 (2) Proof of service of a notice of intent to release or the putative father's verified acknowledgment of notice
31 of intent to release ~~shall must~~ be filed with the court, if ~~such the~~ the notice was given to the putative father. The court shall
32 request the records and statistics bureau of the department of public health and ~~environmental sciences~~ human services
33 to send to the court a copy of any notice of intent to claim paternity of the particular child which the bureau has
34 received.

1 (3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court
2 shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry shall include the
3 following:

4 (a) whether the mother was married at the time of conception of the child or at any time ~~thereafter~~ after
5 conception;

6 (b) whether the mother was cohabiting with a ~~man~~ person of the opposite sex at the time of conception or
7 birth of the child;

8 (c) whether the mother has received support payments or promises of support payments with respect to the
9 child or in connection with ~~her~~ the pregnancy; or

10 (d) whether any ~~man~~ person has formally or informally acknowledged or declared ~~his~~ possible paternity of the
11 child.

12 (4) Notwithstanding this section or any other provisions of law and in consideration of ~~her~~ the mother's right
13 to privacy, ~~as a~~ mother of a child who is the subject of proceedings under this part may not be compelled to testify
14 concerning or to divulge the identity of the father or possible father of that child.

15 (5) Notice of the hearing ~~shall~~ must be served upon the following persons in the manner appropriate under
16 the Montana Rules of Civil Procedure or any manner which the court shall direct:

17 (a) a putative father who has timely filed a notice of intent to claim paternity as provided in 40-6-126 or
18 40-6-127;

19 (b) a putative father who has not been served with a notice of intent to release at least 30 days before the
20 expected date of delivery specified in the notice of intent to release;

21 (c) any other ~~male~~ person who was not served pursuant to 40-6-127(2) with a notice of intent to release and
22 who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of
23 the child.

24 (6) The notice of hearing ~~shall~~ must inform the putative father that his failure to appear at the hearing
25 constitutes a denial of ~~his~~ the putative father's interest in custody of the child, which denial will result in the court's
26 termination of ~~his~~ the putative father's rights to the child.

27 (7) Proof of service of the notice of hearing required by subsection (5) ~~shall~~ must be filed with the court. A
28 verified acknowledgment of service by the party to be served is proof of personal service. Notice of hearing need not
29 be required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive
30 it is sufficient. If ~~as a~~ person has not been identified as the natural father or possible father, the court, on the basis of
31 all information available, shall determine whether publication or public posting of notice of the proceeding is likely to
32 lead to identification and if so shall order publication or public posting at the times and places and in the manner it
33 considers appropriate. The name of the natural mother may be included in ~~such~~ the publication only with ~~her~~ the
34 mother's written consent.

1 (8) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon
2 the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the
3 identity of the father cannot be determined.

4 (9) If the court finds that the father of the child is a person who did not receive either a timely notice of intent
5 to release pursuant to 40-6-127 or a notice required pursuant to subsection (5) of this section and who has not waived
6 ~~his~~ the right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that
7 person is served with a notice of hearing."

8
9 **Section 151.** Section 40-6-135, MCA, is amended to read:

10 **"40-6-135. Relinquishment of parental rights -- form, execution, and revocation.** (1) A parent or guardian who
11 proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by executing a
12 relinquishment by which all parental rights to the child are voluntarily relinquished to the department of ~~family public~~
13 health and human services, a licensed adoption agency, or the prospective adoptive parents. A parent may not execute
14 a relinquishment to the department or a licensed adoption agency unless the department or the agency has agreed to
15 accept custody of the child until the child is adopted.

16 (2) A relinquishment may be executed at any time, except that a birth mother may not execute a
17 relinquishment before the child is 72 hours old.

18 (3) Except as otherwise provided in this section, a relinquishment must be by a separate instrument executed
19 before a notary public.

20 (4) If the person from whom a relinquishment is required is a member of any of the armed services or is in
21 prison, the relinquishment may be executed and acknowledged before any person authorized by law to administer
22 oaths.

23 (5) If the relinquishment is executed in another state or country, the court having jurisdiction over the adoption
24 proceeding in this state shall determine whether the relinquishment was executed in accordance with the laws of that
25 state or country and may not proceed unless it finds that the relinquishment was so executed.

26 (6) Upon the filing of a properly and voluntarily executed relinquishment of a child by a parent or guardian,
27 the court shall immediately issue an order terminating the rights of that parent or guardian to that child. If the rights
28 of both parents, the surviving parent, or the guardian have been terminated and if the department of ~~family public health~~
29 and human services or a licensed adoption agency has agreed to accept custody of the child until the child is adopted,
30 the court shall issue an order committing the child to the department or to the licensed adoption agency to which the
31 relinquishment was given.

32 (7) Entry of an order terminating the rights of both parents pursuant to subsection (6) terminates the
33 jurisdiction of the district court over the child in any divorce or separate maintenance action.

34 (8) Upon petition of a person who executed a relinquishment and of the department of ~~family public health~~

1 and human services or the licensed adoption agency to which the child was relinquished, the court with which the
2 relinquishment was filed may grant a hearing to consider whether the relinquishment should be revoked. A
3 relinquishment may not be revoked if the child has been placed for adoption. A verbatim record of testimony related
4 to the petition must be made."

5
6 **Section 152.** Section 40-8-103, MCA, is amended to read:

7 **"40-8-103. Definitions.** As used in this chapter, unless the context otherwise requires the following definitions
8 apply:

9 (1) "Adoption" means the act of creating the legal relationship between parent and child when it does not
10 exist genetically.

11 (2) "Adoptive parent" means an adult who has become the mother or father of a child through the legal
12 process of adoption.

13 (3) "Agency" means a public or voluntary agency licensed by any jurisdiction within the United States and
14 expressly empowered to place children as a preliminary to a possible adoption.

15 (4) "Birth parent" means the mother or father of genetic origin of a child but does not include a putative father
16 of a child.

17 (5) "Child" means any person under 18 years of age.

18 (6) "Court" means a Montana district court or a tribal court of any Montana Indian reservation.

19 (7) "Department" means the department of family public health and human services, ~~as established and~~
20 ~~provided for in 2-15-2404 2-15-2201.~~

21 (8) "Extended family member" means an adult who is the child's grandparent, aunt or uncle, or brother or
22 sister.

23 (9) "Home study" means the process of assisting the prospective adoptive parent or family to assess its own
24 readiness to adopt and a determination by the department or a licensed child-placing agency of the compliance of the
25 parent or family and its residence with applicable standards.

26 (10) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights
27 have not been terminated.

28 (11) "Placement for adoption" means the transfer of physical custody of a child with respect to whom all
29 parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt
30 the child.

31 (12) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect
32 to a child by a parent to an agency or individual pursuant to 40-6-135, 40-8-109, or 40-8-117, whichever is
33 applicable."

1 **Section 153.** Section 40-8-110, MCA, is amended to read:

2 **"40-8-110. Adoption services account.** There is an adoption services account in the special revenue fund.
3 The fees collected by the department of ~~family~~ public health and human services under 40-8-109 must be deposited
4 into this account and may be used by the department for adoption service."

5
6 **Section 154.** Section 40-8-111, MCA, is amended to read:

7 **"40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there have been
8 filed written consents to adoption executed by:

9 (a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father
10 or mother:

11 (i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201;
12 endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward
13 the child, as provided in 45-5-625;

14 (ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the
15 child;

16 (iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child,
17 as defined in 41-3-102(8)(d);

18 (iv) who has caused the child to be maintained by any public or private children's institution, charitable agency,
19 or any licensed adoption agency or the department of ~~family~~ public health and human services of the state of Montana
20 for a period of 1 year without contributing to the support of the child during ~~said~~ that period, if able;

21 (v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the
22 support of the child during a period of 1 year before the filing of a petition for adoption; or

23 (vi) whose parental rights have been judicially terminated;

24 (b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated
25 by judicial proceedings and ~~such the~~ guardian has authority by order of the court appointing ~~him~~ the guardian to
26 consent to the adoption;

27 (c) the executive head of an agency if the child has been relinquished for adoption to ~~such the~~ agency or if
28 the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been
29 legally vested in ~~such the~~ agency with authority to consent to adoption of the child; or

30 (d) any person having legal custody of a child by court order if the parental rights of the parents have been
31 judicially terminated, but in ~~such that~~ case the court having jurisdiction of the custody of the child ~~must~~ shall consent
32 to adoption and a certified copy of its order ~~shall~~ must be attached to the petition.

33 (2) The consents required by subsections (1)(a) and (1)(b) ~~shall~~ must be acknowledged before an officer
34 authorized to take acknowledgments or witnessed by a representative of the department of ~~family~~ public health and

1 human services or of an agency or witnessed by a representative of the court."

2
3 **Section 155.** Section 40-8-121, MCA, is amended to read:

4 **"40-8-121. Petition for adoption.** (1) A petition for adoption ~~shall~~ must be filed in duplicate, verified by the
5 petitioners, and ~~shall~~ must specify:

6 (a) the full names, ages, and place of residence of the petitioners and, if married, the place and date of the
7 marriage;

8 (b) when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

9 (c) the date and place of birth of child, if known;

10 (d) the name used for the child in the proceeding and, if a change in name is desired, the new name;

11 (e) that it is the desire of the petitioners that the relationship of parent and child be established between them
12 and the child;

13 (f) a full description and statement of value of all property owned or possessed by the child;

14 (g) facts, if any, which excuse consent on the part of a parent to the adoption.

15 (2) One copy of the petition ~~shall~~ must be retained by the court. The other ~~shall~~ must be sent to the
16 department of ~~family~~ public health and human services or to the child-placing agency participating in the adoption
17 proceeding.

18 (3) Any written consent required by this part may be attached to the petition or may be filed after the filing
19 of the petition, with the consent of the court."
20

21 **Section 156.** Section 40-8-124, MCA, is amended to read:

22 **"40-8-124. Interlocutory and final decree.** (1) Upon examination of the report described in 40-8-122, if ~~such~~
23 a report has been considered necessary by the court, and after hearing, the court may issue an interlocutory decree
24 giving the care and custody to the petitioners pending the further order of the court.

25 (2) When a petition has been filed seeking the adoption of a child, the court ~~must~~ shall cause service of
26 process to be made on the parent or parents of the child, except in those cases ~~hereinafter~~ provided in this section,
27 in the following manner:

28 (a) The court shall order a citation to issue to the parent or parents in the name of the state of Montana and
29 under the seal of the court directing ~~such~~ the parent or parents to appear in court at a time to be fixed by the court
30 and show cause why the petition should not be granted.

31 (b) ~~Such~~ The citation, together with a copy of the petition for adoption, ~~shall~~ must be personally served upon
32 ~~such~~ the parent or parents. If, however, ~~any such~~ a parent or parents cannot be found within this state, service may
33 be ~~had~~ made by publication of a copy of the citation in the manner provided for the publication of summons by Rule
34 4, M.R.Civ.P.

(3) If, after completion of ~~such~~ service, any parent ~~so~~ served does not appear, the court may act upon the petition and the order of the court ~~thereon shall be~~ is binding upon all persons ~~so~~ served; ~~provided that any such~~ However, a person may appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

(4) The petitioners and the child shall appear at the hearing, unless the presence of the child is waived by the court.

(5) Service of process, ~~as aforesaid,~~ need not be made on a parent who has consented in writing to an adoption or on any parent whose consent to adoption is not required under the provisions of 40-8-111, and service of process ~~shall~~ may not be made on any parent who has relinquished ~~his~~ the child to the department of ~~family~~ public health and human services or an adoption agency licensed by the department.

(6) After an interlocutory decree has been issued by the court or after the date of placement for adoption, the investigator, if any, shall observe the child in ~~his~~ the child's adoptive home and report in writing to the court within 6 months on any circumstances or conditions ~~which~~ that may have a bearing on the adoption. After 6 months from the date of the interlocutory decree or the date of placement for adoption, the petitioners may apply to the court for a final decree of adoption. The court ~~shall thereupon~~ must set a time and place for final hearing. Notice of the time and date of the hearing ~~shall~~ must be served on the department of ~~family~~ public health and human services or the licensed child-placing agency or any other person named by the court. The investigator, if any, shall file with the court a written report of ~~his~~ the investigator's findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree or the date of placement for adoption. After hearing on ~~said~~ the application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order ~~shall~~ must be made as to the future custody of the child."

Section 157. Section 40-8-126, MCA, is amended to read:

"40-8-126. Confidentiality of record and proceedings. (1) Unless the court shall otherwise order, all hearings held in proceedings under this part ~~shall be~~ are confidential and ~~shall~~ must be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption ~~shall~~ must be kept as a permanent record of the court and withheld from inspection. ~~No~~ A person ~~shall~~ may not have access to ~~such~~ the records except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered; or

(b) as provided in 50-15-206.

(3) All files and records pertaining to ~~said~~ the adoption proceedings in the county departments of public welfare, the department of ~~social and rehabilitation services,~~ the department of family public health and human services,

1 or any authorized agencies ~~shall be~~ are confidential and must be withheld from inspection except upon order of court
2 for good cause shown or as provided in 50-15-206."

3
4 **Section 158.** Section 40-9-102, MCA, is amended to read:

5 **"40-9-102. Grandparent visitation rights.** (1) Except as provided in subsection (5), the district court may grant
6 to a grandparent of a child reasonable visitation rights, including but not limited to visitation rights regarding a child
7 who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under
8 Title 41 or this title. The department of ~~family~~ public health and human services must be given notice of a petition for
9 grandparent visitation regarding a child who is the subject of, or as to whom a disposition has been made during, an
10 administrative or court proceeding under Title 41 or this title.

11 (2) Visitation rights granted under this section may be granted only upon a finding by the court, after a
12 hearing, that the visitation would be in the best interest of the child.

13 (3) ~~No~~ A person may not petition the court under this section more often than once every 2 years unless there
14 has been a significant change in the circumstances of;

15 (a) the child;

16 (b) the child's parent, guardian, or custodian; or

17 (c) the child's grandparent.

18 (4) The court may appoint an attorney to represent the interests of a child with respect to visitation when ~~such~~
19 the interests are not adequately represented by the parties to the proceeding.

20 (5) This section does not apply if the child has been adopted by a person other than a stepparent or a
21 grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than
22 a stepparent or a grandparent."

23
24 **Section 159.** Section 41-3-102, MCA, is amended to read:

25 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

26 (1) "A person responsible for a child's welfare" means;

27 (a) the child's parent, guardian, or foster parent;

28 (b) a staff person providing care in a day-care facility;

29 (c) an employee of a public or private residential institution, facility, home, or agency; or

30 (d) any other person legally responsible for the child's welfare in a residential setting.

31 (2) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

32 (3) (a) "Adequate health care" means any medical care, including the prevention of the withholding of
33 medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

34 (b) ~~Nothing in this~~ This chapter may not be construed to require or justify a finding of child abuse or neglect

1 for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, ~~nothing~~
2 ~~in this chapter may not~~ be construed to limit the administrative or judicial authority of the state to ensure that medical
3 care is provided to the child when there is imminent or substantial risk of harm to the child.

4 (4) "Child" or "youth" means any person under 18 years of age.

5 (5) (a) "Child abuse or neglect" means:

6 (i) harm to a child's health or welfare, as defined in subsection (8); or

7 (ii) threatened harm to a child's health or welfare, as defined in subsection (15).

8 (b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a
9 person responsible for the child's welfare.

10 (6) "Department" means the department of ~~family public health and human services provided for in 2-15-2401~~
11 2-15-2201.

12 (7) "Dependent youth" means a youth:

13 (a) who is abandoned;

14 (b) who is without parents or guardian or not under the care and supervision of a suitable adult;

15 (c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;

16 (d) who is destitute;

17 (e) who is dependent upon the public for support; or

18 (f) whose parent or parents have voluntarily relinquished custody and whose legal custody has been
19 transferred to a licensed agency.

20 (8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person
21 responsible for the child's welfare:

22 (a) inflicts or allows to be inflicted upon the child physical or mental injury;

23 (b) commits or allows to be committed sexual abuse or exploitation of the child;

24 (c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing,
25 shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable
26 means to do so;

27 (d) abandons the child by leaving the child under circumstances that make reasonable the belief that the
28 parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical
29 custody for a period of 6 months and during that period does not manifest to the child and the person having physical
30 custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care
31 of the child; or

32 (e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate
33 the parents have failed.

34 (9) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional

1 hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and
2 responsibilities of a person who is 18 years of age or older.

3 (10) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological
4 functioning.

5 (11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ
6 or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function
7 sustained as a result of excessive corporal punishment.

8 (12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent
9 exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

10 (13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution
11 offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children
12 as described in 45-5-625.

13 (14) "Social worker" means an employee of the department whose duties generally involve the provision of
14 either child or adult protective services, or both.

15 (15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or
16 welfare.

17 (16) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening
18 conditions by providing treatment ~~including appropriate nutrition, hydration, and medication~~ that, in the treating
19 physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting
20 the conditions. ~~However, the~~ The term does not include the failure to provide treatment ~~other than appropriate~~
21 nutrition, hydration, or medication to an infant when, in the treating physician's or physicians' reasonable medical
22 judgment:

23 (a) the infant is chronically and irreversibly comatose;

24 (b) the provision of treatment would:

25 (i) merely prolong dying;

26 (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

27 (iii) otherwise be futile in terms of the survival of the infant; or

28 (c) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment
29 itself under the circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than
30 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born
31 extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed
32 to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit
33 any existing protections available under state laws regarding medical neglect of children over 1 year of age.

34 (17) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this

1 section."

2
3 **Section 160.** Section 41-3-107, MCA, is amended to read:

4 **"41-3-107. Interagency cooperation.** (1) To effectuate the purposes of this chapter, the department of ~~family~~
5 public health and human services shall cooperate with and shall seek the cooperation and involvement of all appropriate
6 public and private agencies, including health, education, social services, and law enforcement agencies; juvenile courts;
7 and any other agency, organization, or program providing or concerned with human services related to the prevention,
8 identification, or treatment of child abuse or neglect. ~~Such~~ The cooperation and involvement may not include joint case
9 management but may include joint policy planning, public education, information services, staff development, and other
10 training.

11 (2) The department shall enter into a cooperative agreement with other state agencies, as provided in
12 52-2-203, for the purpose of implementing this section."

13
14 **Section 161.** Section 41-3-108, MCA, is amended to read:

15 **"41-3-108. Child protective teams.** The county attorney or the department of ~~family~~ public health and human
16 services may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may
17 assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child
18 and ~~his~~ the child's family. The supervisor of child protective services in a local service area or ~~his~~ the supervisor's
19 designee shall serve as the team's coordinator. Members shall include:

- 20 (1) a social worker;
21 (2) a member of a local law enforcement agency;
22 (3) a representative of the medical profession;
23 (4) a county attorney; and
24 (5) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about
25 Indian culture and family matters."

26
27 **Section 162.** Section 41-3-201, MCA, is amended to read:

28 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have reasonable
29 cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused
30 or neglected, they shall report the matter promptly to the department of ~~family~~ public health and human services or its
31 local affiliate, which then shall notify the county attorney of the county where the child resides.

32 (2) Professionals and officials required to report are:

- 33 (a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care,
34 or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official; or

(h) clergy.

(3) Any person may make a report under this section if ~~he~~ the person knows or has reasonable cause to suspect that a child is abused or neglected.

(4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A clergyperson or priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the clergyperson or priest in ~~his~~ that person's capacity as a clergyperson or priest;

(ii) the statement was intended to be a part of a confidential communication between the clergyperson or priest and a member of ~~his~~ the clergyperson's or priest's church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the clergyperson or priest.

(c) A clergyperson or priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(5) The reports referred to under this section ~~shall~~ must contain:

(a) the names and addresses of the child and ~~his or her~~ the child's parents or other persons responsible for ~~his or her~~ the child's care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible ~~therefor~~ for the injury or neglect; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 163. Section 41-3-202, MCA, is amended to read:

1 **"41-3-202. Action on reporting.** (1) Upon receipt of a report as required by 41-3-201 that a child is or has
2 been abused or neglected, a social worker, ~~or~~ the county attorney, or a peace officer shall promptly conduct a thorough
3 investigation into the home of the child involved or any other place where the child is present, into the circumstances
4 surrounding the injury of the child, and into all other nonfinancial matters which in the discretion of the investigator
5 are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into
6 the financial status of the child's family or of any other person responsible for the child's care except as necessary to
7 ascertain eligibility for federal assistance programs or to comply with the provisions of 41-3-406.

8 (2) The social worker is responsible for assessing the family and planning for the child. If the child is treated
9 at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical
10 practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have
11 the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the
12 social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school
13 attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten
14 through 8th grade.

15 (3) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide
16 protective services to the child and may provide protective services to any other child under the same care. The
17 department ~~will~~ shall advise the county attorney of its investigation.

18 (4) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written
19 report to the department. The department shall maintain a record system containing child abuse and neglect cases.

20 (5) Any person reporting abuse or neglect which involves acts or omissions on the part of a public or private
21 residential institution, home, facility, or agency ~~shall be~~ is responsible for ensuring that the report is made to the
22 department of ~~family~~ public health and human services, its local affiliate, and the county attorney of the county in
23 which the facility is located."
24

25 **Section 164.** Section 41-3-205, MCA, is amended to read:

26 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department of ~~social and~~
27 ~~rehabilitation services, the department of family~~ public health and human services and its local affiliate, the county
28 welfare department, the county attorney, and the court concerning actions taken under this chapter and all records
29 concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Any person
30 who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

31 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court
32 may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

33 (3) Records may also be disclosed to the following persons or entities in this state or any other state:

34 (a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect,

1 or investigate reports of child abuse or neglect;

2 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or
3 child who is the subject of a report in the records;

4 (c) a licensed health or mental health professional who is treating the family or child who is the subject of a
5 report in the records;

6 (d) a parent or guardian of the child who is the subject of a report in the records or other person responsible
7 for the child's welfare, without disclosure of the identity of any person who reported or provided information on the
8 alleged child abuse or neglect incident contained in the records;

9 (e) a child named in the records who was allegedly abused or neglected or the child's guardian ad litem;

10 (f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of
11 assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

12 (g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care
13 facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of
14 the investigation;

15 (h) an employee of the department if disclosure of the records is necessary for administration of programs
16 designed to benefit the child;

17 (i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to
18 meet requirements of the federal Indian Child Welfare Act;

19 (j) a youth probation officer who is working in an official capacity with the child who is the subject of a report
20 in the records;

21 (k) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case
22 involving child abuse or neglect;

23 (l) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review
24 board established under Title 41, chapter 3, part 10;

25 (m) a school employee participating in an interview of a child by a social worker, county attorney, or peace
26 officer as provided in 41-3-202;

27 (n) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed
28 in subsection (3); or

29 (o) members of a local interagency staffing group provided for in 52-2-203.

30 (4) A person who is authorized to receive records under this section shall maintain the confidentiality of the
31 records and may not disclose information in the records to anyone other than the persons described in subsection
32 (3)(a).

33 (5) ~~Nothing in this~~ This section is not intended to affect the confidentiality of criminal court records or records
34 of law enforcement agencies."

1 **Section 165.** Section 41-3-208, MCA, is amended to read:

2 **"41-3-208. Rulemaking authority.** (1) The department of ~~family~~ public health and human services shall adopt
3 rules to govern the procedures used by department personnel in preparing and processing reports and in making
4 investigations authorized by this chapter.

5 (2) The department may adopt rules to govern the disclosure of case records containing reports of child abuse
6 and neglect."

7
8 **Section 166.** Section 41-3-301, MCA, is amended to read:

9 **"41-3-301. Emergency protective service.** (1) Any child protective social worker of the department of ~~family~~
10 public health and human services, a peace officer, or the county attorney who has reason to believe any youth is in
11 immediate or apparent danger of harm may immediately remove the youth and place ~~him~~ the youth in a protective
12 facility. The department may make a request for further assistance from the law enforcement agency or take
13 appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other
14 person having legal custody of the youth at the time the placement is made or as soon ~~thereafter~~ after placement as
15 possible.

16 (2) ~~No~~ A child who has been removed from ~~his~~ the child's home or any other place for ~~his~~ the child's
17 protection or care may not be placed in a jail.

18 (3) A petition ~~shall~~ must be filed within 48 hours of emergency placement of a child unless arrangements
19 acceptable to the agency for the care of the child have been made by the parents.

20 (4) The department of ~~family~~ public health and human services shall make ~~such~~ the necessary arrangements
21 for the youth's well-being as are required prior to the court hearing."

22
23 **Section 167.** Section 41-3-302, MCA, is amended to read:

24 **"41-3-302. Responsibility of providing protective services.** (1) The department of ~~family~~ public health and
25 human services ~~shall have~~ has the primary responsibility to provide the protective services authorized by this chapter
26 and ~~shall have~~ has the authority pursuant to this chapter to take temporary or permanent custody of a child when
27 ordered to do so by the court, including the right to give consent to adoption.

28 (2) The department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours
29 a day, 7 days a week."

30
31 **Section 168.** Section 41-3-401, MCA, is amended to read:

32 **"41-3-401. Abuse, neglect, and dependency petitions.** (1) The county attorney, attorney general, or an
33 attorney hired by the county welfare department or office of human services shall be responsible for filing all petitions
34 alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county

1 welfare department or office of human services with the written consent of the county attorney or attorney general,
2 may require all state, county, and municipal agencies, including law enforcement agencies, to conduct ~~such the~~
3 investigations and furnish ~~such the~~ reports as may be necessary.

4 (2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. ~~Such The~~
5 petitions ~~shall must~~ be given preference by the court in setting hearing dates.

6 (3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of
7 Montana. The ~~rules of civil procedure shall~~ Montana Rules of Civil Procedure apply except as ~~herein~~ modified in this
8 section. Proceedings under a petition are not a bar to criminal prosecution.

9 (4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in
10 the petition, if residing in the state, ~~shall must~~ be served personally with a copy of the petition and summons at least
11 5 days prior to the date set for hearing. If ~~such the~~ person or agency cannot be served personally, the person or agency
12 may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of
13 proceedings.

14 (5) In the event personal service cannot be made upon the parents or parent, guardian, or other person or
15 agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion
16 of the court the interests of justice require.

17 (6) If a parent of the child is a minor, notice ~~shall must~~ be given to the minor parent's parents or guardian,
18 and if there is no guardian, the court shall appoint one.

19 (7) Any person interested in any cause under this chapter has the right to appear.

20 (8) Except ~~where when~~ the proceeding is instituted or commenced at the request of the department of ~~family~~
21 public health and human services, a citation ~~shall must~~ be issued and served upon a representative of the department
22 prior to the court hearing.

23 (9) The petition ~~shall must~~:

24 (a) state the nature of the alleged abuse, neglect, or dependency;

25 (b) state the full name, age, and address of the youth and the name and address of ~~his~~ the youth's parents
26 or guardian or person having legal custody of the youth;

27 (c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the
28 action.

29 (10) The petition may ask for the following relief:

30 (a) temporary investigative authority and protective services;

31 (b) temporary legal custody;

32 (c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to
33 adoption;

34 (d) any combination of the ~~above~~ relief provided for in subsections (10)(a) through (10)(c) or ~~such~~ other relief

1 as may be required for the best interest of the youth.

2 (11) The petition may be modified for different relief at any time within the discretion of the court.

3 (12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent
4 party."

5
6 **Section 169.** Section 41-3-402, MCA, is amended to read:

7 **"41-3-402. Petition for temporary investigative authority and protective services.** (1) In cases where it appears
8 that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, attorney general,
9 or an attorney hired by the county welfare department or office of human services may file a petition for temporary
10 investigative authority and protective services.

11 (2) A petition for temporary investigative authority and protective services ~~shall~~ must state the specific
12 authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of
13 being abused or neglected.

14 (3) The petition for temporary investigative authority and protective services ~~shall~~ must be supported by an
15 affidavit signed by the county attorney, attorney general, or an attorney hired by the county welfare department or
16 office of human services or a department of ~~family~~ public health and human services report stating in detail the facts
17 upon which the request is based."

18
19 **Section 170.** Section 41-3-406, MCA, is amended to read:

20 **"41-3-406. Dispositional hearing -- contributions by parents or guardians for youth's care.** (1) If a youth is
21 found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following
22 dispositions to protect the welfare of the youth:

23 (a) permit the youth to remain with the youth's parents or guardian, subject to those conditions and limitations
24 the court may prescribe;

25 (b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in 41-3-408;

26 (c) transfer legal custody to any of the following:

27 (i) the department;

28 (ii) a child-placing agency that is willing and able to assume responsibility for the education, care, and
29 maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth;
30 or

31 (iii) a relative or other individual who, after study by a social service agency designated by the court, is found
32 by the court to be qualified to receive and care for the youth;

33 (d) order any party to the action to do what is necessary to give effect to the final disposition, including
34 undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of

1 money by the department unless the department is notified and a court hearing is set in a timely manner on the
2 proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have
3 been examined.

4 (e) order further care and treatment as the court considers in the best interest of the youth that does not
5 require an expenditure of money by the department unless the department is notified and a court hearing is set in a
6 timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and
7 other resources have been examined.

8 (2) If the youth is transferred to the custody of the department, the court shall examine the financial ability
9 of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and
10 treatment of the youth, including the costs of necessary medical, dental, and other health care.

11 (3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as
12 provided in subsection (2), the court shall order the youth's parents or guardians to pay an amount based on the
13 uniform child support guidelines adopted by the department of ~~social and rehabilitation~~ public health and human services
14 pursuant to 40-5-209.

15 (4) (a) Except as provided in subsection (4)(b), contributions ordered under this section and each modification
16 of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter
17 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for
18 the payment of the contribution without need for an amendment of the support order or for any further action by the
19 court.

20 (b) A court-ordered exception from contributions under this section must be in writing and be included in the
21 order. An exception from the immediate income withholding requirement may be granted if the court finds that there
22 is:

23 (i) good cause not to require immediate income withholding; or

24 (ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

25 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

26 (i) a written determination and explanation by the court of the reasons why the implementation of immediate
27 income withholding is not in the best interests of the child; and

28 (ii) proof of timely payment of previously ordered support in cases involving modification of contributions
29 ordered under this section.

30 (d) An alternative arrangement must:

31 (i) provide sufficient security to ensure compliance with the arrangement;

32 (ii) be in writing and be signed by a representative of the department and the person required to make
33 contributions; and

34 (iii) if approved by the court, be entered into the record of the proceeding.

(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).

(6) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of ~~social and rehabilitation~~ public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of ~~social and rehabilitation~~ public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 171. Section 41-3-702, MCA, is amended to read:

"41-3-702. Children's trust fund account -- nonsupplantation of funds. (1) There is a children's trust fund account in the state special revenue fund in the state treasury. The money in the account is allocated to the Montana children's trust fund board, provided for in 2-15-2402, for funding services and activities under and payment of administrative costs of the child abuse and neglect prevention program provided for in 41-3-701.

(2) Funds deposited in the children's trust fund account may be used only for the program authorized in 41-3-701 and may not be used to pay the expenses of any other program or service administered in whole or in part by the department of ~~family~~ public health and human services."

Section 172. Section 41-3-704, MCA, is amended to read:

"41-3-704. Program costs. The costs incurred by the Montana children's trust fund board in administering the child abuse and neglect prevention program must be paid for with money from the children's trust fund account established by 41-3-702. The board shall keep costs to a minimum and use existing office space, personnel, equipment, and supplies of the department of ~~family~~ public health and human services to the extent possible."

Section 173. Section 41-3-1003, MCA, is amended to read:

"41-3-1003. Establishment of local citizen review board -- membership. (1) Subject to the availability of funds, the youth court judge of a district designated pursuant to 41-3-1002 to operate a pilot program shall establish a local citizen review board in the judicial district to review the case of each child assigned to foster care by the youth court of the judicial district, as provided in Title 41, chapter 5.

(2) A local citizen review board is composed of at least three and not more than five members appointed by the youth court judge of a judicial district designated pursuant to 41-3-1002. Each member appointed must be sworn in by a judge of the judicial district to which the member is appointed to serve.

(3) The youth court judge of a judicial district designated pursuant to 41-3-1002 shall appoint the local citizen review board according to the following guidelines:

1 (a) Members of a local citizen review board must be recruited from groups with special knowledge of or
2 interest in foster care and child welfare, which may include but is not limited to adoptive parents and members of the
3 professions of law, medicine, psychology, social work, and education.

4 (b) As far as practicable, members of a local citizen review board shall represent the various socioeconomic
5 and ethnic groups of the area served.

6 (c) A person employed by the department of ~~family~~ public health and human services, by a private agency
7 regulated, certified, directed, or licensed by or contracting with the department of ~~family~~ public health and human
8 services, or by a youth court may not serve on a local citizen review board.

9 (d) A member of a local citizen review board must be a resident of one of the counties of the judicial district
10 that the member is appointed to serve.

11 (4) The members of a local citizen review board must be willing to serve without compensation."
12

13 **Section 174.** Section 41-3-1004, MCA, is amended to read:

14 **"41-3-1004. Administration -- training -- oversight -- procedures.** (1) Subject to the availability of funds, the
15 youth court of a judicial district designated pursuant to 41-3-1002 shall:

16 (a) establish and approve policies and procedures that have the force of law for the operation of the local
17 citizen review board;

18 (b) approve and provide training programs for local citizen review board members;

19 (c) provide consultation services on request to the local citizen review board; and

20 (d) employ staff and provide for support services for the local citizen review board.

21 (2) The office of the supreme court administrator shall, in accordance with the direction of the supreme court,
22 oversee the program established in this part and, at the time prescribed by 5-11-210, prepare a report to the governor,
23 the legislature, and the public regarding:

24 (a) state laws, policies, and practices affecting permanence and appropriate care for children in the custody
25 of the department of ~~family~~ public health and human services and other agencies; and

26 (b) the effectiveness of the local citizen review board in bringing about permanence and appropriate care for
27 children in the custody of the department of ~~family~~ public health and human services and other agencies.

28 (3) The youth court of a judicial district designated pursuant to 41-3-1002 shall adopt procedures that have
29 the force of law for the administration of the local citizen review board pilot program regarding:

30 (a) the removal of members of the local citizen review board;

31 (b) the time, content, and manner in which case plans for and case progress reports on a child assigned to
32 foster care must be provided to the local citizen review board by the department of ~~family~~ public health and human
33 services, other agencies, or individuals directly responsible for the care of the child;

34 (c) the provision of written notice of the review to the department of ~~family~~ public health and human services,

1 any other agency directly responsible for the care or placement of a child, the parents or their attorneys, foster parents,
2 surrogate parents, mature children or their attorneys, a court-appointed attorney or special advocate of any child, any
3 county attorney or attorney general actively involved in the case, and other interested persons. The notice must include
4 a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

5 (d) securing or excusing the presence at the review of caseworkers and other employees of the department
6 of ~~family~~ public health and human services or other agencies directly responsible for the care of the child; and

7 (e) the manner in which the local citizen review board may remove cases from review when review is not
8 required under federal law."

9
10 **Section 175.** Section 41-3-1006, MCA, is amended to read:

11 **"41-3-1006. Terms -- officers -- meetings.** (1) A local citizen review board member shall serve at the pleasure
12 of the appointing authority. However, if not otherwise released from service on a local citizen review board, the
13 following provisions apply:

14 (a) A member shall serve a term of 2 years, except that if a vacancy occurs, a successor must be appointed
15 to serve the unexpired term.

16 (b) A member may be reappointed and continue to serve until a successor is appointed.

17 (2) A local citizen review board shall:

18 (a) elect annually from its membership a presiding officer and vice presiding officer to serve in the absence
19 of the presiding officer; and

20 (b) meet at the nearest department of ~~family~~ public health and human services office or another place mutually
21 agreed to by a majority of the local citizen review board as often as it considers necessary to carry out the duties of
22 the board."

23
24 **Section 176.** Section 41-3-1008, MCA, is amended to read:

25 **"41-3-1008. Access to records.** (1) Notwithstanding the provisions of 41-3-205, a local citizen review board
26 has access to:

27 (a) any records of the youth court that are pertinent to the case; and

28 (b) any records of the department of ~~family~~ public health and human services or other agencies that would
29 be admissible in a dispositional review hearing conducted pursuant to 41-3-406, including school records and reports
30 of private service providers contained in the records of the department of ~~family~~ public health and human services or
31 other agencies.

32 (2) All requested records not already before the local citizen review board must be submitted by the
33 department of ~~family~~ public health and human services within 5 working days after receipt of a request. A local citizen
34 review board and any staff provided for the board shall return all records and copies received from the department of

1 ~~family public health and human~~ services to the department within 7 working days after completion of the review.

2 (3) A local citizen review board may retain a reference copy of case material used by the board to make its
3 recommendation if:

4 (a) the material is necessary for the ongoing work of the local citizen review board with regard to the particular
5 case or to work of the board; and

6 (b) the confidentiality of the material is continued and protected in the same manner as other material received
7 from the department of ~~family public health and human~~ services. Material retained by the local citizen review boards
8 is not subject to disclosure under the public records law.

9 (4) If a local citizen review board is denied access to requested records, it may request a hearing. The court
10 may require the organization in possession of the records to show cause why the records should not be made available
11 as provided by this section."

12
13 **Section 177.** Section 41-3-1010, MCA, is amended to read:

14 **"41-3-1010. Review -- scope -- procedures -- immunity.** (1) Except for cases removed from review under
15 procedures established under 41-3-1004, the local citizen review board shall review the case of each child in foster
16 care that is assigned by the youth court.

17 (2) The review must take place at times set by the local citizen review board. The first review may not be
18 more than 6 months after the child is placed in foster care. Subsequent reviews must take place at least once every
19 6 months until the child is no longer within the jurisdiction of the youth court or no longer in foster care.

20 (3) The youth court, by rule of the court or on an individual case basis, may relieve the local citizen review
21 board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next
22 scheduled board review.

23 (4) The local citizen review board shall review any case in which a petition to terminate parental rights has
24 been denied as soon as practical but no later than 45 days after the denial.

25 (5) After reviewing each case, the local citizen review board shall prepare written findings and
26 recommendations with respect to:

27 (a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for
28 removal of the child from the home and to make it possible for the child to be returned home;

29 (b) the continuing need for and appropriateness of the placement;

30 (c) compliance with the case plan;

31 (d) the progress that has been made toward alleviating the need for placement;

32 (e) a likely date by which the child may be returned home or placed for adoption;

33 (f) other problems, solutions, or alternatives that the local citizen review board determines should be explored;

34 and

1 (g) whether the youth court should appoint an attorney or other person as special advocate to represent or
2 appear on behalf of the child pursuant to 41-3-303.

3 (6) Whenever a member of a local citizen review board has a potential conflict of interest in a case being
4 reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case
5 review. The following provisions apply:

6 (a) The declaration of the member must be recorded in the official records of the local citizen review board.

7 (b) If, in the judgment of the majority of the local citizen review board, the potential conflict of interest may
8 prevent the member from fairly and objectively reviewing the case, the board may remove the member from
9 participation in the review.

10 (7) The local citizen review board shall keep accurate records and retain the records on file. The local citizen
11 review board shall send copies of its written findings and recommendations to the youth court, the department of ~~family~~
12 public health and human services, and other participants in the review.

13 (8) The local citizen review board may hold joint or separate reviews for groups of siblings.

14 (9) The local citizen review board may disclose to parents and their attorneys, foster parents, mature children
15 and their attorneys, and other persons authorized by the board to participate in the case review the records disclosed
16 to the board pursuant to 41-3-1008. Before participating in a local citizen review board case review, each participant,
17 other than parents and children, shall swear or affirm to the board that the participant will keep confidential the
18 information disclosed by the board in the case review and will disclose it only as authorized by law."
19

20 **Section 178.** Section 41-3-1011, MCA, is amended to read:

21 **"41-3-1011. Recommendations by board.** In addition to reviewing individual cases of children in foster care,
22 a local citizen review board may make recommendations to the youth court and to the department of ~~family~~ public
23 health and human services concerning foster care services, policies, procedures, and laws."
24

25 **Section 179.** Section 41-3-1012, MCA, is amended to read:

26 **"41-3-1012. Presence of certain employees at meetings of board.** (1) Unless excused from doing so by the
27 local citizen review board, the department of ~~family~~ public health and human services and any other agency directly
28 responsible for the care and placement of the child shall require the presence of any employees having knowledge of
29 the case at board meetings.

30 (2) The local citizen review board may require the presence of specific employees of the department of ~~family~~
31 public health and human services or any other agency or other persons at board meetings. If an employee fails to be
32 present at the meeting, the local citizen review board may request a court order. The court may require the employee
33 to be present and show cause why the employee should not be compelled to appear before the local citizen review
34 board.

(3) As used in this section, "presence" includes telephone participation, except that the caseworker on the case at the time of the meeting must be physically present if required."

Section 180. Section 41-3-1013, MCA, is amended to read:

"41-3-1013. Court review of findings and recommendations of board. (1) Upon receipt of findings and recommendations from the local citizen review board, the youth court shall:

(a) review the findings and recommendations of the local citizen review board within 10 days. If the youth court finds it appropriate, the youth court may on its own motion schedule a review hearing.

(b) cause the findings and recommendations of the local citizen review board to become part of the youth court file; and

(c) give the local citizen review board written notice if the youth court modifies, alters, or takes action on a case as a result of the board's recommendations or refuses to take action on the board's recommendations in any case.

(2) Upon receipt of findings and recommendations from the local citizen review board, the department of family public health and human services shall:

(a) review the findings and recommendations of the local citizen review board within 10 days. The recommendations must be implemented and the case plan modified as the department of family public health and human services considers appropriate and as resources permit.

(b) give the local citizen review board written notice as soon as practicable, but in no case later than 7 days after the review is completed, if the department of family public health and human services does not intend to implement the recommendations; and

(c) include the findings and recommendations of the local citizen review board as part of the case file of the department of family public health and human services.

(3) Upon its own motion or upon the request of the department of family public health and human services, the local citizen review board, or any interested party, the youth court may appoint an attorney or other person as special advocate to represent or appear on behalf of the child. Subject to the direction of the youth court, the court-appointed special advocate shall:

(a) investigate all relevant information about the case;

(b) advocate for the child, ensuring that all relevant facts are brought before the court;

(c) facilitate and negotiate to ensure that the youth court, the department of family public health and human services, and the child's attorney fulfill their obligations to the child in a timely fashion; and

(d) monitor all youth court orders to ensure compliance and to bring to the youth court's attention any change in circumstance that may require modification of the youth court's order."

Section 181. Section 41-3-1014, MCA, is amended to read:

1 **"41-3-1014. Dispositional review hearing by youth court.** (1) The youth court shall conduct a dispositional
2 review hearing within 18 months after the original placement and conduct a review hearing periodically during the
3 continuation of foster care. Unless good cause otherwise is shown, the youth court shall conduct a dispositional review
4 hearing at any time upon the request of the department of ~~family~~ public health and human services, an agency directly
5 responsible for care or placement of the child, a parent whose parental rights have not been terminated, an attorney
6 for the child, a court-appointed special advocate, or a local citizen review board. The youth court shall schedule the
7 hearing as soon as possible after receiving a request.

8 (2) The court may order that the child or any other person be present during the hearing.

9 (3) The court shall notify the parties listed in subsection (1) and any other interested parties of the hearing.
10 The notice must state the time and place of the hearing. Upon request of the youth court, the department of ~~family~~
11 public health and human services or other legal custodian of the child shall provide the youth court with information
12 concerning the whereabouts and identity of the parties.

13 (4) The youth court shall enter an order within 20 days after the review hearing. If the child is in foster care,
14 the order must include a determination of:

15 (a) whether the child should be returned to the parent;

16 (b) whether the child should be placed for adoption;

17 (c) whether the child should continue in foster care for a specified period; or

18 (d) whether, because of special needs or circumstances, the child should be placed in the permanent custody
19 or guardianship of a responsible relative or other individual or should continue in foster care on a permanent or
20 long-term basis.

21 (5) If the court determines that the child must be placed or must continue in foster care or must be placed
22 in the custody or guardianship of a responsible relative or other individual, the youth court shall enter written findings
23 specifying why placement with parents or adoption is not appropriate. If the current placement is not expected to be
24 permanent, the youth court shall specify a projected timetable for return of the child to the child's home or for
25 permanent placement. If the timetable set forth by the youth court is not met, the department of ~~family~~ public health
26 and human services shall promptly notify the youth court and the parties.

27 (6) In the course of the dispositional review hearing, the youth court may determine the adequacy of and
28 compliance with the case plan and case progress report. In addition to other orders, the youth court may:

29 (a) order the department of ~~family~~ public health and human services to develop or to expand a case plan or
30 case progress report that must be submitted within 10 days after the hearing;

31 (b) set a court hearing at a specific later time;

32 (c) direct the local citizen review board to review the status of the child prior to its next review, as provided
33 in 41-3-1010;

34 (d) order the department of ~~family~~ public health and human services or other agency directly responsible for

1 the child to modify the care, placement, or supervision of the child; and

2 (e) determine whether the department of ~~family~~ public health and human services or other agency directly
3 responsible for the child has made reasonable efforts to reunify the family.

4 (7) The dispositional review hearing must be conducted in the manner provided in 41-3-406.

5 (8) Any decision of the youth court made pursuant to the dispositional review hearing is a final order for the
6 purposes of 41-3-406."

7
8 **Section 182.** Section 41-3-1101, MCA, is amended to read:

9 **"41-3-1101. Establishment of substitute care for youth.** The legislature, in recognition of the wide and varied
10 needs of youth in need of care, delinquent youth, and youth in need of supervision of this state and of the desirability
11 of meeting these needs on a community level to the fullest extent possible, establishes by this part a system of
12 substitute care to provide facilities and services for youth placed out of their homes and establishes a program to
13 provide ~~such those~~ facilities and services through local nonprofit corporations, counties, and the department of ~~family~~
14 public health and human services."

15
16 **Section 183.** Section 41-3-1102, MCA, is amended to read:

17 **"41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

18 (1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children
19 or youth.

20 (2) "Department" means the department of ~~family~~ public health and human services provided for in ~~2-15-2401~~
21 2-15-2201.

22 (3) "Foster child" means a person under 18 years of age who has been placed by the department in a licensed
23 youth foster home.

24 (4) "Operator of a youth care facility" means ~~any~~ a person owning or operating a youth care facility into which
25 ~~he the operator~~ takes any child or children for the purpose of caring for them and maintaining them and for which care
26 and maintenance ~~he the operator~~ receives money or other consideration of value, and which child is neither ~~he the~~
27 operator's son, daughter, nor ward, except that this part ~~shall~~ does not apply when any person accepts ~~such the~~ care
28 and custody of ~~such a~~ child on a temporary basis and simply as a temporary accommodation for the parent or parents,
29 guardian, or relative of ~~such the~~ child.

30 (5) "Person" means any individual, partnership, voluntary association, or corporation.

31 (6) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an
32 emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child
33 whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not
34 limited to homemaker services, child care, and emergency care either in the home or out of the home.

(7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 41-3-1151.

(8) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(9) "Youth care facility" means a facility licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, youth group homes, and child-care agencies.

(10) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

(11) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth."

Section 184. Section 41-3-1103, MCA, is amended to read:

"41-3-1103. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, ~~youth in need of supervision, and delinquent youth,~~ as defined in 41-5-103;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, ~~youth in need of supervision, and delinquent youth;~~

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the ~~breakdown number~~ of youth in need of care, ~~youth in need of supervision, and delinquent youth by category~~ in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care, ~~youth in need of supervision, and delinquent youth~~ in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under this subsection may not exceed appropriations for the purposes of this subsection."

Section 185. Section 41-3-1104, MCA, is amended to read:

"41-3-1104. Aftercare facilities. The department of ~~family services~~ corrections may establish, maintain, and administer youth correctional facilities, evaluation facilities, mental health facilities and services, aftercare programs, and aftercare facilities for the care, custody, and treatment of youth who have been committed to the department of corrections."

Section 186. Section 41-3-1114, MCA, is amended to read:

"41-3-1114. Continuing jurisdiction of youth court. The youth court committing a delinquent youth or a youth in need of supervision to the department of ~~family services~~ corrections retains continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by the department after notice to the youth court of original jurisdiction."

Section 187. Section 41-3-1122, MCA, is amended to read:

"41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth -- reimbursement by county. (1) Whenever a youth who is a youth in need of care, a youth in need of supervision, or a delinquent youth is placed by the department of ~~family~~ public health and human services or the department of corrections in a youth care facility, the department making the placement shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department of public health and human services for board, clothing, personal needs, treatment, and room of the youth.

(2) On or before the 20th of each month, the department of public health and human services or the department of corrections shall present a claim to the county of residence of the youth for no more than one-half of the nonfederal share of the payments ~~so~~ made during the month. The county ~~must~~ shall make reimbursement to the

1 department within 20 days after the claim is presented.

2 (3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches the level
3 of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster care expenditures.

4 (4) If a county's level of expenditure for foster care in fiscal year 1987 is \$10,000 or less, the county's level
5 of expenditure for purposes of determining the county's reimbursement specified in subsection (3) is the level of
6 expenditures for fiscal year 1987 or the average of expenditures for fiscal years 1984 through 1987, whichever is less.

7 (5) A county that was state-assumed prior to 1987, but at a later date reassumes responsibility pursuant to
8 53-2-811, is responsible for reimbursement of foster care expenditures up to the county's calculated level of
9 expenditures for fiscal year 1987 as if the county had not been state-assumed.

10 (6) The department shall conduct or arrange for the review required under 41-3-1115, or when applicable,
11 41-3-1010 of a youth placed in a youth care facility if the youth is placed by the department."

12
13 **Section 188.** Section 41-3-1132, MCA, is amended to read:

14 **"41-3-1132. Governmental contracts with nonprofit organizations.** (1) The department of public health and
15 human services and the department of corrections may contract with nonprofit corporations or associations to provide
16 facilities and services for youth in need of care, youth in need of supervision, and delinquent youth in youth care
17 facilities and ~~is~~ are authorized to expend ~~such~~ money as that is appropriated or available ~~therefor~~ for those purposes.

18 ~~Such~~ The contracts ~~shall~~ must be based on the following considerations:

19 (a) budgets submitted by the nonprofit corporation or association identifying fixed and variable costs;

20 (b) reasonable costs of service;

21 (c) appropriation level; and

22 (d) availability of funds.

23 (2) Governmental units, including but not limited to counties, municipalities, school districts, or state
24 institutions of higher learning, are authorized, at their own expense, to provide funds, materials, facilities, and services
25 for community-based services."

26
27 **Section 189.** Section 41-4-103, MCA, is amended to read:

28 **"41-4-103. Appropriate public authorities defined.** The "appropriate public authorities" as used in Article III
29 of the Interstate Compact on the Placement of Children ~~shall~~, with reference to this state, ~~mean~~ means the department
30 of ~~family~~ public health and human services, and ~~said~~ the department shall receive and act with reference to notices
31 required by ~~said~~ Article III."

32
33 **Section 190.** Section 41-4-104, MCA, is amended to read:

34 **"41-4-104. Appropriate authority in the receiving state.** As used in Article V(1) of the Interstate Compact on

1 the Placement of Children, the phrase "appropriate authority in the receiving state", with reference to this state, ~~shall~~
2 ~~mean~~ means the department of ~~family~~ public health and human services."

3
4 **Section 191.** Section 41-5-103, MCA, is amended to read:

5 **"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise, the
6 following definitions apply:

7 (1) "Adult" means an individual who is 18 years of age or older.

8 (2) "Agency" means any entity of state or local government authorized by law to be responsible for the care
9 or rehabilitation of youth.

10 (3) "Commit" means to transfer to legal custody.

11 (4) "Correctional facility" means a public or private residential facility used for the placement of delinquent
12 youth or individuals convicted of criminal offenses.

13 (5) "Court", when used without further qualification, means the youth court of the district court.

14 (6) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has
15 been given but does not include a person who has only physical custody.

16 (7) "Delinquent youth" means a youth:

17 (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

18 (b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates
19 any condition of ~~his~~ probation.

20 (8) "Department" means the department of ~~family services~~ corrections provided for in ~~2-15-2401~~ 2-15-2301.

21 (9) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest
22 or in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any
23 time after the youth is taken into custody and before final disposition of ~~his~~ the youth's case.

24 (10) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at
25 will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

26 (11) "Final disposition" means the implementation of a court order for the disposition or placement of a youth
27 as provided in 41-5-523.

28 (12) "Foster home" means a private residence licensed by the department for placement of a youth.

29 (13) "Guardianship" means the status created and defined by law between a youth and an adult with the
30 reciprocal rights, duties, and responsibilities.

31 (14) "Holdover" means a room, office, building, or other place approved by the board of crime control for the
32 temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours
33 while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care
34 facility. The term does not include a jail.

1 (15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The
2 term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

3 (16) "Judge", when used without further qualification, means the judge of the youth court.

4 (17) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives
5 a person the right and duty to:

6 (i) have physical custody of the youth;

7 (ii) determine with whom the youth shall live and for what period;

8 (iii) protect, train, and discipline the youth; and

9 (iv) provide the youth with food, shelter, education, and ordinary medical care.

10 (b) An individual granted legal custody of a youth shall personally exercise ~~his~~ the individual's rights and duties
11 as guardian unless otherwise authorized by the court entering the order.

12 (18) "Necessary parties" includes the youth, ~~his~~ the youth's parents, guardian, custodian, or spouse.

13 (19) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have
14 been judicially terminated, nor does it include the putative father of an illegitimate youth unless ~~his~~ the putative father's
15 paternity is established by an adjudication or by other clear and convincing proof.

16 (20) "Probable cause hearing" means the hearing provided for in 41-5-303.

17 (21) "Regional detention facility" means a youth detention facility established and maintained by two or more
18 counties, as authorized in 41-5-811.

19 (22) "Restitution" means payments in cash to the victim or with services to the victim or the general
20 community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court
21 order.

22 (23) "Secure detention facility" means any public or private facility that:

23 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses; and

24 (b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful
25 custody of the facility.

26 (24) "Serious juvenile offender" means a youth who has committed an offense that would be considered a
27 felony offense if committed by an adult and that is an offense against a person, an offense against property, or an
28 offense involving dangerous drugs.

29 (25) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

30 (26) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the
31 facilities enumerated in 41-5-306(1).

32 (27) "Short-term detention center" means a detention facility licensed by the department for the temporary
33 placement or care of youth, for a period not to exceed 96 hours, pending a probable cause hearing, release, or transfer
34 of the youth to an appropriate detention facility or shelter care facility.

1 (28) "State youth correctional facility" means a residential facility used for the placement and rehabilitation
2 of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school in Helena.

3 (29) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food,
4 shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are
5 without the care and supervision of their parents or guardian.

6 (30) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

7 (31) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a
8 youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the
9 youth court judge and probation officers.

10 (32) "Youth detention facility" means a secure detention facility licensed by the department for the temporary
11 substitute care of youth that:

12 (a) is operated, administered, and staffed separately and independently of a jail; and

13 (b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

14 (33) "Youth in need of care" has the meaning provided for in 41-3-102.

15 (34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that, if
16 committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

17 (a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

18 (b) continues to exhibit behavior beyond the control of ~~his~~ the youth's parents, foster parents, physical
19 custodian, or guardian despite the attempt of ~~his~~ the youth's parents, foster parents, physical custodian, or guardian
20 to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

21 (c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses
22 to regard as a youth in need of supervision."

23
24 **Section 192.** Section 41-5-206, MCA, is amended to read:

25 **"41-5-206. Transfer to criminal court.** (1) After a petition has been filed alleging delinquency, the court may,
26 upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the
27 district court if:

28 (a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and
29 the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as
30 defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of
31 either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

32 (ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the
33 unlawful act is one or more of the following:

34 (A) negligent homicide as defined in 45-5-104;

- 1 (B) arson as defined in 45-6-103;
- 2 (C) aggravated or felony assault as defined in 45-5-202;
- 3 (D) robbery as defined in 45-5-401;
- 4 (E) burglary or aggravated burglary as defined in 45-6-204;
- 5 (F) aggravated kidnapping as defined in 45-5-303;
- 6 (G) possession of explosives as defined in 45-8-335;
- 7 (H) criminal sale of dangerous drugs as defined in 45-9-101;
- 8 (I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- 9 (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through
- 10 (1)(a)(ii)(I);
- 11 (b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a
- 12 petition alleging delinquency, except that the hearing ~~will~~ must be conducted by the youth court without a jury;
- 13 (c) notice in writing of the time, place, and purpose of the hearing is given to the youth, ~~his~~ the youth's
- 14 counsel, and ~~his~~ the youth's parents, guardian, or custodian at least 10 days before the hearing; and
- 15 (d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:
- 16 (i) the youth committed the delinquent act alleged;
- 17 (ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond
- 18 that afforded by juvenile facilities; and
- 19 (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.
- 20 (2) In transferring the matter of prosecution to the district court, the court may also consider the following
- 21 factors:
- 22 (a) the sophistication and maturity of the youth, determined by consideration of the youth's home,
- 23 environmental situation, and emotional attitude and pattern of living;
- 24 (b) the record and previous history of the youth, including previous contacts with the youth court, law
- 25 enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile
- 26 institutions. However, lack of a prior juvenile history with youth courts ~~will~~ is not of itself ~~be~~ grounds for denying the
- 27 transfer.
- 28 (3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the
- 29 conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102,
- 30 mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or
- 31 mitigated deliberate homicide if the act had been committed by an adult.
- 32 (4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction
- 33 of the youth court was waived and the case transferred to district court.
- 34 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged

1 in the petition. A youth may not be prosecuted in the district court for a criminal offense originally subject to the
2 jurisdiction of the youth court unless the case has been transferred as provided in this section.

3 (6) Upon order of the youth court transferring the case to the district court, the county attorney shall file the
4 information against the youth without unreasonable delay.

5 (7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated
6 in subsection (1) may be:

7 (a) tried in youth court;

8 (b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county
9 attorney and order of the youth court judge.

10 (8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is
11 sentenced to the state prison, the commitment must be to the department of corrections ~~and human services~~. The
12 department shall confine the youth in whatever institution that it considers proper, including a state youth correctional
13 facility under the procedures of 52-5-111; however, ~~no~~ a youth under 16 years of age may not be confined in the state
14 prison.

15 (9) A youth whose case is transferred to district court may not be detained or otherwise placed in a jail or
16 other adult detention facility before final disposition of ~~his~~ the youth's case unless:

17 (a) alternative facilities do not provide adequate security; and

18 (b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults
19 accused or convicted of criminal offenses."

20
21 **Section 193.** Section 41-5-301, MCA, is amended to read:

22 **"41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information from any
23 agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in
24 need of supervision or, being subject to a court order or consent order, has violated the terms ~~thereof~~ of an order, a
25 probation officer shall make a preliminary inquiry into the matter.

26 (2) The probation officer may:

27 (a) require the presence of any person relevant to the inquiry;

28 (b) request subpoenas from the judge to accomplish this purpose;

29 (c) require investigation of the matter by any law enforcement agency or any other appropriate state or local
30 agency.

31 (3) If the probation officer determines that the facts indicate a youth in need of care, the matter ~~shall~~ must
32 be immediately referred to the department of public health and human services.

33 (4) (a) The probation officer in the conduct of the preliminary inquiry shall:

34 (i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and

1 the United States;

2 (ii) determine whether the matter is within the jurisdiction of the court;

3 (iii) determine, if the youth is in detention or shelter care, whether ~~such~~ detention or shelter care should be
4 continued based upon criteria set forth in 41-5-305.

5 (b) Once relevant information is secured, the probation officer shall:

6 (i) determine whether the interest of the public or the youth requires that further action be taken;

7 (ii) terminate the inquiry upon the determination that no further action be taken; and

8 (iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

9 (5) The probation officer upon determining that further action is required may:

10 (a) provide counseling, refer the youth and ~~his~~ the youth's parents to another agency providing appropriate
11 services, or take any other action or make any informal adjustment that does not involve probation or detention;

12 (b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401
13 through 41-5-403, ~~provided such~~ if the treatment or adjustment is voluntarily accepted by the youth's parents or
14 guardian and the youth, ~~and provided further that said~~ if the matter is referred immediately to the county attorney for
15 review, and ~~that if~~ if the probation officer ~~proceed~~ proceeds no further unless authorized by the county attorney; or

16 (c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or
17 a youth in need of supervision.

18 (6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be
19 a delinquent youth or a youth in need of supervision. The application must be supported by ~~such~~ evidence ~~as~~ that the
20 youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true,
21 the youth court shall grant leave to file the petition.

22 (7) A petition charging a youth held in detention must be filed within 7 working days from the date the youth
23 was first taken into custody or the petition ~~shall~~ must be dismissed and the youth released unless good cause is shown
24 to further detain ~~such~~ the youth.

25 (8) If ~~no~~ a petition is not filed under this section, the complainant and victim, if any, ~~shall~~ must be informed
26 by the probation officer of the action and the reasons ~~therefor~~ for not filing and ~~shall~~ must be advised of the right to
27 submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall
28 consider the facts, consult with the probation officer, and make the final decision as to whether a petition ~~shall be~~ is
29 filed."

30
31 **Section 194.** Section 41-5-403, MCA, is amended to read:

32 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or guardians for**
33 **youth's care.** (1) The following dispositions may be imposed by informal adjustment:

34 (a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and as determined by the department;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth as determined by the department;

(d) restitution upon approval of the youth court judge;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; ~~however~~ However, the ability of the victim or ~~his~~ the victim's insurer to stand any loss may not be considered in any case.

(3) If the youth violates an aftercare agreement as provided for in 52-5-126, ~~he~~ the youth must be returned to the court for further disposition. A youth may not be placed in a state youth correctional facility under informal adjustment.

(4) If the youth is placed in substitute care requiring payment by the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(5) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of ~~social and rehabilitation~~ public health and human services pursuant to 40-5-209.

(6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate

1 income withholding is not in the best interests of the child; and

2 (ii) proof of timely payment of previously ordered support in cases involving modification of contributions
3 ordered under this section.

4 (d) An alternative arrangement must:

5 (i) provide sufficient security to ensure compliance with the arrangement;

6 (ii) be in writing and be signed by a representative of the department and the person required to make
7 contributions; and

8 (iii) if approved by the court, be entered into the record of the proceeding.

9 (7) (a) If the court orders the payment of contributions under this section, the department shall apply to the
10 department of ~~social and rehabilitation~~ public health and human services for support enforcement services pursuant
11 to Title IV-D of the Social Security Act.

12 (b) The department of ~~social and rehabilitation~~ public health and human services may collect and enforce a
13 contribution order under this section by any means available under law, including the remedies provided for in Title 40,
14 chapter 5, parts 2 and 4."

15
16 **Section 195.** Section 41-5-523, MCA, is amended to read:

17 **"41-5-523. Disposition -- commitment to department -- placement and evaluation of youth -- restrictions. (1)**

18 If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment
19 making any of the following dispositions:

20 (a) place the youth on probation;

21 (b) commit the youth to the department if the court determines that the youth is in need of placement in other
22 than the youth's own home, provided that:

23 (i) the court shall determine whether continuation in the home would be contrary to the welfare of the youth
24 and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the
25 youth's home. The court shall include a determination in the order committing the youth to the department.

26 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the
27 judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement
28 is necessary for the protection of the public. The court may order the department to notify the court within 5 working
29 days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the
30 department for placement in a state youth correctional facility, the department is responsible for determining an
31 appropriate date of release into an appropriate placement.

32 (c) order restitution by the youth or the youth's parents;

33 (d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed
34 by an adult;

1 (e) require the performance of community service;

2 (f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to
3 receive counseling services;

4 (g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the
5 persons having legal custody of the youth;

6 (h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the
7 court may designate;

8 (i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the
9 community and that does not obligate funding from the department without the department's approval, except that
10 a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the
11 department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

12 (j) commit the youth to a mental health facility if, based upon the testimony of a professional person as
13 defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is
14 entitled to all rights provided by 53-21-114 through 53-21-119. A youth adjudicated mentally ill or seriously mentally
15 ill as defined in 53-21-102 may not be committed to a state youth correctional facility. A youth adjudicated to be
16 mentally ill or seriously mentally ill after placement by the department in a state youth correctional facility must be
17 moved to a more appropriate placement in response to the youth's mental health needs and consistent with the
18 disposition alternatives available in 53-21-127.

19 (k) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

20 (2) When a youth is committed to the department, the department shall determine the appropriate placement
21 and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth
22 placement committee. Placement is subject to the following limitations:

23 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a
24 criminal offense if committed by an adult may not be placed in a state youth correctional facility.

25 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum
26 period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth
27 under the jurisdiction of the youth court. ~~Nothing in this~~ This section limits ~~does not limit~~ the power of the department
28 to enter into an aftercare agreement with the youth pursuant to 52-5-126.

29 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution
30 of sentence of adults convicted of crimes.

31 (3) A youth placed by the department in a state youth correctional facility or other facility or program operated
32 by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A
33 youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation
34 officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205

1 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is
2 not limited to:

3 (a) submitting information and documentation necessary for the person, committee, or team that is making
4 the placement recommendation to determine an appropriate placement for the youth;

5 (b) securing approval for payment of special education costs from the youth's school district of residence or
6 the office of public instruction, as required in Title 20, chapter 7, part 4;

7 (c) submitting an application to a facility in which the youth may be placed; and

8 (d) case management of the youth.

9 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to
10 final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county
11 determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided
12 in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation
13 services ordered by the court.

14 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation
15 ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay
16 all or part of the cost of the evaluation.

17 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility
18 unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to
19 criminal court under 41-5-206.

20 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is
21 transferred to the district court under 41-5-206.

22 (8) An order of the court may be modified at any time. In the case of a youth committed to the department,
23 an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

24 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment
25 copies of medical reports, social history material, education records, and any other clinical, predisposition, or other
26 reports and information pertinent to the care and treatment of the youth.

27 (10) If a youth is committed to the department, the court shall examine the financial ability of the youth's
28 parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment
29 of the youth, including the costs of necessary medical, dental, and other health care.

30 (11) If the court determines that the youth's parents or guardians are financially able to pay a contribution
31 as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the
32 uniform child support guidelines adopted by the department of ~~social and rehabilitation~~ public health and human services
33 pursuant to 40-5-209.

34 (12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each

1 modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title
2 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to
3 withholding for the payment of the contribution without need for an amendment of the support order or for any further
4 action by the court.

5 (b) A court-ordered exception from contributions under this section must be in writing and must be included
6 in the order. An exception from the immediate income withholding requirement may be granted if the court finds there
7 is:

8 (i) good cause not to require immediate income withholding; or

9 (ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

10 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

11 (i) a written determination and explanation by the court of the reasons why the implementation of immediate
12 income withholding is not in the best interests of the child; and

13 (ii) proof of timely payment of previously ordered support in cases involving modification of contributions
14 ordered under this section.

15 (d) An alternative arrangement must:

16 (i) provide sufficient security to ensure compliance with the arrangement;

17 (ii) be in writing and be signed by a representative of the department and the person required to make
18 contributions; and

19 (iii) if approved by the court, be entered into the record of the proceeding.

20 (13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court
21 may modify its order for the payment of contributions required under subsection (11).

22 (14) (a) If the court orders the payment of contributions under this section, the department shall apply to the
23 department of ~~social and rehabilitation~~ public health and human services for support enforcement services pursuant
24 to Title IV-D of the Social Security Act.

25 (b) The department of ~~social and rehabilitation~~ public health and human services may collect and enforce a
26 contribution order under this section by any means available under law, including the remedies provided for in Title 40,
27 chapter 5, parts 2 and 4."

28
29 **Section 196.** Section 41-5-530, MCA, is amended to read:

30 **"41-5-530. Parental contributions account -- allocation of proceeds.** (1) There is a parental contributions
31 account in the state special revenue fund.

32 (2) Contributions paid by the parents and guardians of youth under 41-3-406, 41-5-403, 41-5-523, or
33 41-5-524 must be deposited in the account.

34 (3) All money in the account, except any amount required to be returned to federal or county sources, is

1 allocated to the department of public health and human services to carry out its duties under 52-1-103."

2
3 **Section 197.** Section 44-5-202, MCA, is amended to read:

4 **"44-5-202. Photographs and fingerprints.** (1) The following agencies may, if authorized by subsections (2)
5 through (5), collect, process, and preserve photographs and fingerprints:

6 (a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office,
7 or both;

8 (b) the department of corrections ~~and human services~~; and

9 (c) the department of justice.

10 (2) The department of corrections ~~and human services~~ may photograph and fingerprint anyone under the
11 jurisdiction of the division of corrections or its successor.

12 (3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has
13 been arrested or noticed or summoned to appear to answer an information or indictment if:

14 (a) the charge is the commission of a felony;

15 (b) the identification of an accused is in issue; or

16 (c) it is required to do so by court order.

17 (4) Whenever a person charged with the commission of a felony is not arrested, ~~he the person~~ shall ~~submit~~
18 ~~himself to appear before~~ the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at
19 the time of ~~his~~ initial appearance in court to answer the information or indictment against ~~him the person~~.

20 (5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if ~~he~~
21 ~~the accused~~ has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic,
22 regulatory, or fish and game offense may not be photographed or fingerprinted unless ~~he the individual~~ is incarcerated.

23 (6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on
24 a completed form provided by the state repository.

25 (7) The state repository shall compare the fingerprints received with those already on file in the state
26 repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once
27 inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send
28 the originating agency a copy of the individual's complete criminal history record.

29 (8) Photographs and fingerprints taken ~~shall~~ **must** be returned by the state repository to the originating agency,
30 which shall return all copies to the individual from whom they were taken, in the following circumstances:

31 (a) upon order of the court that had jurisdiction; or

32 (b) upon the request of the individual when ~~he the individual~~ was released without the filing of charges or
33 when the charges did not result in a conviction."

1 **Section 198.** Section 44-5-213, MCA, is amended to read:

2 **"44-5-213. Procedures to ensure accuracy of criminal history records.** In order to ensure complete and
3 accurate criminal history record information:

4 (1) the department of justice shall maintain a centralized state repository of criminal history record information
5 to serve all criminal justice agencies in the state;

6 (2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an
7 individual who has been photographed and fingerprinted under 44-5-202 shall be reported to the originating agency
8 and the state repository within 15 days. If the dispositions can readily be collected and reported through the court
9 system, the dispositions may be submitted to the state repository by the administrative office of the courts.

10 (3) an originating agency shall advise the state repository within 30 days of all dispositions concerning the
11 termination of criminal proceedings against an individual who has been photographed and fingerprinted under 44-5-202;

12 (4) the department of corrections ~~and human services~~ shall advise the state repository within 30 days of all
13 dispositions subsequent to conviction of an individual who has been photographed and fingerprinted under 44-5-202;

14 (5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history
15 record information to ensure the timeliness of the information. When no final disposition is shown by the state
16 repository records, the state repository shall query the source of the document or other appropriate source for current
17 status. Inquiries ~~shall~~ must be made prior to any dissemination except in those cases in which time is of the essence
18 and the repository is technically incapable of responding within the necessary time period. If time is of the essence,
19 the inquiry ~~shall~~ must still be made and the response ~~shall~~ must be forwarded as soon as it is received.

20 (6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and
21 current; and

22 (7) the department of justice shall adopt rules for criminal justice agencies other than those that are part of
23 the judicial branch of government to implement this section. The department of justice may adopt rules for the same
24 purpose for the judicial branch of government if the supreme court consents to the rules."

25
26 **Section 199.** Section 45-5-621, MCA, is amended to read:

27 **"45-5-621. Nonsupport.** (1) A person commits the offense of nonsupport if the person fails to provide support
28 that the person can provide and that the person knows the person is legally obliged to provide to a spouse, child, or
29 other dependent.

30 (2) (a) A person commits the offense of aggravated nonsupport if:

31 (i) the offender has left the state without making reasonable provisions for the support of a spouse, child, or
32 other dependent; or

33 (ii) the offender has been previously convicted of the offense of nonsupport.

34 (b) For purposes of this section, "conviction" means a conviction, as defined in 45-2-101, in this state,

conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated.

(3) If a defense to the charge of nonsupport is inability to pay, the person's inability must be the result of circumstances over which the person had no control. In determining ability to pay, after an allowance for the person's minimal subsistence needs, the support of a spouse, child, or other dependent has priority over any other obligations of the person.

(4) When a person is ordered to pay support by a court or administrative agency with jurisdiction to enter the order, the support order is prima facie evidence of the person's legal obligation to provide support.

(5) Payment records maintained by the court or administrative agency that issued the support order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

(6) It is not a defense to a charge of nonsupport that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

(7) (a) Except as provided in subsection (7)(b) or (7)(c), a person convicted of nonsupport shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of nonsupport who has failed to provide support under a court or administrative order for 6 months or more or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.

(c) A person convicted of aggravated nonsupport shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(8) Before trial with the consent of the defendant, on entry of a plea of guilty, or after conviction, instead of the penalty provided in subsection (7) or in addition to that penalty, the defendant may post a bond, undertaking, or other security. This security must be for a period of 2 years or, in the case of aggravated nonsupport, for a period of 10 years. The court shall fix the sum of the security in an amount sufficient to ensure payment of support by the defendant. After the security is posted, the court shall release the defendant on the condition that the defendant comply with any order for support. If there is no order for support, the court shall order the defendant to pay support to the spouse, child, or other dependent in an amount that is consistent with the defendant's ability to pay and, if applicable, the child support guidelines adopted under 40-5-209.

(9) The bond, undertaking, or other security posted pursuant to subsection (8) must be forfeited if the defendant fails to pay support as ordered, and the court may proceed to try the defendant upon the original charge of nonsupport, sentence the defendant under the original plea or conviction, or enforce a suspended sentence.

(10) As part of any prosecution under this section, the court shall also order the defendant to make restitution to the spouse, the child's caretaker, or any other dependent or to the person or agency that provided support to the

1 spouse, child, or other dependent. The amount of restitution is the sum of the arrearages payable under a support order
2 or, if there is no support order, an amount determined reasonable by the court. The terms for payment of restitution
3 must be determined by the court.

4 (11) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport
5 paid to or for the benefit of any person that the defendant has failed to support. A bond, undertaking, or other security
6 forfeited under subsection (9) must be paid to the person or agency entitled to receive support from the defendant.

7 (12) When any payment of public assistance money has been made for the benefit of a child by the
8 department of ~~social and rehabilitation~~ public health and human services under the provisions of Title 53, a
9 representative of the department may sign a criminal complaint against the person obligated by law to support the child
10 who received the public assistance.

11 (13) The court may order that a term of imprisonment imposed under this section be served in another facility
12 made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the
13 expense of the imprisonment. The court may impose restrictions on the defendant's ability to leave the premises of
14 the facility and require that the defendant follow the rules of that facility. The facility may be a community-based
15 prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the
16 sentencing court."

17
18 **Section 200.** Section 45-5-625, MCA, is amended to read:

19 **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if the
20 person knowingly:

21 (a) employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or
22 simulated;

23 (b) photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records
24 a child engaging in sexual conduct, actual or simulated;

25 (c) persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use
26 as designated in subsection (1)(a), (1)(b), or (1)(d);

27 (d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits,
28 or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

29 (e) possesses material referred to in subsection (1)(d); or

30 (f) finances any of the activities described in subsections (1)(a) through (1)(d), knowing that the activity is
31 of the nature described in those subsections.

32 (2) (a) Except as provided in subsections (2)(b) and (2)(c), a person convicted of the offense of sexual abuse
33 of children shall be fined not to exceed \$10,000 or be imprisoned in the state prison for any term not to exceed 20
34 years, or both.

(b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be fined not to exceed \$10,000 or be imprisoned in the state prison for any term not to exceed 50 years, or both.

(c) A person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(f) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if ~~such an~~ the activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections ~~and human services.~~"

Section 201. Section 45-8-109, MCA, is amended to read:

"45-8-109. Prohibited activities -- penalties -- exceptions. (1) A person is guilty of a crime if, with one or more other persons, ~~he the person~~ purposely or knowingly assembles for the purpose of training in, instructing in the use of, or practicing with any technique or means capable of causing property damage, bodily injury, or death, with the purpose of employing the training, instruction, or practice in a civil disorder.

(2) A person convicted of violating the provisions of subsection (1) is guilty of a felony and shall be imprisoned in the state prison for a period not to exceed 10 years or be fined not to exceed \$50,000, or both.

(3) Subsection (1) does not prohibit:

(a) an act protected pursuant to Article II of the Montana constitution;

(b) an act of a governmental military force;

(c) an act of a peace officer performed in the lawful performance of the officer's duties;

(d) an authorized activity of the department of fish, wildlife, and parks; the department of corrections ~~and human services~~; a law enforcement agency; or the law enforcement academy;

(e) training in nonviolent civil disobedience techniques;

(f) lawful self-defense or defense of others or an activity intended to teach or practice self-defense or self-defense techniques; or

(g) a facility, program, or lawful activity related to firearms instruction or training intended to teach the safe handling and use of firearms or activities or sports related to recreational use or possession of firearms.

(4) Sections 45-8-107 through 45-8-109 do not apply to an employer or employees involved in a labor dispute."

Section 202. Section 45-9-202, MCA, is amended to read:

"45-9-202. Alternative sentencing authority. (1) A person convicted of a dangerous drug felony offense under this chapter may, in lieu of imprisonment, be sentenced according to the alternatives provided in subsection (2).

1 (2) If the court determines, either from the face of the record or from a presentence investigation and report,
2 that incarceration of the defendant is not appropriate, the court may, as a condition of a suspended or deferred
3 sentence, impose one or more of the following alternatives:

4 (a) imposition of a fine not to exceed the maximum amount provided by statute for those offenses that specify
5 a fine as part of the penalty or \$1,000 for those offenses that do not specify a fine;

6 (b) commitment to a residential drug treatment facility licensed and approved by the state for rehabilitative
7 treatment for not less than the minimum recommended time determined necessary by the facility and not more than
8 1 year;

9 (c) mandatory service of not more than 2,000 hours in a community-based drug treatment or drug education
10 program with compliance to be monitored by the probation and parole bureau of the department of corrections ~~and~~
11 ~~human services~~ based upon information provided by the treatment or education program;

12 (d) if recommended by the probation and parole bureau, placement in a program of intensive probation that
13 requires, at a minimum, that the defendant comply with all of the following conditions:

14 (i) maintain employment or full-time student status at an approved school, making progress satisfactory to
15 the probation officer, or be involved in supervised job searches and community service work designated by the
16 probation officer;

17 (ii) pay probation supervision fees through the clerk of the district court of not less than \$50 per month to
18 be deposited in an account in the state special revenue fund to the credit of the department of corrections ~~and human~~
19 ~~services~~;

20 (iii) find a place to reside approved by the probation officer that may not be changed without the officer's
21 approval;

22 (iv) remain at the residence at all times except to go to work, to attend school, or to perform community
23 service or as otherwise specifically allowed by the probation officer;

24 (v) remain drug free and submit to drug and alcohol tests administered randomly not less than once each
25 month by or under supervision of the probation officer;

26 (vi) perform not less than 10 hours of community service each month as approved by the probation officer,
27 except that full-time students may be exempted or required to perform fewer hours of community service;

28 (vii) enroll or make satisfactory effort to seek enrollment in an approved drug rehabilitation program; and

29 (viii) comply with any other conditions imposed by the court to meet the needs of the community and the
30 defendant;

31 (e) suspension or revocation of the defendant's driver's license issued under Title 61, chapter 5, subject to
32 the following terms and conditions:

33 (i) upon the first conviction of an offense under this chapter, the driver's license must be suspended for 6
34 months;

1 (ii) upon the second conviction, the driver's license must be revoked for 1 year;

2 (iii) upon a third or subsequent conviction, the driver's license must be revoked for 3 years."

3
4 **Section 203.** Section 46-1-202, MCA, is amended to read:

5 **"46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following definitions
6 apply:

7 (1) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering
8 a charge.

9 (2) "Arrest" means taking a person into custody in the manner authorized by law.

10 (3) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person
11 specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest
12 and a copy certified by the issuing court.

13 (4) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a
14 pending criminal proceeding.

15 (5) "Charge" means a written statement that accuses a person of the commission of an offense, that is
16 presented to a court, and that is contained in a complaint, information, or indictment.

17 (6) "Conviction" means a judgment or sentence entered upon a guilty plea or upon a verdict or finding of guilty
18 rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

19 (7) "Court" means a place where justice is judicially administered and includes the judge of the court.

20 (8) "Included offense" means an offense that:

21 (a) is established by proof of the same or less than all the facts required to establish the commission of the
22 offense charged;

23 (b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the
24 offense charged; or

25 (c) differs from the offense charged only in the respect that a less serious injury or risk to the same person,
26 property, or public interest or a lesser kind of culpability suffices to establish its commission.

27 (9) "Judge" means a person who is vested by law with the power to perform judicial functions.

28 (10) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the
29 adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

30 (11) "Make available for examination and reproduction" means to make material and information that is subject
31 to disclosure available upon request at a designated place during specified reasonable times and to provide suitable
32 facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make
33 copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials
34 required to carry out tests on disclosed items. The parties may by mutual consent make other or additional

1 arrangements.

2 (12) "New trial" means a reexamination of the issue in the same court before another jury after a verdict or
3 finding has been rendered.

4 (13) "Notice to appear" means a written direction that is issued by a peace officer and that requests a person
5 to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

6 (14) "Offense" means a violation of any penal statute of this state or any ordinance of its political
7 subdivisions.

8 (15) "Parole" means the release to the community of a prisoner by a decision of the board of pardons and
9 parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and parole
10 and the supervision of the department of corrections ~~and human services~~.

11 (16) "Peace officer" means any person who by virtue of the person's office or public employment is vested
12 by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's
13 authority.

14 (17) "Persistent felony offender" means an offender who has previously been convicted of a felony and who
15 is presently being sentenced for a second felony committed on a different occasion than the first. An offender is
16 considered to have been previously convicted of a felony if:

17 (a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which
18 a sentence of imprisonment in excess of 1 year could have been imposed;

19 (b) less than 5 years have elapsed between the commission of the present offense and either:

20 (i) the previous felony conviction; or

21 (ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a
22 previous felony conviction; and

23 (c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside
24 at the postconviction hearing.

25 (18) "Place of trial" means the geographical location and political subdivision in which the court that will hear
26 the cause is situated.

27 (19) "Preliminary examination" means a hearing before a judge for the purpose of determining if there is
28 probable cause to believe a felony has been committed by the defendant.

29 (20) "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The
30 release is subject to the supervision of the department of corrections ~~and human services~~ upon direction of the court.

31 (21) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and
32 carry out criminal proceedings on behalf of the state or a political subdivision.

33 (22) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

34 (a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment

1 of that objective; or

2 (b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the
3 same person or the property of the same person.

4 (23) "Search warrant" means an order that is:

5 (a) in writing;

6 (b) in the name of the state;

7 (c) signed by a judge;

8 (d) a particular description of the place, object, or person to be searched and the evidence, contraband, or
9 person to be seized; and

10 (e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

11 (24) "Sentence" means the judicial disposition of a criminal proceeding upon a plea, verdict, or finding of
12 guilty.

13 (25) "Statement" means:

14 (a) a writing signed or otherwise adopted or approved by a person;

15 (b) a video or audio recording of a person's communications or a transcript of the communications; and

16 (c) a writing containing a summary of a person's oral communications or admissions.

17 (26) "Summons" means a written order issued by the court that commands a person to appear before a court
18 at a stated time and place to answer a charge for the offense set forth in the order.

19 (27) "Superseded notes" means handwritten notes, including field notes, that have been substantially
20 incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except
21 as provided in 46-15-324.

22 (28) "Temporary road block" means any structure, device, or means used by a peace officer for the purpose
23 of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

24 (29) "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury
25 or in a criminal action, prosecution, or proceeding.

26 (30) "Work product" means legal research, records, correspondence, reports, and memoranda, both written
27 and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel,
28 or their staff or investigators."

29
30 **Section 204.** Section 46-14-221, MCA, is amended to read:

31 **"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses.** (1) The issue
32 of the defendant's fitness to proceed may be raised by the court, the defendant or the defendant's counsel, or by the
33 prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor counsel for the
34 defendant contests the finding of the report filed under 46-14-206, the court may make the determination on the basis

1 of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence
2 upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical
3 psychologists who joined in the report and to offer evidence upon the issue.

4 (2) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant
5 must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of
6 the director of the department of ~~corrections~~ public health and human services to be placed in an appropriate institution
7 of the department of ~~corrections~~ public health and human services for so long as the unfitness endures. The committing
8 court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the
9 defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the
10 reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in
11 subsection (4), and the prosecutor shall petition the court in the manner provided in chapter 20 or 21 of Title 53,
12 whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

13 (3) If the court determines that the defendant lacks fitness to proceed because the defendant is
14 developmentally disabled as provided in 53-20-102(4), the proceeding against the defendant must be dismissed and
15 the prosecutor shall petition the court in the manner provided in chapter 20 of Title 53.

16 (4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution
17 that is susceptible to fair determination prior to trial and without the personal participation of the defendant.

18 (5) The expenses of sending the defendant to the custody of the director of the department of ~~corrections~~
19 public health and human services to be placed in an appropriate institution of the department of ~~corrections~~ public
20 health and human services, of keeping the defendant there, and of bringing the defendant back are chargeable to the
21 state and payable according to procedures established under 3-5-902(1)."

22
23 **Section 205.** Section 46-14-222, MCA, is amended to read:

24 "46-14-222. **Proceedings if fitness regained.** When the court, on its own motion or upon the application of
25 the director of the department of ~~corrections~~ public health and human services, the prosecution, or the defendant or
26 the defendant's legal representative, determines, after a hearing if a hearing is requested, that the defendant has
27 regained fitness to proceed, the proceeding must be resumed. If, however, the court is of the view that so much time
28 has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the
29 court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil
30 commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate
31 institution of the department of ~~corrections~~ public health and human services."

32
33 **Section 206.** Section 46-14-301, MCA, is amended to read:

34 "46-14-301. **Commitment upon finding of not guilty by reason of lack of mental state -- hearing to determine**

1 **release or discharge.** (1) When a defendant is found not guilty for the reason that due to a mental disease or defect
2 the defendant could not have a particular state of mind that is an essential element of the offense charged, the court
3 shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an
4 investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing
5 to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing
6 to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In
7 either case, the testimony and evidence presented at the trial must be considered by the court in making its
8 determination.

9 (2) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

10 (a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property
11 damage, the court may find that the defendant suffers from a mental disease or defect that renders the defendant a
12 danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or others,
13 the defendant may be committed to the custody of the director of the department of ~~corrections~~ public health and
14 human services to be placed in an appropriate mental health facility for custody, care, and treatment. However, if the
15 court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor shall
16 petition the court in the manner provided in Title 53, chapter 20.

17 (b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or
18 substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the manner
19 provided in Title 53, chapter 20 or 21.

20 (3) A person committed to the custody of the director of the department of ~~corrections~~ public health and
21 human services must have a hearing within 180 days of confinement to determine the person's present mental
22 condition and whether the person must be discharged or released or whether the commitment may be extended
23 because the person continues to suffer from a mental disease or defect that renders the person a danger to the person
24 or others. The hearing must be conducted by the court that ordered the commitment unless that court transfers
25 jurisdiction to the district court in the district in which the person has been placed. The court shall cause notice of the
26 hearing to be served upon the person, the person's counsel, the prosecutor, and the court that originally ordered the
27 commitment. The hearing is a civil proceeding, and the burden is upon the state to prove by clear and convincing
28 evidence that the person may not be safely released because the person continues to suffer from a mental disease or
29 defect that causes the person to present a substantial risk of:

30 (a) serious bodily injury or death to the person or others;

31 (b) an imminent threat of physical injury to the person or others; or

32 (c) substantial property damage.

33 (4) According to the determination of the court upon the hearing, the person must be discharged or released
34 on conditions the court determines to be necessary or must be committed to the custody of the director of the

1 department of ~~corrections~~ public health and human services to be placed in an appropriate mental health facility for
2 custody, care, and treatment.

3 (5) A professional person shall review the status of the person each year. At the time of the annual review,
4 the director of the department of ~~corrections~~ public health and human services or the person or the representative of
5 the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held
6 pursuant to the provisions of subsection (3)."

7
8 **Section 207.** Section 46-14-302, MCA, is amended to read:

9 **"46-14-302. Discharge or release upon motion of director.** (1) If the director of the department of ~~corrections~~
10 public health and human services believes that a person committed to the director's custody under 46-14-301 may be
11 discharged or released on condition without danger to the person or others because the person no longer suffers from
12 a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the
13 person or others, a substantial risk of an imminent threat of physical injury to the person or others, or a substantial risk
14 of substantial property damage, the director shall make application for the discharge or release of the person in a report
15 to the district court by which the person was committed unless that court transfers jurisdiction to the court in the
16 district in which the person has been placed and shall send a copy of the application and report to the prosecutor of
17 the county from which the person was committed.

18 (2) Either the director of the department of ~~corrections~~ public health and human services or the person may
19 also make application to the court for discharge or release as part of the person's annual treatment review.

20 (3) The court shall then appoint at least one person who is either a qualified psychiatrist or licensed clinical
21 psychologist to examine the person and to report as to the person's mental condition within 60 days or a longer period
22 that the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings on the
23 examinations, the court may have the person confined in any mental health facility located near the place where the
24 court sits that may be designated by the director of the department of ~~corrections~~ public health and human services
25 as suitable for the temporary detention of persons suffering from mental disease or defect.

26 (4) The committed person or the person's attorney may secure a professional person of the committed
27 person's choice to examine the committed person and to testify at the hearing. If the person wishing to secure the
28 testimony of a professional person is unable to do so because of financial reasons, the court shall appoint an additional
29 professional person to perform the examination. Whenever possible, the court shall allow the committed person or the
30 person's attorney a reasonable choice of an available professional person qualified to perform the requested
31 examination. The professional person must be compensated by the department of ~~corrections~~ public health and human
32 services.

33 (5) If the court is satisfied by the report filed under subsection (1) and the testimony of the reporting
34 psychiatrist or licensed clinical psychologist that the committed person may be discharged or released on condition

1 because the person no longer suffers from a mental disease or defect that causes the person to present a substantial
2 risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury
3 to the person or others, or a substantial risk of substantial property damage, the court shall order the person's
4 discharge.

5 (6) (a) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may
6 safely be discharged or released on the grounds that the person no longer suffers from a mental disease or defect that
7 causes the person to present a substantial risk of:

8 (i) serious bodily injury or death to the person or others;

9 (ii) an imminent threat of physical injury to the person or others; or

10 (iii) substantial property damage.

11 (b) A hearing is considered a civil proceeding, and the burden is upon the state to prove by clear and
12 convincing evidence that the person may not be safely discharged or released because the person continues to suffer
13 from a mental disease or defect that causes the person to present a substantial risk of:

14 (i) serious bodily injury or death to the person or others;

15 (ii) an imminent threat of physical injury to the person or others; or

16 (iii) substantial property damage.

17 (c) According to the determination of the court upon the hearing, the committed person must then be
18 discharged or released on conditions that the court determines to be necessary or must be recommitted to the custody
19 of the director of the department of ~~corrections~~ public health and human services, subject to discharge or release only
20 in accordance with the procedures provided in this section and 46-14-303."

21
22 **Section 208.** Section 46-14-303, MCA, is amended to read:

23 **"46-14-303. Application for discharge or release by committed person.** A committed person may make
24 application for discharge or release to the district court by which the person was committed unless that court transfers
25 jurisdiction to the court in the district in which the person has been placed, and the procedure to be followed upon the
26 application is the same as that prescribed in 46-14-302 in the case of an application by the director of the department
27 of ~~corrections~~ public health and human services. However, an application by a committed person need not be
28 considered until the person has been confined for a period of not less than 6 months from the date of the order of
29 commitment, and if the determination of the court is adverse to the application, the person may not be permitted to
30 file a further application until 1 year has elapsed from the date of any preceding hearing on an application for the
31 person's release or discharge."

32
33 **Section 209.** Section 46-14-304, MCA, is amended to read:

34 **"46-14-304. Revocation of conditional release.** (1) The court may order revocation of a person's conditional

1 release if the court determines after hearing evidence that:

2 (a) the conditions of release have not been fulfilled; and

3 (b) based on the violations of the conditions and the person's past mental health history, there is a substantial
4 likelihood that the person continues to suffer from a mental disease or defect that causes the person to present a
5 substantial risk of:

6 (i) serious bodily injury or death to the person or others;

7 (ii) an imminent threat of physical injury to the person or others; or

8 (iii) substantial property damage.

9 (2) The court may retain jurisdiction to revoke a conditional release for no longer than 5 years.

10 (3) If the court finds that the conditional release should be revoked, the court shall immediately order the
11 person to be recommitted to the custody of the director of the department of ~~corrections~~ public health and human
12 services, subject to discharge or release only in accordance with the procedures provided in 46-14-302 and
13 46-14-303."

14
15 **Section 210.** Section 46-14-312, MCA, is amended to read:

16 **"46-14-312. Sentence to be imposed.** (1) If the court finds that the defendant at the time of the commission
17 of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in
18 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

19 (2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental
20 disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need
21 not apply and the court shall sentence the defendant to be committed to the custody of the director of the department
22 of ~~corrections~~ public health and human services to be placed in an appropriate institution for custody, care, and
23 treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under
24 subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18,
25 if the treatment of the individual and the protection of the public are provided for.

26 (3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition
27 the sentencing court for review of the sentence if the professional person certifies that:

28 (a) the defendant no longer suffers from a mental disease or defect;

29 (b) the defendant's mental disease or defect no longer renders the defendant unable to appreciate the
30 criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law;

31 (c) the defendant suffers from a mental disease or defect but is not a danger to the defendant or others; or

32 (d) the defendant suffers from a mental disease or defect that makes the defendant a danger to the defendant
33 or others, but:

34 (i) there is no treatment available for the mental disease or defect;

1 (ii) the defendant refuses to cooperate with treatment; or

2 (iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect.

3 (4) The sentencing court may make any order not inconsistent with its original sentencing authority except
4 that the length of confinement or supervision must be equal to that of the original sentence. The professional person
5 shall review the defendant's status each year."

6
7 **Section 211.** Section 46-18-101, MCA, is amended to read:

8 **"46-18-101. Correctional policy.** (1) It is the purpose of this section to declare the correctional policy of the
9 state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement
10 the policy established by this section.

11 (2) The correctional policy of the state of Montana is to protect society by preventing crime through
12 punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be
13 held accountable for the individual's actions. Corrections laws and programs must be implemented to impress upon
14 each individual the responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that
15 prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is
16 certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime be dealt with in
17 accordance with their individual characteristics, circumstances, needs, and potentialities.

18 (3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

19 (i) the crime committed;

20 (ii) the prospects of rehabilitation of the offender;

21 (iii) the circumstances under which the crime was committed;

22 (iv) the criminal history of the offender; and

23 (v) consideration of alternatives to imprisonment of the offender in the state prison or the women's
24 correctional ~~center~~ system.

25 (b) Dangerous offenders who habitually violate the law and victimize the public must be removed from society
26 and correctively treated in custody for long terms, as needed. Other offenders must be dealt with by probation,
27 suspended sentence, community corrections, community service, or fine whenever ~~such~~ the disposition appears
28 practicable and not detrimental to the needs of public safety and the welfare of the individual. Whenever possible,
29 sentences for offenders must include restitution to the victim, payment of costs as provided in 46-18-232, and payment
30 of costs of court-appointed counsel as provided in 46-8-113.

31 (4) It is also the policy of the state that alternatives to imprisonment, such as community corrections, should
32 be used whenever appropriate for nonviolent felony offenders in order to provide them opportunities to gain work
33 experience, to learn life skills, to obtain education and training, or to participate in other activities that will reduce
34 recidivism and enable offenders to become productive members of society."

1 **Section 212.** Section 46-18-105, MCA, is amended to read:

2 **"46-18-105. Community corrections facilities or programs.** The department of corrections ~~and human services~~
3 may provide community corrections facilities or programs for the rehabilitation of nonviolent felony offenders, as
4 authorized under Title 53, chapter 30, part 3."

5
6 **Section 213.** Section 46-18-111, MCA, is amended to read:

7 **"46-18-111. Presentence investigation -- when required.** (1) Upon the acceptance of a plea or upon a verdict
8 or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a
9 presentence investigation and report. The district court shall consider the presentence investigation report prior to
10 sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507,
11 or 45-5-625 involving a victim who was less than 16 years of age when the offense was committed, the investigation
12 must include an evaluation of the defendant and a recommendation as to treatment of the offender in the least
13 restrictive environment, considering community safety and offender needs. The evaluation must be completed by a
14 person who is determined to be qualified under guidelines established by the department of corrections ~~and human~~
15 ~~services~~. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district
16 court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by
17 the county or the state, or both, under Title 3, chapter 5, part 9.

18 (2) Unless the court makes a finding that a report is unnecessary, a defendant convicted of any offense not
19 enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written
20 presentence investigation report by a probation officer is presented to and considered by the district court. The district
21 court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor."

22
23 **Section 214.** Section 46-18-201, MCA, is amended to read:

24 **"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense
25 upon a verdict or a plea of guilty, the court may:

26 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under
27 the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding
28 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose
29 upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable
30 restrictions or conditions may include:

- 31 (i) jail base release;
32 (ii) jail time not exceeding 180 days;
33 (iii) conditions for probation;
34 (iv) restitution;

- (v) payment of the costs of confinement;
- (vi) payment of a fine as provided in 46-18-231;
- (vii) payment of costs as provided in 46-18-232 and 46-18-233;
- (viii) payment of costs of court-appointed counsel as provided in 46-8-113;
- (ix) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;
- (x) community service;
- (xi) home arrest as provided in Title 46, chapter 18, part 10;
- (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;
- or
- (xiii) any combination of ~~the above~~ subsections (1)(a)(i) through (1)(a)(xii).
- (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).
- (c) impose a fine as provided by law for the offense;
- (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;
- (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections ~~and human services~~ for placement in an appropriate correctional institution or program;
- (f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;
- (g) impose any combination of subsections (1)(b) through (1)(f).
- (2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.
- (3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.
- (4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3),

1 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

4 (6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case
5 of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed,
6 imposition of the sentence was deferred, or execution of the sentence was suspended.

7 (7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of
8 imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section
9 46-18-222 does not apply to the first 30 days of the imprisonment.

10 (8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court
11 may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

12 (9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the
13 state prison shall enroll in the educational phase of the prison's sexual offender program.

14 (10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of
15 the offender in the state prison, including placement of the offender in a community corrections facility or program.
16 In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225.
17 If the offender is subsequently sentenced to the state prison or the women's correctional ~~center~~ system, the court shall
18 state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

19
20 **Section 215.** Section 46-18-225, MCA, is amended to read:

21 **"46-18-225. Criteria for sentencing nonviolent felony offenders.** Prior to sentencing a nonviolent felony
22 offender to a term of imprisonment in the state prison or the women's correctional ~~center~~ system, the court shall take
23 into account whether:

24 (1) the interests of justice and the needs of public safety truly require the level of security provided by
25 imprisonment of the offender in the state prison or the women's correctional ~~center~~ system;

26 (2) the needs of the offender can be better served in the community or in a facility or program other than the
27 state prison or the women's correctional ~~center~~ system;

28 (3) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

29 (4) the offender acted under strong provocation;

30 (5) the offender has made restitution or will make restitution to the victim of the offender's criminal conduct;

31 (6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for a
32 substantial period of time before the commission of the present crime;

33 (7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

34 (8) the character and attitude of the offender indicate that the offender is likely to commit another crime;

1 (9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

2 (10) imprisonment of the offender would create an excessive hardship on the offender or the offender's
3 family."

4
5 **Section 216.** Section 46-18-235, MCA, is amended to read:

6 **"46-18-235. Disposition of money collected as fines and costs.** The money collected by a court as a result
7 of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 ~~shall~~ must be paid:

8 (1) by a district court to the county general fund of the county in which the court is held, except that:

9 (a) if the costs assessed include any district court expense listed in 3-5-901, the money collected from
10 assessment of these costs must be paid to the state for deposit into the state general fund to the extent the expenses
11 were paid by the state;

12 (b) if the fine was imposed for a violation of Title 45, chapter 9 or 10, the court may order the money paid
13 into the drug forfeiture account maintained under 44-12-206 for the law enforcement agency which made the arrest
14 from which the conviction and fine arose; and

15 (c) if the fine was imposed for a violation of 45-5-206, 50% of the amount collected must be deposited in
16 the state special revenue fund for use of the department of ~~family~~ public health and human services in the battered
17 spouses and domestic violence grant program created by 52-6-101; and

18 (2) by a justice's court pursuant to 3-10-601."

19
20 **Section 217.** Section 46-18-254, MCA, is amended to read:

21 **"46-18-254. Release of sexual offender -- duties of court and department.** A sexual offender must be informed
22 in writing at the time of sentencing of the duty to register under 46-18-255; Title 46, chapter 23, part 5; and this
23 section by the court in which the offender is sentenced. The department of corrections ~~and human services~~ shall obtain
24 the address where the person expects to reside upon release or discharge or suspension of the person's sentence. The
25 department of corrections ~~and human services~~ shall inform the appropriate law enforcement agency having local
26 jurisdiction where the person expects to reside."

27
28 **Section 218.** Section 46-18-1001, MCA, is amended to read:

29 **"46-18-1001. Definitions.** As used in this part, the following definitions apply:

30 (1) (a) "Home" means the temporary or permanent residence of an offender consisting of the actual living area
31 approved by the supervising authority.

32 (b) When more than one residence or family are located on a single piece of property, the term does not
33 include the residence of any other person who is not part of the social unit formed by the offender's immediate family.

34 (2) "Home arrest" means the use of a person's home for purposes of confinement.

1 (3) "Monitoring device" means an electronic device or apparatus that is limited in capability to recording or
2 transmitting information concerning the offender's presence in or absence from the home. The device must be minimally
3 intrusive.

4 (4) "Supervising authority" means, in the case of an adult felon, the corrections division of the department
5 of corrections ~~and human services~~; in the case of an adult misdemeanor, a court-approved entity other than the
6 corrections division of the department of corrections ~~and human services~~; or, in the case of a juvenile, the juvenile
7 probation division of the youth court or any other person or entity appointed by the court.

8 (5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent homicide,
9 aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery, sexual intercourse without
10 consent, sexual abuse of children, arson, aggravated burglary, escape, any criminal attempt to commit an enumerated
11 offense, or conviction as a persistent felony offender when the offender has a felony conviction for any of the listed
12 offenses within the 5-year period preceding the date of the present conviction."
13

14 **Section 219.** Section 46-18-1004, MCA, is amended to read:

15 **"46-18-1004. Home arrest -- ineligibility.** A person being held under a detainer, warrant, or process issued
16 by some other jurisdiction is not eligible for home arrest. A person convicted of a violent felony offense is not eligible
17 for home arrest. However, this section does not prevent the use of a monitoring device as a part of an intensive
18 supervision program or other program of the department of corrections ~~and human services~~."
19

20 **Section 220.** Section 46-19-202, MCA, is amended to read:

21 **"46-19-202. Proceedings following determination regarding fitness.** (1) If it is found that defendant is mentally
22 fit as provided in 46-19-201, the warden of the Montana state prison shall execute the judgment.

23 (2) If it is found that ~~he~~ the defendant lacks fitness, the execution of judgment must be suspended and the
24 court shall commit ~~him~~ the defendant to the custody of the superintendent of the Montana state hospital to be placed
25 in an appropriate institution of the department of ~~corrections~~ public health and human services for ~~so~~ as long as the
26 lack of fitness endures.

27 (3) When the court, on its own motion or upon application of the superintendent of the Montana state
28 hospital, the county prosecuting officer, or the defendant or ~~his~~ the defendant's legal representative, determines after
29 a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the warden must be directed
30 by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the
31 commitment of the defendant that it would be unjust to proceed with execution of the sentence, the court may suspend
32 the execution of the sentence and may order the defendant to be discharged."
33

34 **Section 221.** Section 46-19-303, MCA, is amended to read:

1 **"46-19-303. Power of governor to enter into contracts.** The governor ~~is hereby empowered to~~ may designate
2 the department of corrections ~~and human services~~ to enter into ~~such~~ contracts recommended by the department on
3 behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate
4 Corrections Compact pursuant to 46-19-301."

5
6 **Section 222.** Section 46-19-305, MCA, is amended to read:

7 **"46-19-305. Hearings requested by other states.** The board of pardons and parole and the department of
8 corrections ~~and human services~~ shall hold ~~such~~ hearings as may be requested by any other party state pursuant to
9 Article IV(6) of the Western Interstate Corrections Compact."

10
11 **Section 223.** Section 46-19-402, MCA, is amended to read:

12 **"46-19-402. Effectuation of purposes of compact.** The department of corrections ~~and human services~~ shall
13 enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be
14 within its jurisdiction, including but not limited to the making and submission of ~~such~~ the reports ~~as that~~ are required
15 by the compact."

16
17 **Section 224.** Section 46-23-103, MCA, is amended to read:

18 **"46-23-103. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

19 (1) "Board" means the board of pardons and parole provided for in 2-15-2302.

20 (2) "Department" means the department of corrections ~~and human services~~ provided for in ~~Title 2, chapter~~
21 ~~15, part 23~~ 2-15-2301.

22 (3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the
23 constitution of Montana.

24 (4) "Parole" means the release to the community of a prisoner by the decision of the board prior to the
25 expiration of ~~his~~ the prisoner's term, subject to conditions imposed by the board and subject to supervision of the
26 department of corrections ~~and human services~~."

27
28 **Section 225.** Section 46-23-104, MCA, is amended to read:

29 **"46-23-104. Board of pardons and parole.** (1) The board of pardons and parole is responsible for executive
30 clemency and parole as provided in this chapter.

31 (2) The board shall meet monthly, and at ~~such~~ other times ~~as that~~ the board considers necessary, at the state
32 prison.

33 (3) The principal office of the board ~~shall be~~ is in Deer Lodge.

34 (4) The board may designate one of its members, one of its staff members, or any other adult correctional

1 releasing authority to conduct interviews relative to:

- 2 (a) parole eligibility;
- 3 (b) plans for release on parole; or
- 4 (c) revocation hearings."

5
6 **Section 226.** Section 46-23-106, MCA, is amended to read:

7 **"46-23-106. Information from courts to board.** It ~~shall be~~ is the duty of the court disposing of any criminal
8 case to cause to be transmitted to the board of pardons and parole statistical data in accordance with regulations
9 issued by the board regarding all dispositions of defendants whether found guilty or discharged."

10
11 **Section 227.** Section 46-23-201, MCA, is amended to read:

12 **"46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections
13 (2) through (5), the board may release on nonmedical parole by appropriate order any person confined in the Montana
14 state prison or the women's correctional ~~center~~ system, except persons under sentence of death and persons serving
15 sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be
16 released without detriment to the prisoner or to the community.

17 (2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at
18 least one-half of the prisoner's full term, less the good time allowance provided for in 53-30-105. Except as provided
19 in subsection (3), a prisoner designated as a nondangerous offender under 46-18-404 may be paroled after the prisoner
20 has served one-quarter of the prisoner's full term, less the good time allowance provided for in 53-30-105. Any prisoner
21 serving a time sentence may be paroled after the prisoner has served 17 1/2 years of the sentence.

22 (3) A prisoner serving a time sentence under 45-9-109 may not be paroled until the prisoner has served at
23 least one-half of the full term, less the good time allowance provided for in 53-30-105.

24 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30
25 years, less the good time allowance provided for in 53-30-105.

26 (5) A parole may be ordered under this section only for the best interests of society and not as an award of
27 clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that
28 the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

29 (6) Whenever the department of corrections ~~and human services~~ certifies to the board that the population at
30 either the male or female correctional facility has exceeded its designed capacity for 30 consecutive days, the board
31 shall consider the respective male or female prisoners under the jurisdiction of the department eligible for parole 120
32 days prior to the eligibility dates provided for in subsections (2) through (4).

33 (7) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months
34 of incarceration, the provisions of subsection (6) do not apply."

1 **Section 228.** Section 46-23-302, MCA, is amended to read:

2 **"46-23-302. Order for hearing on application for executive clemency.** After the board has duly considered
3 an application for executive clemency and has by majority vote favored a hearing, it must pass an order in substance
4 as follows:

5 "Whereas, the Board of Pardons and Parole has officially received an application for executive clemency
6 concerning, a convict confined in the state prison (or to one, who has been found guilty of an offense committed
7 against the laws of the state), who was convicted of the crime of committed at, in the county of, State of
8 Montana, on the day of, 19.., and sentenced for a term of years.

9 Therefore, ~~be~~ it is ordered that, the day of, 19.., ~~be~~ is set ~~apart~~ for the consideration of ~~said the~~
10 executive clemency matter; and all persons having an interest ~~therein~~ in the matter desiring to be heard either for or
11 against the granting of the pardon, commutation, restoration of citizenship, or remission or suspension of fine or
12 forfeiture are ~~hereby~~ notified to be present at o'clock of ~~said that~~ day, at

13 Further, ordered that a copy of this order be printed and published in the (here insert name of some
14 newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper printed
15 and published at, in the county of, once each week for 2 weeks beginning, 19.., and ending"

16
17 **Section 229.** Section 46-23-315, MCA, is amended to read:

18 **"46-23-315. Authority of governor to grant respite -- application.** The governor has the power to grant respites
19 after conviction and judgment for any offenses committed against the criminal laws of the state for ~~such the time as~~
20 ~~he that the governor~~ thinks proper. The governor may grant a respite upon application of a person authorized to apply
21 for executive clemency and prior to any review or recommendation by the board of pardons and parole. A respite must
22 be of temporary duration for a definite period of time. Any respite that is granted that stays the execution of a death
23 warrant has the effect of postponing the execution of the warrant. In ~~such a that~~ case, if clemency is not granted, the
24 death warrant is again in effect at the expiration of the period of respite and the execution must take place on the date
25 of expiration of the respite."

26
27 **Section 230.** Section 46-23-401, MCA, is amended to read:

28 **"46-23-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

29 (1) "Applicant" means any prisoner who is eligible under 46-23-411 and who signs an application to
30 participate in the supervised release program.

31 (2) "Board" means the board of pardons and parole provided for in 2-15-2302.

32 (3) "Department" means the department of corrections ~~and human services~~ provided for in 2-15-2301.

33 (4) "Prisoner" means a person sentenced by a state district court to a term of confinement in the state prison.

34 (5) "Sponsor" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any

1 person, group, association, or organization approved by the department to undertake the supervision of prisoners
2 participating in the supervised release program.

3 (6) "State prison" means the Montana state prison at Deer Lodge or any adult correctional facility designated
4 by the department.

5 (7) "Supervising agent" means a probation and parole officer of the department."
6

7 **Section 231.** Section 46-23-502, MCA, is amended to read:

8 **"46-23-502. Definitions.** As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

9 (1) "Department" means the department of corrections ~~and human services~~ provided for in ~~Title 2, chapter~~
10 ~~15, part 23~~ 2-15-2301.

11 (2) "Sexual offender" means a person who has been convicted of a sexual offense.

12 (3) "Sexual offense" means:

13 (a) any violation of 45-5-502(3), 45-5-503, 45-5-505, 45-5-507 (unless the act occurred between two
14 consenting persons 16 years of age or older), or 45-5-625; or

15 (b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed
16 in subsection (3)(a)."
17

18 **Section 232.** Section 46-23-503, MCA, is amended to read:

19 **"46-23-503. Release of sexual offender from place of confinement -- duties of official in charge.** A sexual
20 offender who is released from the custody of the department of corrections ~~and human services or the department of~~
21 ~~family services~~ must be informed in writing prior to release of ~~his~~ the duty to register under 46-18-254, 46-18-255,
22 and this part by the official in charge of the place of confinement. The official shall obtain the address where the person
23 expects to reside upon ~~his~~ release and report the address to the department of corrections ~~and human services~~. The
24 department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects
25 to reside."
26

27 **Section 233.** Section 46-23-1001, MCA, is amended to read:

28 **"46-23-1001. Definitions.** As used in this part, unless the context requires otherwise, the following definitions
29 apply:

30 (1) "Board" means the board of pardons and parole provided for in 2-15-2302.

31 (2) "Department" means the department of corrections ~~and human services~~ provided for in ~~Title 2, chapter~~
32 ~~15, part 23~~ 2-15-2301.

33 (3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the
34 expiration of ~~his~~ the prisoner's term, subject to conditions imposed by the board and subject to supervision of the

1 department.

2 (4) "Probation" means the release by the court without imprisonment, except as otherwise provided by law,
3 of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to
4 the supervision of the department upon direction of the court."

5
6 **Section 234.** Section 46-23-1024, MCA, is amended to read:

7 **"46-23-1024. Initial hearing after arrest.** (1) After the arrest of the prisoner, a hearing ~~shall~~ must be held
8 within a reasonable time, unless the hearing is waived by the parolee, to determine whether there is probable cause
9 or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of
10 parole conditions. An independent officer, who need not be a judicial officer, must preside over the hearing. The hearing
11 must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as
12 convenient after arrest. The parolee must be given notice of the hearing and must be allowed to appear and speak in
13 his the parolee's own behalf and introduce relevant information to the hearings officer.

14 (2) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses and
15 position of the parolee and the substance of the documents or evidence given in support of parole revocation. Based
16 on the information given to ~~him the hearings officer~~, the hearings officer shall determine whether there is probable
17 cause to hold the parolee for the final decision of the board of pardons and parole as provided in 46-23-1025."

18
19 **Section 235.** Section 49-3-204, MCA, is amended to read:

20 **"49-3-204. Licensing.** (1) A state or local governmental agency may not grant, deny, or revoke the license
21 or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical
22 or mental disability, or national origin. Each state or local governmental agency shall take ~~such~~ appropriate action in
23 the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination,
24 and enforce compliance with the policy of this chapter. This subsection does not prevent the department of ~~family~~
25 public health and human services from licensing a child-placing agency that gives nonarbitrary consideration in adoption
26 proceedings to relevant information concerning the factors listed in this subsection. Consideration of religious factors
27 by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of
28 religion within the meaning of this section.

29 (2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that
30 excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the
31 grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national
32 origin. This subsection does not apply to any lodge of a recognized national fraternal organization."

33
34 **Section 236.** Section 49-4-502, MCA, is amended to read:

1 **"49-4-502. Definitions.** As used in this part, the following definitions apply:

2 (1) "Appointing authority" means the presiding judge or justice of any court, the chairman of any board,
3 commission, or authority, the director or commissioner of any department or agency, or any other person presiding at
4 any hearing or other proceeding in which a qualified interpreter is required pursuant to this part.

5 (2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired
6 as to prohibit the person from understanding oral communications. The term further includes, but is not limited to, a
7 person who, because of loss of hearing, cannot communicate spoken language.

8 (3) "Intermediary interpreter" means a knowledgeable deaf person who, because of ~~his~~ the person's intimate
9 acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary
10 between the deaf person and a qualified interpreter.

11 (4) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly
12 affected by the decision or action which may be made or taken.

13 (5) "Qualified interpreter" means an interpreter listed by the department of ~~social and rehabilitation~~ public
14 health and human services as provided in 49-4-507."

15
16 **Section 237.** Section 49-4-507, MCA, is amended to read:

17 **"49-4-507. Coordination of interpreter requests.** (1) Whenever an appointing authority is required to appoint
18 an interpreter, the authority shall request the department of ~~social and rehabilitation~~ public health and human services
19 to furnish the authority with a list of qualified interpreters. If the choice of qualified interpreters does not meet the
20 needs or wishes of the deaf person, the appointing authority shall appoint another qualified interpreter.

21 (2) The Montana association of the deaf and the Montana registry of interpreters for the deaf shall provide
22 the department of ~~social and rehabilitation~~ public health and human services with a list of qualified and available
23 interpreters.

24 (3) The only function of the department of ~~social and rehabilitation~~ public health and human services is to
25 maintain the list referred to in subsection (2)."

26
27 **Section 238.** Section 50-1-101, MCA, is amended to read:

28 **"50-1-101. Definitions.** Unless the context indicates otherwise, in this chapter, the following definitions apply:

29 ~~(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

30 ~~(2)(1)~~ (1) "Communicable disease" means a disease designated communicable by the department.

31 ~~(3)(2)~~ (2) "Department" means the department of public health and ~~environmental sciences,~~ human services
32 provided for in ~~Title 2, chapter 15, part 21~~ 2-15-2201."

33
34 **Section 239.** Section 50-1-102, MCA, is amended to read:

1 **"50-1-102. Legal adviser to ~~board and~~ department.** The attorney general is legal adviser to the ~~board and~~
2 department. If the county attorney fails to act and with the approval of the attorney general, the department may retain
3 special counsel and compensate ~~him~~ the special counsel from appropriations to the department."

4
5 **Section 240.** Section 50-1-103, MCA, is amended to read:

6 **"50-1-103. Enforcement of public health laws.** (1) Either the county attorney of a county where a cause of
7 action arises or the department may bring an action necessary to abate, restrain, or prosecute the violation of public
8 health laws.

9 (2) Except as otherwise provided in the public health laws administered by the ~~board or the~~ department, the
10 department may, through the attorney general or appropriate county attorney, sue in district court to enjoin any
11 violation of the public health laws, rules, or orders adopted or issued under the public health laws administered by the
12 ~~board or~~ department."

13
14 **Section 241.** Section 50-1-104, MCA, is amended to read:

15 **"50-1-104. General penalty.** Anyone who violates a rule adopted by the ~~board or the~~ department for which
16 ~~no~~ a penalty is not specified is guilty of a misdemeanor."

17
18 **Section 242.** Section 50-1-202, MCA, is amended to read:

19 **"50-1-202. General powers and duties.** The department shall:

20 (1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;
21 (2) make investigations, disseminate information, and make recommendations for control of diseases and
22 improvement of public health to persons, groups, or the public;

23 (3) at the request of the governor, administer any federal health program for which responsibilities are
24 delegated to states;

25 (4) inspect and work in conjunction with custodial institutions and Montana university system units periodically
26 as necessary and at other times on request of the governor;

27 (5) after each inspection made under subsection (4) ~~of this section~~, submit a written report on sanitary
28 conditions to the governor and to the director of the department of corrections and human services or the commissioner
29 of higher education and include recommendations for improvement in conditions if necessary;

30 (6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer
31 systems, and ventilation of public buildings;

32 ~~(7) organize laboratory services and provide equipment and personnel for those services;~~

33 ~~(8)~~ (7) develop and administer activities for the protection and improvement of dental health and supervise
34 dentists employed by the state, local boards of health, or schools;

(8) develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(9) conduct health education programs;

(10) provide consultation to school and local community health nurses in the performance of their duties;

(11) consult with the superintendent of public instruction on health measures for schools;

(12) develop, adopt, and administer rules setting standards for a program to provide services to handicapped children, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) aftercare and related services; and

(d) eligibility;

(13) provide consultation to local boards of health;

(14) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(15) accept and expend federal funds available for public health services;

(16) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(17) after consultation with the board, adopt rules imposing fees for the tests and services performed by the laboratory of the department of environmental sciences. Fees, established on an annual basis, should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees shall must be deposited in the state special revenue fund for the use of the department in performing tests and services.

(18) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases; and

(19) adopt and enforce rules regarding the transportation of dead human bodies."

Section 243. Section 50-2-101, MCA, is amended to read:

"50-2-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means a disease designated communicable by the department.

(2) "Department" means the department of public health and environmental sciences, human services provided for in Title 2, chapter 15, part 21 2-15-2201.

(3) "Local board" means a county, city, city-county, or district board of health.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(5) "Physician" means a physician legally authorized to practice medicine in this state."

Section 244. Section 50-3-102, MCA, is amended to read:

"50-3-102. Powers and duties of department regarding state fire prevention and investigation -- rules. (1) For the purpose of reducing the state's fire loss, the department shall:

(a) inspect each unit of the Montana university system and other state buildings, including state institutions, as often as its budget and other inspection duties allow, but no more frequently than once each year unless requested by the commissioner of higher education for buildings in the university system, by the department of corrections or the department of public health and human services for state institutions, or by the department of administration for all other state buildings. A copy of the inspection report for units of the university system must be given to the commissioner of higher education, a copy of the inspection report for state institutions must be given to the department of corrections and the department of public health and human services, and a copy of the inspection report for all other state buildings must be given to the department of administration. The department of justice shall advise the commissioner of higher education and the directors of the departments of corrections, public health and human services, and administration concerning fire prevention, fire protection, and public safety when it distributes the reports.

(b) inspect public, business, or industrial buildings, as provided in chapter 61, and require conformance to law and rules promulgated under the provisions of this chapter;

(c) assist local fire and law enforcement authorities in arson investigations and may initiate or supervise these investigations when, in its judgment, the initiation or supervision is necessary;

(d) provide fire prevention and fire protection information to public officials and the general public;

(e) serve as the state entity primarily responsible for promoting fire safety at the state level;

(f) encourage coordination of all services and agencies in fire prevention matters to reduce duplication and fill voids in services;

(g) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices; and

(h) keep a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating to the fires that have been determined by investigations under the provisions of chapter 63. Except for statements of witnesses given during an investigation, information that may be held in confidence under 50-63-403, and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5, the record must be open at all times to public inspection.

(2) The department may adopt rules necessary for safeguarding life and property from the hazards of fire and

1 carrying into effect the fire prevention laws of this state.

2 (3) The department shall adopt rules based on nationally recognized standards necessary for safeguarding life
3 and property from the hazards associated with the manufacture, transportation, storage, sale, and use of explosive
4 materials.

5 (4) If necessary to safeguard life and property under rules promulgated pursuant to this section, the
6 department may maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until
7 there is compliance with the rules."

8
9 **Section 245.** Section 50-4-102, MCA, is amended to read:

10 **"50-4-102. Definitions.** For the purposes of this chapter, the following definitions apply:

11 (1) "Authority" means the Montana health care authority created by 50-4-201.

12 (2) "Board" means one of the regional health care planning boards created pursuant to 50-4-401.

13 (3) "Certificate of public advantage" or "certificate" means a written certificate issued by the authority as
14 evidence of the authority's intention that the implementation of a cooperative agreement, when actively supervised
15 by the authority, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

16 (4) "Cooperative agreement" or "agreement" means a written agreement between two or more health care
17 facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical
18 services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services
19 customarily offered by health care facilities.

20 (5) "Data base" means the unified health care data base created pursuant to 50-4-502.

21 (6) "Health care" includes both physical health care and mental health care.

22 (7) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit,
23 that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes
24 all facilities and institutions included in 50-5-101~~(19)~~(18). The term does not apply to a facility operated by religious
25 groups relying solely on spiritual means, through prayer, for healing.

26 (8) "Health insurer" means any health insurance company, health service corporation, health maintenance
27 organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal
28 law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and
29 private entities.

30 (9) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized
31 by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

32 (10) "Management plan" means the health care resource management plan required by 50-4-304.

33 (11) "Region" means one of the health care planning regions created pursuant to 50-4-401.

34 (12) "Statewide plan" means one of the statewide universal health care access plans for access to health care

1 required by 50-4-301."

2
3 **Section 246.** Section 50-4-201, MCA, is amended to read:

4 **"50-4-201. Montana health care authority -- allocation -- membership.** (1) There is a Montana health care
5 authority.

6 (2) The authority is allocated to the department of ~~health and environmental sciences~~ public health and human
7 services for administrative purposes as provided in 2-15-121.

8 (3) The authority consists of five voting members appointed by the governor. At least one member must
9 represent consumer organizations. Members of the authority must be appointed as follows:

10 (a) ~~Within 30 days of May 3, 1993, the~~ The speaker and minority leader of the house of representatives shall
11 select an individual with recognized expertise or interest, or both, in health care. The speaker and minority leader and
12 the person selected by them shall nominate by majority vote five individuals for appointment to the authority.

13 (b) ~~Within 30 days of May 3, 1993, the~~ The president and minority leader of the senate shall select an
14 individual with recognized expertise or interest, or both, in health care. The president and minority leader and the person
15 selected by them shall nominate by majority vote five individuals for appointment to the authority.

16 (c) ~~Within 90 days of May 3, 1993, the~~ The governor shall appoint from those nominated under subsections
17 (3)(a) and (3)(b) five individuals to the authority.

18 (4) A vacancy must be filled in the same manner as original appointments under subsection (3), except that
19 one individual must be selected under subsection (3)(a) and one under subsection (3)(b). The governor shall appoint
20 from those nominated the individual to fill the vacancy.

21 (5) The presiding officer of the authority must be elected by majority vote of the voting members. The initial
22 presiding officer must serve a 4-year term.

23 (6) Members serve terms of 4 years, except that of the members initially appointed, two members serve
24 4-year terms, two members serve 3-year terms, and one member serves a 2-year term, to be determined by lot.

25 (7) The ~~directors~~ director of the department of ~~social and rehabilitation~~ public health and human services and
26 ~~the department of health and environmental sciences~~ and the commissioner of insurance are nonvoting, ex officio
27 members of the authority.

28 (8) The attorney general is an ex officio, nonvoting member of the authority only for the purpose of the
29 authority's approval or denial of certificates of public advantage, supervision of cooperative agreements, and revocation
30 of certificates of public advantage pursuant to Title 50, chapter 4, part 6.

31 (9) A member shall acknowledge a direct conflict of interest in a proceeding in which the member has a
32 personal or financial interest."

33
34 **Section 247.** Section 50-4-304, MCA, is amended to read:

1 **"50-4-304. Health care resource management plan.** (1) Each statewide plan must contain a health care
2 resource management plan that takes into account the provisions of 50-4-303. The management plan must provide
3 for the distribution of health care resources within the regions established pursuant to 50-4-401 and within the state
4 as a whole, consistent with the principles provided in subsection (2).

5 (2) The management plan must include:

6 (a) a statement of principles used in the allocation of resources and in establishing priorities for health
7 services;

8 (b) identification of the current supply and distribution of:

9 (i) hospital, nursing home, and other inpatient services;

10 (ii) home health and mental health services;

11 (iii) treatment services for alcohol and drug abuse;

12 (iv) emergency care;

13 (v) ambulatory care services, including primary care resources;

14 (vi) nutrition benefits, prenatal benefits, and maternity care;

15 (vii) human resources;

16 (viii) health sciences library resources and services;

17 (ix) major medical equipment; and

18 (x) health screening and early intervention services;

19 (c) a determination of the appropriate supply and distribution of the resources and services identified in
20 subsection (2)(b) and of the mechanisms that will encourage the appropriate integration of these services on a local
21 or regional basis. To arrive at a determination, the authority shall consider the following factors:

22 (i) the needs of the statewide population, with special consideration given to the development of health care
23 services in underserved areas of the state;

24 (ii) the needs of particular geographic areas of the state;

25 (iii) the use of Montana facilities by out-of-state residents;

26 (iv) the use of out-of-state facilities by Montana residents;

27 (v) the needs of populations with special health care needs;

28 (vi) the desirability of providing high-quality services in an economical and efficient manner, including the
29 appropriate use of midlevel practitioners; and

30 (vii) the cost impact of these resource requirements on health care expenditures;

31 (d) a component that addresses health promotion and disease prevention and that is prepared by the
32 department of public health and environmental sciences human services in a format established by the authority;

33 (e) incentives to improve access to and use of preventive care; primary care services, including mental health
34 services; and community-based care;

(f) incentives for healthy lifestyles;

(g) incentives to improve access to health care in underserved areas, including:

(i) a system by which the authority may identify persons with an interest in becoming health care professionals and provide or assist in providing health care education for those persons; and

(ii) tax credits and other financial incentives to attract and retain health care professionals in underserved areas; and

(h) a component that addresses integration of the plan, to the extent allowed by state and federal law, with services provided by the Indian health service and by the United States department of veterans affairs and by the medicare and medicaid programs.

(3) In adopting the management plan, the authority shall consider the regional health resource plans recommended by regional panels.

(4) The management plan must be revised annually in a manner determined by the authority.

(5) Prior to adoption of the management plan, the authority shall hold one or more public hearings for the purpose of receiving oral and written comment on a draft plan. After hearings have been concluded, the authority shall adopt the management plan, taking comments into consideration."

Section 248. Section 50-4-310, MCA, is amended to read:

"50-4-310. Long-term care study and recommendations. (1) The authority shall conduct a study of the long-term care needs of state residents and report to the public and the legislature the authority's recommendations, including any necessary legislation, for meeting those long-term care needs. ~~The report must be available to the public on or before September 1, 1996, after which the authority shall conduct public hearings on its report in each region established under 50-4-401. The authority shall present its report to the legislature on or before January 1, 1997.~~

(2) This section does not preclude the authority from recommending cost-sharing arrangements for long-term care services or from recommending that the services be phased in over time. The authority's recommendations must support and may not supplant informal care giving by family and friends and must include cost containment recommendations for any long-term care service suggested for inclusion.

(3) The authority's report must estimate costs associated with each of the long-term care services recommended and may suggest independent financing mechanisms for those services. The report must also set forth the projected cost to Montana and its citizens over the next 20 years if there is no change in the present accessibility, affordability, or financing of long-term care services in this state.

(4) The authority shall consult with the department of ~~social and rehabilitation~~ public health and human services in developing its recommendations under this section."

Section 249. Section 50-4-402, MCA, is amended to read:

1 **"50-4-402. Powers and duties of boards.** (1) A board shall:

2 (a) meet at the time and place designated by the presiding officer, but not less than quarterly;

3 (b) submit an annual budget and grant application to the authority at the time and in the manner directed by
4 the authority;

5 (c) adopt procedures governing its meetings and other aspects of its day-to-day operations as the board
6 determines necessary;

7 (d) develop regional health resource plans in the format determined by the authority that must address the
8 health care needs of the region and address the development of health care services in underserved areas of the region
9 and other matters;

10 (e) revise the regional plan annually;

11 (f) hold at least one public hearing on the regional plan within the region at the time and in the manner
12 determined by the regional board;

13 (g) transmit the regional plan to the authority at the time determined by the authority;

14 (h) apply to the authority for grant funds for operation of the regional board and account, in the manner
15 specified by the authority, for grant funds provided by the authority; and

16 (i) seek from public and private sources money to supplement grant funds provided by the authority.

17 (2) Regional boards may:

18 (a) recommend that the authority sanction voluntary agreements between health care providers and between
19 health care consumers in the region that will improve the quality of, access to, or affordability of health care but that
20 might constitute a violation of antitrust laws if undertaken without government direction;

21 (b) make recommendations to the authority regarding major capital expenditures or the introduction of
22 expensive new technologies and medical practices that are being proposed or considered by health care providers;

23 (c) undertake voluntary activities to educate consumers, providers, and purchasers and promote voluntary,
24 cooperative community cost containment, access, or quality of care projects; and

25 (d) make recommendations to the department of public health and ~~environmental sciences~~ human services
26 or to the authority, or both, regarding ways of improving affordability, accessibility, and quality of health care in the
27 region and throughout the state.

28 (3) Each regional board may review and advise the authority on regional technical matters relating to the
29 statewide plans required by 50-4-301, the common benefits package, procedures for developing and applying practice
30 guidelines for use in the statewide plans, provider and facility contracts with the state, utilization review
31 recommendations, expenditure targets, and uniform health care benefits and the impact of the benefits upon the
32 provision of quality health care within the region."

33
34 Section 250. Section 50-5-101, MCA, is amended to read:

1 "50-5-101. **Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates
2 otherwise, the following definitions apply:

3 (1) "Accreditation" means a designation of approval.

4 (2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that
5 provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

6 (3) "Affected person" means an applicant for certificate of need, a member of the public who will be served
7 by the proposal, a health care facility located in the geographic area affected by the application, an agency that
8 establishes rates for health care facilities, a third-party payer who reimburses health care facilities in the area affected
9 by the proposal, or an agency that plans or assists in planning for health care facilities.

10 (4) "Ambulatory surgical facility" means a facility, not part of a hospital, that provides surgical treatment to
11 patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from
12 surgery or other treatment.

13 (5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are
14 accumulated during a single batching period.

15 (6) "Batching period" means a period, not exceeding 1 month, established by department rule during which
16 letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing
17 of all letters of intent within the batch.

18 ~~(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

19 ~~(8)~~(7) "Capital expenditure" means:

20 (a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting
21 principles, is not properly chargeable as an expense of operation and maintenance; or

22 (b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other
23 property of value had changed hands.

24 ~~(9)~~(8) "Certificate of need" means a written authorization by the department for a person to proceed with a
25 proposal subject to 50-5-301.

26 ~~(10)~~(9) "Challenge period" means a period, not exceeding 1 month, established by department rule during
27 which a person may apply for comparative review with an applicant whose letter of intent has been received during
28 the preceding batching period.

29 ~~(11)~~(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and
30 prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and
31 endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare,
32 or safety.

33 ~~(12)~~(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological,
34 radioassay, cytological, immunohematological, pathological, or other examination of materials derived from the

1 human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or
2 assessment of a medical condition.

3 ~~(13)~~(12) "College of American pathologists" means the organization nationally recognized by that name with
4 headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical
5 laboratories that it finds meet its standards and requirements.

6 ~~(14)~~(13) "Comparative review" means a joint review of two or more certificate of need applications that are
7 determined by the department to be competitive in that the granting of a certificate of need to one of the applicants
8 would substantially prejudice the department's review of the other applications.

9 ~~(16)~~(14) "Construction" means the physical erection of a health care facility and any stage of the physical
10 erection, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

11 ~~(16)~~(15) "Department" means the department of ~~health and environmental sciences~~ public health and human
12 services provided for in ~~Title 2, chapter 16, part 21~~ 2-15-2201.

13 ~~(17)~~(16) "Federal acts" means federal statutes for the construction of health care facilities.

14 ~~(18)~~(17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision
15 of the state, or an agency of a political subdivision.

16 ~~(19)~~(18) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private
17 or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health
18 services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include
19 offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health
20 maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term
21 care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers,
22 rehabilitation facilities, residential treatment facilities, and adult day-care centers.

23 ~~(20)~~(19) "Health maintenance organization" means a public or private organization that provides or arranges
24 for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees
25 or through contractual or other arrangements with a provider or group of providers.

26 ~~(21)~~(20) "Home health agency" means a public agency or private organization or subdivision of the agency
27 or organization that is engaged in providing home health services to individuals in the places where they live. Home
28 health services must include the services of a licensed registered nurse and at least one other therapeutic service and
29 may include additional support services.

30 ~~(22)~~(21) "Hospice" means a coordinated program of home and inpatient health care that provides or
31 coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising
32 out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and
33 dying and that includes formal bereavement programs as an essential component. The term includes:

34 (a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets

1 all medicare certification regulations for freestanding inpatient hospice facilities; and

2 (b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can
3 house three or more hospice patients.

4 ~~(23)~~(22) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services
5 for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may
6 or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A
7 hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours per day, 7 days per
8 week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in
9 providing health services for psychiatric, mentally retarded, and tubercular patients.

10 ~~(24)~~(23) "Infirmity" means a facility located in a university, college, government institution, or industry for
11 the treatment of the sick or injured, with the following subdefinitions:

12 (a) an "infirmity--A" provides outpatient and inpatient care;

13 (b) an "infirmity--B" provides outpatient care only.

14 ~~(25)~~(24) "Joint commission on accreditation of hospitals" means the organization nationally recognized by
15 that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants
16 accreditation status to a health care facility that it finds meets its standards and requirements.

17 ~~(26)~~(25) "Kidney treatment center" means a facility that specializes in treatment of kidney diseases, including
18 freestanding hemodialysis units.

19 ~~(27)~~(26) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care,
20 intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that
21 provides personal care. The term does not include adult foster care licensed under 52-3-303, community homes for
22 the developmentally disabled licensed under 53-20-305, community homes for individuals with severe disabilities
23 licensed under 52-4-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses,
24 roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional
25 health care, or juvenile and adult correctional facilities operating under the authority of the department of corrections
26 ~~and human services.~~

27 (b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social
28 services under the supervision of a licensed registered nurse on a 24-hour basis.

29 (c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and
30 social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

31 (d) "Intermediate developmental disability care" means the provision of nursing care services, health-related
32 services, and social services for the developmentally disabled, as defined in 53-20-102(4), or individuals with related
33 problems.

34 (e) "Personal care" means the provision of services and care for residents needing some assistance in

performing the activities of daily living.

~~(28)~~(27) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services and costs a substantial sum of money.

~~(29)~~(28) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

~~(30)~~(29) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of mentally ill individuals, or any combination of these services.

~~(31)~~(30) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(32)~~(31) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

~~(33)~~(32) "Offer" means the holding out by a health care facility that it can provide specific health services.

~~(34)~~(33) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

~~(35)~~(34) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(36)~~(35) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(37)~~(36) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

~~(38)~~(37) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(39)~~(38) "Resident" means an individual who is in a long-term care facility for intermediate or personal care.

~~(40)~~(39) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's

1 condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less
2 restrictive levels of care at the earliest possible time.

3 ~~(41)~~(40) "Residential treatment facility" means a facility operated for the primary purpose of providing
4 residential psychiatric care to individuals under 21 years of age.

5 ~~(42)~~(41) "State health plan" means the plan prepared by the department to project the need for health care
6 facilities within Montana and approved by the statewide health coordinating council and the governor."

7
8 **Section 251.** Section 50-5-106, MCA, is amended to read:

9 **"50-5-106. Records and reports required of health care facilities -- confidentiality.** Health care facilities shall
10 keep records and make reports as required by the department. Before February 1 of each year, every licensed health
11 care facility shall submit an annual report for the preceding calendar year to the department. The report ~~shall~~ must be
12 on forms and contain information specified by the department. Information received by the department ~~or board~~ through
13 reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A
14 department employee who discloses information ~~which that~~ would identify a patient ~~shall~~ must be dismissed from
15 employment and subject to the provisions of 45-7-401 and 50-16-551, unless the disclosure was authorized in writing
16 by the patient, ~~his~~ the patient's guardian, or ~~his~~ the patient's agent in accordance with Title 50, chapter 16, part 5.
17 Information and statistical reports from health care facilities which are considered necessary by the department for
18 health planning and resource development activities ~~will~~ must be made available to the public and the health planning
19 agencies within the state. Applications by health care facilities for certificates of need and any information relevant to
20 review of these applications, pursuant to part 3, ~~shall~~ must be accessible to the public."

21
22 **Section 252.** Section 50-5-114, MCA, is amended to read:

23 **"50-5-114. Administrative enforcement -- notice -- order for corrective action.** (1) If the department believes
24 that a violation of a provision of part 1 or 2 of this chapter or of a rule adopted or a condition or limitation imposed by
25 a license issued pursuant to part 1 or 2 has occurred, it may serve written notice on the alleged violator or the violator's
26 agent personally or by certified mail. The notice must specify the provision of part 1 or 2 of this chapter or the rule or
27 license condition or limitation alleged to have been violated and the facts alleged to constitute the violation. The notice
28 must inform the alleged violator of the right to a hearing and that the contested case provisions of the Montana
29 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the hearing. The notice may include an order to take
30 necessary corrective action, including ceasing new admissions, relocating residents, or ceasing the violation within a
31 reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is
32 received, the person named requests in writing a hearing before the ~~board~~ department. On receipt of the request, the
33 ~~board~~ department shall schedule a hearing. Until issuance of a contrary decision by the ~~board~~ department, a department
34 order concerning corrective action remains effective and enforceable.

(2) If, after a hearing held under subsection (1), the ~~board~~ department finds that a violation has occurred, it shall issue an appropriate order for the prevention, abatement, or control of the violation involved or the taking of other corrective action. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease and the time limits for particular action in preventing, abating, or controlling the violation. If, after a hearing on an order contained in a notice, the ~~board~~ department finds that a violation has not occurred or is not occurring, it shall declare the ~~department~~ order void.

(3) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted pursuant to this section.

(4) Instead of or in addition to issuing the order provided for in subsection (1), the department may:

(a) require that the alleged violators appear before the ~~board~~ department for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under any other applicable provisions of part 1 or 2 of this chapter.

(5) Before acting under this section, the department shall attempt to obtain voluntary compliance through a warning, conference, or any other appropriate means.

(6) In connection with a hearing held pursuant to this section, the ~~board~~ department may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of any party."

Section 253. Section 50-5-207, MCA, is amended to read:

"50-5-207. Denial, suspension, or revocation of health care facility license -- provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation ~~will be~~ is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the ~~board or~~ court."

Section 254. Section 50-5-208, MCA, is amended to read:

"50-5-208. Hearing required. (1) A license may not be denied, suspended, or revoked without notice and an opportunity for a hearing before the ~~board~~ department.

(2) Notice ~~shall~~ must be given the applicant or licensee of a date, not less than 15 days after mailing or service, for a hearing before the ~~board~~ department.

(3) The decision of the ~~board~~ department is final 30 days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision. An appeal ~~shall~~ must be in the district court where the facility is located or will be located."

Section 255. Section 50-5-226, MCA, is amended to read:

"50-5-226. Placement in personal-care facilities. (1) A personal-care facility may provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which the facility is licensed under 50-5-227.

(2) A resident of a personal-care facility licensed as a category A facility under 50-5-227 may obtain third-party provider services for skilled nursing care for no more than 20 consecutive days at a time.

(3) A resident of a personal-care facility licensed as a category B facility under 50-5-227 must have a signed statement from a physician agreeing to the resident's admission to the facility if the resident is:

- (a) in need of skilled nursing care;
- (b) in need of medical, physical, or chemical restraint;
- (c) nonambulatory or bedridden;
- (d) incontinent to the extent that bowel or bladder control is absent; or
- (e) unable to self-administer medications.

(4) A resident of a personal-care facility who needs skilled nursing care must have a signed statement, renewed on an annual basis for a category A facility and on a quarterly basis for a category B facility, from a physician, a physician assistant-certified, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the facility and who:

- (a) actually visited the facility within the year covered by the statement for a category A facility and within the calendar quarter covered by the statement for a category B facility;
- (b) has certified that the particular needs of the resident can be adequately met in the facility; and

(c) has certified that there has been no significant change in health care status that would require another level of care.

(5) The department shall, ~~in consultation with the department of social and rehabilitation services,~~ provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, the resident's physician of:

(i) physical and mental standards for residents of personal-care facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates;

and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while resident in the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by individuals referred to in subsection (3);

(c) a method by which the results of any screening decision made pursuant to rules established under subsection (5)(b) may be appealed by the facility operator or by or on behalf of a resident or prospective resident;

(d) standards for operating a category A personal-care facility, including standards for the physical, structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of a facility; and

(e) standards for operating a category B personal-care facility, which must include the standards for a category A personal-care facility and additional standards for assessment of residents, care planning, qualifications and training of staff, restraint use and reduction, prevention and care of pressure sores, incontinence care, and the storage and administration of drugs."

Section 256. Section 50-5-227, MCA, is amended to read:

"50-5-227. Licensing personal-care facilities. (1) The department shall, ~~in consultation with the department of social and rehabilitation services,~~ by rule adopt standards for licensing and operation of personal-care facilities to implement the provisions of 50-5-225 and 50-5-226.

(2) The following licensing categories must be used by the department in adopting rules under subsection (1):

(a) category A--a facility providing personal care to six or more residents who may not be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications; or

(b) category B--a facility providing personal care to five or fewer residents who may be:

1 (i) in need of skilled nursing care;
2 (ii) in need of medical, chemical, or physical restraint;
3 (iii) nonambulatory or bedridden;
4 (iv) incontinent to the extent that bowel or bladder control is absent; or
5 (v) unable to self-administer medications.
6 (3) The department may by rule establish license fees, inspection fees, and fees for patient screening. Fees
7 must be reasonably related to service costs."
8

9 **Section 257.** Section 50-5-301, MCA, is amended to read:

10 **"50-5-301. When certificate of need is required -- definitions.** (1) Unless a person has submitted an application
11 for and is the holder of a certificate of need granted by the department, the person may not initiate any of the
12 following:

13 (a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than
14 to acquire an existing health care facility or to replace major medical equipment with equipment performing substantially
15 the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4). The
16 costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff
17 effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant
18 or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds
19 the expenditure thresholds.

20 (b) a change in the bed capacity of a health care facility through an increase in the number of beds or a
21 relocation of beds from one health care facility or site to another, unless:

22 (i) the number of beds involved is 10 or less or 10% or less of the licensed beds, ~~if~~ fractional, rounded down
23 to the nearest whole number, whichever figure is smaller, in any 2-year period;

24 (ii) a letter of intent is submitted to the department; and

25 (iii) the department determines the proposal will not significantly increase the cost of care provided or exceed
26 the bed need projected in the state health plan;

27 (c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered
28 by or on behalf of the facility within the 12-month period before the month in which the service would be offered and
29 that will result in additional annual operating and amortization expenses of \$150,000 or more;

30 (d) the acquisition by any person of major medical equipment, provided the acquisition would have required
31 a certificate of need pursuant to subsection (1)(a) or (1)(c) if it had been made by or on behalf of a health care facility;

32 (e) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more
33 of an existing health care facility unless:

34 (i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(f) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

(g) the expansion of the geographical service area of a home health agency;

(h) the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or

(i) the provision by a hospital of services for ambulatory surgical care, home health care, long-term care, inpatient mental health care, inpatient chemical dependency treatment, or inpatient rehabilitation.

(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.

(3) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, or residential treatment facility. The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i); or

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including chemical dependency counselors.

(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii) The term does not include adult foster care, licensed under 52-3-303; community homes for the developmentally disabled, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(4) Expenditure thresholds for certificate of need review are established as follows:

1 (a) For acquisition of equipment and the construction of any building necessary to house the equipment, the
2 expenditure threshold is \$750,000.

3 (b) For construction of health care facilities, the expenditure threshold is \$1,500,000."
4

5 **Section 258.** Section 50-5-602, MCA, is amended to read:

6 **"50-5-602. Definitions.** As used in this part, the following definitions apply:

7 (1) "Department" means the department of public health and ~~environmental sciences~~ human services provided
8 for in ~~2-15-2101~~ 2-15-2201.

9 (2) "Family practice" means comprehensive medical care with particular emphasis on the family unit, in which
10 the physician's continuing responsibility for health care is not limited by the patient's age or sex or by a particular organ
11 system or disease entity.

12 (3) "Residency training" means a community-based family practice program to train family practice resident
13 physicians, sponsored by one or more community hospitals and physicians in Montana, for inpatient and outpatient
14 training.

15 (4) "Resident physician" means any physician in advanced medical specialty training."
16

17 **Section 259.** Section 50-5-1103, MCA, is amended to read:

18 **"50-5-1103. Definitions.** In this part the following definitions apply:

19 (1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37, chapter
20 9, and who administers, manages, or supervises a long-term care facility.

21 (2) "Authorized representative" means:

22 (a) a person holding a general power of attorney for a resident;

23 (b) a person appointed by a court to manage the personal or financial affairs of a resident;

24 (c) a representative payee;

25 (d) a resident's next of kin; or

26 (e) a sponsoring agency.

27 (3) "Department" means the department of public health and ~~environmental sciences~~ human services provided
28 for in 2-15-2201.

29 (4) "Facility" or "long-term care facility" means a facility or part ~~thereof~~ of a facility licensed under Title 50,
30 chapter 5, to provide skilled nursing care, intermediate nursing care, or personal care.

31 (5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C.
32 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

33 (6) "Resident" means a person who lives in a long-term care facility."
34

1 **Section 260.** Section 50-6-102, MCA, is amended to read:

2 **"50-6-102. Department to establish and administer program.** The department of public health and
3 ~~environmental sciences~~ human services shall establish and administer an emergency medical services program."

4
5 **Section 261.** Section 50-6-103, MCA, is amended to read:

6 **"50-6-103. Powers of department.** (1) The department of public health and ~~environmental sciences~~ human
7 services is authorized to confer and cooperate with any and all other persons, organizations, and governmental agencies
8 that have an interest in emergency medical services problems and needs.

9 (2) The department is authorized to accept, receive, expend, and administer any and all funds which are now
10 available or which may be donated, granted, or appropriated to the department."

11
12 **Section 262.** Section 50-6-104, MCA, is amended to read:

13 **"50-6-104. Interdepartmental cooperation required.** The department of public health and ~~environmental~~
14 ~~sciences~~ human services, the department of justice, and other interested departments or divisions shall develop in
15 writing a mutually agreeable plan of cooperation so that governmental effort will not be duplicated and governmental
16 resources will be applied on a reasonable priority basis."

17
18 **Section 263.** Section 50-6-203, MCA, is amended to read:

19 **"50-6-203. Rules.** (1) The board, after consultation with the department of public health and ~~environmental~~
20 ~~sciences~~ human services, the department of justice, and other appropriate departments, associations, and organizations,
21 shall adopt rules of the board implementing this part, including but not limited to training and certification of emergency
22 medical technicians and administration of drugs.

23 (2) The board may, by rule, establish various levels of emergency medical technician certification and shall
24 specify for each level the training requirements, acts allowed, recertification requirements, and any other requirements
25 regarding the training, performance, or certification of that level of emergency medical technician that it considers
26 necessary or desirable."

27
28 **Section 264.** Section 50-6-207, MCA, is amended to read:

29 **"50-6-207. Construction.** ~~Nothing in this~~ This part shall may not be construed to detract from the powers
30 granted to the department of public health and ~~environmental sciences~~ human services to regulate emergency medical
31 services provided for in part 3 of this chapter."

32
33 **Section 265.** Section 50-6-302, MCA, is amended to read:

34 **"50-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions

1 apply:

2 (1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or
3 helicopter.

4 (2) (a) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used
5 for the transportation of patients.

6 (b) The term does not include a motor vehicle or aircraft owned by or operated under the direct control of the
7 United States. The term also does not include air transportation services, such as charter or fixed-based operators,
8 regulated by the federal aviation administration, that offer no special medical services or provide only transportation
9 to patients or persons at the direction or under the supervision of an independent physician.

10 ~~(3) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

11 ~~(4)~~(3) "Department" means the department of public health and environmental sciences, human services
12 provided for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

13 ~~(5)~~(4) "Emergency medical service" means a prehospital or interhospital emergency medical transportation
14 or treatment service provided by an ambulance or nontransporting medical unit.

15 ~~(6)~~(5) "Medical control" means the function of a licensed physician in providing direction, advice, or orders
16 to an emergency medical service provider.

17 ~~(7)~~(6) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call
18 for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units
19 provide any one of varying types and levels of service defined by department rule but may not transport patients.

20 ~~(8)~~(7) "Off-line medical director" means a physician who is responsible and accountable for the overall medical
21 direction and medical supervision of an emergency medical service and who is responsible for the proper application
22 of patient care techniques and the quality of care provided by the emergency medical services personnel. The term
23 includes only a physician who volunteers ~~his~~ the physician's services as an off-line medical director or whose total
24 reimbursement for those services in any 12-month period does not exceed \$5,000.

25 ~~(9)~~(8) (a) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

26 (b) The term does not include a person who is nonambulatory and who needs transportation assistance solely
27 because that person is confined to a wheelchair as ~~his~~ the person's usual means of mobility.

28 ~~(10)~~(9) "Person" means an individual, firm, partnership, association, corporation, company, group of
29 individuals acting together for a common purpose, or organization of any kind, including a governmental agency other
30 than the United States."

31
32 **Section 266.** Section 50-6-308, MCA, is amended to read:

33 **"50-6-308. Cancellation of license.** The department may cancel a license if it finds that the licensee has:

34 (1) violated any provision of this part or any rule of the department or order of the department ~~or board~~; and

1 (2) failed or refused to remedy or correct the violation."

2
3 **Section 267.** Section 50-6-310, MCA, is amended to read:

4 **"50-6-310. Notice and hearing required.** (1) The department may not deny or cancel a license without:

5 (a) delivery to the applicant or licensee of a written statement of the grounds for the denial or cancellation
6 or the charge involved;

7 (b) an opportunity to answer at a hearing before the ~~board~~ department to show cause, if any, why the license
8 should not be denied or canceled.

9 (2) The licensee shall make written request to the ~~board~~ department for a hearing within 10 days after notice
10 of the grounds or charges has been received."

11
12 **Section 268.** Section 50-6-314, MCA, is amended to read:

13 **"50-6-314. Authority of ~~board~~ or department to compel and take testimony.** In any proceeding under this part,
14 the ~~board~~ or department may administer oaths, issue subpoenas, summon witnesses, and take testimony of any person
15 within the state."

16
17 **Section 269.** Section 50-6-315, MCA, is amended to read:

18 **"50-6-315. County attorney to prosecute violations.** When the department furnishes evidence to the county
19 attorney of a county in this state, the county attorney shall prosecute any person violating this part or any rule of the
20 department or order issued by the department ~~or board~~."

21
22 **Section 270.** Section 50-6-316, MCA, is amended to read:

23 **"50-6-316. Criminal and civil penalties.** (1) Any person violating any provision of this part or any rule of the
24 department or order issued by the department ~~or board~~ shall be ~~is~~ guilty of a misdemeanor and upon conviction shall
25 be fined not less than \$50 or more than \$100 for the first offense, not less than \$75 or more than \$200 for the second
26 offense, and for third and subsequent offenses, not less than \$200 or more than \$500 or imprisoned in the county jail
27 not to exceed 90 days.

28 (2) A person who violates any provision of this part or any rule of the department or order issued by the
29 department ~~or board~~ is subject to a civil penalty not to exceed \$1,000 for each violation. Each day of violation
30 constitutes a separate violation.

31 (3) An action commenced under subsections (2) through (6) does not bar administrative enforcement of this
32 part as provided in 50-6-327 or an injunction as provided in 50-6-326.

33 (4) If the department has reason to believe that a person has violated any provision of this part or any rule
34 of the department or order issued by the department ~~or board~~, it shall bring an action in the name of the state against

1 ~~such the~~ person to impose, assess, and recover the civil penalties as provided in subsection (2).

2 (5) Any civil penalty collected under subsections (2) through (6) is in lieu of the criminal penalty provided for
3 in subsection (1).

4 (6) All penalties collected under subsections (2) through (5) must be transmitted to the state treasurer for
5 deposit in the state general fund."

6
7 **Section 271.** Section 50-6-324, MCA, is amended to read:

8 **"50-6-324. Advisory committee.** (1) The ~~board or~~ department may establish an advisory committee to assist
9 in making determinations regarding:

10 (a) a request for waiver of licensing requirements as provided in 50-6-325;

11 (b) the resolution of a complaint as described in 50-6-323; and

12 (c) issuance of an order authorized under this part.

13 (2) The advisory committee must be established pursuant to rules adopted by the department."

14
15 **Section 272.** Section 50-6-325, MCA, is amended to read:

16 **"50-6-325. Waiver of licensing requirements.** (1) The department may waive any licensing requirements under
17 this part upon submission and approval of a written application for waiver by a person subject to licensing under this
18 part.

19 (2) The department may waive a licensing requirement if the person provides sufficient justification to allow
20 a finding by the department that:

21 (a) the waiver is necessary to avoid significant financial or other hardship; and

22 (b) granting the waiver would not jeopardize patient care or the public health and safety.

23 (3) A waiver must be issued on a temporary basis, not exceeding 6 months, and may be renewed by the
24 department upon submission and approval of an additional application for waiver of licensing requirements.

25 (4) A waiver granted by the department may be revoked for good cause after notice and an opportunity for
26 a hearing before the department have been provided to the person affected by the department's action.

27 ~~(5) The decision of the department to deny or revoke a waiver under this section may be appealed to the~~
28 ~~board."~~

29
30 **Section 273.** Section 50-6-326, MCA, is amended to read:

31 **"50-6-326. Injunction to require compliance.** (1) The department may seek an injunction from an appropriate
32 district court to require compliance with this part or to require compliance with a rule of the department or an order
33 issued by the department ~~or board~~. The court to which the department applies for an injunction may issue a temporary
34 restraining order if there is reasonable cause to believe that the allegations of the department are true.

(2) An action for injunctive relief initiated by the department pursuant to subsection (1) may be commenced in the district court of the county in which the defendant is located, resides, or is doing business. If the defendant cannot be located in Montana, the action may be commenced in the county where the violation is alleged to occur or have occurred, and the court has jurisdiction to restrain the violation and require compliance."

Section 274. Section 50-6-327, MCA, is amended to read:

"50-6-327. Administrative enforcement. (1) If the department believes that there is a violation of this part or a violation of a rule of the department, it may serve notice of the violation upon the alleged violator or ~~his~~ the alleged violator's agent. Service of notice must be by certified mail and is complete on the date of mailing.

(2) Notice required under subsection (1) must:

- (a) specify the provision of this part or the rule alleged to be violated;
- (b) contain a statement of the facts alleged to constitute a violation; and
- (c) include an order that the alleged violator take necessary corrective action within a reasonable period of time as stated in the order. The order may include corrective action, such as decertification of a specific vehicle or aircraft from use as an ambulance or restriction on the use of a specific individual or type of or level of service in providing emergency medical service.

(3) An order issued pursuant to subsection (2) becomes final unless the person named in the order requests a hearing before the ~~board~~ department. ~~Such~~ The request for a hearing must be made in writing to the ~~board~~ department at least 30 days after the date of service of notice of an alleged violation. On receipt of the request, the ~~board~~ department shall schedule a date for a hearing.

(4) If, after a hearing, the ~~board~~ department finds that a violation has occurred, it shall either affirm or modify the corrective action order ~~issued by the department~~. An order issued by the ~~board~~ department after hearing may prescribe the date by which the violation must cease and may prescribe time limits for corrective action. If, after a hearing, the ~~board~~ department finds ~~no~~ a violation has ~~not~~ occurred, it shall rescind the ~~department's~~ corrective action order."

Section 275. Section 50-8-101, MCA, is amended to read:

"50-8-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of ~~corrections and human services, the department of health and environmental sciences, and the department of family~~ public health and human services provided for in 2-15-2201.

(2) "Facility" means:

- (a) ~~for the department of corrections and human services,~~ nonmedical facilities including:
 - (i) mental health transitional living facilities; and
 - (ii) inpatient freestanding or intermediate transitional living facilities for alcohol/drug treatment or emergency

1 detoxification;

2 ~~(b) for the department of family services;~~

3 ~~(b)~~ community homes for the developmentally disabled, community homes for physically disabled persons,
4 and adult foster care homes; ~~and~~

5 ~~(c)~~ youth care facilities; ~~and~~

6 ~~(c) for the department of health and environmental sciences;~~

7 ~~(d)~~ public accommodations, including roominghouses and retirement homes, hotels, and motels;

8 ~~(e)~~ health care facilities or services, including hospitals, skilled and intermediate nursing home services, and
9 intermediate care nursing home services for the mentally retarded;

10 ~~(f)~~ freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health
11 agencies; and

12 ~~(g)~~ personal care facilities.

13 (3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection
14 necessary for certification for licensure.

15 (4) "Licensing agency" means the agency that is authorized by statute to issue the license."
16

17 **Section 276.** Section 50-8-102, MCA, is amended to read:

18 **"50-8-102. One-step licensing required.** ~~Each~~ The department shall provide one-step licensing of all facilities
19 under its jurisdiction. One-step licensing is at a minimum the provision of a designated office within the department or,
20 by agreement between departments, in another department, responsible for issuing facility licenses. The one-step
21 licensing office shall facilitate intradepartmental certifications for licensure. When practicable, one-step licensure also
22 includes:

23 (1) the coordination of all governmental licensing functions, state and local, required for the licensure of a
24 facility for a program or a service and for health and safety standards. The coordination must include at a minimum the
25 names, addresses, and functions of all governmental authorities enforcing such standards and may include the
26 requirement that the responsible office be a clearinghouse for all forms and applications for other agencies and for
27 assuming the responsibility for insuring timely inspections, reviews, and application processing by other agencies.

28 (2) the use of departmental employees to inspect specified types of facilities for particular health and safety
29 standards as provided in 50-8-105."
30

31 **Section 277.** Section 50-9-102, MCA, is amended to read:

32 **"50-9-102. Definitions.** As used in this chapter, the following definitions apply:

33 (1) "Attending physician" means the physician selected by or assigned to the patient, who has primary
34 responsibility for the treatment and care of the patient.

(2) "Board" means the Montana state board of medical examiners.

(3) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

(4) "Department" means the department of public health and environmental sciences human services provided for in 2-15-2201.

(5) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their professions.

(6) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

(7) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process.

(8) "Living will protocol" means a locally developed, community-wide method or a standardized, state-wide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining treatment from a qualified patient under 50-9-202 by emergency medical service personnel.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(10) "Physician" means an individual licensed under Title 37, chapter 3, to practice medicine in this state.

(11) "Qualified patient" means a patient 18 or more years of age who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

(12) "Reliable documentation" means a standardized, state-wide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.

(13) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(14) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time."

Section 278. Section 50-10-101, MCA, is amended to read:

"50-10-101. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Attending physician" has the meaning provided in 50-9-102.

(2) "Board" means the state board of medical examiners.

(3) "Department" means the department of public health and environmental sciences human services provided

1 for in 2-15-2201.

2 (4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size
3 and design, approved by the department, that signifies that the possessor is a qualified patient, as defined in 50-9-102,
4 or that the possessor's attending physician has issued a do not resuscitate order for the possessor and has documented
5 the grounds for the order in the possessor's medical file.

6 (5) "Do not resuscitate order" means a directive from a licensed physician that emergency life-sustaining
7 procedures should not be administered to a particular person.

8 (6) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and
9 adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and
10 emergency medical services personnel.

11 (7) "Emergency medical services personnel" has the meaning provided in 50-9-102.

12 (8) "Health care facility" has the meaning provided in 50-5-101.

13 (9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary
14 resuscitation.

15 (10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state."

16
17 **Section 279.** Section 50-15-101, MCA, is amended to read:

18 "50-15-101. **Definitions.** Unless the context requires otherwise, in parts 1 through 4, the following definitions
19 apply:

20 ~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

21 ~~(2)~~(1) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be
22 concluded that death occurred recently.

23 ~~(3)~~(2) "Department" means the department of public health and environmental sciences human services
24 provided for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

25 ~~(4)~~(3) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

26 ~~(5)~~(4) "Fetal death" means a birth after 20 weeks of gestation, or before 20 weeks of gestation if the fetus
27 weighs more than 500 grams at the time of delivery, that is not a live birth.

28 ~~(6)~~(5) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained
29 in 40-1-402.

30 ~~(7)~~(6) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the
31 mother.

32 ~~(8)~~(7) "Local registrar" means a person appointed by the department to act as its agent in administering this
33 chapter in the area set forth in the letter of appointment.

34 ~~(9)~~(8) "Person in charge of interment" means a person who places or causes to be placed a dead body or the

ashes after cremation in a grave, vault, urn, or other receptacle or otherwise disposes of the body.

~~(10)(9)~~ "Physician" means a person legally authorized to practice medicine in this state.

~~(11)(10)~~ "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status, and incidental supporting data."

Section 280. Section 50-15-113, MCA, is amended to read:

"50-15-113. Disclosure of information to governmental agencies. (1) The ~~board~~ may direct the department to may disclose information from its records to federal, state, county, or municipal agencies for use only as prescribed by the ~~board~~ department.

(2) If ~~no~~ the identification of individuals is not made, the ~~board~~ department may permit the use of data contained in vital statistics records for research purposes.

(3) The department may provide transcripts to the federal agency responsible for vital statistics if it is reimbursed for costs."

Section 281. Section 50-15-206, MCA, is amended to read:

"50-15-206. Permissible disclosure of birth out of wedlock. (1) Disclosure of birth out of wedlock or information from which birth out of wedlock can be ascertained may be made only:

(a) upon an order of a court to determine personal or property rights. An adopted person of legal age may apply to the court for ~~such~~ an order.

(b) upon request of the department of ~~social and rehabilitation services, the department of family public health and human~~ services, the department of revenue, or a licensed adoption agency for purposes of custody or child support actions, social security eligibility determinations, or Indian tribal enrollment determinations;

(c) upon request of the natural parent during the child's minority unless the child has been placed for adoption.

(2) Except when an order of the court is sought, prior to disclosure, the requesting party must submit in writing to the department:

(a) proof of identity when appropriate;

(b) the need for the information; and

(c) the specific purpose for which the information is to be used. The information may be used only for that purpose."

Section 282. Section 50-15-304, MCA, is amended to read:

"50-15-304. Substitute birth certificate for person adopted. (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of a foreign state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of public health and environmental sciences human services" substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in its files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only on order of a court.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original certificate to its place in its files and notify the local registrar and county clerk and recorder."

Section 283. Section 50-15-702, MCA, is amended to read:

"50-15-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and environmental sciences human services provided for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

(2) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons.

(3) "Medical services" means diagnosis or treatment of illness in a human being by or under the supervision of a physician licensed to practice medicine in Montana."

Section 284. Section 50-16-101, MCA, is amended to read:

"50-16-101. Public officials and corporations to furnish information on request. On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of public health and environmental sciences human services."

1 **Section 285.** Section 50-16-102, MCA, is amended to read:

2 **"50-16-102. Information on infant morbidity and mortality.** (1) If information on infant morbidity and mortality
3 will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the
4 department of public health and environmental sciences ~~human services~~, Montana medical association, an allied society
5 of the Montana medical association, a committee of a nationally organized medical society or research group, or an
6 in-hospital staff committee.

7 (2) A person furnishing information under subsection (1) ~~of this section~~ is immune from suit for damages
8 arising from the release of the data or publication of findings and conclusions based on the data.

9 (3) Data supplied under subsection (1) ~~of this section~~ may be used or published only for advancing medical
10 research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on
11 the data may be released for general publication.

12 (4) The identity of persons whose condition or treatment was studied is confidential and may not be revealed
13 under any circumstances.

14 (5) Any data supplied or studies based on this data are privileged communications and may not be used as
15 evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the
16 person treated or ~~his~~ the person's legal representative, is prejudicial error resulting in a mistrial."

17
18 **Section 286.** Section 50-16-602, MCA, is amended to read:

19 **"50-16-602. Definitions.** As used in this part, unless the context requires otherwise, the following definitions
20 apply:

21 (1) "Department" means the department of public health and environmental sciences ~~human services~~ provided
22 for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

23 (2) "Health care information" means information, whether oral or recorded in any form or medium, that
24 identifies or can readily be associated with the identity of an individual, including one who is deceased, and relates to
25 that individual's health care or status. The term includes any record of disclosures of health care information and any
26 information about an individual received pursuant to state law or rules relating to communicable disease. The term does
27 not include vital statistics information gathered under Title 50, chapter 15.

28 (3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter
29 2, part 1.

30 (4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local
31 board."

32
33 **Section 287.** Section 50-16-701, MCA, is amended to read:

34 **"50-16-701. Definitions.** As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of public health and environmental sciences human services provided for in ~~2-15-2101~~ 2-15-2201.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying the emergency services provider of exposure.

(4) "Emergency services provider" means a person employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(5) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(6) "Health care facility" means a health care facility as defined in 50-5-101.

(7) "Infectious disease" means a communicable disease transmittable through an exposure, including the diseases of human immunodeficiency virus, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and other diseases that may be designated by department rule.

(8) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this chapter and by rule.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless."

Section 288. Section 50-16-1003, MCA, is amended to read:

"50-16-1003. Definitions. As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means:

(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes; or

(b) any other person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of public health and environmental sciences human services provided for in ~~2-15-2101~~ 2-15-2201.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(10) "Local board" means a county, city, city-county, or district board of health.

(11) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(12) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(13) "Person" means an individual, corporation, organization, or other legal entity.

(14) "Posttest counseling" means counseling, conducted at the time the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

(15) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.

(16) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

- (a) is signed and dated by the person tested or the person authorized to act for the person tested; and
- (b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(17) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

(18) (a) "Written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf, and that includes at least the following:

- (i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results;
- (ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time until the blood sample is taken;
- (iii) an explanation of whether and to whom the subject's name and test results may be disclosed;
- (iv) a statement that the test may be obtained anonymously if the subject wishes;
- (v) the name and address of a health care provider whom the subject approves to receive the subject's test results and to provide the subject with posttest counseling; and
- (vi) if the consent is for a test being performed as part of an application for insurance, a statement that only a positive test result will be reported to the designated health care provider and that negative test results may be obtained by the subject from the insurance company.

(b) The department shall develop a form agreement that may be used for purposes of this subsection."

Section 289. Section 50-17-102, MCA, is amended to read:

"50-17-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Approved course of treatment" means a course of treatment for tuberculosis which includes medical treatment prescribed by a physician and consistent with accepted medical standards, as well as appropriate followup to assure public health and safety as set out in the rules of the department.

(2) "Department" means the department of public health and environmental sciences, human services provided for in ~~Title 2, chapter 15, part 2~~ 2-15-2201.

(3) "Local board" means a city, county, city-county, or district board of health.

(4) "Tuberculosis" means a disease caused by mycobacterium tuberculosis."

Section 290. Section 50-18-102, MCA, is amended to read:

"50-18-102. Powers and duties of department. The department of public health and environmental sciences, human services shall undertake to prevent, control, and prescribe treatments for sexually transmitted diseases and may conduct education campaigns for this purpose."

Section 291. Section 50-18-103, MCA, is amended to read:

"50-18-103. Cooperation with federal agencies -- federal funds. (1) The department of public health and environmental sciences, human services shall cooperate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of sexually transmitted diseases.

(2) The department may accept federal funds available for the prevention, control, and treatment of sexually transmitted diseases, deposit funds in the state treasury, and disburse the funds."

1 **Section 292.** Section 50-18-104, MCA, is amended to read:

2 **"50-18-104. Serological test for syphilis.** (1) The department of public health and ~~environmental sciences~~
3 human services shall approve a standard serological test for syphilis. It shall also approve laboratories ~~which~~ that may
4 make ~~such~~ the tests.

5 (2) On request, the department shall make laboratory tests required by this chapter."

6
7 **Section 293.** Section 50-18-105, MCA, is amended to read:

8 **"50-18-105. Rules of department binding.** Rules adopted by the department of public health and ~~environmental~~
9 sciences human services for carrying out the provisions of this chapter are binding on all persons and have the effect
10 of law."

11
12 **Section 294.** Section 50-18-109, MCA, is amended to read:

13 **"50-18-109. Permissible release of information concerning infected persons.** (1) Information concerning
14 persons infected or reasonably suspected to be infected with a sexually transmitted disease may be released only:

15 (a) to personnel of the department of public health and ~~environmental sciences~~ human services;

16 (b) to a physician who has written consent of the person whose record is requested;

17 (c) to a local health officer; or

18 (d) by the department of public health and ~~environmental sciences~~ human services or a local health officer
19 or board under the circumstances allowed by Title 50, chapter 16, part 6.

20 (2) For the purposes of this section, the term "information" includes all knowledge or intelligence and all
21 communications of all knowledge or intelligence, oral or written or in record form, and also includes but is not limited
22 to information concerning the location or nature of the activities or work of all local, state, or federal employees or
23 officers engaged in sexually transmitted disease eradication work, and ~~such~~ the personnel are privileged.

24 (3) The purpose of this section is to protect and preserve the principle of confidentiality in sexually transmitted
25 disease work by public personnel, local, state, and federal, such confidentiality being all important to the success of
26 all sexually transmitted disease eradication work and endeavor, and to require that the principle of confidentiality in
27 ~~such~~ the work remain inviolate."

28
29 **Section 295.** Section 50-18-113, MCA, is amended to read:

30 **"50-18-113. Violation a misdemeanor.** A person who violates provisions of this chapter or rules adopted by
31 the department of public health and ~~environmental sciences~~ human services concerning a sexually transmitted disease
32 or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor."

33
34 **Section 296.** Section 50-19-101, MCA, is amended to read:

1 **"50-19-101. Definitions.** (1) "Department" means the department of public health and environmental sciences
2 human services provided for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

3 (2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO
4 (Landsteiner blood type designation--O, A, B, AB) and RH (Dd) type, approved by the department."

5
6 **Section 297.** Section 50-19-201, MCA, is amended to read:

7 **"50-19-201. Definitions.** As used in this part, the following definitions apply:

8 (1) "Department" means the department of public health and environmental sciences human services provided
9 for in 2-15-2201.

10 (2) "Newborn" means any infant under 28 days of life.

11 (3) "Person" means any individual, firm, partnership, association, corporation, or any other entity whether
12 organized for profit or not."

13
14 **Section 298.** Section 50-19-303, MCA, is amended to read:

15 **"50-19-303. Definitions.** For purposes of this part, the following definitions apply:

16 (1) "Council" means the MIAMI project advisory council established in 2-15-2109.

17 (2) "Department" means the department of public health and environmental sciences human services provided
18 for in 2-15-2101 2-15-2201.

19 (3) "Low income" means, with respect to an individual or family, income that does not exceed the official
20 federal poverty threshold as defined by the federal office of management and budget and revised annually in
21 accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

22 (4) "Project" means the MIAMI project established in 50-19-311.

23 (5) "Service provider" means a person, agency, or organization that has a contract to provide services under
24 the MIAMI project."

25
26 **Section 299.** Section 50-20-104, MCA, is amended to read:

27 **"50-20-104. Definitions.** As used in this chapter, the following definitions apply:

28 (1) "Abortion" means the performance of, assistance or participation in the performance of, or submission
29 to an act or operation intended to terminate a pregnancy without live birth.

30 (2) "Department" means the department of public health and environmental sciences human services provided
31 for in Title 2, chapter 15, part 21 2-15-2201.

32 (3) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is
33 performed.

34 (4) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is

1 to be performed only after full disclosure to ~~her~~ the woman by the physician who is to perform the abortion of ~~each~~
2 ~~of~~ the following information ~~as that~~ is reasonably chargeable to the knowledge of the physician in ~~his~~ the physician's
3 professional capacity:

4 (a) the stage of development of the fetus, the method of abortion to be utilized, and the effects of such
5 abortion method upon the fetus;

6 (b) the physical and psychological effects of abortion; and

7 (c) available alternatives to abortion, including childbirth and adoption.

8 (5) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid."
9

10 **Section 300.** Section 50-21-102, MCA, is amended to read:

11 **"50-21-102. Procedure to procure cadavers.** The procedure to procure a human body for use in teaching and
12 demonstrations of anatomy is as follows:

13 (1) The medical school shall apply to the person or organization having custody of the unclaimed body asking
14 that the body be delivered to the school for teaching and demonstration of anatomy.

15 (2) The medical school shall file a notarized statement with the department of public health and environmental
16 ~~sciences~~ human services showing that proper equipment is available for proper handling, security, and preservation of
17 human bodies.

18 (3) The body ~~shall~~ must be kept at the unit, institution, or hospital for at least 3 weeks after the date of death
19 before it can be used.

20 (4) The medical school shall pay the costs of special preparation and transportation of the body.

21 (5) A burial permit ~~shall~~ must accompany each body, and the medical school shall properly register the body
22 and arrange for burial by a licensed mortician at the expense of the medical school.

23 (6) If there was no request by the deceased person that ~~his~~ the deceased's body be buried immediately, the
24 person or organization having custody may deliver an unclaimed body to the medical school applying.

25 (7) The medical school shall file a statement with the department stating that the body will be used only for
26 teaching and demonstration of anatomy."
27

28 **Section 301.** Section 50-21-103, MCA, is amended to read:

29 **"50-21-103. Limitations on right to perform autopsy or dissection.** The right to perform an autopsy, dissect
30 a human body, or make any postmortem examination involving dissection of any part of a body is limited to cases
31 ~~where in which~~:

32 (1) specifically authorized by law;

33 (2) a coroner is authorized to hold an inquest and then only to the extent that the coroner may authorize
34 dissection or autopsy;

(3) authorized by a written statement of the deceased, whether the statement is of a testamentary character or otherwise;

(4) authorized by the husband, wife, or next of kin responsible by law for burial to determine the cause of death and then only to the extent ~~so~~ authorized;

(5) the decedent died in a hospital operated by the United States department of veterans affairs, Montana school for the deaf and blind, or an institution in the department of corrections or the department of public health and human services, leaving no surviving husband, wife, or next of kin responsible by law for burial and the manager or superintendent of the hospital or institution where death occurred obtains authority on order of the district court to determine the cause of death and then only to the extent authorized by court order;

(6) the decedent died in the state, was a resident, but left no surviving husband, wife, or next of kin charged by law with the duty of burial and the attending physician obtains authority on order of the district court for the purpose of ascertaining the cause of death and then only to the extent authorized by court order after it has been shown that the physician made diligent search for the next of kin responsible by law for burial."

Section 302. Section 50-23-101, MCA, is amended to read:

"50-23-101. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department of public health and environmental sciences human services" means the department of public health and environmental sciences human services provided for in Title 2, chapter 15, part 21 ~~2-15-2201~~.

(2) "Department of livestock" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(4) "Wild animal" means a skunk, fox, raccoon, or bat. Other species of normally nondomesticated animals known to be capable of transmitting rabies may be added to this list through the adoption of rules by the department of public health and environmental sciences human services with the approval of the department of livestock."

Section 303. Section 50-23-103, MCA, is amended to read:

"50-23-103. Quarantine -- destruction -- testing. (1) Whenever a person unlawfully possesses a wild animal, the department of public health and environmental sciences human services or the department of livestock may impound the animal and take any other action considered reasonable to protect public health.

(2) If a wild animal, whether unlawfully or lawfully in the possession of a person, has bitten or otherwise exposed a person to the potentiality of contracting rabies, the animal may be impounded by the department of public health and environmental sciences human services, the department of livestock, or a local health officer and either quarantined or destroyed and the animal's brain may be tested for rabies.

(3) Any lawfully possessed wild animal that is quarantined pursuant to subsection (2) and found not to be rabid ~~shall~~ must be returned to its owner."

1 **Section 304.** Section 50-23-105, MCA, is amended to read:

2 **"50-23-105. Authority to adopt rules.** The department of public health and ~~environmental sciences~~ human
3 services, with the approval of the department of livestock, may adopt rules necessary for the implementation and
4 administration of this part."

5
6 **Section 305.** Section 50-23-106, MCA, is amended to read:

7 **"50-23-106. Injunction -- recovery of costs.** (1) In addition to any other remedies provided by law, the
8 department of public health and ~~environmental sciences~~ human services or, upon the request of the department of
9 public health and ~~environmental sciences~~ human services, an appropriate county attorney may file an action to enjoin
10 a violation of this part or rule adopted pursuant to it.

11 (2) The department of public health and ~~environmental sciences~~ human services or the county attorney, if
12 either prevails in any action brought pursuant to subsection (1) ~~above~~, is entitled to recover from the other party the
13 costs, expenses, and reasonable attorney's fees incurred."

14
15 **Section 306.** Section 50-30-102, MCA, is amended to read:

16 **"50-30-102. Definitions.** In this chapter, the following definitions apply:

17 (1) "Commerce" means all commerce within this state and subject to the jurisdiction ~~thereof~~ of this state and
18 includes the operation of any business or service establishment.

19 (2) "Court" means, in 50-30-220, the district court for the first judicial district and, in 50-30-306 and
20 50-30-307, the district court in the district where the violation occurs.

21 (3) "Department" means the department of public health and ~~environmental sciences~~ human services provided
22 for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

23 (4) "Person" includes an individual, partnership, corporation, or association or its legal representative or
24 agent."

25
26 **Section 307.** Section 50-31-103, MCA, is amended to read:

27 **"50-31-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

28 (1) "Advertisement" means representations disseminated in any manner or by any means, other than by
29 labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs,
30 devices, or cosmetics.

31 (2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other
32 source that has been found by the department to be of a safe and sanitary quality.

33 (3) "Artesian water" means water that is forced from below the ground toward the surface through a well
34 by natural underground pressure.

1 (4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders
2 as those terms are understood by general custom and usage in the food industry.

3 (5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other
4 water that is from an approved source that is disinfected and placed in a sealed container or package for human
5 consumption.

6 (6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

7 (7) "Color" includes black, white, and intermediate grays.

8 (8) (a) "Color additive" means a material which:

9 (i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted,
10 isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal,
11 mineral, or other source; or

12 (ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through
13 reaction with other substance) of imparting color thereto.

14 (b) This term does not include material which has been or is exempted under the federal act.

15 (9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food,
16 drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant
17 thereto. The term does not include:

18 (a) any tobacco or tobacco product;

19 (b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide,
20 Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry"
21 of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin
22 act;

23 (c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act;

24 (d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal
25 Alcohol Administration Act (27 U.S.C., et seq.); or

26 (e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

27 (10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust,
28 dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

29 (11) "Cosmetic" means:

30 (a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the
31 human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

32 (b) articles intended for use as a component of these articles, except that the term does not include soap.

33 (12) "Counterfeit drug" means a drug, drug container, or drug label which, without authorization bears the
34 trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer,

processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and contains not more than 10 parts per million total solids.

(14) "Department" means the department of public health and environmental sciences human services provided for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

(15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

(16) "Distilled water" means purified water that has been vaporized and condensed.

(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

(18) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any article specified in subsections (18)(a), (18)(b), or (18)(c) but does not include devices or their components, parts, or accessories.

(19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301, et seq.).

(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and complies with the food and drug administration quality standards set forth in 21 CFR 103.35.

(21) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(22) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected

1 to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including
2 a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging,
3 transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally
4 recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been
5 adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958,
6 through either scientific procedures or experience based on common use in food) to be safe under the conditions of
7 its intended use.

8 (b) This term does not include:

9 (i) a pesticide chemical in or on a raw agricultural commodity;

10 (ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or
11 transportation of a raw agricultural commodity;

12 (iii) a color additive;

13 (iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food
14 Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et
15 seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71, et seq.).

16 (23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen,
17 fast-food retailer, or any other place that serves food to the public for consumption either at or away from the point
18 of service, and any facility operated by a governmental entity where food is served.

19 (24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and
20 frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four
21 grades of hamburger or ground beef:

22 (a) "regular hamburger" or "regular ground beef" may have:

23 (i) a fat content no greater than the federal standard set forth in 9 ~~C.F.R.~~ CFR 319.15; and

24 (ii) a lean content of no less than 70%;

25 (b) "lean hamburger" or "lean ground beef" may have:

26 (i) a fat content no greater than 22%; and

27 (ii) a lean content of no less than 78%;

28 (c) "extra lean hamburger" or "extra lean ground beef" may have:

29 (i) a fat content no greater than 16%; and

30 (ii) a lean content of no less than 84%; and

31 (d) "super lean hamburger" or "super lean ground beef" may have:

32 (i) a fat content no greater than 12%; and

33 (ii) a lean content of no less than 88%.

34 (25) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the

comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(27) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(28) "Menu" means any list presented to the patron which states the food items for sale in a food service establishment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

(30) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(32) "Organic food" means food that conforms to the definition in 50-31-222.

(33) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(34) "Person" includes an individual, partnership, corporation, and association.

(35) "Pesticide chemical" means a substance which alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., ~~secs.~~ 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(36) "Placard" means any nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

(37) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown,

1 or examined under normal and customary conditions of display for retail sale.

2 (38) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting,
3 cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the
4 enclosure of such food in a package.

5 (39) "Purified water" means water produced by distillation, deionization, reverse osmosis, or other method
6 and that meets the definition of purified water in the 20th edition of the pharmacopoeia of the United States of
7 America, 1980.

8 (40) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed,
9 colored, or otherwise treated in their unpeeled natural form prior to marketing.

10 (41) "Retail establishment" means a commercial establishment at which meat or meat products are displayed
11 for sale or provision to the public, with or without charge.

12 (42) "Spring water" means water that originates in an underground formation and flows naturally, without
13 external force or vacuum, to a natural orifice in the surface of the earth.

14 ~~(43) "State board" or "board" means the board of health and environmental sciences provided for in~~
15 ~~2-15-2104.~~

16 ~~(44)~~(43) "Synthetically compounded" means a product formulated by a process that chemically changes a
17 material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological
18 processes.

19 ~~(45)~~(44) "Water-bottling plant" means any facility in which bottled water is produced.

20 ~~(46)~~(45) "Well water" means water that:

21 (a) is taken from below the ground through a piping device or similar installed device utilizing external force
22 or vacuum;

23 (b) is not modified in its mineral content; and

24 (c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process."
25

26 **Section 308.** Section 50-31-307, MCA, is amended to read:

27 **"50-31-307. Dispensing of prescription drugs.** (1) A drug intended for use by man that falls in one of the
28 categories in subsection (2) may be dispensed only:

29 (a) upon a written prescription of a practitioner licensed by law to administer the drug;

30 (b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist;

31 or

32 (c) by refilling any written or oral prescription if the refilling is authorized by the prescriber either in the original
33 prescription or by oral order that is reduced promptly to writing and filed by the pharmacist.

34 (2) A drug must be dispensed as provided in subsection (1) if the drug:

1 (a) is a habit-forming drug to which 50-31-306(1)(d) applies;

2 (b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral
3 measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to
4 administer the drug; or

5 (c) is limited by an approved application under section 505 of the federal act or 50-31-311 to use under the
6 professional supervision of a practitioner licensed by law to administer the drug.

7 (3) If the drug is a factory prepackaged oral contraceptive, it may be dispensed as provided in subsection (1)
8 or by a registered nurse employed by a family planning clinic under contract with the department of public health and
9 ~~environmental sciences~~ human services pursuant to a physician's written protocol specifying the circumstances under
10 which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and
11 recordkeeping of drugs.

12 (4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in
13 a drug being misbranded while held for sale."

14
15 **Section 309.** Section 50-31-501, MCA, is amended to read:

16 "50-31-501. **Prohibited acts.** The following acts and the causing ~~thereof~~ of the acts within the state of
17 Montana are ~~hereby~~ prohibited:

18 (1) the manufacture, sale or delivery, holding, or offering for sale of any food, drug, device, or cosmetic that
19 is adulterated or misbranded;

20 (2) the adulteration or misbranding of any food, drug, device, or cosmetic;

21 (3) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the
22 delivery or proffered delivery thereof for pay or otherwise;

23 (4) the sale, delivery for sale, holding for sale, or offering for sale of any article in violation of 50-31-205 or
24 50-31-311;

25 (5) the dissemination of any false advertisement;

26 (6) the refusal to permit entry or inspection or to permit the taking of a sample, as authorized by 50-31-106;

27 (7) the giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who
28 relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person
29 residing in the state of Montana from whom ~~he~~ the person received in good faith the food, drug, device, or cosmetic;

30 (8) the removal or disposal of a detained or embargoed article in violation of 50-31-509;

31 (9) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of
32 or the doing of any other act with respect to a food, drug, device, or cosmetic if ~~such the~~ the act is done while ~~such the~~ the
33 article is held for sale and results in ~~such the~~ the article being adulterated or misbranded;

34 (10) forging, counterfeiting, simulating, or falsely representing or, without proper authority, using any mark,

1 stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions
2 of this chapter or of the federal act;

3 (11) the using on the labeling of any drug or in any advertisement relating to ~~such~~ the drug of any
4 representation or suggestion that an application with respect to ~~such~~ the drug is effective under 50-31-311 or that ~~such~~
5 the drug complies with the provisions of 50-31-311;

6 (12) in the case of a prescription drug distributed or offered for sale in this state, the failure of the
7 manufacturer, packer, or distributor ~~thereof~~ to maintain for transmittal or to transmit to any practitioner licensed by
8 applicable law to administer ~~such~~ the drug who makes written request for information as to ~~such~~ the drug true and
9 correct copies of all printed matter ~~which that~~ is required to be included in any package in which that drug is distributed
10 or sold or ~~such~~ other printed matter as is approved under the federal act. ~~Nothing in this subsection shall be construed~~
11 ~~to~~ This subsection does not exempt any person from any labeling requirement imposed by or under other provisions
12 of this chapter.

13 (13) placing or causing to be placed upon any drug or device or container ~~thereof~~ of a drug, with intent to
14 defraud, the trade name, other identifying mark, or imprint of another or any likeness of ~~any of the foregoing~~ name,
15 mark, or imprint;

16 (14) selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of or concealing or keeping
17 in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container
18 ~~thereof of the drug or device~~ with knowledge that the trade name, other identifying mark, or imprint of another or any
19 likeness of any of the foregoing has been placed ~~thereon~~ on the drug, device, or container in a manner prohibited by
20 subsection (13) ~~hereof~~;

21 (15) making, selling, disposing of, or causing to be made, sold, or disposed of or keeping in possession,
22 control, or custody or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint,
23 or reproduce that trade name, other identifying mark, or imprint of another or any likeness of ~~any of the foregoing~~
24 name, mark, or imprint upon any drug, device, or container ~~thereof~~ of the drug or device;

25 (16) the using by any person to ~~his~~ the person's own advantage or revealing, other than to ~~the state board,~~
26 officers or employees of the department, or the courts when relevant in any judicial proceeding under this chapter, any
27 information acquired under authority of this chapter concerning any method or process ~~which that~~ as a trade secret
28 is entitled to protection;

29 (17) the distribution in commerce of a consumer commodity, as defined in this chapter, if ~~such~~ the commodity
30 is contained in a package or if there is affixed to that commodity a label which does not conform to the provisions of
31 this chapter and of regulations promulgated under authority of this chapter. This prohibition does not apply to persons
32 engaged in business as wholesale or retail distributors of consumer commodities except to the extent that ~~such~~ the
33 persons:

34 (a) are engaged in the packaging or labeling of ~~such~~ the commodities; or

(b) prescribe or specify by any means the manner in which ~~such the~~ commodities are packaged or labeled.

(18) the labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this chapter."

Section 310. Section 50-34-101, MCA, is amended to read:

"50-34-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Department" means the department of public health and environmental sciences, human services provided for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

(2) "Flour" means the foods commonly known in the milling and baking industries as:

(a) white flour, also known as wheat flour or plain flour;

(b) bromated flour;

(c) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

(d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excluding whole wheat flour and special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake and pancake flours.

(3) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.

(4) "Rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dog rolls, parkerhouse rolls, and hard rolls, such as Vienna rolls, kaiser rolls, yeast-raised sweet rolls, or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(5) "White bread" means any bread made with flour, whether baked in a pan or on a hearth or screen, and which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread, and Italian bread."

Section 311. Section 50-36-101, MCA, is amended to read:

"50-36-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of public health and environmental sciences, human services, provided for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

(2) "Mattress" means any quilted pad, comforter, mattress, mattress pad, hammock pad, bunk quilt, settee, couch, daybed, davenport, overstuffed chair, cushion, or pillow filled with any soft material capable of use for sleeping or reclining purposes."

Section 312. Section 50-40-103, MCA, is amended to read:

1 **"50-40-103. Definitions.** As used in this part, the following definitions apply:

2 (1) "Department" means the department of public health and ~~environmental sciences~~ human services provided
3 for in ~~Title 2, chapter 15, part 21 2-15-2201.~~

4 (2) "Enclosed public place" means any indoor area, room, or vehicle used by the general public or serving as
5 a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care
6 facilities, auditoriums, arenas, and assembly and meeting rooms open to the public.

7 (3) "Establishment" means an enterprise under one roof that serves the public and for which a single person,
8 agency, corporation, or legal entity is responsible.

9 (4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

10 (5) "Place of work" means an enclosed room where more than one employee works.

11 (6) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe,
12 or any smokable product.

13 (7) "Smoking area" means a designated area in which smoking is permitted."

14
15 **Section 313.** Section 50-44-102, MCA, is amended to read:

16 **"50-44-102. Establishment of program.** (1) The department of public health and ~~environmental sciences~~
17 human services shall establish a program to provide treatment to persons suffering from chronic renal diseases,
18 including dialysis and other medical procedures and techniques, which will have a lifesaving effect in the care and
19 treatment of ~~such~~ the persons. The department shall extend financial assistance to persons suffering from chronic renal
20 diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary to care for ~~such~~ the
21 diseases, including the rental or purchase of home dialysis equipment and supplies.

22 (2) The department shall by rule establish standards for determining the amount or duration of financial
23 assistance to be extended to individuals under this program in order that treatment ~~shall be~~ is provided to those who
24 are financially unable to obtain services without causing severe economic imbalance in the family economic unit. ~~Such~~
25 The standards ~~shall~~ must be established without reference to maximum or minimum income levels.

26 (3) The department is not liable to any person for a failure to provide financial assistance to that person under
27 this section if sufficient funds are not appropriated by the legislature."

28
29 **Section 314.** Section 50-49-103, MCA, is amended to read:

30 **"50-49-103. Definitions.** For purposes of this part, unless the context requires otherwise, the following
31 definitions apply:

32 (1) "Council" means the state advisory council on food and nutrition established in 2-15-2210.

33 (2) "Department" means the department of public health and ~~environmental sciences~~ human services as
34 provided ~~for in 2-15-2101~~ 2-15-2201.

(3) "Food programs and nutrition services" means public or private programs to provide food and nutrition assistance to persons who have need. The term includes but is not limited to the food stamp program, food programs for the elderly, and supplemental food programs for women, infants, and children."

Section 315. Section 50-50-102, MCA, is amended to read:

"50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

~~(2)(1)~~ "Commercial establishment" means an establishment operated primarily for profit.

~~(3)(2)~~ "Department" means the department of public health and environmental sciences, human services provided for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

~~(4)(3)~~ "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

~~(5)(4)~~ "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

~~(6)(5)~~ "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

~~(7)(6)~~ "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge. The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to its members.

~~(8)(7)~~ "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets, but does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

~~(9)(8)~~ "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

~~(10)(9)~~ "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

~~(11)(10)~~ "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26

1 U.S.C. 501.

2 ~~(12)(11)~~ "Perishable food dealer" means a person or commercial establishment which is in the business of
3 purchasing and selling perishable food to the public.

4 ~~(13)(12)~~ "Person" means a person, partnership, corporation, association, cooperative group, or other entity
5 engaged in operating, owning, or offering services of an establishment."

6
7 **Section 316.** Section 50-51-102, MCA, is amended to read:

8 **"50-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

9 ~~(1) "Board" means the board of health and environmental sciences.~~

10 ~~(2)(1)~~ "Commercial establishment" means an establishment operated primarily for profit.

11 ~~(3)(2)~~ "Department" means the department of public health and environmental sciences human services
12 provided for in 2-15-2201.

13 ~~(4)(3)~~ "Establishment" means a hotel, motel, roominghouse, boardinghouse, retirement home, or tourist home.

14 ~~(5)(4)~~ "Hotel" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held out
15 to the public to be a hotel, motel, inn, motor court, tourist court, public lodginghouse, or place where sleeping
16 accommodations are furnished for a fee to transient guests, with or without meals.

17 ~~(6)(5)~~ "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative
18 group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel,
19 boardinghouse, tourist home, retirement home, or roominghouse.

20 ~~(7)(6)~~ "Roominghouse", "boardinghouse", or "retirement home" means buildings in which separate sleeping
21 rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly,
22 or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or
23 kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided
24 by the facility.

25 ~~(8)(7)~~ "Tourist home" means an establishment or premises where sleeping accommodations are furnished to
26 transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are
27 offered for hire or rent for the use of the traveling public.

28 ~~(9)(8)~~ "Transient guest" means a guest for only a brief stay, such as the traveling public."

29
30 **Section 317.** Section 50-52-101, MCA, is amended to read:

31 **"50-52-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following
32 definitions apply:

33 (1) "Campground" means a parcel of land available to and principally used by the public for camping, where
34 persons can camp, secure tents or cabins, or park trailers for camping and sleeping purposes.

(2) "Department" means the department of public health and environmental sciences ~~human services provided~~ for in 2-15-2201.

(3) "Establishment" means a campground, trailer court, work camp, or youth camp.

(4) "Parcel of land" means a unit of land all parts of which are contiguous, including contiguous lots, in the possession of, owned by, or managed by the same person.

(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of a campground, trailer court, work camp, or youth camp.

(6) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(7) (a) "Trailer court" means a parcel of land upon which two or more spaces are available to the public and designated for occupancy by trailers or mobile homes for use as residences.

(b) ~~except that the~~ The term does not include a parcel composed of platted lots, each lot of which is filed with the county clerk and recorder, contains only one trailer space, and is served by a public water supply system and public sewage system which meet the requirements of rules for such systems adopted pursuant to Title 75, chapter 6, part 1, and which is located within the boundaries of an incorporated city or town.

(8) "Work camp" means a parcel of land on which housing is provided by a person for two or more families or individuals living separately, for the exclusive use of the employees of ~~such~~ the person and the families, if any, of the employees. For purposes of this subsection, "housing" includes but is not limited to camping spaces; trailer parking spaces; mobile, modular, or permanent barracks or structures; and any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities. "Housing" does not include shelter provided by an employer for persons who are employed to perform agricultural duties on a ranch or farm.

(9) "Youth camp" means a parcel of land on which permanent buildings, tents, or other structures are maintained as living quarters for 10 or more people and that is used primarily for educational or recreational use by minors. The term includes any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities. The term does not include any site used solely by the members and their families of a private organization that owns the site."

Section 318. Section 50-53-102, MCA, is amended to read:

"50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of public health and environmental sciences, human services provided for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

(2) "Local board of health" or "board" means a local board as defined in 50-2-101.

(3) "Local health officer" or "officer" means a local health officer as defined in 50-2-101.

(4) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(5) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(6) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of ~~his~~ the owner's family, or their invited guests; or

(b) medicinal hot water baths for individual use."

Section 319. Section 50-60-204, MCA, is amended to read:

"50-60-204. Public hearing required -- effective date of certain rules. (1) Except as provided in subsection (2) ~~of this section, no~~ a rule, amendment, or repeal of the state building code may take effect until after a public hearing by the department.

(2) If a hearing has been held by the department of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the department of public health and environmental sciences ~~human services~~, or the state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code."

Section 320. Section 50-70-103, MCA, is amended to read:

"50-70-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

~~(2) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

~~(3)~~(2) "Department" means the department of public health and environmental sciences, human services provided for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

~~(4)~~(3) "Emission" means a release into the work space atmosphere of air contaminants or pollutants.

~~(5)~~(4) "Occupational disease" means an illness, impairment, or disability that:

(a) arises from the person's employment;

(b) is caused by exposure to a substance or industrial practice which is hazardous to health;

(c) has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases;

(d) is not the result of a person's contact or activities outside ~~his~~ the person's employment.

~~(4)(5)~~ "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers which are related to and affected by the conditions of work and by the stress of the industrial environment.

~~(7)(6)~~ "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

~~(8)(7)~~ "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

~~(9)(8)~~ "Sanitary facilities" means toilets, showers, dressing rooms, lunch rooms, sewage disposal systems, and potable water systems.

~~(10)(9)~~ "Threshold limit values" means airborne concentrations of substances which, it is believed, nearly all workers may be repeatedly exposed to day after day without adverse effect.

~~(11)(10)~~ "Workplace" is a place or location where a person is gainfully employed.

~~(12)(11)~~ "Worker" is a person gainfully employed at any place."

Section 321. Section 50-70-105, MCA, is amended to read:

"50-70-105. Duties of department. The department shall:

(1) enforce ~~board~~ orders by appropriate administrative and judicial proceedings;

(2) secure necessary scientific, technical, administrative, and operational service, ~~including laboratory facilities,~~ by contract or otherwise;

(3) prepare and develop a comprehensive plan for the prevention, abatement, and control of occupational disease;

(4) encourage voluntary cooperation by persons and affected groups to achieve the purpose of this chapter;

(5) encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, prevention, abatement, and control;

(6) determine by means of field studies and sampling the degree of health hazard at any workplace in the state;

(7) collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases;

(8) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and interested persons or groups;

(9) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received by the department under this section ~~shall~~ must be deposited in the state treasury to the account of the department.

(10) adopt, amend, and repeal rules implementing and consistent with this chapter;

1 (11) hold hearings that relate to any aspect of or matter in the administration of this chapter at any place
2 designated by the department;

3 (12) designate an attorney to assist in conducting hearings and appoint a reporter who must be present at
4 all hearings and who shall take full stenographic notes of all proceedings, transcripts of which are available to the public
5 at cost;

6 (13) issue orders necessary to carry out this chapter;

7 (14) require access to records relating to emissions;

8 (15) establish threshold limit values of airborne contaminants for the state as a whole."
9

10 **Section 322.** Section 50-70-108, MCA, is amended to read:

11 **"50-70-108. Application for federal aid.** The department may make application for, receive, administer, and
12 expend any federal aid for the control of occupational diseases or the development and administration of industrial
13 hygiene programs related to occupational disease control ~~provided that any such application is first submitted to and~~
14 ~~approved by the board. The board shall approve any such application if it is consistent with this chapter and any other~~
15 ~~applicable requirements of law."~~

16
17 **Section 323.** Section 50-70-109, MCA, is amended to read:

18 **"50-70-109. Confidentiality of records.** (1) Records or other information concerning pollutants or operations
19 ~~which~~ that are furnished to or obtained by the ~~board or~~ department and ~~which that~~, as certified by the owner or
20 operator, relate to production or sales figures or to processes or production unique to the owner or operator or ~~which~~
21 that would tend to affect adversely ~~his~~ the owner's or operator's competitive position are only for the confidential use
22 of the ~~board or~~ department in the administration of this chapter unless the owner expressly agrees to their publication
23 or availability to the general public.

24 (2) This section does not prevent the use of records or information by the ~~board or~~ department in compiling
25 or publishing analyses or summaries relating to the general condition at the workplace if the analyses or summaries do
26 not identify an owner or operator or reveal information made otherwise confidential by this section."
27

28 **Section 324.** Section 50-70-110, MCA, is amended to read:

29 **"50-70-110. Hearing officer.** The ~~board may designate the~~ director of public health and ~~environmental~~
30 ~~sciences~~ human services may act as the hearing officer at any hearing set by the ~~board~~ department and ~~authorize him~~
31 ~~to may~~ make rulings on evidence and conduct the hearing. The ~~board or the~~ director of public health and ~~environmental~~
32 ~~sciences~~ human services as hearing officer may compel the attendance of witnesses and the production of evidence
33 at hearings."
34

Section 325. Section 50-70-111, MCA, is amended to read:

"50-70-111. **Hearings.** (1) ~~No~~ A rule, amendment, or repeal ~~shall~~ may not take effect except after public hearing on due notice. ~~Such~~ The notice ~~shall~~ must be given by public advertisement not less than 20 or more than 30 days prior to the date set for the hearing.

(2) ~~Nothing in this~~ This section ~~requires~~ does not require a hearing prior to the issuance of an emergency order pursuant to 50-70-117.

(3) (a) Any person aggrieved by any order of the ~~board~~ department may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(i) The ~~board~~ department acted without or in excess of its powers.

(ii) The order was procured by fraud.

(iii) The order is contrary to the evidence.

(iv) The applicant has discovered new evidence material to ~~him which he~~ the applicant that the applicant could not, with reasonable diligence, have discovered and produced at the hearing.

(v) Competent evidence was excluded to the prejudice of the applicant.

(b) The petition must be in ~~such a~~ form and filed in ~~such the~~ time ~~as that the board shall~~ department may prescribe."

Section 326. Section 50-70-112, MCA, is amended to read:

"50-70-112. **Permits.** (1) The ~~board~~ department may by rule prohibit the installation, alteration, or use of any machine, equipment, device, or other article which it finds may cause or contribute to occupational disease or which is intended primarily to prevent or control occupational disease, unless a permit has been obtained from it.

(2) The ~~board~~ department may require that applications for permits ~~shall~~ must be accompanied by plans, specifications, and ~~such~~ other information ~~as that it deems~~ considers necessary.

(3) The ~~board~~ department shall provide for the issuance, suspension, revocation, and renewal of permits which it may require pursuant to this section.

(4) If a permit is required, the ~~board~~ department ~~must~~ shall decide within 90 days after receiving application whether or not to issue the permit ~~will issue~~. If ~~no~~ a decision is not rendered within that time, permission ~~shall be deemed~~ is considered to have been denied."

Section 327. Section 50-70-113, MCA, is amended to read:

"50-70-113. **Emissions prohibited.** (1) The ~~board~~ department may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control occupational diseases. Except as otherwise provided in or pursuant to this section, ~~such the~~ levels, concentrations, or quantities ~~shall~~ must be controlled and ~~no~~ emissions in excess ~~thereof shall be lawful~~ of the limitations are unlawful.

1 The ~~board~~ department may also establish standards for sanitary facilities and lunchrooms.

2 (2) The ~~board~~ department may by rule use any widely recognized measuring system for measuring emissions
3 of pollutants.

4 (3) ~~Should~~ If federal minimum standards of industrial hygiene or occupational health ~~be~~ are set by federal law,
5 the ~~board~~ department may, if necessary, set more stringent standards by rule."

6
7 **Section 328.** Section 50-70-114, MCA, is amended to read:

8 "50-70-114. **Variances.** (1) Any person who owns or is in control of any plant, building, structure process,
9 or equipment may apply to the ~~board~~ department for an exemption or partial exemption from rules governing the quality,
10 nature, duration, or extent of emissions of pollutants. The application ~~shall~~ must be accompanied by ~~such~~ the
11 information and data ~~as that~~ the ~~board~~ department may require.

12 (2) The ~~board~~ department may grant the exemption or partial exemption if it finds that:

13 (a) the emissions occurring or proposed to occur do not constitute an immediate danger to the health and
14 safety of the worker; and

15 (b) compliance with the rules from which exemption is sought would produce hardship without equal or
16 greater benefits to the worker.

17 (3) ~~No~~ An exemption or partial exemption may not be granted pursuant to this section except after a public
18 hearing on ~~due~~ notice and until the ~~board~~ department has considered the relative interests of the applicant and the
19 worker or workers involved.

20 (4) ~~No~~ An exemption or partial exemption pursuant to this section may not be granted for a period to exceed
21 1 year, but an exemption or partial exemption may be renewed ~~for like periods~~ if ~~no~~ a complaint is not made to the
22 ~~board department on account thereof~~ or if, after a complaint has been made and ~~duly~~ considered at a public hearing
23 held by the ~~board~~ department on ~~due~~ notice, the ~~board~~ department finds that renewal is justified. ~~No~~ A renewal may
24 not be granted except on application ~~therefor~~. Application for renewal ~~shall~~ must be made at least 60 days prior to the
25 expiration of the exemption or partial exemption. Immediately prior to application for renewal, the applicant shall give
26 public notice of the application in accordance with the rules of the ~~board~~ department. Any renewal pursuant to this
27 subsection ~~shall~~ must be on the same grounds and subject to the same limitations and requirements as provided in
28 subsection (2)(a) ~~of this section~~.

29 (5) An exemption, partial exemption, or renewal ~~thereof~~ is not a right of the applicant or holder but ~~shall be~~
30 is in the discretion of the ~~board~~ department.

31 (6) ~~Nothing in this~~ This section and ~~no~~ any exemption, partial exemption, or renewal granted may not be
32 construed to prevent or limit the application of the emergency provisions and procedures of 50-70-117 to any person
33 or ~~his~~ the person's property."

1 **Section 329.** Section 50-70-116, MCA, is amended to read:

2 **"50-70-116. Enforcement.** (1) When the department has reason to believe that a violation of this chapter or
3 rule made under it has occurred, it may have written notice and the facts alleged to constitute a violation served on
4 the alleged violator and may include an order to take necessary corrective action within a reasonable period of time
5 stated in the order. An order becomes final unless, no later than 30 days after the date of notice is received, the person
6 named requests in writing a hearing before the board department. On receipt of a request, the board department shall
7 hold a hearing.

8 (2) If, after a hearing held under subsection (1) ~~of this section~~, the board department finds that a violation has
9 occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention,
10 abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If,
11 after hearing on an order contained in a notice, the board department finds that no violation is occurring, it shall rescind
12 the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease
13 and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

14 (3) Instead of issuing the order provided for in subsection (1) ~~of this section~~, the board department may either:

15 (a) require that the alleged violator appear before it for a hearing at a time and place specified in a notice and
16 answer the charges complained of; or

17 (b) initiate action under 50-70-118.

18 (4) This chapter does not prevent the board department from making efforts to obtain voluntary compliance
19 through warning, conference, or other appropriate means.

20 (5) In connection with a hearing held under this section, the board department may, and on application by a
21 party shall, compel the attendance of witnesses and the production of evidence on behalf of parties."

22
23 **Section 330.** Section 50-70-117, MCA, is amended to read:

24 **"50-70-117. Emergency procedure.** (1) Any other law to the contrary notwithstanding, if the department finds
25 that a generalized hazard at a workplace exists and that it creates an emergency requiring immediate action to protect
26 human health, the department shall order persons causing or contributing to the hazard to reduce or discontinue
27 immediately the emissions creating the hazard. Upon issuance of this order, the department shall fix a place and time,
28 not later than 72 hours ~~thereafter~~ after issuance, for a hearing to be held before the board department. Not more than
29 24 hours after the commencement of the hearing and without adjournment, the board department shall affirm, modify,
30 or set aside the order ~~of the department~~.

31 (2) In the absence of a generalized condition as that referred to in subsection (1) ~~of this section~~, if the
32 department finds that emissions from an operation are causing imminent danger to human health, it may order the
33 person responsible for the operation in question to reduce or discontinue emissions immediately without regard to
34 50-70-116. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders provided

1 in 50-70-116 apply.

2 (3) This section does not limit any power which the governor or any other officer may have to declare an
3 emergency and act on the basis of the declaration, whether the power is conferred by statute, constitutional provisions,
4 or inheres in the office."

5
6 **Section 331.** Section 50-71-109, MCA, is amended to read:

7 **"50-71-109. Duties of department regarding occupational health hazards.** The department shall report
8 occupational health hazards discovered in its investigations and inspection of places of employment to the department
9 of public health and environmental sciences human services and shall cooperate with the department in carrying out
10 its duties as specified in chapter 70 of this title."

11
12 **Section 332.** Section 50-78-102, MCA, is amended to read:

13 **"50-78-102. Definitions.** As used in this chapter, the following definitions apply:

14 (1) "Chemical manufacturer" means an employer in standard industrial classification codes 20 through 39,
15 as defined in the federal Standard Industrial Classification Manual, with a workplace where chemicals are produced for
16 use or distribution.

17 (2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature
18 system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of
19 nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

20 (3) "Common name" means any designation or identification, such as code name, code number, trade name,
21 brand name, or generic name, used to identify a chemical other than by its chemical name.

22 (4) "Department" means the department of public health and environmental sciences human services provided
23 for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

24 (5) "Designated representative" means:

25 (a) the individual or organization to whom an employee gives written authorization to exercise the employee's
26 rights under this chapter; or

27 (b) a recognized or certified collective bargaining agent who is automatically a designated representative
28 without regard to written employee authorization.

29 (6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals
30 to other distributors or to employers.

31 (7) "Employee" means a person who may be exposed to hazardous chemicals in ~~his~~ the person's workplace
32 under normal operating conditions or possible emergencies.

33 (8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other
34 entity engaged in business or providing services that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds which is a physical hazard or health hazard as defined by subsection (c) of the OSHA standard and which has been identified as such by the federal occupational safety and health administration or the manufacturer and has been ~~so~~ filed with the federal occupational safety and health administration;

(b) any hazardous chemical as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means:

(a) the chief of the municipal fire department or ~~his~~ the chief's agent, for any workplace located within a city or town; or

(b) the county rural fire chief or the district rural fire chief or ~~his~~ the chief's agent, for any workplace not located within a city or town.

(13) "Manufacturing employer" means an employer with a workplace classified in any standard industrial classification code 20 through 39 who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace in any standard industrial classification code other than 20 through 39.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 C.F.R. 1910.1200, as that statute reads on January 1, 1985.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, which is used in an employer's business and which gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under this chapter or under subsection (e)(1)(i) of the OSHA standard."

Section 333. Section 52-1-101, MCA, is amended to read:

1 **"52-1-101. Purpose.** It is the public policy of the legislature to reduce duplication and fragmentation of
2 services to youth, families, and senior citizens by creating a department that shall develop and maintain consolidated
3 programs and services, except youth correctional services, within available resources, and a planned continuum of
4 services to:

5 (1) provide protective services to ensure the health, welfare, and safety of children and adults who are in
6 danger of abuse, neglect, or exploitation within communities; and

7 ~~(2) provide for the care, protection, and mental and physical development of youth alleged to be youth in need~~
8 ~~of supervision or delinquent youth who are referred or committed to the department; and~~

9 ~~(3)~~(2) provide supportive services to enable senior citizens to maintain their independence."
10

11 **Section 334.** Section 52-1-102, MCA, is amended to read:

12 **"52-1-102. Definitions.** Unless the context requires otherwise, in this title, the following definitions apply:

13 (1) "Department" means the department of family public health and human services provided for in ~~2-16-2401~~
14 2-15-2201.

15 (2) "Director" means the director of family public health and human services provided for in ~~2-16-2401~~
16 2-15-2201."

17
18 **Section 335.** Section 52-1-103, MCA, is amended to read:

19 **"52-1-103. Powers and duties of department.** The department shall:

20 (1) administer and supervise all forms of child and adult protective services;

21 (2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

22 ~~(3) provide funding for and place youth alleged or adjudicated to be delinquent or in need of supervision who~~
23 ~~are referred or committed to the department;~~

24 ~~(4)~~(3) provide the following functions, as necessary, for youth in need of care:

25 (a) intake, investigation, case management, and client supervision;

26 (b) placement in youth care facilities;

27 (c) contracting for necessary services;

28 (d) protective services day care; and

29 (e) adoption;

30 ~~(5) administer youth correctional facilities;~~

31 ~~(6) provide supervision, care, and control of youth released from a state youth correctional facility;~~

32 ~~(7)~~(4) license youth care facilities, child-placing agencies, day-care facilities, community homes for
33 developmentally disabled persons, community homes for severely disabled persons, and adult foster care facilities;

34 ~~(8)~~(5) act as lead agency in implementing and coordinating child-care programs and services under the

1 Montana Child Care Act:

2 ~~(9)(6)~~ administer the interstate compacts compact for children and delinquent youth;

3 ~~(10)(7)~~ (a) administer child abuse prevention services funded through child abuse grants and the Montana
4 children's trust fund provided for in Title 41, chapter 3, part 7; and

5 (b) administer elder abuse prevention services;

6 ~~(11)(8)~~ (a) make a written evaluation of each plan developed by the local family services advisory councils,
7 as provided in 52-1-203, indicating those portions of each plan that will be implemented by the department, those
8 portions that will not be implemented, and the reasons for not implementing those portions;

9 (b) develop a statewide youth services and resources plan that takes into consideration local needs as
10 reflected in plans developed by the local family services advisory councils;

11 ~~(12)(9)~~ administer services to the aged;

12 ~~(13)(10)~~ provide consultant services to:

13 (a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

14 (b) youth care facilities;

15 ~~(14) utilize at maximum efficiency the resources of state government in a coordinated effort to:~~

16 ~~(a) provide for children in need of temporary protection or correctional services; and~~

17 ~~(b) coordinate and apply the principles of modern institutional administration to the institutions in the~~
18 ~~department;~~

19 ~~(15) subject to the functions of the department of administration, lease or purchase lands for use by institutions~~
20 ~~in the department and classify those lands to determine which are of such character as to be most profitably used for~~
21 ~~agricultural purposes, taking into consideration:~~

22 ~~(a) the needs of all institutions in the department for the food products that can be grown or produced on the~~
23 ~~lands; and~~

24 ~~(b) the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the~~
25 ~~institutions in the department;~~

26 ~~(16)(11)~~ utilize the staff and services of other state agencies and units of the Montana university system,
27 within their respective statutory functions, to carry out its functions under this title;

28 ~~(17) propose programs with specific goals and objectives to the legislature to meet the projected long-range~~
29 ~~needs of institutions in the department, including programs and facilities for the diagnosis, treatment, care, and~~
30 ~~aftercare of persons placed in institutions in the department;~~

31 ~~(18)(12)~~ contract, as necessary, with the county board of welfare for administration of child and adult
32 protection services for that county; and

33 ~~(19)(13)~~ adopt rules necessary to carry out the purposes of 41-3-1126, ~~41-5-527 through 41-5-529~~, and this
34 chapter."

1 **Section 336.** Section 52-1-110, MCA, is amended to read:

2 **"52-1-110. County contribution for salaries and travel of protective services employees.** (1) ~~Upon transfer~~
3 ~~of certain functions of the county welfare department to the department of family services as provided in section 12,~~
4 ~~Chapter 609, Laws of 1987, the~~ The salaries and travel expenses, as provided in 2-18-501 through 2-18-503, of
5 protective services employees must be paid by the department of family public health and human services. The board
6 of county commissioners shall reimburse the department of family public health and human services from county poor
7 funds in an amount equal to that county's expenditures for salaries, travel expenses, and indirect costs of protective
8 services employees in fiscal year 1987, adjusted for annual inflation.

9 (2) A county that was state-assumed prior to 1987, but at a later date reassumes responsibility pursuant to
10 53-2-811, is responsible for reimbursement of salaries, travel expenses, and indirect costs up to the county's calculated
11 level of expenditures for fiscal year 1987 as if the county had not been state-assumed.

12 (3) On or before the 20th day of the month following the month for which payments were made for protective
13 services employees' salaries, travel, and indirect costs, the department of family public health and human services shall
14 present to the board of county commissioners a claim for the required reimbursement. The board of county
15 commissioners shall make the reimbursement within 20 days after the presentation of the claim."

16
17 **Section 337.** Section 52-2-101, MCA, is amended to read:

18 **"52-2-101. Definitions.** As used in this part, the following definitions apply:

19 (1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services
20 ~~{, especially in predominantly rural areas},~~ for the protection and care of abused, dependent, or neglected children.

21 (2) "Department" means the department of family public health and human services provided for in ~~2-15-2401~~
22 2-15-2201.

23 (3) (a) "Emotionally disturbed child" means a child determined by a psychologist, psychiatrist, licensed social
24 worker, or special education child study team (established under rules adopted by the superintendent of public
25 instruction to implement Title 20, chapter 7, part 4) to have:

26 (i) an identifiable mental health problem as identified in a nationally recognized classification system or as
27 defined in 20-7-401(8); and

28 (ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a dysfunction in
29 any of the following areas:

30 (A) relationships;

31 (B) behavior;

32 (C) cognition; or

33 (D) education.

34 (b) The nationally recognized classification system referred to in subsection (3)(a)(i) must be one recognized

1 by rules established by the department.

2 (4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this
3 title to a person by a state or county agency, regardless of the original source of the assistance."
4

5 **Section 338.** Section 52-2-111, MCA, is amended to read:

6 **"52-2-111. Administrative duties of department.** Subject to the authority and regulations of the department
7 and in cooperation with the federal government, the department shall:

8 (1) adopt rules necessary to carry out the purposes of this part;

9 (2) administer or supervise all child welfare services of the state ~~except the child welfare services which are~~
10 ~~administered by the department of health and environmental sciences and the department of social and rehabilitation~~
11 ~~services."~~

12
13 **Section 339.** Section 52-2-202, MCA, is amended to read:

14 **"52-2-202. Definitions.** For purposes of this part, unless the context requires otherwise, the following
15 definitions apply:

16 (1) "Children with multiagency service needs" means children under 18 years of age who have a need for
17 services that are available from more than one state agency.

18 (2) "Services" means publicly funded social services for children, including public education, child protective
19 services, mental health services, child health care, and related services.

20 (3) "State agency" means:

21 ~~(a) the department of family services provided for in 2-15-2401;~~

22 ~~(b) the department of health and environmental sciences provided for in 2-15-2101;~~

23 ~~(c)(a) the department of corrections and human services provided for in 2-15-2301;~~

24 ~~(d)(b) the board of crime control provided for in 2-15-2006;~~

25 ~~(e)(c) the department of social and rehabilitation public health and human services provided for in 2-15-2201;~~

26 and

27 ~~(f)(d) the superintendent of public instruction provided for in 2-15-701."~~
28

29 **Section 340.** Section 52-2-203, MCA, is amended to read:

30 **"52-2-203. Cooperative agreement regarding children's services.** (1) State agencies shall enter into a
31 cooperative agreement for the purpose of coordinating services to children with multiagency service needs. However,
32 the existing state and community interagency service delivery and planning process for developmental disabilities may
33 not be affected by this section.

34 (2) The cooperative agreement may:

- 1 (a) include a functional definition of "children with multiagency service needs";
- 2 (b) identify the responsibilities of each state agency in relation to children with multiagency service needs;
- 3 (c) describe agreements to recognize duplicated services and to fill gaps in services to children with
- 4 multiagency service needs;
- 5 (d) define a process for the resolution of disputes between state agencies that relate to specific areas of an
- 6 agency's service responsibilities;
- 7 (e) establish local interagency staffing groups that consist of the following members:
- 8 (i) a local representative from each state agency who is authorized to commit resources and make decisions
- 9 on behalf of the agency ~~he represents~~ represented;
- 10 (ii) representatives of local school districts, youth probation offices, and other public agencies serving youth;
- 11 and
- 12 (iii) representatives of local private youth service agencies;
- 13 (f) provide that if a state agency is not able to provide all the services that a child requires, the agency may
- 14 submit the child's case history to the local staffing group for the provision of multiagency services to the child;
- 15 (g) provide that a local interagency staffing group shall meet at the request of any one of its members to
- 16 consider the provision of services to a child with multiagency service needs;
- 17 (h) provide for confidentiality of a child's case records in the same manner as provided in 41-3-205; and
- 18 (i) provide for review and necessary revision of the cooperative agreement at least once annually.
- 19 (3) For purposes of this part, the department of ~~family~~ public health and human services is designated as the
- 20 lead agency in coordinating and planning services to children with multiagency service needs. Other state agencies shall
- 21 cooperate with the department of ~~family~~ public health and human services to ~~assure~~ ensure minimum duplication and
- 22 maximum coordination of services for children in Montana."
- 23

24 **Section 341.** Section 52-2-211, MCA, is amended to read:

25 **"52-2-211. County interdisciplinary child information team.** (1) The following persons and agencies operating

26 within a county may by written agreement form a county interdisciplinary child information team:

- 27 (a) the youth court;
- 28 (b) the county attorney;
- 29 (c) the department of ~~family~~ public health and human services;
- 30 (d) the county superintendent of schools;
- 31 (e) the sheriff;
- 32 (f) the chief of any police force; ~~and~~
- 33 (g) the superintendents of public school districts; and
- 34 (h) the department of corrections.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the information team:

(a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;

(b) entities operating private elementary and secondary schools;

(c) attorneys; and

(d) a person or entity that has or may have a legitimate interest in one or more children that the information team will serve.

(3) The members of the information team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused, neglected, dependent, and delinquent children and youth in need of supervision. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205, 41-5-602, or 41-5-603 may not be disseminated beyond the team.

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team."

Section 342. Section 52-2-303, MCA, is amended to read:

"52-2-303. Multiagency service placement plan committee -- membership -- administration. (1) There is a multiagency service placement plan committee.

(2) The committee is composed of the following members:

(a) an appointee of the director of the department of public health and human services;

(b) an appointee of the superintendent of public instruction; and

(c) an appointee of the director of the department of corrections ~~and human services~~;

~~(d) an appointee of the director of the department of health and environmental sciences; and~~

~~(e) an appointee of the director of the department of social and rehabilitation services.~~

(3) The committee is attached to the department of health and human services for administrative purposes only as provided in 2-15-121.

(4) Except as provided in this section, the committee must be administered in accordance with 2-15-122."

Section 343. Section 52-2-401, MCA, is amended to read:

"52-2-401. Definitions. As used in this part, the following definitions apply:

(1) "Agency" includes a person not related by blood or marriage to a minor child to be adopted.

(2) "Department" means the department of ~~family~~ public health and human services provided for in ~~2-15-2401~~ 2-15-2201.

(3) "Person" includes any individual, partnership, voluntary association, or corporation."

Section 344. Section 52-2-503, MCA, is amended to read:

"52-2-503. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of ~~family~~ public health and human services provided for in 2-15-2201.

(2) "Hard-to-place child" means a minor, as defined by 41-1-101, who is a dependent of a public or voluntary licensed child-placing agency, legally free for adoption, and is not likely to be adopted because of:

(a) physical or mental disease or disability;

(b) recognized high risk of physical or mental disease or disability; or

(c) sibling relationship to another child who is eligible for adoption."

Section 345. Section 52-2-522, MCA, is amended to read:

"52-2-522. Authorization. The department of ~~family services and the department of social and rehabilitation~~ public health and human services ~~are~~ is authorized to develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states for:

(1) the protection of children on behalf of whom adoption assistance is being provided; and

(2) the provision of procedures for interstate children's adoption assistance payments, including medical payments."

Section 346. Section 52-2-523, MCA, is amended to read:

"52-2-523. Federal participation. Consistent with federal law, the department of ~~family services and the department of social and rehabilitation~~ public health and human services, in connection with the administration of services provided and compacts entered into under authority of 52-2-521 through 52-2-528, shall apply for and administer all federal aid for adoption assistance and medical assistance costs in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272), Titles IV (e) and XIX of the Social Security Act, or any other applicable federal laws."

Section 347. Section 52-2-527, MCA, is amended to read:

"52-2-527. Medical benefits -- rules. (1) The provisions of this section apply only when the compact entered by this state and the other state under 52-2-521 through 52-2-528 provides that the adoption assistance state, whether it be this state or the other state, shall continue medical assistance to children in accordance with the adoption

1 assistance agreements made by the adoption assistance state after the children have changed their residence to this
2 state or to the other state. All other children entitled to medical assistance in this state are eligible to receive it in
3 accordance with the applicable laws and procedures.

4 (2) A child with special needs residing in this state who is the subject of an adoption assistance agreement
5 with another state is entitled to receive medical assistance identification from this state upon the filing in the office of
6 the department of ~~social and rehabilitation~~ public health and human services located in the county of the child's
7 residence a copy of the adoption assistance agreement. Medical assistance identification gained pursuant to this section
8 entitles the holder to processing and payment on claims of the holder in the same manner and pursuant to the same
9 conditions and procedures as other recipients of medical assistance.

10 (3) The department of ~~social and rehabilitation~~ public health and human services shall provide coverage and
11 benefits for a child who is in another state who is covered by an adoption assistance agreement entered into in this
12 state for coverage or benefits, if any, provided for under the adoption assistance agreement made in this state but not
13 provided by the residence state. The adoptive parents acting for the child may submit evidence of payment for services
14 or benefit amounts not payable in the residence state and must be reimbursed for the services. However, there may
15 not be reimbursement for services or benefit amounts covered under any insurance or other third-party medical contract
16 or arrangement held by the child or the adoptive parents. The department of ~~social and rehabilitation~~ public health and
17 human services shall adopt rules implementing this subsection. The additional coverage and benefit amounts provided
18 by this subsection are for services for which there is no federal contribution or for which, if federally aided,
19 contributions are not provided by the residence state. Rules adopted pursuant to this subsection must include
20 procedures to be followed for obtaining prior approval for services covered by this subsection when prior approval is
21 required."

22
23 **Section 348.** Section 52-2-703, MCA, is amended to read:

24 **"52-2-703. Definitions.** In this part, the following definitions apply:

25 (1) "Child" means a person under 13 years of age.

26 (2) "Day care" or "child care" means care for children provided by an adult, other than a parent of the children
27 or other person living with the children as a parent, on a regular basis for daily periods of less than 24 hours, whether
28 that care is for daytime or nighttime hours.

29 (3) "Day-care center" means an out-of-home place in which day care is provided to 13 or more children on
30 a regular basis.

31 (4) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides
32 day care on a regular basis or a place licensed or registered to provide day care on an irregular basis for children
33 suffering from illness. It includes a family day-care home, a day-care center, a group day-care home, or a facility
34 providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as

provided in 52-2-713. The term does not include:

(a) a person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day-care facility is required to receive payments as provided in 52-2-713; or

(b) any group facility established chiefly for educational purposes that limits its services to children who are 3 years of age or older.

(5) "Department" means the department of ~~family~~ public health and human services provided for in ~~2-15-2401~~ 2-15-2201.

(6) "Family day-care home" means a private residence in which day care is provided to three to six children on a regular basis.

(7) "Group day-care home" means a private residence or other structure in which day care is provided to 7 to 12 children on a regular basis.

(8) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(9) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

(10) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(11) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify compliance with the prescribed standards and promulgated rules.

(12) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(13) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(14) (a) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

(b) The term includes the status of a child described in subsection (14)(a) in a step or adoptive relationship."

Section 349. Section 52-2-704, MCA, is amended to read:

"52-2-704. ~~Lead agency -- duties~~ Duties of department. (1) The department is ~~designated as the lead agency~~ responsible for the purposes of planning, implementing, and coordinating programs under the Montana Child Care Act.

(2) The department shall:

1 (a) assess child-care needs and resources within the state;

2 (b) develop a state child-care plan after consultation with the local family services advisory councils
3 established under 52-1-203 and the child-care advisory council established in 52-2-705;

4 (c) coordinate child-care programs administered by ~~the department and the departments of social and~~
5 ~~rehabilitation services, health and environmental sciences, and labor and industry~~ all state agencies;

6 (d) issue licenses to persons to receive children into a day-care center on a regular basis;

7 (e) prescribe the conditions and publish minimum standards upon which licenses and registration certificates
8 are issued;

9 (f) adopt rules for day-care facilities consistent with the purposes of this part; and

10 (g) issue registration certificates to a person or persons to receive children into a family day-care home or
11 group day-care home on a regular basis.

12 (3) The department may:

13 (a) enter into interagency agreements to administer and coordinate child-care programs;

14 (b) accept any federal funds made available for the improvement or promotion of child-care services within
15 the state;

16 (c) administer any state and federal funds that may be appropriated for the purposes of the part."

17
18 **Section 350.** Section 52-2-731, MCA, is amended to read:

19 "52-2-731. **Standards for day care.** In developing standards, the department shall seek the advice and
20 assistance of the ~~department of health and environmental sciences and~~ superintendent of public instruction,
21 representatives of day-care facilities, specialists in child care, and representatives of parent groups who use the
22 services of day-care facilities. The standards may pertain to:

23 (1) character, suitability, and qualifications of an applicant and other persons directly responsible for the care
24 of children;

25 (2) the number of individuals or staff required for adequate supervision and care of children in day-care
26 facilities;

27 (3) child-care programs and practices necessary to ensure the health, safety, safety in transportation,
28 development, and well-being of children;

29 (4) adequate and appropriate admission policies;

30 (5) adequacy of physical facilities and equipment;

31 (6) general financial ability and competence of an applicant to provide necessary care for children and maintain
32 prescribed standards;

33 (7) the ages and numbers of children that may be cared for in a day-care facility."

1 **Section 351.** Section 52-2-733, MCA, is amended to read:

2 **"52-2-733. Periodic visits to facilities by department -- investigations -- consultation with licensees and**
3 **registrants.** (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers
4 to ensure that minimum standards are maintained.

5 (2) The department may investigate and inspect the conditions and qualifications of any day-care center, group
6 day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of
7 this part.

8 (3) The department must visit and inspect at least 20% of all registered family day-care homes and group
9 day-care homes in each of the governor's planning regions annually.

10 (4) The department shall make annual unannounced visits to day-care centers.

11 (5) Upon request of the department, ~~the department of health and environmental sciences~~ or the state fire
12 prevention and investigation program of the department of justice shall inspect any day care facility for which a license
13 or registration certificate is applied for or issued and shall report its findings to the department.

14 (6) Upon request, the department shall give consultation to every licensee and registrant who desires to
15 upgrade the services of ~~his~~ the licensee's or registrant's program.

16 (7) ~~Nothing in this~~ This section may not be construed to require the department to conduct an inspection of
17 each day-care facility applying for a registration certificate under the provisions of this part."
18

19 **Section 352.** Section 52-2-735, MCA, is amended to read:

20 **"52-2-735. Health protection -- certification required.** (1) ~~The department of health and environmental sciences~~
21 shall adopt rules for the protection of children in day-care centers from the health hazards of inadequate food
22 preparation, poor nutrition, and communicable diseases. Rules adopted by the department must include rules requiring
23 children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted for care
24 in the facility unless an exemption has been claimed as provided in 20-5-405.

25 (2) Local public health authorities shall arrange to provide training to day-care center providers and employees
26 regarding health hazards. Upon successful completion of the training the local public health authorities shall issue
27 certificates to the providers and employees.

28 (3) In lieu of training, local public health authorities may elect to inspect facilities and issue certificates of
29 approval to child-care center providers.

30 (4) Each applicant for a license to operate a day-care center shall submit to the department a certificate issued
31 pursuant to subsection (2) or (3) before the department will issue a license.

32 (5) The local public health authority may charge the applicant a reasonable fee, not to exceed \$25, for any
33 inspection necessary to issue a certificate of approval, or a fee not to exceed the documented cost for training it
34 provides under this section."

1 **Section 353.** Section 52-3-101, MCA, is amended to read:

2 **"52-3-101. Functions of department of ~~family~~ public health and human services.** The department of ~~family~~
3 public health and human services shall:

4 (1) consult with and advise organized efforts by communities, organizations, associations, and groups that
5 are working toward any forms of assistance to problems of aging;

6 (2) study and identify problems of aging;

7 (3) review existing programs for the aging and make recommendations to the governor and the legislature for
8 improvements in ~~such~~ the programs;

9 (4) encourage the sponsorship of community projects which will seek to make optimum use of the time and
10 talents of retired persons;

11 (5) coordinate, through area councils on aging, the delivery of community-based care, including but not limited
12 to home health care, homemaker services, foster home care, nutrition, transportation, winterization, information and
13 referral, and recreation."

14
15 **Section 354.** Section 52-3-102, MCA, is amended to read:

16 **"52-3-102. Grants and gifts to department.** The department of ~~family~~ public health and human services may
17 receive on behalf of the state any grant from the federal government or any grant or gift from any source and accept
18 the grant or gift so that the title ~~shall~~ will pass to the state. All grants, grants-in-aid, or gifts ~~shall~~ must be deposited
19 with the state treasurer and ~~shall~~ must be continuously available to the department."

20
21 **Section 355.** Section 52-3-103, MCA, is amended to read:

22 **"52-3-103. Designation of area agencies.** (1) The department of ~~family~~ public health and human services may
23 designate as an area agency in a geographical area an entity that demonstrates its ability to:

24 (a) develop and administer an area plan for a comprehensive and coordinated system of services; and

25 (b) serve as the advocate and focal point for older persons in the planning and service area.

26 (2) ~~Such an~~ An entity may be but is not limited to:

27 (a) an established office on aging that operates within the geographical area;

28 (b) an office or agency of a unit of general purpose local government, except a county welfare office or
29 department;

30 (c) any combination of ~~such~~ offices or units of general purpose local governments; or

31 (d) any other public or private nonprofit agency, except a regional or local agency of the state."

32
33 **Section 356.** Section 52-3-111, MCA, is amended to read:

34 **"52-3-111. Senior citizens' legislature.** (1) The department of ~~family~~ public health and human services may

1 contract with a senior citizens' organization for the purpose of establishing a mock legislature to be held in the year
2 preceding the legislative session.

3 (2) The contract entered into with the senior citizens' organization must provide that ~~such~~ the organization
4 match on a one-to-two ~~{organization to department}~~ ratio any amount contracted for.

5 (3) The department of ~~family~~ public health and human services shall cooperate with the department of
6 administration in assisting the senior citizens' organization designated to establish the mock legislature."

7
8 **Section 357.** Section 52-3-202, MCA, is amended to read:

9 **"52-3-202. Definitions.** As used in this part, the following definitions apply:

10 (1) "Aged person" means an aged person as defined by the department.

11 (2) "Department" means the department of ~~family~~ public health and human services provided for in 2-15-2201.

12 (3) "Disabled adult" means a person 18 years of age or over who is defined by the department as disabled
13 but not developmentally disabled.

14 (4) "Protective services" means assistance to an aged person or disabled adult in obtaining the services
15 offered by the department."

16
17 **Section 358.** Section 52-3-302, MCA, is amended to read:

18 **"52-3-302. Definitions.** As used in this part, the following definitions apply:

19 (1) "Adult foster family care homes" means private homes owned by one or more persons 18 years of age
20 or older which offer light personal care or custodial care to disabled adults who are not related to the owner by blood
21 or marriage or which offer light personal care or custodial care to aged persons.

22 (2) "Aged person" means a person defined by the department as aged.

23 (3) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so
24 as to provide for ~~his~~ the person's basic needs of food and shelter and having a specific person available to help ~~him~~
25 the person meet ~~his~~ the person's basic needs.

26 (4) "Department" means the department of ~~family~~ public health and human services provided for in 2-15-2201.

27 (5) "Disabled adult" means a person 18 years of age or older defined by the department as disabled.

28 (6) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal
29 hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration, but not
30 administration of prescriptive medications.

31 (7) "Skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse
32 under orders of an attending physician."

33
34 **Section 359.** Section 52-3-401, MCA, is amended to read:

1 **"52-3-401. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following
2 definitions apply:

3 (1) "Department" means the department of ~~family public health and human services~~ provided for in 2-15-2201.

4 (2) "Older Americans Act" means the Older Americans Act of 1965, as amended, 42 U.S.C. 3001, et seq.

5 (3) "Planning and service area" means a geographic area of the state that is designated for purposes of
6 planning, development, delivery, and overall administration of services under the Older Americans Act.

7 (4) "Services to the aged" means those services the department administers pursuant to the Older Americans
8 Act.

9 (5) "State plan" means a plan developed by the department to coordinate and administer delivery of services
10 under the Older Americans Act."

11
12 **Section 360.** Section 52-3-502, MCA, is amended to read:

13 **"52-3-502. Definitions.** In this part, the following definitions apply:

14 (1) "Department" means the department of ~~family public health and human services~~ provided for in 2-15-2201.

15 (2) "Older Montanan" means a resident of this state who is at least 60 years of age."

16
17 **Section 361.** Section 52-3-603, MCA, is amended to read:

18 **"52-3-603. Office of legal and long-term care ombudsman services.** Contingent on receipt of federal funds
19 for the purpose, there is an office of legal and long-term care ombudsman services in the department of ~~family public~~
20 health and human services. As required by the Older Americans Act of 1965, as amended (42 U.S.C. 3001, et seq.),
21 and the regulations adopted pursuant thereto, the office:

22 (1) serves as an advocate for Montana citizens residing in long-term care facilities, regardless of their age or
23 source of payment for care, to ensure that their rights are protected, that they receive quality care, and that they reside
24 in a safe environment; and

25 (2) coordinates legal services for the elderly."

26
27 **Section 362.** Section 52-3-605, MCA, is amended to read:

28 **"52-3-605. Enforcement of access.** (1) A person who violates the provisions of 52-3-604 is subject to a civil
29 penalty not to exceed \$1,000. Each day of violation constitutes a separate violation. The department of public health
30 and ~~environmental sciences~~ human services or, upon request of that department, the county attorney of the county
31 in which the long-term care facility in question is located may petition the district court to impose, assess, and recover
32 the civil penalty. Money collected as a civil penalty must be deposited in the state general fund.

33 (2) The department of public health and ~~environmental sciences~~ human services or, upon request of that
34 department, the county attorney of the county in which the long-term care facility in question is located may bring an

1 action to enjoin a violation of any provision of 52-3-604 in addition to or exclusive of the remedy in subsection (1)."

2
3 **Section 363.** Section 52-3-804, MCA, is amended to read:

4 **"52-3-804. Duties of department of ~~family~~ public health and human services.** (1) The department shall
5 investigate reports of abuse, sexual abuse, neglect, or exploitation received pursuant to 52-3-811(1)(a).

6 (2) The department of ~~family~~ public health and human services shall prepare an annual report of the
7 information obtained pursuant to the reporting requirement of this part.

8 (3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, or
9 under Title 52, chapter 4, part 1, for a person alleged to have been abused, sexually abused, neglected, or exploited.

10 (4) If a person alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or the
11 person's caretaker refuses to allow a representative of the department entrance to the premises for the purpose of
12 investigating a report made pursuant to 52-3-811(1)(a), the district court in the county where the person is found may
13 order a law enforcement officer or a department social worker to enter the premises to conduct an investigation upon
14 finding there is probable cause to believe the person is abused, sexually abused, neglected, or exploited.

15 (5) If a representative of the department has reasonable grounds to believe that an older or developmentally
16 disabled person alleged to be abused, sexually abused, or neglected is suffering from abuse, sexual abuse, or neglect
17 that presents a substantial risk of death or serious physical injury, the department may:

18 (a) provide voluntary protective services as provided in subsection (3); or

19 (b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide
20 emergency protective services as follows:

21 (i) arrange or facilitate an appropriate emergency protective service placement;

22 (ii) transport or arrange for the transport of the person to the appropriate placement;

23 (iii) not later than 2 judicial days following placement of the person, either:

24 (A) provide voluntary protective services as provided under subsection (3); or

25 (B) petition the district court to act as temporary guardian or appoint a temporary guardian as provided in
26 72-5-317."

27
28 **Section 364.** Section 52-3-805, MCA, is amended to read:

29 **"52-3-805. Adult protective service teams.** (1) The county attorney or the department of ~~family~~ public health
30 and human services shall convene one or more temporary or permanent interdisciplinary adult protective service teams.

31 These teams shall assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating
32 services to older persons, and developmentally disabled persons who are victims of abuse, sexual abuse, neglect, or
33 exploitation. The supervisor of adult protective services of the department of ~~family~~ public health and human services
34 or the department's designee shall serve as the team's coordinator. Members must include a social worker, a member

1 of a local law enforcement agency, a representative of the medical profession, and a county attorney or the county
2 attorney's designee, who is an attorney. Members may include other appropriate persons designated by the county
3 attorney or the department.

4 (2) When the team considers a matter involving a developmentally disabled adult in the care of a person
5 providing developmental disabilities services, the team must also include a provider of developmental disability services
6 other than the provider involved in the matter under review ~~and a representative of the developmental disabilities~~
7 ~~division of the department of social and rehabilitation services.~~ The team shall make a report to the county attorney
8 that contains a recommendation concerning any criminal prosecution to be brought pursuant to this part."

9
10 **Section 365.** Section 52-3-811, MCA, is amended to read:

11 **"52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or have
12 reasonable cause to suspect that an older person or a developmentally disabled person known to them in their
13 professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:

14 (a) if the person is not a resident of a long-term care facility, report the matter to:

15 (i) the department of ~~family~~ public health and human services or its local affiliate;

16 (ii) the county attorney of the county in which the person resides or in which the acts that are the subject of
17 the report occurred;

18 (b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman
19 appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of ~~health and environmental sciences.~~
20 The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of
21 abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the
22 report ~~to the department of family services and~~ to the county attorney as provided in subsection (1)(a)(ii).

23 (2) If the report required in subsection (1) involves an act or omission of the department of ~~family~~ public health
24 and human services ~~which that~~ may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report
25 may not be sent to the department but must be sent instead to the county attorney of the county in which the older
26 person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

27 (3) Professionals and other persons required to report are:

28 (a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital
29 staff engaged in the admission, examination, care, or treatment of persons;

30 (b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any
31 other health or mental health professional;

32 (c) an ambulance attendant;

33 (d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a
34 developmentally disabled person in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies;

(g) a peace officer or other law enforcement official; and

(h) a person providing services to an older person or a developmentally disabled person pursuant to a contract with a state or federal agency.

(4) Any other person may submit a report as provided in subsection (1)."

Section 366. Section 52-3-813, MCA, is amended to read:

"52-3-813. Confidentiality. (1) The case records of the ~~departments of social and rehabilitation services and family department of public health and human~~ services, ~~their~~ its local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 must be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who is caring for an older person or a developmentally disabled person who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the developmentally disabled person if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the developmentally disabled person who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, neglected, or exploited older person or developmentally disabled person, if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case; or

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, neglected, or exploited older person or developmentally disabled person;

(g) an employee of the department ~~or the department of social and rehabilitation services~~ if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, neglected, or exploited older person or developmentally disabled person; and

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, neglected, or exploited older person or developmentally disabled person.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court which has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a developmentally disabled person is the holder of a license, permit, or certificate issued by the department of commerce under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 367. Section 52-4-101, MCA, is amended to read:

"52-4-101. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Client" means a person for whom voluntary protective services are rendered pursuant to provisions of this part.

(2) "Department" means the department of ~~family public health and human services provided for in 2-15-2401~~ 2-15-2201.

(3) "Developmentally disabled person" means a person who by reason of a developmental disability is not able, unassisted, to properly manage or care for ~~his person~~ the person's self or his property.

(4) "Protective services" means case management of services directed at preventing or remedying neglect, abuse, or exploitation of developmentally disabled persons.

(5) "Ward" means a person for whom the department has been appointed guardian under Title 72, chapter

1 5, part 3."

2
3 **Section 368.** Section 52-4-202, MCA, is amended to read:

4 **"52-4-202. Definitions.** As used in 52-4-201 through 52-4-205, the following definitions apply:

5 (1) "Community home for persons with severe disabilities" means a family-oriented residence that is designed
6 to provide residential services for two to eight persons with severe disabilities and that does not provide skilled or
7 intermediate nursing care. This definition does not preclude the provision of skilled or intermediate nursing care by
8 third-person providers.

9 (2) "Department" means the department of ~~family public health and human services established~~ public health and human services
10 in ~~2-15-2401~~ 2-15-2201.

11 (3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII of the
12 federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended.

13 (4) "Severe disability" means a permanent disability that substantially limits major life activity, such as
14 walking, self-care, seeing, hearing, speaking, learning, reasoning, judgment, or memory, and that can be diagnosed by
15 a physician. The term includes the condition of a person with severe disabilities as defined in 53-19-102."

16
17 **Section 369.** Section 52-4-204, MCA, is amended to read:

18 **"52-4-204. Health and safety standards.** (1) A community home for persons with severe disabilities must be
19 certified annually for fire and life safety by the department of justice. The department of justice shall notify the
20 department whenever a community home has been certified or refused certification.

21 (2) (a) Local health officers shall inspect a community home for persons with severe disabilities to ensure
22 compliance with health and safety standards. If for any reason the local authority cannot complete the inspection in
23 a timely manner, the department of public health and environmental sciences ~~human services~~ may make the inspection
24 to ensure compliance with the standards.

25 (b) The inspecting health officer shall notify the department whether a community home is or is not in
26 compliance with applicable standards.

27 (c) A reasonable fee may be charged by health authorities conducting compliance inspections."
28

29 **Section 370.** Section 52-4-205, MCA, is amended to read:

30 **"52-4-205. Rulemaking.** (1) The department shall, for the purpose of licensing, adopt rules to govern
31 administration, operation, and health and safety requirements for community homes for persons with severe disabilities
32 in order to protect rights of residents. The department shall provide for temporary and provisional licensing.

33 (2) The ~~department of health and environmental sciences and the~~ state fire prevention and investigation
34 program of the department of justice shall provide advice and recommendations to the department concerning licensing

1 requirements for health and safety."

2
3 **Section 371.** Section 52-5-101, MCA, is amended to read:

4 **"52-5-101. Establishment of state youth correctional facilities -- prohibitions.** (1) The department of ~~family~~
5 ~~services~~ corrections, within the annual or biennial budgetary appropriation, may establish, maintain, and operate
6 facilities to properly diagnose, care for, train, educate, and rehabilitate youth in need of these services. The youth must
7 be 10 years of age or older and under 19 years of age. The facilities include but are not limited to the state youth
8 correctional facilities at the Mountain View school in Helena and the Pine Hills school in Miles City.

9 (2) A youth alleged or found to be a youth in need of supervision may not be placed in a state youth
10 correctional facility as defined in 41-5-103."

11
12 **Section 372.** Section 52-5-102, MCA, is amended to read:

13 **"52-5-102. Control and management of youth correctional facilities.** The facilities provided for in 52-5-101
14 shall exercise their functions under the supervision and general management of the department of ~~family services~~
15 corrections. Except where otherwise provided by law, the department by rules shall establish standards of care and
16 policies of admission, transfers, discharge, and aftercare supervision in order to provide adequate care for children and
17 adequate service to the courts. Policies of admission may include criteria for medical examinations required under
18 52-5-108. The department shall develop special programs within each facility which are adaptable to the particular
19 needs of its operation."

20
21 **Section 373.** Section 52-5-103, MCA, is amended to read:

22 **"52-5-103. Cooperative agreements for services with governing body of Indian tribe.** (1) The department of
23 ~~family services~~ corrections may enter into agreements with the governing body of an Indian tribe within the state for
24 residential, educational, evaluation, and aftercare services maintained by the department for children who have been
25 adjudicated delinquent by the tribal court, subject to the provisions of this part and parts 1 and 2 of Title 53, chapter
26 1.

27 (2) Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter
28 11."

29
30 **Section 374.** Section 52-5-107, MCA, is amended to read:

31 **"52-5-107. Maximum age of commitment.** ~~No~~ A child who has attained the age of 18 years ~~shall~~ may not
32 be committed by any youth court to the department of ~~family services~~ corrections, except, however, that any person
33 under 19 years who prior to attaining the age of 18 years came under the jurisdiction of the youth court by reason of
34 delinquent conduct and whose adjudication of delinquency is not made until after the child reaches the age of 18 years

1 may be committed to the department of ~~family services~~ corrections."

3 **Section 375.** Section 52-5-108, MCA, is amended to read:

4 **"52-5-108. Medical examination before admission -- records required to accompany child committed.** (1)

5 Before a child is admitted for any purpose or for any length of time to the Mountain View school, the Pine Hills school,
6 or other facility under an order of commitment to the department of ~~family services~~ corrections, ~~he~~ the child must be
7 examined by a licensed physician. A child committed to one of the schools or the department must be accompanied
8 by the order of commitment, a medical examination report, an adequate social history, and any school records.

9 (2) The medical examination required under this section must be a current, complete physical examination of
10 the child."

12 **Section 376.** Section 52-5-109, MCA, is amended to read:

13 **"52-5-109. Commitment expenses -- arrangement for transportation.** The expenses of committing a child to
14 the Mountain View school, the Pine Hills school, or the department of ~~family services~~ corrections and transporting ~~such~~
15 the child to the Mountain View school, the Pine Hills school, or the place designated by the department for it to receive
16 custody and the expense of returning ~~such~~ the child to the county of residence ~~shall~~ must be borne by the county of
17 residence. The district judge shall arrange for transportation of the child to the place where the department has directed
18 that it will receive custody of ~~such~~ the child."

20 **Section 377.** Section 52-5-110, MCA, is amended to read:

21 **"52-5-110. Transfer of child to other facility or institution -- notice.** The department of ~~family services~~
22 corrections, upon recommendation of the superintendent of a facility, may transfer a child resident in one of its youth
23 correctional facilities to any other facility or institution under the jurisdiction and control of the department."

25 **Section 378.** Section 52-5-111, MCA, is amended to read:

26 **"52-5-111. Commutation of sentence to state prison and transfer of prisoner to youth correctional facility.**

27 (1) Upon the application of a person under 19 years of age who has been sentenced to the state prison or upon the
28 application of the youth's parents or guardian, the governor may, after consulting with the department of corrections
29 ~~and human services and the department of family services~~ and with the approval of the board of pardons and parole,
30 commute the sentence by committing the person who may benefit from programs offered at a youth correctional facility
31 to the department of ~~family services~~ corrections until the youth is 19 years of age or until sooner placed or discharged.

32 (2) If the person's behavior after being committed to the department of ~~family services~~ corrections indicates
33 that the youth is not a proper person to reside at one of the youth correctional facilities, the governor, after consulting
34 with the department of corrections ~~and human services and the department of family services~~ and with the approval

1 of the board of pardons and parole, may revoke the commutation and return the youth to the state prison to serve out
2 the youth's unexpired term, and the time spent by the youth at one of the youth correctional facilities or while a refugee
3 from one of the youth correctional facilities is not considered as a part of the youth's original sentence.

4 (3) Upon recommendation of the warden and with the approval of the department of corrections ~~and human~~
5 ~~services and the department of family services~~, a person under 19 years of age who has been sentenced to the state
6 prison and who may benefit from programs offered at a youth correctional facility may be transferred to any youth
7 correctional facility under the jurisdiction and control of the department of ~~family services~~ corrections.

8 (4) If the person's behavior after transfer to a youth correctional facility indicates that the youth might be
9 released on parole or that the youth's sentence might be commuted and the youth be discharged from custody, the
10 superintendent of the facility, with the approval of the department of corrections ~~and human services and the~~
11 ~~department of family services~~, may make an appropriate recommendation to the board of pardons and parole and the
12 governor, who may in their discretion parole ~~such~~ the person or commute the youth's sentence.

13 (5) If the person's behavior after transfer to a youth correctional facility indicates that the youth is not a proper
14 person to reside in the facility, upon recommendation of the superintendent and with the approval of the department
15 of corrections ~~and human services and the department of family services~~, the youth must be returned to the state
16 prison to serve out the unexpired term."

17
18 **Section 379.** Section 52-5-112, MCA, is amended to read:

19 "52-5-112. **University aid to residents of schools.** The department of ~~family services~~ corrections may, on the
20 recommendation of the superintendent, authorize a resident of the Mountain View school or Pine Hills school who has
21 completed high school and who is otherwise eligible to receive up to \$800 per year toward ~~his~~ the resident's expenses
22 incurred in attending a unit of the Montana university system. The money may be used for transportation, clothing,
23 books, board, and room and ~~shall~~ must be paid in the same manner as other expenses of the school. The board of
24 regents of higher education may waive fees and tuition for these residents pursuant to 20-25-421. No more than eight
25 residents of each school may receive these benefits each year. The department shall notify the board of regents before
26 August 1 of each year of the residents that it has designated to receive the benefits for the ~~forthcoming~~ next school
27 year."

28
29 **Section 380.** Section 52-5-113, MCA, is amended to read:

30 "52-5-113. **Apprehension and return of youth leaving youth correctional facility without permission.** A youth
31 who has left a youth correctional facility of the department of ~~family services~~ corrections without permission may be
32 apprehended and returned by any citizen. The term "youth correctional facility of the department" means any facility
33 under the supervision and control of the department of ~~family services which~~ corrections that has as its primary
34 function the care, training, custody, and control of youth and specifically includes the Pine Hills school for boys and

1 the Mountain View school for girls."

3 **Section 381.** Section 52-5-120, MCA, is amended to read:

4 **"52-5-120. Youth industries programs.** The department of ~~family services~~ corrections may:

5 (1) establish industries programs in state youth correctional facilities that:

6 (a) assist in the training and rehabilitation of residents at state youth correctional facilities; and

7 (b) provide the production or manufacture of products and the rendering of services that may be needed by:

8 (i) a department or agency of the state of Montana or a unit of local government;

9 (ii) an agency of the federal government; or

10 (iii) an office or agency of another state or a political subdivision of another state;

11 (2) contract with private industry for the sale of goods produced or manufactured at state youth correctional
12 facilities; and

13 (3) fix the purchase price for goods and services available under the industries program established in
14 subsection (1)."

16 **Section 382.** Section 52-5-121, MCA, is amended to read:

17 **"52-5-121. Rulemaking authority.** The department of ~~family services~~ corrections may adopt rules necessary
18 for administration of industries programs authorized in 52-5-120. Rules adopted by the department may include rules
19 regarding:

20 (1) requirements for participation of youth in industries programs;

21 (2) the type of training and experience to be provided to youth under these programs;

22 (3) the type of goods and services to be sold under the industries programs;

23 (4) contracts with private industry for the sale of goods produced or manufactured at state youth correctional
24 facilities; and

25 (5) payment of wages to youth working in industries programs."

27 **Section 383.** Section 52-5-126, MCA, is amended to read:

28 **"52-5-126. Youth aftercare agreement.** (1) A youth released by the department of ~~family services~~ corrections
29 from one of the state youth correctional facilities to the supervision, custody, and control of the department shall,
30 before the youth's release, sign an aftercare agreement containing:

31 (a) a statement of the terms and conditions of the release, including a list of the acts that, if committed by
32 the youth, may result in a return to the facility; and

33 (b) a statement that if the department or any person alleges any violation of the terms and conditions of the
34 agreement, the youth is entitled to a hearing as provided for in 52-5-129 before being returned to the facility.

(2) A youth released from a state youth correctional facility for commitment to a mental health facility pursuant to Title 53, chapter 21, part 1, shall sign an aftercare agreement that will remain in effect until the department no longer has custody of the youth."

Section 384. Section 52-5-127, MCA, is amended to read:

"52-5-127. Control over youth released under aftercare agreement. The department of ~~family services~~ corrections has control over a youth released under 52-5-126 until the youth attains the age of 19 years unless the youth is discharged by the department before age 19. However, the youth is subject to the continuing jurisdiction of the youth courts of Montana, pursuant to 41-5-205, for acts committed by the youth while under the control of the department."

Section 385. Section 52-5-128, MCA, is amended to read:

"52-5-128. Detention of youth who violates aftercare agreement. A youth who violates the terms and conditions of ~~his~~ the youth's aftercare agreement may be detained by the department of ~~family services~~ corrections or by a law officer of the state, county, or city of the state upon certificates in writing to the officer by the department to the effect that the youth has violated the terms and conditions of ~~his~~ the youth's aftercare agreement."

Section 386. Section 52-5-129, MCA, is amended to read:

"52-5-129. Hearing on alleged violation of aftercare agreement -- right to appeal outcome. (1) When it is alleged by an aftercare counselor that a youth has violated the terms of ~~his~~ the youth's aftercare agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that ~~he~~ the youth should be returned to the youth correctional facility from which ~~he~~ the youth was released or a different plan for treatment should be pursued by the department of ~~family services~~ corrections.

(2) The youth, upon advice of an attorney, may waive ~~his~~ the right to a hearing.

(3) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of ~~his~~ the aftercare agreement, including notice of the purpose of the hearing;

(b) disclosure of the evidence against ~~him~~ the youth and the facts constituting the alleged violation;

(c) opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against ~~him~~ the youth and to show that there are compelling reasons that justify or mitigate the violation;

(d) opportunity to have the referee subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses;

1 (f) the right to be represented by an attorney;

2 (g) a record of the hearing; and

3 (h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons
4 for the final decision will be provided by the referee.

5 (4) The department shall appoint a referee, who may not be an employee of the department, to conduct the
6 hearing. In the conduct of the hearing, the department may request the county attorney's assistance as necessary. The
7 department shall adopt rules necessary to effect a prompt and full review.

8 (5) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the violation,
9 ~~he the referee~~ shall make a recommendation to the department for the placement of the youth. In making this
10 recommendation, the referee may consider mitigating circumstances. Final approval rests with the department and must
11 be made within 10 days of the referee's recommendation.

12 (6) The youth may appeal from the decision at the hearing to the district court of the county in which the
13 hearing was held by serving and filing a notice of appeal with the court within 10 days of the department's decision.
14 The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The
15 district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record
16 of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record
17 on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

18 (7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained
19 except when ~~he the youth's~~ detention or care is required to protect the person or property of the youth or of others
20 or ~~he the youth~~ may abscond or be removed from the community. The department shall determine the place and
21 manner of detention and is responsible for the cost of the detention. Procedures for taking into custody and detention
22 of a youth charged with violation of ~~he the youth's~~ aftercare agreement are as provided in 41-5-303, 41-5-306,
23 41-5-311, and 41-5-314.

24 (8) If the decision is made to return the youth to the youth correctional facility from which ~~he the youth~~ was
25 released and the youth appeals that decision, ~~he the youth~~ shall await the outcome of the appeal at the facility."

26
27 **Section 387.** Section 52-6-101, MCA, is amended to read:

28 **"52-6-101. Battered spouses and domestic violence grant program created.** There is a grant program
29 established within the department of ~~family~~ public health and human services for the allocation of grant money to local
30 battered spouses and domestic violence programs."

31
32 **Section 388.** Section 52-6-102, MCA, is amended to read:

33 **"52-6-102. Duties of department.** The department of ~~family~~ public health and human services:

34 (1) shall adopt rules necessary to carry out the purposes of this part;

- (2) may spend no more than 5% of the appropriated funds for administrative costs of the program;
- (3) shall accept federal funds that may be available for use in carrying out the provisions of this part;
- (4) may use state funds as a match for federal funds if required; and
- (5) may conduct research and compile statistics relating to battered spouses and domestic violence."

Section 389. Section 52-6-103, MCA, is amended to read:

"52-6-103. Authorized grantees -- criteria for grants. (1) The department of ~~family~~ public health and human services ~~must~~ shall award battered spouses and domestic violence grants only to local domestic abuse programs that are locally controlled. Grants may be awarded to governmental or nongovernmental agencies or persons.

(2) Battered spouses and domestic violence grants are to be awarded on the following basis:

- (a) demonstrated need;
- (b) project merit;
- (c) administrative design; and
- (d) efficiency of administration."

Section 390. Section 52-6-104, MCA, is amended to read:

"52-6-104. Authorized services of programs. (1) Local battered spouses and domestic violence programs may provide services that include but are not limited to the following:

- (a) counseling for victims or their spouses;
- (b) shelters or safe homes for victims;
- (c) advocacy programs that assist victims in obtaining services and information; and
- (d) educational programs relating to battered spouses and domestic violence designed for both the community at large and specialized groups such as hospital personnel and law enforcement officials.

(2) The services authorized in subsection (1) may be provided on a regional basis by a local battered spouses and domestic violence program if ~~so~~ authorized by the department of ~~family~~ public health and human services according to regional boundaries established by the department."

Section 391. Section 53-1-101, MCA, is amended to read:

"53-1-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Department" means the department of corrections ~~and human services~~ provided for in Title 2, chapter 15, part 23.
- (2) "Director" means the director of corrections ~~and human services~~ provided for in 2-15-2301.
- (3) "Institution" means any of the institutions listed in 53-1-202."

1 **Section 392.** Section 53-1-105, MCA, is amended to read:

2 **"53-1-105. Disposition of contraband in correctional institution.** (1) Cash possessed in excess of the amount
3 allowed by the policy of an adult or youth correctional institution or obtained in violation of ~~such~~ a policy may be
4 confiscated and deposited in an inmate or resident welfare fund to be used for the intended purpose of that fund.

5 (2) The department of corrections ~~and human services~~ shall adopt policies for the disposition of other
6 contraband confiscated from inmates or residents in adult or youth correctional institutions. Receipts from the sale of
7 contraband must be deposited in an inmate or resident welfare fund to be used for the intended purpose of that fund."

8
9 **Section 393.** Section 53-1-106, MCA, is amended to read:

10 **"53-1-106. Exchange of offenders under treaty.** If a treaty in effect between the United States and a foreign
11 country provides for the transfer, by exchange or otherwise, of convicted offenders to the country of which they are
12 citizens or nationals, the governor may, on behalf of the state and subject to the terms of the treaty, authorize the
13 director of the department of corrections ~~and human services~~ to consent to the transfer or exchange of offenders in
14 Montana institutions and take any other action necessary to initiate the participation of this state in the treaty."

15
16 **Section 394.** Section 53-1-201, MCA, is amended to read:

17 **"53-1-201. Purpose of department of corrections.** The department of corrections shall utilize at maximum
18 efficiency the resources of state government in a coordinated effort to:

19 (1) develop and maintain comprehensive services and programs in the ~~fields~~ field of:-

20 ~~(a) adult and youth~~ corrections; and

21 ~~(b) mental health; and~~

22 ~~(c) chemical dependency;~~

23 ~~(2) provide inpatient institutional care for developmentally disabled persons who require that care according~~
24 ~~to the requirements of Title 53, chapter 20; and~~

25 ~~(3) provide nursing home care for honorably discharged veterans as provided by law.~~

26 (2) provide for the care, protection, and mental and physical development of youth alleged to be youth in need
27 of supervision or delinquent youth who are referred or committed to the department."

28
29 **Section 395.** Section 53-1-202, MCA, is amended to read:

30 **"53-1-202. Department of corrections ~~and human services~~.** (1) ~~The following components~~ Adult and youth
31 correctional services are in the department of corrections ~~and human services~~ to carry out the purposes of the
32 department;

33 ~~(a)(2) adult~~ Adult corrections services ~~consisting~~ consist of the following institutional components to
34 incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

1 ~~[(a)]~~ Montana state prison;
 2 ~~[(b)]~~ the Montana women's correctional center system; and
 3 ~~[(c)]~~ appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons
 4 who meet the criteria developed by the department for placement:

5 ~~[(A)(i)]~~ in prerelease centers;
 6 ~~[(B)(ii)]~~ under intensive supervision;
 7 ~~[(C)(iii)]~~ under parole or probation pursuant to Title 46, chapter 23, part 2; or
 8 ~~[(D)(iv)]~~ in other appropriate programs;
 9 ~~(b) mental health services consisting of the following institutional components for care and treatment of the~~
 10 ~~mentally ill pursuant to Title 53, chapter 21:~~

11 ~~(i) Montana state hospital;~~
 12 ~~(ii) Montana center for the aged; and~~
 13 ~~(iii) a community services component consisting of appropriate services for the care and treatment of the~~
 14 ~~mentally ill pursuant to Title 53, chapter 21, part 2;~~

15 ~~(c) chemical dependency services consisting of appropriate detoxification, inpatient, intensive outpatient,~~
 16 ~~outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;~~
 17 ~~(d) institutional and residential components of the developmental disabilities system for those developmentally~~
 18 ~~disabled persons who require that care according to Title 53, chapter 20, consisting of:~~

19 ~~(i) the Montana developmental center; and~~
 20 ~~(ii) Eastmont human services center; and~~
 21 ~~(e) veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as~~
 22 ~~provided by law, consisting of:~~

23 ~~(i) Montana veterans' home; and~~
 24 ~~(ii) eastern Montana veterans' home at Glendive.~~
 25 (3) Youth correctional services consist of the following institutional components to diagnose, care for, train,
 26 educate, and rehabilitate youth pursuant to Title 52, chapter 5:

27 (a) Mountain View school;
 28 (b) Pine Hills school; and
 29 (c) any other institution that provides care and services for delinquent youth.
 30 ~~[(2)(4)]~~ A state institution may not be moved, discontinued, or abandoned without ~~prior~~ the consent of the
 31 legislature "

32
 33 Section 396. Section 53-1-203, MCA, is amended to read:

34 "53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

1 ~~(1)(a)~~ adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and rules for the
2 admission, custody, transfer, and release of persons in department programs except as otherwise provided by law;
3 ~~however~~ However, no such rules adopted by the department may not amend or alter the statutory powers and duties
4 of the state board of pardons and parole;

5 ~~(2)(b)~~ subject to the functions of the department of administration, lease or purchase lands for use by
6 institutions and classify those lands to determine which are of such character as to those that may be most profitably
7 used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be
8 grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
9 persons confined in the institutions;

10 ~~(3)(c)~~ contract with private nonprofit Montana corporations to establish and maintain community based
11 prerelease centers for purposes of preparing inmates of the Montana state prison who are approaching parole eligibility
12 or discharge for release into the community; the. The centers shall provide a less restrictive environment than the
13 prison while maintaining adequate security; the. The centers shall must be operated in coordination with other
14 department correctional programs, including the supervised release program provided for in Title 46, chapter 23, part
15 4. Nothing in this This subsection shall does not affect the department's authority to operate and maintain community
16 based prerelease centers in existence on July 14, 1982.

17 ~~(4)(d)~~ utilize the staff and services of other state agencies and units of the Montana university system, within
18 their respective statutory functions, to carry out its functions under this title;

19 ~~(5)(e)~~ propose programs to the legislature to meet the projected long-range needs of institutions, including
20 programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; and

21 ~~(6)(f)~~ encourage the establishment of programs at the local level for the prevention and rehabilitation of
22 disabilities as they relate to mental illness and chemical dependency and encourage the establishment of programs at
23 the local and institutional level for the rehabilitation and education of adult felony offenders;

24 (g) administer all state and federal funds allocated to the department for youth in need of supervision and
25 delinquent youth, as defined in 41-5-103;

26 (h) collect and disseminate information relating to youth in need of supervision and delinquent youth;

27 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of
28 the specific information, by category, related to youth in need of supervision and delinquent youth in out-of-home care
29 facilities;

30 (j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need of
31 supervision and who are referred or committed to the department;

32 (k) administer youth correctional facilities;

33 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

34 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

- 1 (i) provide for children in need of temporary protection or correctional services; and
2 (ii) coordinate and apply the principles of modern institutional administration to the institutions in the
3 department.
4 (2) The department of corrections may enter into contracts with nonprofit corporations or associations or
5 private organizations to provide substitute care for youth in need of supervision and delinquent youth in youth care
6 facilities."

7
8 **Section 397.** Section 53-1-204, MCA, is amended to read:

9 **"53-1-204. Responsibility of warden and superintendents of institutions.** The warden or superintendents of
10 institutions in the department of corrections are responsible for the immediate management and control of their
11 respective institutions, subject to the general policies and programs established by the department of corrections."

12
13 **Section 398.** Section 53-1-206, MCA, is amended to read:

14 **"53-1-206. Participation by institutions in research programs.** The department of corrections may direct a
15 penal and corrective institution of the state to participate in and cooperate with programs of research and development
16 being conducted and carried on by any units of the Montana university system, by any of the other educational
17 institutions of the state of Montana, or by any foundation or agency ~~thereof~~ of an educational institution in the fields
18 of science, health, education, and natural resources. These programs may include the voluntary participation of the
19 inmates of the institution in testing and experimental work conducted as a part ~~thereof~~ the testing. Any funds received
20 from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare
21 and rehabilitation ~~thereof~~ of the inmates and may not become a part of the regular budgeted operation of the
22 institution."

23
24 **NEW SECTION. Section 399. Purpose of department of public health and human services.** The department
25 of public health and human services shall use to maximum efficiency the resources of state government in a
26 coordinated effort to:

- 27 (1) develop and maintain comprehensive services and programs in the fields of:
28 (a) mental health; and
29 (b) chemical dependency;
30 (2) provide, according to the requirements of Title 53, chapter 20, inpatient institutional care for
31 developmentally disabled persons who require institutional care; and
32 (3) provide nursing home care for honorably discharged veterans as provided by law.

33
34 **NEW SECTION. Section 400. Department of public health and human services.** (1) The following

1 components are in the department of public health and human services to carry out the purposes of the department:

2 (a) mental health services, consisting of the following institutional components for care and treatment of the
3 mentally ill pursuant to Title 53, chapter 21:

4 (i) the Montana state hospital;

5 (ii) the Montana center for the aged; and

6 (iii) a community services component, consisting of appropriate services for the care and treatment of the
7 mentally ill pursuant to Title 53, chapter 21, part 2;

8 (b) chemical dependency services, consisting of appropriate detoxification, inpatient, intensive outpatient,
9 outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

10 (c) institutional and residential components of the developmental disabilities system for those developmentally
11 disabled persons who require institutional or residential care according to Title 53, chapter 20, which components
12 consist of:

13 (i) the Montana developmental center; and

14 (ii) the Eastmont human services center; and

15 (d) the veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans
16 as provided by law, consisting of:

17 (i) the Montana veterans' home; and

18 (ii) the eastern Montana veterans' home at Glendive.

19 (2) A state institution may not be moved, discontinued, or abandoned without the consent of the legislature.

20
21 **NEW SECTION. Section 401. Powers and duties of department of public health and human services.** The
22 department of public health and human services shall:

23 (1) adopt rules for the admission, custody, transfer, and release of persons in department programs except
24 as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers
25 and duties of the board of pardons and parole.

26 (2) subject to the functions of the department of administration, lease or purchase lands for use by institutions
27 and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into
28 consideration the needs of all institutions for the food products that can be grown or produced on the lands and the
29 relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

30 (3) use the staff and services of other state agencies and units of the Montana university system, within their
31 respective statutory functions, to carry out its functions under this title;

32 (4) propose programs to the legislature to meet the projected long-range needs of institutions, including
33 programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; and

34 (5) encourage the establishment of programs at the local level for the prevention and rehabilitation of

1 disabilities as they relate to mental illness and chemical dependency.

2
3 NEW SECTION. Section 402. Responsibility of superintendents of institutions. The superintendents of
4 institutions in the department of public health and human services are responsible for the immediate management and
5 control of their respective institutions, subject to the general policies and programs established by the department.
6

7 **Section 403.** Section 53-1-301, MCA, is amended to read:

8 **"53-1-301. Permitted institutional industries, powers of ~~department~~ departments, and incentive pay to**
9 **inmates.** (1) Except as provided in subsection (4), the department of corrections or the department of public health and
10 human services may:

11 (a) establish industries in institutions that will result in the production or manufacture of products and the
12 rendering of services as may be needed by any department or agency of the state or any political subdivision of the
13 state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit
14 organizations and that will assist in the rehabilitation of residents in institutions;

15 (b) obtain federal certification of specific prison industries programs in order to gain access to interstate
16 markets for prison industries products;

17 (c) contract with private industry for the sale of goods or components manufactured or produced in shops
18 under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

19 (d) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

20 (e) fix the sale price for goods produced or manufactured at institutions. Prices may not exceed prices existing
21 in the open market for goods of comparable quality.

22 (f) require institutions to purchase needed goods from other institutions;

23 (g) provide for the repair and maintenance of property and equipment of institutions by residents of
24 institutions;

25 (h) provide for construction projects, up to the aggregate sum of \$25,000 per project, performed by residents
26 of institutions, except when the construction work is covered by a collective bargaining agreement;

27 (i) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

28 (j) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

29 (k) sell manufactured or agricultural products and livestock on the open market;

30 (l) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the
31 state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective
32 bargaining contract;

33 (m) pay an inmate or resident of an institution from receipts from the sale of products produced or
34 manufactured or services rendered in a program in which the inmate or resident is working;

(n) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for deposit in the Montana crime victims compensation and assistance account established under 53-9-109; and

(o) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) (a) Except as provided for in subsection (2)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for each program, except that inmates employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(3) Premiums for workers' compensation and occupational disease coverage must be paid by the prison industries program or by the department of ~~institutions~~ corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.

(4) Except as provided in subsection (5), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(5) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4."

Section 404. Section 53-1-303, MCA, is amended to read:

"53-1-303. **Prohibited acts.** Unless permitted by the department of corrections or the department of public health and human services, arranging for the labor of a resident of an institution is prohibited."

Section 405. Section 53-1-304, MCA, is amended to read:

"53-1-304. **Supervision of industries program.** The industries program ~~shall~~ must be supervised by the director of the department of corrections ~~and human services or of the department of public health and human services or his~~ the director's designated representative, provided the administration of the industries program is separate from the administration of any institution where the program may be located."

1 **Section 406.** Section 53-1-401, MCA, is amended to read:

2 **"53-1-401. Definitions.** As used in this part, unless the context requires otherwise, the following definitions
3 apply:

4 (1) "Ancillary charge" means the expense of providing identifiable, direct, resident services, including but not
5 limited to:

6 (a) physicians' services;

7 (b) x-ray and laboratory services;

8 (c) dental services;

9 (d) speech-language pathology and audiology services;

10 (e) occupational and physical therapy;

11 (f) medical supplies;

12 (g) prescribed drugs; and

13 (h) specialized medical equipment.

14 (2) "Care" means the care, treatment, support, maintenance, and other services rendered by the department
15 to a resident.

16 (3) "Department" means the department of ~~corrections~~ public health and human services provided for in Title
17 ~~2, chapter 15, part 23~~ 2-15-2201.

18 (4) "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident
19 under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for
20 the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations
21 of guardianships or conservatorships.

22 (5) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the
23 number of days in the year.

24 (6) "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous period in excess
25 of 120 days. No absence of a resident from the institution due to a temporary or trial visit may be counted as
26 interrupting the accrual of the 120 days required to attain the status of a long-term resident.

27 (7) "Per diem" means the gross daily budgeted cost of operating an institution or an individual unit of an
28 institution (including certain contracted medical services, depreciation, and associated department costs but excluding
29 the cost of educational programs, federal grants, ancillary charges, and costs not directly identified with patient care)
30 divided by the full-time equivalent resident load.

31 (8) "Resident" means any person who is receiving care from or who is a resident of an institution listed in
32 53-1-402.

33 (9) "Third-party resource" means but is not limited to applicable medicare, medicaid, and personal health care
34 benefits."

1 **Section 407.** Section 53-1-501, MCA, is amended to read:

2 **"53-1-501. Rates for residential community correctional program board, room, and services charged by the**
3 **department of corrections.** (1) The department of corrections shall establish per diem rates for room, board, and
4 services for persons placed in or committed to a community correctional program operated by the department of
5 corrections. The department of corrections may adopt rules allowing it to order part of a person's employment income
6 to be used to pay restitution, fines, and child or spousal support.

7 (2) The department of corrections shall prescribe rules and procedures for the establishment of rates and
8 charges to residents in any community correctional program that is under contract with the department of corrections
9 and that provides room, board, or services or any combination of room, board, and services to residents of those
10 facilities or programs. The amount assessed by these programs must be subject to the resident's ability to pay, based
11 on the rates established as the basis for assessed charges, and subject to approval by the department of corrections."

12
13 **Section 408.** Section 53-1-502, MCA, is amended to read:

14 **"53-1-502. Rates for board, room, and ancillary services charged to correctional facility inmates.** (1) The
15 department of corrections may establish and charge reasonable rates for board, room, and ancillary services as
16 described in 53-1-401 for persons incarcerated in an institutional correctional facility.

17 (2) The department of corrections may prescribe rules that establish criteria and a procedure for determining
18 ability to pay. The department of corrections may not make an assessment that would place an undue financial burden
19 on the person."

20
21 **Section 409.** Section 53-2-101, MCA, is amended to read:

22 **"53-2-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

23 (1) "Department" means the department of ~~social and rehabilitation~~ public health and human services provided
24 for in Title 2, chapter 15, part 22.

25 (2) "Protective services" means services to children and adults to be provided by the department ~~of family~~
26 ~~services~~ as permitted by Titles 41 and 53.

27 (3) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this
28 title to a person by a state or county agency, regardless of the original source of the assistance.

29 (4) "Needy person" is one who is eligible for public assistance under the laws of this state."

30
31 **Section 410.** Section 53-2-303, MCA, is amended to read:

32 **"53-2-303. County attorney and clerk -- ex officio duties.** The county attorney ~~shall be~~ is, ex officio, the legal
33 adviser to the county welfare board and shall render ~~such~~ legal services as that the county or department of ~~family~~
34 public health and human services may require. The county clerk and recorder ~~shall be~~ is, ex officio, the secretary and

1 clerk of the county welfare board."

2
3 **Section 411.** Section 53-2-304, MCA, is amended to read:

4 **"53-2-304. Staff personnel of county department.** (1) Each county board shall select and appoint from a list
5 of qualified persons furnished by the department of ~~social and rehabilitation~~ public health and human services ~~such~~ staff
6 personnel ~~as that~~ are necessary. The staff personnel in each county ~~shall~~ must consist of at least one qualified staff
7 worker (or investigator) and ~~such~~ clerks and stenographers ~~as that~~ may be ~~decided~~ necessary. If conditions warrant,
8 the county board, with the approval of the department of ~~social and rehabilitation~~ public health and human services,
9 may appoint some fully qualified person listed by the department as supervisor of its staff personnel. The staff
10 personnel of each county department are directly responsible to the county board, but the department of ~~social and~~
11 ~~rehabilitation~~ public health and human services may supervise ~~such~~ the county employees in respect to the efficient
12 and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff
13 personnel without the approval of the department of ~~social and rehabilitation~~ public health and human services. The
14 department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence,
15 or similar cause. The final authority for dismissal is the county board. In counties where the department has assumed
16 the administration of welfare duties, the final authority for dismissal is the director of the department.

17 (2) Public assistance staff personnel attached to the county board ~~shall~~ must be paid from state public
18 assistance funds both their salaries and their travel expenses as provided for in 2-18-501 through 2-18-503 when away
19 from the county seat in the performance of their duties, but the county board of public welfare shall reimburse the
20 department of ~~social and rehabilitation~~ public health and human services from county poor funds the full amount of the
21 salaries and travel expenses not reimbursed to the department by the federal government and the full amount of the
22 department's administrative costs ~~which that~~ are allocated by the department to the county for the administration of
23 county welfare programs and not reimbursed to the department by the federal government. Under circumstances
24 prescribed by the department of ~~social and rehabilitation~~ public health and human services, the reimbursement by the
25 county board of public welfare may be less than the county share as prescribed ~~above in this subsection~~. All other
26 administrative costs of the county department ~~shall also~~ must be paid from county poor funds.

27 (3) On or before the 20th day of the month following the month for which the payments to the public
28 assistance staff personnel of the county were made, the department of ~~social and rehabilitation~~ public health and
29 human services shall present to the county department of public welfare a claim for the required reimbursements. The
30 county board shall make ~~such~~ reimbursements within 20 days after the presentation of the claim, and the department
31 of ~~social and rehabilitation~~ public health and human services shall credit ~~(add)~~ all ~~such~~ reimbursements to its account
32 for administrative costs.

33 (4) If a county has transferred its public assistance and protective services responsibilities to the state under
34 part 8 of this chapter, the ~~appropriate~~ department shall select, appoint, and supervise all necessary public assistance

1 and protective services personnel, including if necessary a supervisor of staff personnel. All ~~such~~ personnel are directly
2 responsible to ~~that~~ the department."

3
4 **Section 412.** Section 53-2-305, MCA, is amended to read:

5 **"53-2-305. County departments under supervision of department.** County departments are under the
6 supervision of the department of ~~social and rehabilitation~~ public health and human services and are subject to audit by
7 the department."

8
9 **Section 413.** Section 53-2-306, MCA, is amended to read:

10 **"53-2-306. County department charged with local administration of public assistance.** Except in a county that
11 has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter,
12 the county department of public welfare ~~shall be~~ is charged with the local administration of all forms of public
13 assistance operations in the county. All ~~such~~ local administration must conform to federal and state law and the rules
14 ~~as established by the department of social and rehabilitation~~ public health and human services."

15
16 **Section 414.** Section 53-2-322, MCA, is amended to read:

17 **"53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities.** (1) The
18 board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so
19 much of that amount as may be necessary. The board may levy up to an additional 12 mills if approved by the voters
20 in the county. A county shall levy sufficient mills to reimburse the state for any administrative or operational costs in
21 excess of the administrative and operational costs for the previous fiscal year. The department of public health and
22 human services shall notify the counties of the number of mills required to be levied. Once an additional levy has been
23 approved, the amount of the approved levy may continue to be levied without voter approval.

24 (2) The board shall budget and expend so much of the funds in the county poor fund for public assistance
25 and protective services purposes as necessary to reimburse the department ~~and the department of family services~~ for
26 the county's proportionate share of the administrative costs and of all public assistance and protective services and
27 its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

28 (3) The amounts set up in the budget for the reimbursements to the department ~~and the department of family~~
29 ~~services~~ must be sufficient to make all of these reimbursements in full. The budget must make separate provision for
30 each one of these public assistance and protective services activities, and proper accounts must be established for the
31 funds for all the activities.

32 (4) The department shall submit to the counties, no later than May 10, the most current county participation
33 percentages that are necessary to establish preliminary county budgets. As soon as the county proposed budget
34 provided for in 7-6-2315 has been agreed upon, a copy must be mailed to the department, and at any time before the

1 final adoption of the budget, the department shall make recommendations with regard to changes in any part of the
2 budget relating to the county poor fund as considered necessary in order to enable the county to discharge its
3 obligations under the public assistance laws.

4 (5) The department shall promptly examine the county proposed budget in order to ascertain if the amounts
5 provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings.
6 The board shall make changes in the amounts provided for reimbursements, if any are required, in order that the county
7 will be able to make the reimbursements in full.

8 (6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing
9 the department without having first obtained a statement in writing from the department to the effect that the amount
10 to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in
11 the budget.

12 (7) The county poor fund, irrespective of the source of any part of the fund, may not be used directly or
13 indirectly for the erection or improvement of any county building so long as the fund is needed for paying the county's
14 proportionate share of public assistance and protective services or its proportionate share of any other public assistance
15 activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county
16 buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of
17 money in the county poor fund, whether the money was produced by the mill levy provided for in subsection (1) or from
18 any additional levy authorized by law. The expenditure may be authorized only when any county building used for the
19 care of the poor must be improved in order to meet legal standards required for the building by the department of health
20 and environmental sciences and when the expenditure has been approved by the department of social and rehabilitation
21 services and the department of family services.

22 (8) Money in the county poor fund may be used as matching funds for the receipt of federal money."
23

24 **Section 415.** Section 53-2-501, MCA, is amended to read:

25 **"53-2-501. Investigations and enforcement actions by department of justice.** (1) When requested by the
26 department of ~~social and rehabilitation~~ public health and human services, the department of justice shall:

27 (a) investigate matters relating to public assistance and vendor payments, including but not limited to the claim
28 for an acceptance of public assistance benefits by public assistance recipients and the receipt and disbursement of public
29 assistance funds by state, county, or other governmental agencies;

30 (b) institute civil or criminal actions in the appropriate courts to enforce the public assistance laws and
31 violations thereof.

32 (2) For purposes of the enforcement of and investigations relating to laws governing public assistance and
33 vendor payments, the department of justice is a criminal justice agency, as defined in 44-5-103, and employees
34 designated by the department have peace officer status with the powers of search, seizure, and arrest."

1 **Section 416.** Section 53-2-503, MCA, is amended to read:

2 **"53-2-503. Information made available to department of justice.** (1) The department of ~~social and rehabilitation~~
3 public health and human services and its local units shall make available to the department of justice information
4 contained in the public assistance files pertinent to the investigations and judicial actions described in 53-2-501.

5 (2) Every other state, county, or other governmental agency shall make available to the agents or attorneys
6 of the department of justice all records, files, memoranda, forms, or other papers relating to public assistance matters,
7 including income tax returns filed with the department of revenue."

8
9 **Section 417.** Section 53-2-602, MCA, is amended to read:

10 **"53-2-602. Grants based on need.** Subject to review by the county board, the staff of the county department
11 shall determine grants and changes in grants, based on the needs of each applicant, after investigation in accordance
12 with the rules and standards of assistance prescribed by the department of ~~social and rehabilitation~~ public health and
13 human services."

14
15 **Section 418.** Section 53-2-606, MCA, is amended to read:

16 **"53-2-606. Right of appeal.** (1) If an application for assistance for food stamps, aid to families with dependent
17 children, or medicaid is not acted upon promptly or if a decision is made with which the applicant or recipient is not
18 satisfied, the applicant or recipient may appeal to the board of ~~social and rehabilitation appeals~~ public assistance for
19 a fair hearing by addressing a request for a hearing to the department of public health and human services. The board
20 of ~~social and rehabilitation appeals~~ public assistance shall, upon receipt of a request for a hearing, give the applicant
21 or recipient prompt notice and opportunity for a fair hearing.

22 (2) The department may upon its own motion review any decision of a county welfare board and may consider
23 any application upon which a decision has not been made by the county board within a reasonable time from the filing
24 of the decision. The department may have an additional investigation made and shall make a decision as to the granting
25 of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity
26 with the provisions of this title.

27 (3) If the department reviews a county decision on its own motion, applicants or recipients affected by the
28 decisions of the department shall upon request be given reasonable notice and an opportunity for a fair hearing by the
29 board of ~~social and rehabilitation appeals~~ public assistance.

30 (4) All decisions of the department or the board of ~~social and rehabilitation appeals~~ public assistance are final
31 and are binding and must be complied with by the county department."

32
33 **Section 419.** Section 53-2-608, MCA, is amended to read:

34 **"53-2-608. Method of issuing assistance grants.** (1) Checks in payment of public assistance must be issued

1 by the department of ~~social and rehabilitation~~ public health and human services upon approved certificates of award
2 and reports of changes of eligible grantees as are forwarded by the county to the state department, and all checks must
3 be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance must be
4 issued in the full approved amount for each eligible approved grantee, and the original monthly payment must be from
5 the state public assistance accounts. All public assistance checks represent cash on demand at full par value to the
6 recipient and vendor.

7 (2) Whenever the department of ~~social and rehabilitation~~ public health and human services, acting pursuant
8 to standards established by the department, determines that any otherwise eligible recipient of public assistance has,
9 by reason of any physical or mental condition, such inability to manage funds that making payments to the recipient
10 would be contrary to the recipient's welfare, the department may, under standards established under the state plan,
11 make the public assistance payment on behalf of the recipient to another person found by the department to be
12 interested in or concerned with the welfare of the recipient."

13
14 **Section 420.** Section 53-2-609, MCA, is amended to read:

15 **"53-2-609. Revocation of assistance.** If the county department or department of ~~social and rehabilitation~~
16 public health and human services has reason to believe, by reason of a complaint or otherwise, that public assistance
17 under this title has been improperly granted, it shall have an investigation made. If it appears as a result of an
18 investigation that the assistance was improperly granted, the department of ~~social and rehabilitation~~ public health and
19 human services shall notify the county department that ~~no~~ further payments ~~shall~~ may not be authorized for ~~such the~~
20 recipient. The right of appeal is granted recipients whose assistance has been revoked."

21
22 **Section 421.** Section 53-2-610, MCA, is amended to read:

23 **"53-2-610. County to reimburse department.** (1) On or before the 20th of each month, the department of
24 ~~social and rehabilitation~~ public health and human services shall present a claim for reimbursement to each county
25 department for its proportionate share of public assistance granted in the county to recipients during the month and
26 for vendor medical payments made on behalf of recipients in the previous month. The county department shall make
27 the reimbursement to the department of ~~social and rehabilitation~~ public health and human services within 20 days after
28 the claim is presented.

29 (2) The counties may not be required to reimburse the department of ~~social and rehabilitation~~ public health
30 and human services for:

31 (a) any portion of public assistance paid to a household eligible for aid to families with dependent children if
32 the household includes an enrolled Indian who is the caretaker relative of a needy dependent child; or

33 (b) any payment on behalf of any person in a state-operated medical institution.

34 (3) (a) From the original date of entrustment or the original date of state residency, whichever is earlier,

1 recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home, or
2 private charitable institution are the financial responsibility of the appropriate county as provided in subsections (3)(b)
3 through (3)(d).

4 (b) The county in which commitment of an adult is initiated is considered the county of financial responsibility
5 except where court decree declares the residency to be otherwise. When an adult is transferred from a facility or
6 institution to one of the facilities listed in subsection (3)(a), the county that initiated the original commitment is
7 considered the county of financial responsibility except in the case of an adult transfer from an out-of-state institution,
8 in which case the county in which the facility is located is considered the county of financial responsibility.

9 (c) In all cases in which a minor patient or ward is involved, the county of financial responsibility is the county
10 in which the parent or guardian resides. If the custody of a minor is entrusted to a state agency, the agency may make
11 a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section.

12 (d) If a person is or becomes an adult while in an institution, the person may determine the county of
13 residence when the person is restored to competency and released. The person becomes the financial responsibility
14 of the new county of residence."
15

16 **Section 422.** Section 53-2-613, MCA, is amended to read:

17 **"53-2-613. Application for assistance -- assignment of support rights.** (1) Applications for public assistance,
18 including but not limited to aid to families with dependent children and medical assistance, must be made to the county
19 department of public welfare in the county in which the person is residing. The application must be submitted, in the
20 manner and form prescribed by the department of ~~social and rehabilitation~~ public health and human services, and must
21 contain information required by the department of ~~social and rehabilitation~~ public health and human services.

22 (2) A person by signing an application for public assistance assigns to the state, the department of ~~social and~~
23 ~~rehabilitation~~ public health and human services, and to the county welfare department all rights the applicant may have
24 to support and medical payments from any other person in the applicant's own behalf or in behalf of any other family
25 member for whom application is made.

26 (3) The assignment:

27 (a) is effective for both current and accrued support and medical obligations;

28 (b) takes effect upon a determination that the applicant is eligible for public assistance;

29 (c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under
30 the assignment that was owed prior to the termination of public assistance to a recipient.

31 (4) Whenever a support obligation is assigned to the department of ~~social and rehabilitation~~ public health and
32 human services pursuant to this section, the following provisions apply:

33 (a) If the support obligation is based upon a judgment or decree or an order of a court of competent
34 jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse public assistance

1 money expended.

2 (b) A recipient or former recipient of public assistance may not commence or maintain an action to recover
3 a delinquent support obligation without notifying the department's child support enforcement division. The department
4 may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the
5 right of any person to recover money not assigned.

6 (c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or
7 release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a
8 judgment or decree or an order of the court until the department's child support enforcement division has filed a written
9 notice that:

10 (i) the assignment of current support amounts has been terminated; and

11 (ii) all assigned support delinquencies, if any, are satisfied or released.

12 (d) A recipient or former recipient of public assistance may not take action to modify or make any agreement
13 to modify, settle, or release any past, present, or future support obligation unless the department's child support
14 enforcement division is given written notice and an opportunity to participate. Any modifications or agreements entered
15 into without the participation of the department are void with respect to the state, the department, and the county
16 welfare department."

17
18 **Section 423.** Section 53-2-801, MCA, is amended to read:

19 "53-2-801. **Purpose.** The purpose of this part is to provide for the department of ~~social and rehabilitation~~
20 public health and human services to assume all responsibilities for public assistance programs and ~~for the department~~
21 ~~of family services to assume all responsibilities~~ for protective services for children and adults that, as of July 1, 1983,
22 are provided by the counties pursuant to Titles 41 and 53. The assumption may become effective only at the option
23 and with the express consent of each individual county requesting state assumption. State assumption allows counties
24 to pay the state the proceeds from the 9-mill levy provided for in 53-2-813 rather than an amount based on the actual
25 cost of providing public assistance and protective services in the county. Counties that opt for state assumption may
26 provide other optional services for indigents with money available from funds derived from the difference between the
27 9-mill levy and the maximum amount of 13.5 mills permitted by 53-2-322."

28
29 **Section 424.** Section 53-2-802, MCA, is amended to read:

30 "53-2-802. **Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

31 (1) "County department" means the county department of public welfare provided for in part 3 of this chapter.

32 (2) "Mill levy equivalent" means the prior year's expenditure divided by the value of 1 mill.

33 (3) "Needy person" is one who is eligible for public assistance under the laws of this state.

34 (4) "Protective services" means services to children and adults to be provided by the department of family

1 public health and human services as permitted by Titles 41 and 53.

2 (5) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this
3 title to a person by a state or county department, regardless of the original source of assistance.

4 (6) "State assumption" means the transfer to the department of ~~social and rehabilitation services and the~~
5 ~~department of family~~ public health and human services by the board of county commissioners of all powers and duties,
6 including staff personnel as provided in 53-2-301 through 53-2-306 and for public assistance and protective services,
7 respectively, provided by the county department pursuant to Titles 41 and 53, except as otherwise specifically provided
8 in this part. A county may continue to provide optional indigent assistance as provided in 53-2-804 and nursing home
9 and hospital services as provided in 7-6-2512."

10
11 **Section 425.** Section 53-2-803, MCA, is amended to read:

12 "53-2-803. **Authority to adopt rules.** The department of ~~social and rehabilitation services and the department~~
13 ~~of family~~ public health and human services may adopt rules necessary to carry out the purposes of this part, including
14 implementing transfer of the county programs to ~~each the~~ department, ~~respectively.~~"

15
16 **Section 426.** Section 53-2-811, MCA, is amended to read:

17 "53-2-811. **Transfer of county public assistance and protective services to the state departments --**
18 **reassumption of responsibility.** (1) All responsibility of a county for public assistance and protective services for children
19 and adults pursuant to Titles 41 and 53 may be transferred to the department of ~~social and rehabilitation services and~~
20 ~~the department of family services, respectively~~ public health and human services, except that the county attorney shall
21 continue to provide legal assistance and representation for the purposes of adult and child protective services without
22 charge and all debts and obligations incurred prior to the effective date of state assumption continue as the
23 responsibility of the county.

24 (2) The board of county commissioners, after public hearing, may by resolution or ordinance transfer to the
25 department of ~~social and rehabilitation services and the department of family~~ public health and human services all
26 powers and duties for public assistance and protective services for children and adults, ~~respectively~~, including the
27 selection, supervision, and termination of staff personnel associated with the performance of these activities. Upon the
28 effective date of the transfer, the department of ~~social and rehabilitation services and the department of family~~ public
29 health and human services shall assume all powers and duties related to public assistance and protective services,
30 ~~respectively~~, and accorded by law to the county welfare department. If the notice required in subsection (3) is given,
31 the transfer is effective at the start of the next state fiscal year.

32 (3) Counties opting for state assumption shall notify the department of ~~social and rehabilitation services and~~
33 ~~the department of family~~ public health and human services by October 1 if the county wishes to change its status on
34 the following July 1. A county that has opted for state assumption prior to July 1, 1995, may reassume responsibility

1 for public assistance and protective services on July 1, 1996, if the county notifies the department prior to September
2 30, 1995.

3 (4) Counties opting for state assumption shall permit the department of ~~social and rehabilitation services and~~
4 ~~the department of family~~ public health and human services to use the same facilities currently occupied by the county
5 department or substantially equal facilities, with fair rental value for the facilities to be paid by ~~each~~ the department.
6 Counties opting for state assumption shall transfer to the ~~appropriate~~ department all materials, equipment, and supplies
7 used in the operation of the county department and which were paid for in whole or in part with federal or state funds."

8
9 **Section 427.** Section 53-2-812, MCA, is amended to read:

10 **"53-2-812. State assumption -- permanent transfer to state -- exceptions.** Except as provided in this section,
11 a county opting for state assumption does so on a complete and permanent basis. State assumption or reassumption
12 must be made pursuant to the adoption of a resolution or ordinance as provided in 53-2-811(2) and notice to the
13 department of ~~social and rehabilitation services and the department of family~~ public health and human services as
14 provided in 53-2-811(3). A county that has opted for state assumption prior to July 1, 1995, may reassume
15 responsibility for public assistance and protective services if notice is provided pursuant to 53-2-811(2) and (3). A
16 county shall notify the department of ~~social and rehabilitation services and the department of family~~ public health and
17 human services by October 1 if the county wishes to change its status on the following July 1. Under a retention or
18 reassumption, staff personnel continue under the supervision and control of the department. All debts and obligations
19 of the department ~~and the department of family services~~ pertaining to public assistance and protective services at the
20 time of reassumption must be transferred to the county opting for reassumption. A county may not retain or reassume
21 assistance programs partially funded by the federal government."

22
23 **Section 428.** Section 53-2-813, MCA, is amended to read:

24 **"53-2-813. Mill levy for counties transferring public assistance and protective services.** (1) For the purpose
25 of this part, 9 mills must be levied annually in those counties opting for state assumption.

26 (2) For a county electing state assumption, the proceeds of the mill levy established in subsection (1) must
27 be deposited in the state special revenue fund in the state treasury to the credit of the department of ~~social and~~
28 ~~rehabilitation~~ public health and human services. ~~The general fund authority of the department of social and rehabilitation~~
29 ~~services must be reduced and the general fund authority of the department of family services must be increased by~~
30 ~~an amount equal to the county's expenditures for child and adult protective services in the fiscal year immediately~~
31 ~~preceding state assumption."~~

32
33 **Section 429.** Section 53-3-115, MCA, is amended to read:

34 **"53-3-115. Legislative findings.** (1) The legislature finds that in order to use the limited resources of the state

1 for the purposes of providing public assistance to persons whom it has determined are in need, certain programs must
2 be eliminated and the provision of public assistance programs must be reorganized for more efficient delivery of
3 services.

4 (2) The legislature finds that county governments are in the best position to efficiently and effectively deliver
5 services for those in need who are not otherwise eligible for similar services provided by the department of ~~social and~~
6 ~~rehabilitation~~ public health and human services.

7 (3) (a) The legislature finds that the needs of persons who are aged, infirm, or misfortunate are adequately
8 and appropriately provided for through the following programs:

9 (i) medicaid;

10 (ii) aid for dependent children;

11 (iii) food stamps;

12 (iv) commodities; and

13 (v) low-income energy assistance.

14 (b) The legislature further finds that the counties may in their discretion provide other programs of public
15 assistance that they determine are appropriate and that may be funded with money derived from the county poor fund
16 mill levy.

17 (4) The legislature finds that the effects of eliminating the state program of general relief are not known and
18 that the administration and financing of public assistance programs by each county may not provide uniform assistance
19 throughout the state."

20
21 **Section 430.** Section 53-4-201, MCA, is amended to read:

22 **"53-4-201. Definitions.** (1) The term "aid to families with dependent children" means money payments made
23 on behalf of a dependent child pursuant to Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.), including
24 payments to meet the needs of a relative with whom the dependent child is living. The term also includes emergency
25 assistance to families with children as provided by the federal Social Security Act.

26 (2) "Department" means the department of ~~social and rehabilitation~~ public health and human services provided
27 for in ~~Title 2, chapter 15, part 22~~ 2-15-2201.

28 (3) (a) The term "dependent child", for public assistance purposes, means:

29 (i) a child under the age of 18; or

30 (ii) a person under the age of 19 who is a student under the regulations prescribed by the department.

31 (b) The child ~~if described in subsection (a)(i) or (a)(ii) above~~ must be deprived of parental support or care by
32 reason of the death, continued absence from the home, continued unemployment, or physical or mental incapacity of
33 a parent and be living with a relative, as defined in rules adopted by the department.

34 (4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this

1 title to a person by a state or county agency, regardless of the original source of the assistance."

2
3 **Section 431.** Section 53-4-203, MCA, is amended to read:

4 **"53-4-203. Demonstration program -- purpose.** (1) The department of ~~social and rehabilitation~~ public health
5 and human services shall seek an agreement with the U.S. secretary of health and human services in order to establish
6 a demonstration program as authorized under section 503 of the federal Family Support Act of 1988, Public Law
7 100-485.

8 (2) The purpose of the program under subsection (1) is to test a policy that would either eliminate or modify
9 the requirements of 45 CFR 233.100 to allow unemployed recipients of aid to families with dependent children to work
10 more than 100 hours in a month and still retain eligibility for public assistance."

11
12 **Section 432.** Section 53-4-222, MCA, is amended to read:

13 **"53-4-222. County administration subject to rules prescribed by department.** The county department of public
14 welfare shall administer the provisions of this part in the respective counties subject to the rules prescribed by the
15 department of ~~social and rehabilitation~~ public health and human services pursuant to the provisions of this part."

16
17 **Section 433.** Section 53-4-242, MCA, is amended to read:

18 **"53-4-242. Periodic reconsideration of assistance.** All assistance grants made under this part ~~shall~~ must be
19 reconsidered as frequently as may be required by the rules of the department of ~~social and rehabilitation~~ public health
20 and human services."

21
22 **Section 434.** Section 53-4-244, MCA, is amended to read:

23 **"53-4-244. Payments to person interested in child's welfare in lieu of special guardianship.** In lieu of
24 guardianship proceedings, payments may be made in behalf of the child or children to another person found by the
25 county department to be interested in or concerned with the welfare of ~~such~~ the needy child or children in accordance
26 with the rules established by the department of ~~social and rehabilitation~~ public health and human services."

27
28 **Section 435.** Section 53-4-246, MCA, is amended to read:

29 **"53-4-246. County share of participation.** Each county where the recipient of aid to families with dependent
30 children resides shall reimburse the department of ~~social and rehabilitation~~ public health and human services in the
31 amount of 22.5% of the approved aid to families with dependent children grants, exclusive of the federal share."

32
33 **Section 436.** Section 53-4-702, MCA, is amended to read:

34 **"53-4-702. Definitions.** As used in this part, unless the context requires otherwise, the following definitions

1 apply:

2 (1) "Aid to families with dependent children" has the same meaning as provided in 53-4-201.

3 (2) "Department" means the department of ~~social and rehabilitation~~ public health and human services provided
4 for in ~~Title 2, chapter 15, part 22~~ 2-15-2201.

5 (3) "Family Support Act of 1988" means the federal Family Support Act of 1988, Public Law 100-485, as
6 amended.

7 (4) "JOBS program" or "program" means the job opportunities and basic skills training program established
8 in 53-4-703."

9
10 **Section 437.** Section 53-4-719, MCA, is amended to read:

11 **"53-4-719. Rulemaking authority.** The department of ~~social and rehabilitation~~ public health and human services
12 may adopt rules necessary to implement the provisions of this part."

13
14 **Section 438.** Section 53-5-401, MCA, is amended to read:

15 **"53-5-401. Old-age assistance recovery.** (1) Upon the death of any recipient of old-age assistance, the
16 department of ~~social and rehabilitation~~ public health and human services shall execute and present a claim against the
17 estate of the person within the time specified in the published notice to creditors in the estate matter for the total
18 amount of assistance paid ~~under Chapter 82, Laws of 1937, as amended~~. A claim may not be enforced against any
19 real estate of a recipient while it is occupied by the surviving spouse or dependent as a home.

20 (2) Every transfer of property made by deed, grant, bargain, sale, or gift by any recipient of old-age assistance
21 and recorded subsequent to ~~his having received such~~ the recipient's receipt of the assistance is presumed to have been
22 made without value, as the term "value" is defined by 31-2-330, and with the intent to defeat the purposes of this
23 section. These presumptions are disputable and may be controverted by competent evidence.

24 (3) If the federal law so requires, the federal government is entitled to a share of any amounts collected from
25 recipients or their estates in proportion to the amount that it has contributed to the grants recovered, and the amount
26 due the United States must be promptly paid by the state to the United States government. The remaining portion of
27 the amount collected must be distributed to the state and county in proportion to the total amount paid by each."

28
29 **Section 439.** Section 53-6-101, MCA, is amended to read:

30 **"53-6-101. Montana medicaid program -- authorization of services.** (1) There is a Montana medicaid program
31 established for the purpose of providing necessary medical services to eligible persons who have need for medical
32 assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in
33 accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The
34 department of ~~social and rehabilitation~~ public health and human services shall administer the Montana medicaid

1 program.

2 (2) Medical assistance provided by the Montana medicaid program includes the following services:

3 (a) inpatient hospital services;

4 (b) outpatient hospital services;

5 (c) other laboratory and x-ray services, including minimum mammography examination as defined in
6 33-22-132;

7 (d) skilled nursing services in long-term care facilities;

8 (e) physicians' services;

9 (f) nurse specialist services;

10 (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

11 (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42
12 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

13 (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

14 (j) services that are provided by physician assistants-certified within the scope of their practice and that are
15 otherwise directly reimbursed as allowed under department rule to an existing provider;

16 (k) health services provided under a physician's orders by a public health department; and

17 (l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

18 (3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also
19 include the following services:

20 (a) medical care or any other type of remedial care recognized under state law, furnished by licensed
21 practitioners within the scope of their practice as defined by state law;

22 (b) home health care services;

23 (c) private-duty nursing services;

24 (d) dental services;

25 (e) physical therapy services;

26 (f) mental health center services administered and funded under a state mental health program authorized
27 under Title 53, chapter 21, part 2;

28 (g) clinical social worker services;

29 (h) prescribed drugs, dentures, and prosthetic devices;

30 (i) prescribed eyeglasses;

31 (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

32 (k) inpatient psychiatric hospital services for persons under 21 years of age;

33 (l) services of professional counselors licensed under Title 37, chapter 23;

34 (m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(6) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(7) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(8) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(9) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(10) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(11) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(12) Medicaid payment for personal-care facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 440. Section 53-6-104, MCA, is amended to read:

"53-6-104. Freedom of doctors to treat recipients of medical assistance -- freedom to select doctor. (1) The department of ~~social and rehabilitation~~ public health and human services shall provide for professional freedom of those licensed practitioners who provide medical assistance under this part and provide reasonable freedom of choice to recipients of medical aid to select the vendor or provider of medical care, services, or prescribed drugs.

1 (2) ~~Nothing in this~~ This section may not be construed to prohibit the department from imposing conditions on
2 the payment of provider services and the receipt of medical assistance, as provided for under 53-6-111 and 53-6-113
3 through 53-6-116."

4
5 **Section 441.** Section 53-6-106, MCA, is amended to read:

6 **"53-6-106. Health care facility standards -- definitions.** (1) For purposes of 53-6-106 through 53-6-108, the
7 following definitions apply:

8 (a) "Department" means the department of ~~social and rehabilitation~~ public health and human services.

9 (b) "Health care facility" means a health care facility as defined in 50-5-101.

10 (2) The department ~~and the department of health and environmental sciences~~ may enter into agreements with
11 appropriate federal agencies for the purpose of certifying health care facilities for the Montana medicaid program.

12 (3) The department of ~~health and environmental sciences~~ public health and human services shall adopt rules
13 prescribing minimum standards for the maintenance and operation of health care facilities, including standards for the
14 quality of care provided by those facilities receiving reimbursement under the Montana medicaid program. These
15 standards must include, as a minimum, those requirements imposed upon health care facilities by Title XIX of the
16 federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and by the implementing regulations
17 contained in 42 CFR 430, et seq., as may be amended. The authority to prescribe standards and adopt rules under
18 53-6-106 through 53-6-108 is in addition to the authority granted to the department ~~of health and environmental~~
19 ~~sciences~~ pursuant to Title 50, chapter 5.

20 (4) Standards adopted by the department ~~of health and environmental sciences~~ may include but are not limited
21 to requirements in the following areas: staffing, fire protection, health and safety, food and nutrition, environmental
22 and sanitation, administration, admission policies, patient care planning, training, medication, health services,
23 rehabilitation services, and social services and activities."

24
25 **Section 442.** Section 53-6-107, MCA, is amended to read:

26 **"53-6-107. Sanctions -- penalties.** (1) The department of public health and human services may suspend,
27 terminate, or refuse to renew an agreement with a health care facility that has failed to meet the requirements for
28 certification adopted for the Montana medicaid program under 53-6-106 through 53-6-108. The department may also
29 impose sanctions in the form of denial of medicaid payments for new admissions or other penalties as described in
30 53-6-111.

31 (2) The department may impose a civil monetary penalty, with interest not to exceed 12% per annum, for
32 each day that a facility is substantially out of compliance with standards adopted by the department ~~of health and~~
33 ~~environmental sciences~~ under the authority of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be
34 collected by the department and may be applied to the protection of the health and property of residents of health care

1 facilities that the department finds deficient, including payment for the costs of relocation of residents to other facilities,
2 operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds
3 lost.

4 (3) The department may appoint temporary management personnel to oversee the operation of the facility and
5 to assure the health and safety of the facility's residents if there is a need for temporary management because:

6 (a) an orderly closure of the facility is necessary; or

7 (b) improvements are being made to bring the facility into compliance with applicable standards.

8 (4) The department shall, in the case of an emergency, close the facility or transfer residents in the facility
9 to other facilities, or both."

10
11 **Section 443.** Section 53-6-108, MCA, is amended to read:

12 **"53-6-108. Rules governing sanctions or remedies.** The department of public health and human services shall
13 adopt rules governing the application of sanctions or remedies imposed under 53-6-107, the amounts of any fines, and
14 the severity of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally
15 more severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the standards adopted by
16 the department of ~~health and environmental sciences~~ or those federal standards established in 53-6-106 may not
17 exceed \$1,000 for each day the deficiency remains uncorrected. A health care facility aggrieved by an action of the
18 department may request a hearing pursuant to Title 2, chapter 4, part 6."

19
20 **Section 444.** Section 53-6-110, MCA, is amended to read:

21 **"53-6-110. Report and recommendations on medicaid funding.** (1) As a part of the information required in
22 17-7-111, the department of ~~social and rehabilitation~~ public health and human services shall submit a report concerning
23 medicaid funding for the next biennium. This report must include at least the following elements:

24 (a) analysis of past and present funding levels for the various categories and types of health services eligible
25 for medicaid reimbursement;

26 (b) projected increased medicaid funding needs for the next biennium. These projections must identify the
27 effects of projected population growth and demographic patterns on at least the following elements:

28 (i) trends in unit costs for services, including inflation;

29 (ii) trends in use of services;

30 (iii) trends in medicaid recipient levels; and

31 (iv) the effects of new and projected facilities and services for which a need has been identified in the state
32 health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

33 (2) As an integral part of the report, the department of ~~social and rehabilitation~~ public health and human
34 services shall present a recommendation of funding levels for the medicaid program. The recommendation need not

1 be consistent with the state health plan.

2 ~~(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of~~
3 ~~social and rehabilitation services shall consult with the department of health and environmental sciences.~~

4 ~~(4)(3)~~ In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid
5 funding anticipated to be allocated to specific categories and types of health care services.

6 ~~(5)(4)~~ Whenever the department of ~~social and rehabilitation~~ public health and human services establishes an
7 estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative
8 finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled
9 meeting."

10
11 **Section 445.** Section 53-6-111, MCA, is amended to read:

12 **"53-6-111. Department charged with general administration of medical assistance -- adoption of rules to**
13 **punish fraud.** (1) The department of ~~social and rehabilitation~~ public health and human services ~~is hereby authorized and~~
14 ~~empowered to~~ may administer and supervise a vendor payment program of medical assistance under the powers,
15 duties, and functions provided in chapter 2 of this title, as amended, and as contemplated by the provisions of Title
16 XIX of the federal Social Security Act.

17 (2) The department shall adopt rules establishing a system of penalties and sanctions applicable to providers
18 of medical assistance services and supplies who engage in fraudulent, abusive, or improper activities. The department
19 shall define, by rule, those activities ~~which~~ that are fraudulent, abusive, or improper.

20 (3) The penalties or sanctions imposed include but are not limited to:

21 (a) required courses of education in the rules governing the medicaid program;

22 (b) withholding of payments to offset previous improper payments to a provider;

23 (c) suspension of payments to a provider pending resolution of a dispute involving fraudulent, abusive, or
24 improper activities;

25 (d) suspension of participation in the program for a specified period of time; and

26 (e) permanent termination of participation in the medical assistance program.

27 (4) The department is entitled to recover from a provider all amounts paid as a result of fraudulent, abusive,
28 or improper activities, together with interest at the rate set by 15-30-142 for tax deficiencies from the date of ~~such~~
29 payment.

30 (5) In all cases in which a penalty or sanction may be imposed, a provider is entitled to a hearing under the
31 provisions of Title 2, chapter 4, part 6."

32
33 **Section 446.** Section 53-6-112, MCA, is amended to read:

34 **"53-6-112. Department to print and distribute copies of part and certain forms.** The department of ~~social and~~

1 ~~rehabilitation public health and human~~ services shall have printed and distribute copies of this part to all county welfare
2 departments and shall prescribe the form of and print and supply to the county welfare departments blanks of
3 applications, reports, and ~~such~~ other forms as may be necessary in relation to medical assistance."
4

5 **Section 447.** Section 53-6-113, MCA, is amended to read:

6 **"53-6-113. Department to adopt rules.** (1) The department of ~~social and rehabilitation~~ public health and human
7 services shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided
8 for in this part and as may be required by federal laws and regulations governing state participation in medicaid under
9 Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as amended.

10 (2) The department shall adopt rules as are necessary to further define for the purposes of this part the
11 services provided under 53-6-101 and to provide that services utilized are medically necessary and that these services
12 are the most efficient and cost effective available. The rules may establish the amount, scope, and duration of services
13 provided under the Montana medicaid program, including the items and components constituting the services.

14 (3) The department shall establish by rule the rates for reimbursement of services provided under this part.
15 The department may in its discretion set such rates of reimbursement as it determines necessary for the purposes of
16 the program. In establishing rates of reimbursement, the department may consider but is not limited to:

- 17 (a) the availability of appropriated funds;
18 (b) the actual cost of services;
19 (c) the quality of services;
20 (d) the professional knowledge and skills necessary for the delivery of services; and
21 (e) the availability of services.

22 (4) The department shall specify by rule those professionals who may deliver or direct the delivery of particular
23 services.

24 (5) The department may provide by rule for payment by a recipient of a portion of the reimbursements
25 established by the department for services provided under this part.

26 (6) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid
27 program. Rules may include but are not limited to financial standards and criteria for income and resources, treatment
28 of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, and
29 confidentiality of applicant and recipient information.

30 (7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in
31 53-6-131 if required by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, or
32 if funds appropriated are not sufficient to provide medical care for all eligible persons.

33 (8) The department may adopt rules necessary for the administration of medicaid managed-care systems.
34 Rules to be adopted may include but are not limited to rules concerning:

- 1 (a) participation in managed care;
2 (b) selection and qualifications for providers of managed care; and
3 (c) standards for the provision of managed care."
4

5 **Section 448.** Section 53-6-114, MCA, is amended to read:

6 **"53-6-114. Rules of department binding on county welfare departments.** All rules of the department of ~~social~~
7 ~~and rehabilitation~~ public health and human services made under this part ~~shall be~~ are binding upon the county
8 departments of public welfare."
9

10 **Section 449.** Section 53-6-115, MCA, is amended to read:

11 **"53-6-115. Contracts with other agencies.** The department of ~~social and rehabilitation~~ public health and
12 human services may by suitable rules provide for contracting with any state or private agency for processing and
13 payment of claims under ~~such~~ the program of medical assistance, and the department ~~shall have the authority to~~ may
14 contract with one or more private or state agencies to provide any or all of the enumerated medical services."
15

16 **Section 450.** Section 53-6-116, MCA, is amended to read:

17 **"53-6-116. Medicaid managed care -- capitated health care.** (1) The department of ~~social and rehabilitation~~
18 public health and human services, in its discretion, may develop managed-care and capitated health care systems for
19 medicaid recipients.

20 (2) The department may contract with one or more persons for the management of comprehensive physical
21 health services and the management of comprehensive mental health services for medicaid recipients. The department
22 may contract for the provision of these services by means of a fixed monetary or capitated amount per recipient.

23 (3) A managed-care system is a program organized to serve the medical needs of medicaid recipients in an
24 efficient and cost-effective manner by managing the receipt of medical services for a geographical or otherwise defined
25 population of recipients through appropriate health care professionals.

26 (4) The provision of medicaid services through managed-care and capitated health care systems is not subject
27 to the limitations provided in 53-6-101 and 53-6-104.

28 (5) The proposed systems, referred to in subsection (1), must be submitted to the legislative finance
29 committee. The legislative finance committee shall review the proposed systems at its next regularly scheduled meeting
30 and shall provide any comments concerning the proposed systems to the department of ~~social and rehabilitation~~ public
31 health and human services."
32

33 **Section 451.** Section 53-6-117, MCA, is amended to read:

34 **"53-6-117. Participation requirements.** (1) The department of ~~social and rehabilitation~~ public health and human

1 services may require medicaid recipients to participate in a managed-care system.

2 (2) Recipients who are required by the department to participate in a managed-care system shall participate
3 as required in order to remain eligible for medicaid.

4 (3) The department may require the participation of medicaid recipients in managed-care systems based upon
5 geographical, financial, social, medical, and other factors as the department may determine are relevant to the
6 development and efficient management of managed-care systems."

7
8 **Section 452.** Section 53-6-131, MCA, is amended to read:

9 **"53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be
10 granted to a person who is determined by the department of ~~social and rehabilitation~~ public health and human services,
11 in its discretion, to be eligible as follows:

12 (a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI
13 of the federal Social Security Act §42 U.S.C. 1381, et seq., or aid to families with dependent children under Title IV
14 of the federal Social Security Act §42 U.S.C. 601, et seq.,

15 (b) The person would be eligible for assistance under a program described in subsection (1)(a) if that person
16 were to apply for that assistance.

17 (c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the
18 person would be receiving assistance under one of the programs in subsection (1)(a).

19 (d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to
20 families with dependent children, other than with respect to school attendance.

21 (e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster
22 care under the supervision of the state and has been adopted as a hard-to-place child.

23 (f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

24 (i) the person's income does not exceed the income level specified for federally aided categories of assistance
25 and the person's resources are within the resource standards of the federal supplemental security income program; or

26 (ii) the person, while having income greater than the medically needy income level specified for federally aided
27 categories of assistance:

28 (A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy
29 income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department
30 the amount by which the person's income exceeds the medically needy income level specified for federally aided
31 categories of assistance; and

32 (B) has resources that are within the resource standards of the federal supplemental security income program.

33 (g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

34 (2) The department may establish income and resource limitations. Limitations of income and resources must

1 be within the amounts permitted by federal law for the medicaid program.

2 (3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for
3 medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay
4 all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for
5 a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget
6 Reconciliation Act of 1989, Public Law 101-239, who:

7 (a) has income that does not exceed income standards as may be required by the federal Social Security Act;
8 and

9 (b) has resources that do not exceed standards the department determines reasonable for purposes of the
10 program.

11 (4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar
12 costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

13 (5) The department, under the Montana medicaid program, may provide, if a waiver is not available from the
14 federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act 42 U.S.C.
15 1396, et seq.), as may be amended, and not specifically listed in this part to categories of persons that may be
16 designated by the act for receipt of assistance.

17 (6) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and
18 pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42
19 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards
20 that the department determines reasonable for purposes of the program.

21 (7) A person described in subsection (6) must be provided continuous eligibility for medical assistance, as
22 authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7)."

23
24 **Section 453.** Section 53-6-132, MCA, is amended to read:

25 **"53-6-132. Application for assistance.** Application for assistance under this part ~~shall~~ must be made to the
26 office of the county department in the county in which the person is residing. The application ~~shall~~ must be presented
27 in the manner on the form prescribed by the department of ~~social and rehabilitation~~ public health and human services.
28 All individuals wishing to apply ~~shall~~ must have the opportunity to do so."

29
30 **Section 454.** Section 53-6-133, MCA, is amended to read:

31 **"53-6-133. Investigation and determination of eligibility.** (1) The county department shall promptly investigate
32 and determine the eligibility of each applicant under this part in accordance with the rules of the department of ~~social~~
33 ~~and rehabilitation~~ public health and human services. Each applicant ~~shall~~ must be informed of ~~his~~ the right to a fair
34 hearing and of the confidential nature of the information given. The county department shall determine whether or not

1 the applicant is eligible for assistance under this part, and aid ~~shall~~ must be furnished promptly to eligible persons. Each
2 applicant shall receive written notice of the decision concerning ~~his~~ the applicant's application, and the right of appeal
3 ~~shall be~~ is secured to the applicant under the procedures of 53-2-606.

4 (2) The county departments of public welfare and the department of ~~social and rehabilitation~~ public health and
5 human services ~~are hereby authorized to~~ may accept the federal social security administration's determination of
6 eligibility for supplemental security income, Title XVI of the Social Security Act, as qualifying ~~such~~ the eligible
7 individuals to receive medical assistance under this part."

8
9 **Section 455.** Section 53-6-134, MCA, is amended to read:

10 **"53-6-134. Extension of eligibility for medical assistance to persons terminated from aid to families with**
11 **dependent children.** (1) In accordance with section 1925 of Title XIX of the Social Security Act (42 U.S.C. 1396r-6),
12 the department of ~~social and rehabilitation~~ public health and human services shall provide for the extension of eligibility
13 for medical assistance to persons who lose eligibility for aid to families with dependent children due to:

- 14 (a) increased hours or income from employment; or
15 (b) loss of federally prescribed earned income disregards.

16 (2) In providing for the extension of eligibility for medical assistance under subsection (1), the department may
17 provide for health insurance or other health coverage in accordance with subsections 1925(a)(4)(B) and 1925(b)(4)(C)
18 of Title XIX of the Social Security Act ~~42 U.S.C. 1396r-6(a)(4)(B) and 42 U.S.C. 1396r-6(b)(4)(C)~~, and may exercise
19 the other options contained in section 1925 of Title XIX of the Social Security Act ~~42 U.S.C. 1396r-6~~, regarding the
20 provision of medical assistance."

21
22 **Section 456.** Section 53-6-142, MCA, is amended to read:

23 **"53-6-142. Periodic review of assistance.** All medical assistance cases approved under this part ~~shall~~ must
24 be reviewed as often as ~~shall be~~ required under the rules of the department of ~~social and rehabilitation~~ public health
25 and human services."

26
27 **Section 457.** Section 53-6-143, MCA, is amended to read:

28 **"53-6-143. Limitations on liens and recoveries.** (1) An applicant for or recipient of assistance may not be
29 required to execute an agreement creating a lien on ~~his~~ the applicant's real property.

30 (2) A lien may be imposed against the real or personal property of an individual prior to ~~his~~ the individual's
31 death for recovery of medical assistance paid or to be paid on ~~his~~ the individual's behalf under this chapter only:

- 32 (a) pursuant to a judgment of a court for recovery of assistance incorrectly paid on behalf of the recipient;

33 or

- 34 (b) on a third-party recovery as provided in 53-2-612.

(3) (a) The department may recover medical assistance correctly paid on behalf of a recipient only:

(i) as provided in 53-2-611, except that it may not recover for any assistance paid on behalf of a recipient for services provided before ~~he~~ the recipient reached age 65; or

(ii) as provided in 53-2-612.

(b) The department may recover under 53-2-611 only:

(i) after the death of the recipient's surviving spouse, if any; and

(ii) if there is no surviving child of the recipient who is under age 21, blind, or permanently and totally disabled.

(4) Recoveries must be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, ~~shall~~ must be prorated to reimburse the county share of participation. The provisions of this section are ~~hereby~~ extended to provide for the recovery of all medical assistance paid under this part and ~~likewise~~ to all medical aid to the aged assistance paid by the department of ~~social and rehabilitation~~ public health and human services during the period of time July 1, 1965, through June 30, 1967."

Section 458. Section 53-6-150, MCA, is amended to read:

"53-6-150. Statutory appropriation of donated funds. (1) The department of ~~social and rehabilitation~~ public health and human services may receive private funds and nonfederal and nonstate public funds for its medical assistance programs. Donated funds must be matched with federal funds whenever possible.

(2) Funds donated to the department for its medical assistance programs are statutorily appropriated to the department as provided in 17-7-502."

Section 459. Section 53-6-401, MCA, is amended to read:

"53-6-401. Definitions. As used in this part, the following definitions apply:

(1) "Community-based medicaid services" means those long-term medical, habilitative, rehabilitative, and other services that are available to medicaid-eligible persons in a community setting or in a person's home as a substitute for medicaid services provided in long-term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization.

(2) "Department" means the department of ~~social and rehabilitation~~ public health and human services as provided for in ~~Title 2, chapter 15, part 22~~ 2-15-2201.

(3) "Long-term care facilities" means facilities that are certified by the department of ~~health and environmental sciences~~ to provide skilled or intermediate nursing care services, including intermediate nursing care services for the developmentally disabled.

(4) "Long-term care medicaid services" means community-based medicaid services and those medicaid

1 services provided in long-term care facilities.

2 (5) "Long-term care preadmission screening and resident review" means an evaluation that results in a
3 determination as to whether a person requires the services provided in long-term care facilities and whether
4 community-based medicaid services would be an appropriate substitute for medicaid services that are available in
5 long-term care facilities."

6
7 **Section 460.** Section 53-7-101, MCA, is amended to read:

8 **"53-7-101. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

9 (1) "Department" means the department of ~~social and rehabilitation~~ public health and human services provided
10 for in 2-15-2201.

11 (2) "Independent living" means control over one's life based upon a choice between acceptable options in a
12 manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

13 (3) "Maintenance" means money payments made in accordance with 53-7-108.

14 (4) "Occupational license" means a license, permit, or other written authority required by any governmental
15 unit to engage in an occupation.

16 (5) "Person with an employment handicap" means the same as "individual with handicaps" as defined in the
17 federal Rehabilitation Act of 1973 (~~29 U.S.C. 706(8)(A)~~), as may be amended. The term includes any individual who
18 lacks occupation or vocational achievement due to the presence of a physical or mental disability.

19 (6) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or
20 substantially reduce the employment handicap of a person within a reasonable length of time, including but not limited
21 to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs,
22 medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory
23 medical conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

24 (7) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the
25 body or to increase the acuity of a sense organ.

26 (8) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies,
27 or scientific principles to meet the needs of and address the barriers confronted by persons with employment
28 handicaps. ~~Such~~ The barriers may exist in the areas of education, rehabilitation, employment, transportation,
29 independent living, and recreation.

30 (9) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services
31 to assist a person with an employment handicap to become independent and productive or employable.

32 (10) "Rehabilitation training" means training provided to a person with an employment handicap to rehabilitate
33 the person's employment handicap; ~~including.~~ The term includes but is not limited to manual, preconditioning,
34 prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or

1 more remunerative skills and capacities.

2 (11) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with an
3 employment handicap to enable the person insofar as possible to become independent and productive or employable.

4 (12) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance,
5 vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration,
6 transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and
7 materials, group facilities, family services, followup services, and any other goods and services provided for by rule
8 and that the department determines to be necessary to rehabilitate the person."

9
10 **Section 461.** Section 53-7-202, MCA, is amended to read:

11 **"53-7-202. Definitions.** (1) "Department" means the department of ~~social and rehabilitation~~ public health and
12 human services.

13 (2) "Severe disability" means a severe physical or mental impairment that seriously limits a person's functional
14 capacities in respect to obtaining employment.

15 (3) "Sheltered employment" means a recognized program of rehabilitation, remunerative employment, or other
16 occupational rehabilitating activity of an educational or therapeutic nature provided by a nonprofit sheltered workshop
17 provider. Sheltered employment includes job skills and social skills training and remunerative employment.

18 (4) "Supervised work program" means a program providing guidance in learning and achieving the
19 requirements of job performance through work activity, sheltered employment, and supported employment.

20 (5) "Supported employment" means competitive work in an integrated work setting for a person with a severe
21 disability who is in need of assistance in order to become employed or remain employed. Supported employment
22 includes assessment, preplacement preparation, job development, job placement, job skills training, and support
23 services.

24 (6) "Support services" means continuous or periodic job skills training provided to a person at a worksite to
25 enable the person to perform work. Support services also include services away from the worksite that are necessary
26 to allow a person with a severe disability to participate in a supervised work program, such as transportation, direction
27 and assistance in functional skills, and counseling for family members.

28 (7) "Work activity" means therapeutic work-related activities provided by a nonprofit work activity center
29 provider to persons whose physical or mental impairment is so severe as to make their productive capacity
30 inconsequential. Therapeutic work-related activities include training in basic skills of living and any purposeful activity
31 so long as work or production is not the main purpose."

32
33 **Section 462.** Section 53-7-301, MCA, is amended to read:

34 **"53-7-301. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Blindness" means a visual disability in which:

(i) a person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses; or

(ii) a person's visual field at the widest diameter subtends an angle no greater than 20 degrees.

(b) The term includes any visual disability that, in the determination of the department, renders vision seriously defective or causes blindness.

(2) "Department" means the department of ~~social and rehabilitation~~ public health and human services provided for in 2-15-2201.

(3) "Independent living" means control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

(4) "Low vision" means a visual impairment that, even with correction, remains so severe as to make performance of daily tasks difficult.

(5) "Maintenance" means money payments made in accordance with 53-7-310.

(6) "Occupational license" means a license, permit, or other written authority required by any governmental unit to engage in an occupation.

(7) "Person with an employment handicap" means the same as "individual with handicaps" as defined in the federal Rehabilitation Act of 1973, 29 U.S.C. 706(8)(A)}, as may be amended. The term includes any individual who lacks occupation or vocational achievement due to the presence of a physical or mental disability.

(8) (a) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce an employment handicap caused by blindness or low vision within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances.

~~(b) but excluding~~ The term does not include curative treatment for acute or transitory medical conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

(9) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(10) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with blindness or low vision. ~~Such~~ The barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.

(11) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services to assist a person with blindness or low vision to become independent and productive or employable.

(12) "Rehabilitation training" means training provided to a person with blindness or low vision to rehabilitate the person's employment handicap, including but not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and

1 capacities.

2 (13) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with
3 blindness or low vision to enable the person insofar as possible to become independent and productive or employable.

4 (14) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance,
5 vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration,
6 transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and
7 materials, group facilities, family services, followup services, and any other goods and services provided for by rule
8 and that the department determines to be necessary to rehabilitate the person."

9
10 **Section 463.** Section 53-9-105, MCA, is amended to read:

11 **"53-9-105. Rehabilitation of victims.** The division shall refer to the department of ~~social and rehabilitation~~
12 public health and human services victims who have been permanently disabled through criminally injurious conduct,
13 who are receiving benefits under this part, and who in the opinion of the division may be vocationally rehabilitated. The
14 department of ~~social and rehabilitation~~ public health and human services shall provide for the vocational rehabilitation
15 of the victims under its rehabilitation programs to the extent funds are available under ~~such~~ the programs."

16
17 **Section 464.** Section 53-10-501, MCA, is amended to read:

18 **"53-10-501. Definitions.** As used in this part, the following definitions apply:

19 (1) "Block grant" means the federal community services block grant established under 42 U.S.C. 9901, et
20 seq. ~~(95 Stat. 511, et seq.)~~.

21 (2) "Department" means the department of ~~social and rehabilitation~~ public health and human services provided
22 for in 2-15-2201.

23 (3) "Human resource development council" means a nonprofit public or private community organization serving
24 low-income persons in a multicounty area that has the same boundaries as one or more substate planning districts
25 established by executive order of the governor."

26
27 **Section 465.** Section 53-18-101, MCA, is amended to read:

28 **"53-18-101. Definitions.** As used in this part, the following definitions apply:

29 (1) "Department" means the department of ~~social and rehabilitation~~ public health and human services provided
30 for in ~~Title 2, chapter 15, part 22~~ 2-15-2201.

31 (2) "Self-sufficiency trust" means a trust created by a nonprofit corporation that is a 501-C-3 organization
32 under the United States Internal Revenue Code of 1954, as amended, and that was organized under the Montana
33 Nonprofit Corporation Act, Title 35, chapter 2, for the purpose of providing for the care and treatment of one or more
34 persons who are residents of this state and are developmentally disabled, mentally ill, physically handicapped, or

otherwise eligible for department services, as defined by the department."

Section 466. Section 53-18-103, MCA, is amended to read:

"53-18-103. Administration of trust account. (1) The department may accept money from a self-sufficiency trust for deposit in the self-sufficiency trust account pursuant to an agreement with the self-sufficiency trust naming one or more beneficiaries who are residents of this state and are developmentally disabled, mentally ill, physically handicapped, or otherwise eligible for department services, as defined by the department. The agreement must specify the care or treatment to be provided for each named beneficiary. Money in the trust account must be accounted for separately for each named beneficiary. The department ~~of corrections and human services shall contract with the~~ department of public health and human services shall administer the trust account for beneficiaries who are mentally ill.

(2) (a) The department shall adopt rules to administer the trust account.

(b) The money in the trust account may be spent by the department, pursuant to its rules, only to provide care or treatment for the named beneficiary in accordance with the terms of the agreement.

(c) If the director of the department determines that the money in the trust account for a named beneficiary cannot be used for the care and treatment of the beneficiary in a manner consistent with the rules of the department and the agreement or upon request of the self-sufficiency trust, the remaining money in the trust account for the named beneficiary, together with any accumulated interest, must be promptly returned to the self-sufficiency trust that provided the money for deposit in the trust account.

(3) The trust account money must be deposited in the state treasury and invested as required by law and the earnings credited to the trust account."

Section 467. Section 53-19-102, MCA, is amended to read:

"53-19-102. Definitions. As used in this part, the following definitions apply:

(1) "Community home for persons with severe disabilities" means a facility licensed by the department ~~of family services~~, as provided for in 52-4-201 through 52-4-205.

(2) "Department" means the department of ~~social and rehabilitation~~ public health and human services established in 2-15-2201.

(3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended.

(4) "Live and function independently" means to have control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

(5) "Person with severe disabilities" means the same as "individual with severe handicaps" as defined in the

1 federal Rehabilitation Act of 1973, 29 U.S.C. 706(15)(B), as may be amended. The term includes an individual whose
2 ability to function independently in family or community or whose ability to engage or continue in employment is so
3 limited by the severity of ~~his~~ the physical or mental disability that the services provided under this part are required in
4 order for the individual to achieve a greater level of independence in functioning in family or community or in engaging
5 in or continuing in employment."

6
7 **Section 468.** Section 53-20-102, MCA, is amended to read:

8 **"53-20-102. (Temporary) Definitions.** As used in this part, the following definitions apply:

9 (1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created
10 by 2-15-211.

11 (2) "Community-based facilities" or "community-based services" includes those services and facilities which
12 are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting,
13 including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care
14 facilities, sheltered workshops, and other community-based services and facilities.

15 (3) "Court" means a district court of the state of Montana.

16 (4) "Developmentally disabled" means suffering from a disability attributable to mental retardation, cerebral
17 palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and
18 requiring treatment similar to that required by mentally retarded individuals if the disability originated before the
19 individual attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial
20 handicap of ~~such~~ the individual.

21 (5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire
22 and maintain those life skills which enable ~~him~~ the person to cope more effectively with the demands of ~~his~~ the
23 individual's own person and environment and to raise the level of ~~his~~ the individual's physical, mental, and social
24 efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

25 (6) "Individual treatment planning team" means the interdisciplinary team of persons involved in and
26 responsible for the habilitation of a person committed to a residential facility. The committed person is a member of
27 the team.

28 (7) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers
29 and sisters of a person.

30 (8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's
31 degree in psychology, who:

32 (a) has training and experience in psychometric testing and evaluation;

33 (b) has experience in the field of developmental disabilities; and

34 (c) is certified as provided for in 53-20-106 by the department of ~~social and rehabilitation services and the~~

1 ~~department of corrections~~ public health and human services.

2 (9) "Qualified mental retardation professional" means a person who has at least 1 year of experience working
3 directly with persons with mental retardation or other developmental disabilities and who is:

4 (a) a licensed physician or osteopath;

5 (b) a registered nurse; or

6 (c) a professional program staff person for the residential facility who the department of ~~corrections~~ public
7 health and human services determines meets the professional requirements necessary for federal certification of the
8 facility.

9 (10) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or
10 habilitation.

11 (11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human
12 services center.

13 (12) "Residential facility screening team" means a team of persons appointed as provided in 53-20-133.

14 (13) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally
15 disabled and in need of developmental disability services.

16 (14) "Responsible person" means any person willing and able to assume responsibility for a person who is
17 developmentally disabled or alleged to be developmentally disabled.

18 (15) "Seriously developmentally disabled" means a person who:

19 (a) is developmentally disabled;

20 (b) is impaired in cognitive functioning; and

21 (c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe
22 as to require total care or near total care and because of those behaviors or deficits, cannot be safely and effectively
23 habilitated in community-based services. (Terminates September 30, 1995--sec. 27, Ch. 381. L. 1991.)

24 **53-20-102. (Effective October 1, 1995) Definitions.** As used in this part, the following definitions apply:

25 (1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created
26 by 2-15-211.

27 (2) "Community-based facilities" or "community-based services" includes those services and facilities which
28 are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting,
29 including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care
30 facilities, sheltered workshops, and other community-based services and facilities.

31 (3) "Court" means a district court of the state of Montana.

32 (4) "Developmentally disabled" means suffering from a disability attributable to mental retardation, cerebral
33 palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and
34 requiring treatment similar to that required by mentally retarded individuals if the disability originated before the

1 individual attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial
2 handicap of ~~such~~ the individual.

3 (5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire
4 and maintain those life skills which enable ~~him~~ the person to cope more effectively with the demands of ~~his~~ the
5 individual's own person and environment and to raise the level of ~~his~~ the individual's physical, mental, and social
6 efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

7 (6) "Individual treatment planning team" means the interdisciplinary team of persons involved in and
8 responsible for the habilitation of a person committed to a residential facility. The committed person is a member of
9 the team.

10 (7) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers
11 and sisters of a person.

12 (8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's
13 degree in psychology, who:

14 (a) has training and experience in psychometric testing and evaluation;

15 (b) has experience in the field of developmental disabilities; and

16 (c) is certified as provided for in 53-20-106 by the department of ~~social and rehabilitation services and the~~
17 ~~department of corrections~~ public health and human services.

18 (9) "Qualified mental retardation professional" means a person who has at least 1 year of experience working
19 directly with persons with mental retardation or other developmental disabilities and who is:

20 (a) a licensed physician or osteopath;

21 (b) a registered nurse; or

22 (c) a professional program staff person for the residential facility who the department of ~~corrections~~ public
23 health and human services determines meets the professional requirements necessary for federal certification of the
24 facility.

25 (10) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or
26 habilitation.

27 (11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human
28 services center.

29 (12) "Residential facility screening team" means a team of persons appointed as provided in 53-20-133.

30 (13) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally
31 disabled and in need of developmental disability services.

32 (14) "Responsible person" means any person willing and able to assume responsibility for a person who is
33 developmentally disabled or alleged to be developmentally disabled.

34 (15) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical

1 disability or a combination of both, rendering a person unable to function in a community-based setting and which has
2 resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person
3 afflicted of the ability to protect ~~his~~ the person's life or health."

4
5 **Section 469.** Section 53-20-104, MCA, is amended to read:

6 **"53-20-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an independent board
7 of inquiry and review to ensure that the treatment of all persons admitted to a residential facility is humane and decent
8 and meets the requirements set forth in this part.

9 (2) The board shall review all plans for experimental research or hazardous treatment procedures involving
10 persons admitted to a residential facility to ensure that the research project is humane and not unduly hazardous and
11 that it complies with the principles of the statement on the use of human subjects for research of the American
12 association on mental deficiency and with the principles for research involving human subjects required by the United
13 States department of health and human services. An experimental research project involving persons admitted to a
14 residential facility affected by this part may not be commenced unless it is approved by the mental disabilities board
15 of visitors.

16 (3) The board shall investigate all cases of alleged mistreatment of a resident.

17 (4) The board shall at least annually inspect every residential facility that is providing a course of residential
18 habilitation and treatment to any person pursuant to this part. The board shall inspect the physical plant, including
19 residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The
20 board shall inquire concerning all habilitation programs being implemented by the facility.

21 (5) The board shall inspect the file of each person admitted to a residential facility pursuant to this part to
22 ensure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints,
23 isolation, or other extraordinary measures.

24 (6) The board may assist a resident at a residential facility in resolving any grievance the resident may have
25 concerning the resident's admission or course of treatment and habilitation in the facility.

26 (7) If the board believes that a facility is failing to comply with the provisions of this part in regard to its
27 physical facilities or its treatment of any resident, it shall report its findings at once to the superintendent of the facility
28 and the director of the department of ~~corrections~~ public health and human services. If appropriate, after waiting a
29 reasonable time for a response from the superintendent or the director, the board may notify the parents or guardian
30 of the resident involved, the next of kin, if known, the responsible person appointed by the court for the resident
31 involved, and the district court that has jurisdiction over the facility.

32 (8) The board shall report annually to the governor concerning the status of the residential facilities and
33 habilitation programs that it has inspected."

1 **Section 470.** Section 53-20-106, MCA, is amended to read:

2 **"53-20-106. Certification of professional persons.** (1) The department of ~~social and rehabilitation services and~~
3 ~~the department of corrections~~ public health and human services shall certify professional persons for purposes of this
4 part.

5 (2) The department of ~~social and rehabilitation services and the department of corrections~~ public health and
6 human services shall adopt rules governing the certification of professional persons. The rules must establish the
7 appropriate combination of education, skills, and experience necessary for certification and set forth qualifications
8 developed by reference to recognized national standards in the field of developmental disabilities."

9
10 **Section 471.** Section 53-20-125, MCA, is amended to read:

11 **"53-20-125. Outcome of screening -- recommendation for treatment at residential facility -- hearing.** (1) If as
12 a result of the screening required by 53-20-133 the residential facility screening team concludes that the person
13 evaluated is seriously developmentally disabled and recommends treatment and habilitation in a residential facility on
14 an extended basis, the team shall file its written recommendation and report with the court and request that the court
15 order the admission. The report shall include the factual basis for the recommendation and shall describe any tests or
16 evaluation devices that have been employed in evaluating the patient.

17 (2) If ~~no~~ a responsible person has not yet been appointed, the court may appoint one at this time. If there is
18 no parent or guardian, the court shall appoint a responsible person.

19 (3) At the request of the respondent, ~~his~~ the respondent's parents or guardian, or the responsible person, the
20 court shall appoint counsel for the respondent. If the parents ~~for~~ guardian ~~are~~ is indigent and if ~~they~~ the parents or
21 guardian ~~request~~ requests it, the court shall appoint counsel for the parents or guardian.

22 (4) Notice of the recommendation must be mailed or delivered to the respondent, ~~his~~ the respondent's parents
23 or guardian, the responsible person, next of kin, if known, and the attorney for the respondent, if any, and for the
24 parents or guardian, if any.

25 (5) The respondent, ~~his~~ the respondent's parents or guardian, the responsible person, or the attorney for any
26 party may request that a hearing be held on the recommendation. If a hearing is requested, the court shall mail or
27 deliver notice of the date, time, and place of the hearing to each of the parties listed at the beginning of this subsection.
28 The hearing must be held before the court without jury. The rules of civil procedure must apply.

29 (6) If the court finds that the respondent is seriously developmentally disabled, it shall order the respondent
30 admitted to a residential facility for an extended course of treatment and habilitation. If the court finds that the
31 respondent is developmentally disabled but not seriously developmentally disabled, it shall dismiss the petition and refer
32 the respondent to the department of ~~social and rehabilitation~~ public health and human services to be considered for
33 placement in community-based services according to 53-20-209. If the court finds that the respondent is not
34 developmentally disabled or is not in need of developmental disability services, it shall dismiss the petition.

1 (7) If none of the parties notified of the recommendation request a hearing, the court may issue an order
2 authorizing the person to be admitted to the residential facility for an extended period of treatment and habilitation or
3 the court may initiate its own inquiry as to whether the order should be granted. The court may refuse to authorize
4 admission of a person to a residential facility for an extended period of treatment and habilitation if admission is not
5 in the best interests of the person."

6
7 **Section 472.** Section 53-20-128, MCA, is amended to read:

8 **"53-20-128. Extension of admission period -- hearing.** (1) If the qualified mental retardation professional in
9 charge of the resident determines that the admission to the residential facility should continue beyond the period
10 specified in the court order, ~~he the professional~~ shall, at least 15 days before the end of the period set out in the court
11 order, send written notice of ~~his the professional's~~ recommendation and request for renewal of the order to the court
12 that issued the order, the resident, ~~his the resident's~~ parents or guardian, the next of kin, if known, the attorney who
13 most recently represented the resident, if any, and the responsible person appointed by the court, if any. The
14 recommendation and request must be accompanied by a written report describing the habilitation plan that has been
15 undertaken for the resident and the future habilitation plan that is anticipated by the qualified mental retardation
16 professional.

17 (2) If any person ~~so~~ notified requests a hearing, the court shall set a time and place for the hearing and shall
18 mail or deliver notice to all of the persons informed of the recommendation. The hearing must be conducted in the
19 manner set forth in 53-20-125. If the court finds that the residential admission is still justified, it may order continuation
20 of the admission to that residential facility or transfer of the resident to a different residential facility. If the court finds
21 that the resident is still in need of developmental disabilities services but does not require treatment in a residential
22 facility or if all parties are willing for the resident to participate in a community-based program of habilitation, it shall
23 refer the respondent to the department of ~~social and rehabilitation~~ public health and human services to be considered
24 for placement in community-based services according to 53-20-209. If the person is placed in community-based
25 services or if the need for developmental disabilities services no longer exists, the court shall dismiss the petition. The
26 court may not order continuation of admission to a residential facility that does not have an individualized habilitation
27 plan for the resident. In its order, the court shall make findings of fact on which its order is based. The court may on
28 its own initiative inquire concerning the suitability of continuing an admission to a residential facility."

29
30 **Section 473.** Section 53-20-133, MCA, is amended to read:

31 **"53-20-133. Residential facility screening team -- referral by court -- membership -- rules.** (1) When the district
32 court considers a person for commitment to a residential facility under this part, the court shall refer the person to the
33 residential facility screening team for screening to determine whether placement and habilitation in a residential facility
34 are appropriate for the person.

(2) A court may not commit a person to a residential facility under 53-20-125 unless the residential facility screening team determines that placement and habilitation in a residential facility are appropriate for the person.

(3) The residential facility screening team may not determine that placement and habilitation in a residential facility are appropriate unless the residential facility screening team determines that the person is seriously developmentally disabled.

(4) The residential facility screening team shall provide the court with the social and placement information relied upon by the residential facility screening team in making its determination.

(5) For purposes of this part, the department of ~~social and rehabilitation services and the department of corrections~~ public health and human services shall adopt rules providing for the membership and terms of the members of the residential facility screening team and setting forth the criteria and procedures to govern the determinations made by the residential facility screening team."

Section 474. Section 53-20-161, MCA, is amended to read:

"53-20-161. Maintenance of records. (1) Complete records for each resident must be maintained and must be readily available to persons who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident's records must be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if the resident is capable of giving informed consent, or by ~~his~~ the resident's parents or guardian or the responsible person must be permitted access to the resident's records. Information may not be released from the records of a resident or former resident of the residential facility unless the release of the information has been properly authorized in writing by:

(a) the court;

(b) the resident or former resident if ~~he~~ the resident or former resident is over the age of majority and is capable of giving informed consent;

(c) the parents or guardian in charge of a resident under the age of 12;

(d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and the resident if the resident is capable of giving informed consent;

(e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

(f) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;

(g) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or

(h) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian of a resident

1 of that facility whenever release is required by federal or state law or department of ~~social and rehabilitation~~ public
2 health and human services rules.

3 (2) Information may not be released by a superintendent or ~~his~~ the superintendent's designee as set forth in
4 subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the
5 resident, ~~his~~ the resident's parents or guardian, the attorney who most recently represented the resident, if any, the
6 responsible person appointed by the court, if any, and the court that ordered the admission. If any of the parties so
7 notified objects to the release of information, they may petition the court for a hearing to determine whether the release
8 of information should be allowed. Information may not be released pursuant to subsection (1)(f), (1)(g), or (1)(h) unless
9 it is released to further some legitimate need of the resident or to accomplish a legitimate purpose of the facility that
10 is not inconsistent with the needs and rights of the resident. Information may not be released pursuant to these
11 subsections except in accordance with written policies consistent with the requirements of this part adopted by the
12 facility. Persons receiving notice of a proposed release of information shall also receive a copy of the written policy of
13 the facility governing release of information.

14 (3) These records must include:

15 (a) identification data, including the resident's legal status;

16 (b) the resident's history, including but not limited to:

17 (i) family data, educational background, and employment record;

18 (ii) prior medical history, both physical and mental, including prior institutionalization;

19 (c) the resident's grievances, if any;

20 (d) an inventory of the resident's life skills, including mode of communication;

21 (e) a record of each physical examination that describes the results of the examination;

22 (f) a copy of the individual habilitation plan and any modifications ~~thereto~~ to the plan and an appropriate
23 summary that will guide and assist the resident care workers in implementing the resident's program;

24 (g) the findings made in monthly reviews of the habilitation plan, which findings must include an analysis of
25 the successes and failures of the habilitation program and direct whatever modifications are necessary;

26 (h) a copy of the postinstitutionalization plan that includes a statement of services needed in the community
27 and any modifications ~~thereto~~ to the plan and a summary of the steps that have been taken to implement that plan;

28 (i) a medication history and status;

29 (j) a summary of each significant contact by a professional person with a resident;

30 (k) a summary of the resident's response to ~~his~~ the resident's habilitation plan, prepared by a qualified mental
31 retardation professional involved in the resident's habilitation and recorded at least monthly. Wherever possible, ~~such~~
32 the response must be scientifically documented.

33 (l) a monthly summary of the extent and nature of the resident's work activities and the effect of the activity
34 upon the resident's progress in the habilitation plan;

1 (m) a signed order by a qualified mental retardation professional, professional person, or physician for any
2 physical restraints;

3 (n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered
4 by a staff member noting personal knowledge of the incident or accident or other source of information, including any
5 reports of investigations of resident's mistreatment;

6 (o) a summary of family visits and contacts;

7 (p) a summary of attendance and leaves from the facility;

8 (q) a record of any seizures, illnesses, injuries, and treatments ~~thereof~~ and immunizations."

9
10 **Section 475.** Section 53-20-163, MCA, is amended to read:

11 **"53-20-163. Abuse of residents prohibited.** (1) Every residential facility shall prohibit mistreatment, neglect,
12 or abuse in any form of any resident. Alleged violations must be reported immediately to the superintendent of the
13 facility, and there must be a written record that:

14 (a) each alleged violation has been thoroughly investigated and findings stated; and

15 (b) the investigation into the alleged violation was initiated within 24 hours of the report of the incident and
16 the results were reported to the director of the department of ~~corrections~~ public health and human services.

17 (2) The reports must also be made to the mental disabilities board of visitors monthly. Each facility shall cause
18 a written statement of this policy to be posted in each cottage and building and circulated to all staff members."

19
20 **Section 476.** Section 53-20-202, MCA, is amended to read:

21 **"53-20-202. Definitions.** As used in this part, the following definitions apply:

22 (1) "Comprehensive developmental disability system" means a system of services, including but not limited
23 to the following basic services, with the intention of providing alternatives to institutionalization:

24 (a) evaluation services;

25 (b) diagnostic services;

26 (c) treatment services;

27 (d) day-care services;

28 (e) training services;

29 (f) education services;

30 (g) employment services;

31 (h) recreation services;

32 (i) personal-care services;

33 (j) domiciliary-care services;

34 (k) special living arrangements services;

- (l) counseling services;
(m) information and referral services;
(n) follow-along services;
(o) protective and other social and sociolegal services; and
(p) transportation services.

(2) "Department" means the department of ~~social and rehabilitation services~~ public health and human services.

(3) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurological handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of the person.

(4) "Developmental disabilities facility" means any service or group of services offering care to the developmentally disabled on an inpatient, outpatient, residential, clinical, or other programmatic basis.

(5) "Planning and advisory council" or "council" means the developmental disabilities planning and advisory council created in 2-15-2204."

Section 477. Section 53-20-213, MCA, is amended to read:

"53-20-213. Departments to cooperate. The department of ~~corrections and human services, the department of social and rehabilitation services, the department of health and environmental sciences, the department of family public health and human~~ services, and the office of superintendent of public instruction shall cooperate on all aspects of each agency's respective programs for the developmentally disabled."

Section 478. Section 53-20-214, MCA, is amended to read:

"53-20-214. Certain transfers of funds authorized. Funds appropriated to the ~~department of corrections and human services,~~ Montana state hospital, or Montana developmental center may be transferred by budget amendment as provided in appropriation acts and with the approval of the governor to the department of ~~social and rehabilitation~~ public health and human services for comprehensive developmental disability systems if residents of any of those institutions are transferred to a comprehensive developmental disability system resulting in less expenditures at that institution than allowed by legislative appropriation."

Section 479. Section 53-20-302, MCA, is amended to read:

"53-20-302. Definition of community home -- limitation on number of residents. A community home for the developmentally disabled is a family-oriented residence or home designed to provide facilities for two to eight developmentally disabled persons, established as an alternative to existing state institutions. The number of developmentally disabled persons may not exceed eight in ~~such~~ a community home, except that the department of

1 ~~family public health and human~~ services may grant written approval for more than eight but not more than twelve
2 persons."

3
4 **Section 480.** Section 53-20-303, MCA, is amended to read:

5 **"53-20-303. Parties authorized to establish and operate community homes.** (1) Nonprofit corporations or
6 associations may be formed or organized in any community for the purposes of establishing a community home or
7 homes for the developmentally disabled under this part and to receive services, facilities, and funds as the department
8 of ~~social and rehabilitation~~ public health and human services and other governmental units may be authorized by law
9 to provide.

10 (2) The department may also establish a community home or homes for the developmentally disabled under
11 this part and receive services, facilities, and funds as the department and other governmental units may be authorized
12 by law to provide."

13
14 **Section 481.** Section 53-20-304, MCA, is amended to read:

15 **"53-20-304. Department contracts with nonprofit corporations -- governmental units providing for community**
16 **homes.** (1) The department of ~~social and rehabilitation~~ public health and human services may contract with nonprofit
17 corporations or associations to provide facilities and services for the developmentally disabled in community homes for
18 the developmentally disabled and is authorized to expend ~~moneys~~ money appropriated or available for that purpose.

19 (2) Governmental units, including but not limited to counties, municipalities, school districts, or state
20 institutions of higher learning, are authorized to provide, at their own expense, funds, materials, facilities, and services
21 for community homes for the developmentally disabled."

22
23 **Section 482.** Section 53-20-305, MCA, is amended to read:

24 **"53-20-305. Local control of community homes -- departmental licensing, administration, operation, health**
25 **and safety standards.** (1) Community homes for the developmentally disabled may be under local control, and the
26 nonprofit corporations or associations operating community homes are authorized to establish homes and programs
27 they believe in the best interest of their homes.

28 (2) (a) A community home for the developmentally disabled ~~shall~~ must be licensed annually by the department
29 of ~~family public health and human~~ services.

30 (b) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in the
31 certification process.

32 (3) ~~(a)~~ The department of ~~family public health and human~~ services for the purpose of licensing shall adopt
33 standards and rules concerning the administration, operation, health, and safety of community homes for the
34 developmentally disabled.

1 ~~(b) The department of health and environmental sciences shall provide advice and recommendations to the~~
2 ~~department of social and rehabilitation services and the department of family services concerning the standards for~~
3 ~~health and safety."~~

4
5 **Section 483.** Section 53-20-306, MCA, is amended to read:

6 "53-20-306. **Federal aid.** The department of ~~social and rehabilitation~~ public health and human services ~~is~~
7 ~~authorized to may~~ apply for and receive federal-aid money or other assistance ~~which that may be is~~ available for
8 programs in the nature of the program created by this part."

9
10 **Section 484.** Section 53-20-307, MCA, is amended to read:

11 "53-20-307. **Health and safety standards for licensing.** (1) (a) After initial certification by the state fire
12 prevention and investigation program of the department of justice, community homes must be certified annually for fire
13 and life safety by the department of justice.

14 (b) The department of justice shall notify the department of ~~social and rehabilitation services and the~~
15 ~~department of family~~ public health and human services when a community home has been certified.

16 (2) (a) Local health officers shall certify community homes for compliance with health and safety standards.
17 If for any reason the local authority cannot complete the certification in a timely manner, the department of ~~health and~~
18 ~~environmental sciences~~ public health and human services is authorized to make the determination on certification.

19 (b) A reasonable fee may be charged to authorized parties as defined in 53-20-303 for the health and safety
20 certification."

21
22 **Section 485.** Section 53-20-504, MCA, is amended to read:

23 "53-20-504. **Powers and duties of department of** ~~corrections and human services and department of social~~
24 ~~and rehabilitation~~ public health and human services. The department of ~~corrections and human services and the~~
25 ~~department of social and rehabilitation~~ public health and human services:

26 (1) may operate or contract with a nonprofit corporation that demonstrates expertise in and the capability of
27 providing programs for the patient population to be served by the facility and for the operation and management of
28 nursing homes;

29 (2) shall ensure that any state-owned nursing homes are in compliance with federal and state regulations;

30 (3) shall adopt rules for staffing requirements and the admission of patients;

31 (4) may accept grants, gifts, bequests, and contributions in money or property or any other form from
32 individuals, corporations, associations, or federal, state, and local government agencies for the purposes of establishing
33 and operating nursing homes."

1 **Section 486.** Section 53-20-505, MCA, is amended to read:

2 **"53-20-505. Disposition of facility.** ~~Nothing in Section 53-20-504 prohibits~~ does not prohibit the disposition
3 of the facility as provided in 77-2-302 if an appropriate use for the facility cannot be found by the department of
4 ~~corrections and human services or the department of social and rehabilitation~~ public health and human services."

5
6 **Section 487.** Section 53-21-102, MCA, is amended to read:

7 **"53-21-102. (Temporary) Definitions.** As used in this part, the following definitions apply:

8 (1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created
9 by 2-15-211.

10 (2) "Court" means any district court of the state of Montana.

11 (3) "Department" means the department of ~~corrections~~ public health and human services provided for in Title
12 ~~2, chapter 15, part 23~~ 2-15-2201.

13 (4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious
14 bodily harm from the activity of a person who appears to be seriously mentally ill.

15 (5) "Friend of respondent" means any person willing and able to assist a mentally ill person, a person alleged
16 to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally ill in dealing with legal
17 proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the
18 person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other
19 person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person
20 may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent,
21 the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change
22 its designation of the friend of respondent.

23 (6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse
24 effects on an individual's cognitive or volitional functions. The term does not include:

25 (a) addiction to drugs or alcohol; or

26 (b) drug or alcohol intoxication.

27 (7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped
28 and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental
29 health clinic or treatment center approved by the department. A correctional institution or facility or jail is not a mental
30 health facility within the meaning of this part.

31 (8) "Mentally ill" means suffering from a mental disorder which has not resulted in self-inflicted injury or injury
32 to others or the imminent threat of injury but which:

33 (a) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with
34 the available assistance of family, friends, or others;

(b) is treatable, with a reasonable prospect of success and consistent with the least restrictive course of treatment as provided in 53-21-127(3), at or through the facility to which the person is to be committed;

(c) has deprived the person of the capacity to make an informed decision concerning treatment;

(d) has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and

(e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated, predictably result in further serious deterioration in the mental condition of the person. Predictability may be established by the patient's medical history.

(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(10) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(11) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(12) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be mentally ill or seriously mentally ill.

(15) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat of injury or which has deprived the person afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury. A person may not be involuntarily committed to a mental health facility or detained for evaluation and treatment because the person is an epileptic or is mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes the person to be seriously mentally ill within the meaning of this part.

(16) "State hospital" means the Montana state hospital. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-102. (Effective July 1, 1997) Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of ~~corrections~~ public health and human services provided for in ~~Title 2, chapter 15, part 23~~ 2-15-2201.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

1 (5) "Friend of respondent" means any person willing and able to assist a seriously mentally ill person or person
2 alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and
3 others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any,
4 representatives of a charitable or religious organization, or any other person appointed by the court to perform the
5 functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of
6 respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference
7 of the respondent. The court may at any time, for good cause shown, change its designation of the friend of
8 respondent.

9 (6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse
10 effects on an individual's cognitive or volitional functions. The term does not include:

11 (a) addiction to drugs or alcohol; or

12 (b) drug or alcohol intoxication.

13 (7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped
14 and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental
15 health clinic or treatment center approved by the department. A correctional institution or facility or jail is not a mental
16 health facility within the meaning of this part.

17 (8) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and
18 sisters of a person.

19 (9) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily
20 admitted for treatment for any period of time.

21 (10) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

22 (11) "Professional person" means:

23 (a) a medical doctor; or

24 (b) a person who has been certified, as provided for in 53-21-106, by the department.

25 (12) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional
26 person.

27 (13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

28 (14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury
29 or injury to others or the imminent threat of injury or which has deprived the person afflicted of the ability to protect
30 the person's life or health. For this purpose, injury means physical injury. A person may not be involuntarily committed
31 to a mental health facility or detained for evaluation and treatment because the person is an epileptic, mentally
32 deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes the person to be
33 seriously mentally ill within the meaning of this part.

34 (15) "State hospital" means the Montana state hospital."

1 **Section 488.** Section 53-21-106, MCA, is amended to read:

2 **"53-21-106. (Temporary) Certification of professional persons.** (1) The department shall certify professional
3 persons, as defined in 53-21-102, for the purpose of this part.

4 (2) The department, with reference to recognized national standards in the field of mental health, shall adopt
5 standards and rules governing the certification of professional persons.

6 (3) The rules for certification must address but are not limited to:

7 (a) the type of education that an individual has received, including degrees;

8 (b) the type of experience or training received by the individual;

9 (c) continuing education, training, instruction, and work experience necessary to maintain certification;

10 (d) an examination instrument to be used to determine an individual's proficiency and understanding of mental
11 health laws, diagnosis, and treatment procedures;

12 (e) the procedure for categorical certification qualifying the level of professional authority and responsibility
13 of an individual; and

14 (f) specific procedures for certification, recertification, and revocation of certification. (Terminates July 1,
15 1997--sec. 1, Ch. 541, L. 1989.)

16 **53-21-106. (Effective July 1, 1997) Certification of professional persons.** (1) The department shall certify
17 professional persons as defined in 53-21-102(10)(b) for the purpose of this part.

18 (2) The department, with reference to recognized national standards in the field of mental health, shall adopt
19 standards and rules governing the certification of professional persons as defined in 53-21-102.

20 (3) The rules for certification must address but are not limited to:

21 (a) the type of education that an individual has received, including degrees;

22 (b) the type of experience or training received by the individual;

23 (c) continuing education, training, instruction, and work experience necessary to maintain certification;

24 (d) an examination instrument to be used to determine an individual's proficiency and understanding of mental
25 health laws, diagnosis, and treatment procedures;

26 (e) the procedure for categorical certification qualifying the level of professional authority and responsibility
27 of an individual; and

28 (f) specific procedures for certification, recertification, and revocation of certification."
29

30 **Section 489.** Section 53-21-138, MCA, is amended to read:

31 **"53-21-138. Diversion of certain mentally ill persons from jail.** (1) The sheriff or administrator of a jail in each
32 county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to
33 be seriously mentally ill, as defined in 53-21-102.

34 (2) If as a result of screening and observation it is believed that an inmate is seriously mentally ill, the sheriff

1 or administrator of the jail shall:

2 (a) request services from a crisis intervention program established by the department as provided for in
3 53-21-139;

4 (b) refer the inmate to the nearest community mental health center, as defined in ~~53-21-212~~ 53-21-201; or

5 (c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care
6 of persons who are seriously mentally ill.

7 (3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious
8 misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public
9 peace.

10 (4) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained
11 in a jail until the level of intoxication is reduced to the point that screening for serious mental illness can be performed."
12

13 **Section 490.** Section 53-21-139, MCA, is amended to read:

14 **"53-21-139. Crisis intervention programs.** (1) The department shall, subject to available appropriations,
15 establish crisis intervention programs. The programs must be designed to provide 24-hour emergency admission and
16 care of seriously mentally ill persons in a temporary, safe environment in the community as an alternative to placement
17 in jail.

18 (2) The department shall provide information and technical assistance regarding needed services and assist
19 counties in developing county plans for crisis intervention services and for the provision of alternatives to jail placement.

20 (3) The department may ~~enter into an interagency agreement with the department of social and rehabilitation~~
21 ~~services to provide crisis intervention programs as:~~

22 (a) a rehabilitative service under 53-6-101(3)(j); and

23 (b) a targeted case management service authorized in 53-6-101(3)(n)."
24

25 **Section 491.** Section 53-21-145, MCA, is amended to read:

26 **"53-21-145. Right to be free from unnecessary or excessive medication.** Patients have a right to be free from
27 unnecessary or excessive medication. ~~No~~ A medication ~~shall~~ may not be administered unless at the written order of
28 a physician. The attending physician ~~shall be~~ is responsible for all medication given or administered to a patient. The
29 use of medication ~~shall~~ may not exceed standards of use that are advocated by the United States food and drug
30 administration. Notation of each individual's medication ~~shall~~ must be kept in ~~his~~ the individual's medical records. The
31 department of public health and environmental sciences ~~human services~~ shall adopt rules governing attending physician
32 review of the drug regimen of each patient under ~~his~~ the physician's care in a mental health facility, except that the
33 drug regimen of inpatients in hospitals ~~shall~~ must be reviewed no less than weekly. Except in the case of outpatients,
34 all prescriptions ~~shall~~ must be written with a termination date, which ~~shall~~ may not exceed 30 days. Medication ~~shall~~

1 may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities
2 that interfere with the patient's treatment program."

3
4 **Section 492.** Section 53-21-165, MCA, is amended to read:

5 **"53-21-165. Records to be maintained.** Complete patient records must be kept by the mental health facility
6 for the length of time required by rules established by the department of public health and ~~environmental sciences~~
7 human services. All records kept by the mental health facility must be available to any person authorized by the patient
8 in writing to receive these records and upon approval of the authorization by the board. The records must also be made
9 available to any attorney charged with representing the patient or any professional person charged with evaluating or
10 treating the patient. These records must include:

- 11 (1) identification data, including the patient's legal status;
- 12 (2) a patient history, including but not limited to:
 - 13 (a) family data, educational background, and employment record;
 - 14 (b) prior medical history, both physical and mental, including prior hospitalization;
- 15 (3) the chief complaints of the patient and the chief complaints of others regarding the patient;
- 16 (4) an evaluation that notes the onset of illness, the circumstances leading to admission, attitudes, behavior,
17 estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in
18 descriptive rather than interpretative fashion;
- 19 (5) a summary of each physical examination that describes the results of the examination;
- 20 (6) a copy of the individual treatment plan and any modifications to the plan;
- 21 (7) a detailed summary of the findings made by the reviewing professional person after each periodic review
22 of the treatment plan, required under 53-21-162(4), that analyzes the successes and failures of the treatment program
23 and includes recommendations for appropriate modification of the treatment plan;
- 24 (8) a copy of the individualized discharge plan and any modifications to the plan and a summary of the steps
25 that have been taken to implement that plan;
- 26 (9) a medication history and status that includes the signed orders of the prescribing physician. The staff
27 person administering the medication shall indicate by signature that orders have been carried out.
- 28 (10) a summary of each significant contact by a professional person with the patient;
- 29 (11) documentation of the implementation of the treatment plan;
- 30 (12) documentation of all treatment provided to the patient;
- 31 (13) chronological documentation of the patient's clinical course;
- 32 (14) descriptions of any changes in the patient's condition;
- 33 (15) a signed order by a professional person for any restrictions on visitations and communications;
- 34 (16) a signed order by a professional person for any physical restraints and isolation;

1 (17) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by
2 a staff member noting that the staff member has personal knowledge of the incident or specifying any other source
3 of information. The summary of the incident must be initialed within 24 hours by a professional person.

4 (18) a summary by the professional person in charge of the facility or by an appointed agent of the
5 determination made after the 30-day review provided for in 53-21-163."
6

7 **Section 493.** Section 53-21-201, MCA, is amended to read:

8 **"53-21-201. Definitions.** As used in this part, the following definitions apply:

9 (1) "Community mental health center" means a facility, not necessarily encompassed within one building, that
10 is licensed by the department of ~~health and environmental sciences~~ public health and human services as a mental health
11 center, as defined in 50-5-101, and that offers comprehensive mental health services that include at least the following
12 services to the public:

13 (a) outpatient services, including specialized outpatient services for children, the elderly, individuals who have
14 serious mental illness, and residents of its service area who have been discharged from inpatient treatment at a mental
15 health facility;

16 (b) 24-hour-a-day emergency care services;

17 (c) day treatment or other partial hospitalization services or psychosocial rehabilitation services;

18 (d) screening for patients being considered for admission to state mental health facilities to determine the
19 appropriateness of admission; and

20 (e) consultation and education in mental health.

21 (2) "Department" means the department of ~~corrections~~ public health and human services."
22

23 **Section 494.** Section 53-21-202, MCA, is amended to read:

24 **"53-21-202. Duties of department.** The department shall:

25 (1) take cognizance of matters affecting the mental health of the citizens of the state;

26 (2) initiate mental health care and treatment, prevention, and research as can best be accomplished by
27 community-centered services. The means must be utilized to initiate and operate these services in cooperation with
28 local agencies as established under this part.

29 (3) collect and disseminate information relating to mental health;

30 (4) prepare and maintain a comprehensive plan for the development of public mental health services in the
31 state;

32 (5) receive from agencies of the United States and other state agencies, persons or groups of persons,
33 associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions
34 for the development of mental health services within the state;

(6) establish standards for mental health programs that receive funds from the department;

(7) evaluate performance of programs that receive funds from the department in compliance with federal and state standards;

(8) coordinate state and community resources to ensure comprehensive delivery of services to children with emotional disturbances and submit at least a biennial report to the governor and the legislature concerning the activities and recommendations of the department and service providers; and

(9) appoint an advisory council to make recommendations to the department regarding services for emotionally disturbed children. The members of the advisory council shall serve without compensation and must include but not be limited to a representative of:

(a) the department;

~~(b) the department of family services;~~

~~(c)(b)~~ the office of public instruction;

~~(d)(c)~~ a youth court;

~~(e)(d)~~ parents of emotionally disturbed children; and

~~(f)(e)~~ service provider groups."

Section 495. Section 53-21-204, MCA, is amended to read:

"53-21-204. Mental health corporations. (1) Mental health regions must be established in the state mental health plan and must conform to the mental health regions as established in the state mental health construction plan promulgated by the ~~board of health and environmental sciences~~ department under the federal Community Mental Health Centers Act.

(2) The mental health regions must be established under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations may not be considered agencies of the department or the state of Montana; ~~however~~ However, they may retain and enter into retirement programs as established under Title 19, chapter 3, ~~The Public Employees' Retirement System Act.~~

(3) Upon the establishment of the mental health regions, the county commissioners in each of the counties in the region designated as participating counties pursuant to subsection (8) shall appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. In addition, unless the groups in subsections (3)(a) and (3)(b) are already represented, the board consists of three members-at-large who must be chosen according to the corporate bylaws, as follows:

(a) Two members must be chosen, one from each of the following groups:

(i) persons with severe and disabling mental illnesses; and

(ii) family members of persons with severe and disabling mental illnesses.

(b) One person must be chosen from among the following four groups:

(i) parents of children with emotional disturbances;

(ii) advocates of mental health services for the elderly;

(iii) health care professionals; or

(iv) organizations that provide community support services, such as food, housing, and clothing, to persons with severe and disabling mental illnesses.

(4) ~~Nothing in this~~ This section prohibits ~~does not prohibit~~ a regional mental health corporation from voluntarily expanding its board membership to include members-at-large, appointed by the board, from any of the groups described in subsections (3)(a) and (3)(b).

(5) The board must be established under guidelines adopted by the bylaws of the corporation. All appointments to the board must be for terms of 2 years, and the department must be notified in writing of all appointments.

(6) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of money and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, taxes, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part must be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(7) Regional mental health board members must be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

(8) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be

1 levied on that property.

2 (9) The regional board of mental health with the approval of the department shall establish a schedule of fees
3 for mental health services. The fees may be received by the board and used to implement the budget in accordance
4 with subsection (6)(d)."

5
6 **Section 496.** Section 53-21-212, MCA, is amended to read:

7 **"53-21-212. Definition.** As used in 53-21-211 through 53-21-214, the term "state agency" means:

8 ~~(1) the department of health and environmental sciences provided for in 2-15-2101;~~

9 ~~(2)(1) the department of social and rehabilitation~~ public health and human services provided for in 2-15-2201;

10 ~~(3) the department of corrections and human services provided for in 2-15-2301; and~~

11 ~~(4)(2) the mental disabilities board of visitors provided for in 2-15-211."~~

12
13 **Section 497.** Section 53-21-402, MCA, is amended to read:

14 **"53-21-402. Powers and duties of department of ~~corrections~~ public health and human services.** The
15 department of ~~corrections~~ public health and human services:

16 (1) shall contract with nonprofit corporations which demonstrate expertise in and the capability of providing
17 rehabilitative and restorative programs for aged citizens for the operation and management of nursing homes established
18 under this part;

19 (2) shall ensure that nursing homes established and operated under this part are in compliance with all
20 applicable federal and state regulations;

21 (3) shall adopt rules for staffing requirements and the admission of patients;

22 (4) shall provide that geriatric residents of the Montana state hospital have first priority for admission to
23 nursing homes established under this part;

24 (5) may accept grants, gifts, bequests, and contributions in money or property or any other form from
25 individuals, corporations, associations, or federal, state, and local government agencies for the purposes of establishing
26 and operating nursing homes under this part."

27
28 **Section 498.** Section 53-21-411, MCA, is amended to read:

29 **"53-21-411. Location and function of center for the aged -- rules.** (1) The institution located at Lewistown
30 is the Montana center for the aged. The primary function of the center is the care and treatment of persons 55 years
31 of age or older. Priority must be given to patients referred from the Montana state hospital.

32 (2) Appropriate admissions to the Montana center for the aged are persons unable to maintain themselves in
33 their homes or communities due to a mental disorder, as defined in 53-21-102, associated with the aging process, but
34 who do not require the intensity of treatment available at the Montana state hospital.

(3) Admissions to the center are voluntary. The department of ~~corrections~~ public health and human services may adopt rules concerning specific admission criteria, treatment, and discharge procedures."

Section 499. Section 53-21-412, MCA, is amended to read:

"53-21-412. Transfer of patients between Montana state hospital and center. (1) With the approval of the department of ~~corrections~~ public health and human services, Montana state hospital patients may be admitted to the center upon voluntary application by the patient or the patient's guardian.

(2) A patient of the center may be voluntarily admitted to Montana state hospital pursuant to 53-21-111 or involuntarily committed pursuant to 53-21-114 through 53-21-127 "

Section 500. Section 53-21-413, MCA, is amended to read:

"53-21-413. Discharge of patients. The superintendent of the center may authorize the discharge of a patient residing at the center according to rules adopted by the department of ~~corrections~~ public health and human services. However, ~~no~~ a patient may not be detained at the center without the consent of the patient or ~~his~~ the patient's guardian."

Section 501. Section 53-21-601, MCA, is amended to read:

"53-21-601. Location and primary function of hospital. (1) The facility providing mental health care services at Warm Springs, Montana, is the Montana state hospital and as its primary function provides care and treatment of mentally ill persons.

(2) (a) The Montana state hospital is a mental health facility, as defined in 53-21-102, of the department of ~~corrections~~ public health and human services for the care and treatment of mentally ill persons.

(b) The role of the Warm Springs facility is to provide intensive inpatient psychiatric services as one component in a comprehensive continuum of publicly and privately provided programs that emphasize treatment in the least restrictive environment.

(c) The mission of the Warm Springs facility is to stabilize persons with severe mental illness and to return them to the community as soon as possible if adequate community-based support services are available.

(3) The department shall adopt rules to manage the state hospital patient population in a manner that will ensure emergency access to services, protect public and individual safety, provide active treatment, implement effective discharge planning, and ensure access to appropriate community-based services.

~~(4) The department shall prepare a report to the 54th legislature that:~~

~~(a) describes current and projected future use of the Montana state hospital; and~~

~~(b) describes progress toward, and additional steps required for achievement of, accreditation by the joint commission on accreditation of healthcare organizations."~~

1 **Section 502.** Section 53-22-102, MCA, is amended to read:

2 **"53-22-102. Compact administrator.** The director of the department of ~~corrections~~ public health and human
3 services, ~~hereafter called "the director", shall be~~ is the compact administrator and ~~shall have the power to~~ may make
4 any rules necessary for the administration of the compact. The director shall cooperate with all departments, agencies,
5 and officers of the state and any political subdivision thereof to facilitate the proper administration of the Interstate
6 Compact on Mental Health or of any supplementary agreement or agreements entered into thereunder by this state."

7
8 **Section 503.** Section 53-22-104, MCA, is amended to read:

9 **"53-22-104. Annual budget.** The department of ~~corrections~~ public health and human services in its annual
10 budget shall include ~~such~~ amounts necessary to discharge the financial obligations incurred by it to carry out the
11 purposes of the Interstate Compact on Mental Health, and the legislature shall appropriate ~~such~~ sums necessary
12 ~~therefor~~ for carrying out the purposes of the compact."

13
14 **Section 504.** Section 53-24-103, MCA, is amended to read:

15 **"53-24-103. Definitions.** For purposes of this chapter, the following definitions apply:

16 (1) "Alcoholic" means a person who has a chronic illness or disorder of behavior characterized by repeated
17 drinking of alcoholic beverages to the extent that it endangers the health, interpersonal relationships, or economic
18 function of the individual or public health, welfare, or safety.

19 (2) "Approved private treatment facility" means a private agency ~~(whose that has as its function is the~~
20 treatment, rehabilitation, and prevention of chemical dependency) ~~and meeting, that meets~~ that meets the standards prescribed
21 in 53-24-208(1), and that is approved under 53-24-208.

22 (3) "Approved public treatment facility" means:

23 (a) a treatment agency operating under the direction and control of the department as a state agency and
24 approved under 53-24-208; or

25 (b) a treatment agency operating under the direction and control of a local government and approved under
26 53-24-208.

27 (4) "Chemical dependency" means the use of any chemical substance, legal or illegal, ~~which that~~ creates
28 behavioral or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug
29 dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or
30 the public health, welfare, or safety.

31 (5) "Department" means the department of ~~corrections~~ public health and human services provided for in
32 ~~2-15-2301~~ 2-15-2201.

33 (6) "Family member" is the spouse, mother, father, child, or member of the household of a chemically
34 dependent person whose life has been affected by the actions of the chemically dependent person and who may require

1 treatment.

2 (7) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has
3 ~~his~~ judgment otherwise so impaired that ~~he~~ the person is incapable of realizing and making a rational decision with
4 respect to ~~his~~ a need for treatment.

5 (8) "Incompetent person" means a person who has been adjudged incompetent by the district court.

6 (9) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as
7 a result of the use of alcohol.

8 (10) "Prevention" has meaning on four levels; these are:

9 (a) education to provide information to the school children and general public relating to chemical dependency
10 treatment and rehabilitative services and to reduce the consequences of life experiences acquired by contact with a
11 chemically dependent person;

12 (b) early detection and recovery from the illness before lasting emotional or physical damage, or both, have
13 occurred;

14 (c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full disability
15 has been reached;

16 (d) the provision of facility requirements to meet division program standards and improve public accessibility
17 for services.

18 (11) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and
19 care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational
20 rehabilitation, and career counseling, which may be extended to chemically dependent persons, intoxicated persons,
21 and family members."

22
23 **Section 505.** Section 53-24-204, MCA, is amended to read:

24 **"53-24-204. Powers and duties of department.** (1) To carry out this chapter, the department may:

25 (a) accept gifts, grants, and donations of money and property from public and private sources;

26 (b) enter into contracts;

27 (c) acquire and dispose of property.

28 (2) The department shall:

29 (a) approve treatment facilities as provided for in 53-24-208;

30 (b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan
31 each biennium;

32 (c) provide for and conduct statewide service system evaluations;

33 (d) distribute state and federal funds to the counties for approved treatment programs in accordance with the
34 provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to chemically dependent persons;

(f) establish criteria to be used for the development of new programs;

(g) certify and establish standards for the certification of:

(i) chemical dependency counselors; and

(ii) instructors providing chemical dependency educational courses;

(h) encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services;

(i) cooperate with the board of pardons and parole in establishing and conducting programs to provide treatment for chemically dependent and intoxicated persons in or on parole from penal institutions;

(j) establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses; and

(k) assist all interested public agencies and private organizations in developing education and prevention programs for chemical dependency."

Section 506. Section 53-30-101, MCA, is amended to read:

"53-30-101. Location and function of prison and women's correctional ~~center~~ system. (1) The institution at Deer Lodge is the state prison and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult male criminal offenders.

(2) The institution located in ~~accordance with sections 1 through 7, Chapter 651, Laws of 1991, Billings~~ is the women's correctional ~~center~~ system, and as its primary function ~~provides~~ is to provide facilities for the custody, treatment, training, and rehabilitation of adult female criminal offenders. ~~The department of corrections and human services may continue to operate the women's correctional center in a temporary location during the 1994-95 biennium. If the authorized institution does not require the level of services provided for in Chapter 651, Laws of 1991, an alternate site in the Billings area may be identified by department officials, city of Billings officials, and Yellowstone County officials as the site of the women's correctional facility."~~

Section 507. Section 53-30-102, MCA, is amended to read:

"53-30-102. Qualifications of warden of state prison and warden of women's correctional ~~center~~ system. The warden of the state prison and the warden of the women's correctional ~~center~~ system ~~shall~~ must be persons trained through education and experience in directing a training, rehabilitation, or custodial program in a penal institution."

Section 508. Section 53-30-105, MCA, is amended to read:

1 **"53-30-105. Good time allowance.** (1) The department of corrections ~~and human services~~ shall adopt rules
2 providing for the granting of good time allowance for inmates employed in any prison work or activity and to implement
3 subsection (5). The good time allowance ~~shall~~ must operate as a credit on the inmate's sentence as imposed by the
4 court, conditioned upon the inmate's good behavior and compliance with the rules made by the department or the
5 warden. The rules adopted by the department under this subsection may not grant good time allowance to exceed:

6 (a) 10 days per month for inmates assigned to maximum, close, and medium I security classifications;

7 (b) 13 days per month for those classified as medium II and minimum security classifications;

8 (c) 15 days per month for inmates after having been assigned as medium II or minimum security for an
9 uninterrupted period of 1 year;

10 (d) 13 days per month for those inmates enrolled in school who successfully complete the course of study
11 or who while so enrolled are released from prison by discharge or parole;

12 (e) 3 days per month for those inmates participating in self-improvement activities designated by the
13 department.

14 (2) In the event of an attempted escape by an inmate or a violation of the rules prescribed by the department
15 or warden, the inmate may be punished by the forfeiture of part or all good time allowances. The warden of the state
16 prison shall advise the department of any attempted escape or violation of rules on the part of the inmate. Any
17 punishment by forfeiture of good time allowance must be approved by the department.

18 (3) A person may not earn good time under this section while the person is on probation. A person may earn
19 good time while on parole at the rate of 30 days per month. If the department determines that a person has violated
20 the conditions of parole, it may, in its discretion, deduct good time credit accumulated under this subsection in an
21 amount up to and including all credit accumulated on the date of the violation.

22 (4) The warden of the state prison or the warden of the women's correctional system may request that all
23 or portions of any previously forfeited good time be restored as a result of subsequent good behavior. Any restoration
24 of good time allowance must be approved by the department.

25 (5) If the population at the Montana state prison or the Montana women's correctional ~~center~~ system exceeds
26 the design capacity of the institution, the department may grant an inmate additional good time credits in an amount
27 necessary to permit the inmate to become eligible for parole or to discharge the inmate's sentence. Good time credits
28 for the discharge of a sentence may not exceed 180 days. The award of good time under this subsection must
29 generally be provided to inmates who are nearest to parole eligibility or discharge."
30

31 **Section 509.** Section 53-30-106, MCA, is amended to read:

32 **"53-30-106. Excessive inmate population -- confinement of inmates in other institutions.** (1) If the inmate
33 population of a correctional institution or system exceeds the emergency capacity for 30 consecutive days, the director
34 of the department of corrections ~~and human services~~ may declare that the emergency capacity has been exceeded and

1 temporarily stop admissions to the institution or system. The director shall notify each sheriff and district court that
2 new inmates will not be accepted by the department for admission into the institution or system until the inmate
3 population is reduced to 95% or less of the emergency capacity. Persons committed to the department and persons
4 sought to be admitted remain in the department's legal custody but must be kept in a detention center in the jurisdiction
5 holding them. In the event the jurisdiction holding the inmate is at maximum capacity, the inmate may be placed in an
6 available detention center in another jurisdiction. The department shall reimburse that jurisdiction for the cost of
7 detention for the period beyond the normal time of delivery to a correctional institution administered by the department.
8 Reimbursement must be at a rate mutually agreeable to the department and the jurisdiction holding the person. The
9 rate must cover the reasonable costs of the holding jurisdiction. Expenses for medication, medical services, or
10 hospitalization for persons confined in a detention center under this section must be ~~borne~~ paid by the department.

11 (2) The department may enter into contracts with the federal government, other states, or the commissioners
12 of counties that have suitable detention centers for confining inmates committed to a correctional institution or system
13 administered by the department, either because a correctional institution or system has exceeded its emergency
14 capacity or because the department has no institution that is adequate for certain inmates.

15 (3) Within budgetary limits, the department may also enter into contracts with public or private corporations
16 for the confinement of selected inmates if suitable programs have been established."

17
18 **Section 510.** Section 53-30-110, MCA, is amended to read:

19 **"53-30-110. Expense of trial for offenses committed in prison.** Whenever a trial of any person takes place
20 under any of the provisions of 45-7-306 and whenever a prisoner in the state prison is tried for any crime committed
21 ~~therein in prison~~, the county clerk of the county where ~~such the~~ trial is held shall make out a statement of all the costs
22 incurred by the county for the trial of ~~such the~~ case and of guarding and keeping ~~such the~~ prisoner, properly certified
23 by a district judge of ~~said the~~ county, ~~which The statement shall must~~ be sent to the department of corrections ~~and~~
24 ~~human services~~ for its approval. After such approval, the department ~~must cause the amount of such~~ shall pay the
25 costs ~~to be paid~~ out of the money appropriated for the support of the state prison to the county treasurer of the county
26 where ~~such the~~ trial was held."

27
28 **Section 511.** Section 53-30-111, MCA, is amended to read:

29 **"53-30-111. Clothing and money furnished on discharge or parole.** The state prison shall furnish suitable
30 clothing to a discharged or paroled inmate. An inmate discharged and delivered to the custody of the federal
31 government or another state shall receive \$5; ~~all~~ All other discharged or paroled inmates may receive "gate money"
32 in an amount up to \$100. The department of corrections ~~and human services~~ may establish rules ~~which that~~
33 to deduct up to one-fourth of an inmate's wages earned under 53-1-301 and hold that money in a special account to
34 be disbursed to the inmate when ~~he the inmate~~ is discharged or paroled. This amount ~~shall be~~ is in addition to the "gate

1 money".

2
3 **Section 512.** Section 53-30-131, MCA, is amended to read:

4 **"53-30-131. Prison industries training program -- purpose and scope.** (1) In addition to any institutional
5 industry operated at the Montana state prison under Title 53, chapter 1, part 3, the department of corrections ~~and~~
6 ~~human services~~ shall conduct a prison industries training program.

7 (2) The purpose of the prison industries training program is to:

8 (a) provide innovative and progressive inmate reformation and rehabilitation possibilities by exposing inmates
9 to worthwhile training;

10 (b) prepare inmates for release by providing industries at the prison that utilize their skills, thus providing
11 experience beyond mere training, inculcating inmates with good production and work habits, and providing them with
12 a means to earn money that will be available to them upon release.

13 (3) The prison industries training program consists of vocational training, on-the-job training, and production
14 experience. The department may contract with public and private vocational education entities to provide this training.

15 (4) The program may provide training and experience involving cultivation, production, repair, construction,
16 refurbishment, service, and related processes involving personal property, including but not limited to such items as
17 crops, livestock, furniture, office and electrical equipment, and motor vehicles. The products and services, with the
18 exception of livestock and agricultural products produced from the Montana state prison ranch and products or services
19 of a federally certified prison industries program, may be provided only to state agencies, local government units, school
20 districts, authorities, and other governmental entities."

21
22 **Section 513.** Section 53-30-132, MCA, is amended to read:

23 **"53-30-132. Inmate participation and status -- prison industries training program -- wages and benefits.** (1)
24 An inmate participating in the prison industries training program may be granted a good time allowance, not to exceed
25 15 days per month, notwithstanding the limits contained in 53-30-105, for outstanding participation in the program
26 as defined by rules adopted by the department of corrections ~~and human services~~. The good time allowance has the
27 same effect as a good time allowance granted under 53-30-105, and the provisions of subsections (2) and (3) of
28 53-30-105 apply to the good time allowance. However, an inmate may not receive good time for participation in this
29 program under any other section or rule that would duplicate the good time authorized in this section.

30 (2) While engaged in on-the-job training and production, inmates not employed in a federally certified prison
31 industries program may be paid a wage commensurate with their production function. Wages must be established at
32 a rate that encourages efficient production and effective levels of inmate participation. Inmates employed in a federally
33 certified prison industries program must be paid as provided in 53-1-301(2).

34 (3) Inmates not working in a federally certified prison industries training program are not employees, either

1 public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates
2 working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

3 (4) Able-bodied persons committed to the Montana state prison as adult offenders shall be required to perform
4 work as provided for by the department of corrections ~~and human services~~."

5
6 **Section 514.** Section 53-30-133, MCA, is amended to read:

7 **"53-30-133. Administration of prison industries training program.** (1) (a) The prison industries training program
8 need not be a self-supporting program. The department of corrections ~~and human services~~ may enter into contracts
9 and establish prices for products or services produced by this program. Within budgetary restrictions, the department
10 shall establish prices that tend to maximize the amount of work available for inmates. All revenue raised through the
11 program may be used only for the program and payment of inmate wages.

12 (b) State agencies, local governments, school districts, authorities, and other local government entities are
13 encouraged to explore the possibilities of using the prison industries training program. State agencies shall cooperate
14 with the department of corrections ~~and human services~~ in notifying governmental entities within the state of the
15 program and of the services and products that are available.

16 (2) (a) The department of corrections ~~and human services~~ shall adopt rules implementing this program. Any
17 price lists established by the department are exempt from the provisions of Title 2, chapter 4, but the department may,
18 if it considers it an effective method of dissemination, publish the price lists in the Montana Administrative Register or
19 the Administrative Rules of Montana, or both.

20 (b) The department of corrections ~~and human services~~ is subject to program audits of the prison industries
21 training program by the legislative auditor."

22
23 **Section 515.** Section 53-30-141, MCA, is amended to read:

24 **"53-30-141. Extension of limits of confinement.** (1) The department of corrections ~~and human services~~ may
25 extend the limits of confinement of the Montana state prison for purposes of housing outside the prison fence inmates
26 who:

27 (a) are employed in ranch or agricultural industry programs; and

28 (b) have demonstrated sufficient reliability and trustworthiness.

29 (2) Housing units outside the confines of the prison fence may be created by renovation of existing buildings
30 or by the erection of modular-type units and associated facilities on the prison ranch.

31 (3) For the purpose of expediting the acquisition and construction of housing units authorized in subsection
32 (2) the department of administration may exempt the project from provisions of Montana law relating to the
33 employment of architects, advertising, labor, and wages. The department of administration need not comply with any
34 state bidding requirements that would preclude a sole source purchase."

Section 516. Section 53-30-303, MCA, is amended to read:

"53-30-303. **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections board" means a community corrections board as provided in 53-30-312.

(2) "Community corrections facility or program" means a community-based or community-oriented facility or program, other than a jail, that:

(a) is operated by a unit of local government, a tribal government, or a nongovernmental agency; and

(b) provides programs and services to aid offenders in:

(i) obtaining and holding regular employment;

(ii) enrolling in and maintaining academic courses;

(iii) participating in vocational training programs;

(iv) utilizing the resources of the community to meet their personal and family needs;

(v) obtaining the benefits of specialized treatment services that exist within the community; and

(vi) paying restitution or performing community restitution to crime victims.

(3) "Crime of violence" means:

(a) an offense in which a person uses or possesses and threatens the use of a deadly weapon during the commission or attempted commission of an offense, including felony assault, kidnapping, aggravated kidnapping, robbery, arson, burglary, aggravated burglary, escape, or intimidation;

(b) an offense, other than an offense in which negligence is an element of the offense, in which the person causes serious bodily injury or death to a person other than himself the person committing the offense during the commission or attempted commission of an offense; or

(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat, intimidation, or force against the victim.

(4) "Department" means the department of corrections ~~and human services~~ created in 2-15-2301.

(5) "Nongovernmental agency" means a person, private nonprofit agency, corporation, association, labor organization, or other nongovernmental entity.

(6) "Nonviolent felony offender" means a person who has committed a felony other than a crime of violence.

(7) "Offender" means a person who has entered a plea of guilty or has been convicted of a felony. The term ~~excludes~~ does not include a person who has committed a crime of violence.

(8) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

(9) "Unit of local government" means a county, city, town, or city-county consolidated government."

Section 517. Section 53-30-401, MCA, is amended to read:

"53-30-401. **Definitions.** As used in this part, unless the context requires otherwise, the following definitions

1 apply:

2 (1) "Department" means the department of corrections ~~and human services~~ provided for in 2-15-2301.

3 (2) "Reduction of sentence" includes changing an incarceration sentence to a grant of probation."

4
5 **Section 518.** Section 61-8-714, MCA, is amended to read:

6 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in subsections (7)
7 and (8), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less
8 than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than \$100 or more than
9 \$500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment
10 sentence will pose a risk to the defendant's physical or mental well-being.

11 (2) Except as provided in subsection (7), on a second conviction, the person shall be punished by a fine of
12 not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48 hours of which must
13 be served consecutively, or more than 6 months. Except as provided in subsection (7), 3 days of the imprisonment
14 sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a
15 risk to the defendant's physical or mental well-being.

16 (3) (a) Except as provided in subsection (7), on the third or subsequent conviction, the person shall be
17 punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served
18 consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000. Except as provided in
19 subsection (7), notwithstanding any provision to the contrary providing for suspension of execution of a sentence
20 imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed
21 for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

22 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall
23 order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the
24 procedure provided under 61-8-421.

25 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not
26 subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy
27 to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to
28 have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession
29 of a person other than the owner in violation of the criminal laws of this state or the United States.

30 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the
31 person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the
32 forfeiture is sought.

33 (4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall
34 complete an alcohol information course at an alcohol treatment program approved by the department of ~~corrections~~

1 public health and human services, which may, in the sentencing court's discretion and upon recommendation of a
2 certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or
3 subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition,
4 the defendant shall complete an alcohol information course at an alcohol treatment program approved by the
5 department of ~~corrections~~ public health and human services, which must include alcohol or drug treatment, or both.
6 Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the
7 court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course
8 or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course
9 is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor,
10 the defendant may attend the information course and treatment program of the defendant's choice. The treatment
11 provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol problem,
12 as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

13 (5) For the purpose of determining the number of convictions under this section, "conviction" means a final
14 conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a
15 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state,
16 which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes
17 of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous
18 conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a
19 prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal
20 justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court
21 order upon good cause shown.

22 (6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of
23 61-8-406 also constitutes a conviction for a violation of 61-8-401.

24 (7) The court may order that a term of imprisonment imposed under this section be served in another facility
25 made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the
26 expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the
27 premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not
28 required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept
29 or reject a defendant referred by the sentencing court.

30 (8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense,
31 the court may order that a term of imprisonment imposed under this section be served by imprisonment under home
32 arrest as provided in Title 46, chapter 18, part 10."

33
34 **Section 519.** Section 61-8-722, MCA, is amended to read:

1 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in subsection (7),
2 a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall
3 be punished by a fine of not less than \$100 or more than \$500.

4 (2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, ~~he~~ the person shall
5 be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less
6 than \$300 or more than \$500.

7 (3) (a) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406,
8 ~~he~~ the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and
9 by a fine of not less than \$500 or more than \$1,000.

10 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall
11 order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the
12 procedure provided under 61-8-421.

13 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not
14 subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy
15 to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to
16 have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession
17 of a person other than the owner in violation of the criminal laws of this state or the United States.

18 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the
19 person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the
20 forfeiture is sought.

21 (4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension
22 of driver's licenses, apply to any conviction under 61-8-406.

23 (5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall
24 complete an alcohol information course at an alcohol treatment program approved by the department of ~~corrections~~
25 public health and human services, which may include alcohol or drug treatment, or both, if considered necessary by
26 the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement
27 of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program.
28 If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

29 (6) For the purpose of determining the number of convictions under this section, "conviction" means a final
30 conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral
31 deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been
32 vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5
33 years have elapsed between the commission of the present offense and a previous conviction. If there has been no
34 additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section,

1 then the prior offense must be expunged from the defendant's record.

2 (7) The court may order that a term of imprisonment imposed under this section be served in another facility
3 made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the
4 expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the
5 premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not
6 required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept
7 or reject a defendant referred by the sentencing court.

8 (8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense,
9 the court may order that a term of imprisonment imposed under this section be served by imprisonment under home
10 arrest as provided in Title 46, chapter 18, part 10."

11
12 **Section 520.** Section 69-3-1002, MCA, is amended to read:

13 **"69-3-1002. Eligibility -- rules.** (1) A residential subscriber with single telephone line service at ~~his~~ the
14 subscriber's principal residence is eligible for low income telephone assistance if ~~he~~ the subscriber is certified by the
15 department of ~~social and rehabilitation~~ public health and human services as a recipient of medicaid benefits.

16 (2) The department shall periodically certify and verify the eligibility of a subscriber to receive low income
17 telephone assistance.

18 (3) The department may adopt rules to establish procedures for the certification and verification of eligible
19 subscribers."

20
21 **Section 521.** Section 69-3-1006, MCA, is amended to read:

22 **"69-3-1006. Federal requirements.** The public service commission, the department of ~~social and rehabilitation~~
23 public health and human services, and participating providers of local telecommunications services shall comply with
24 federal requirements for the receipt of matching federal low income telephone assistance."

25
26 **Section 522.** Section 72-16-217, MCA, is amended to read:

27 **"72-16-217. List of deaths to be made by department of public health and human services -- copy to county**
28 **clerk.** The department of public health and environmental sciences ~~human services~~ shall prepare on or before the fifth
29 of January, April, July, and October of each year a list of all deaths, together with the date of ~~such~~ the death, reported
30 to it during ~~such~~ the period and shall send a copy of ~~such~~ the list of deaths to the county clerk of each county in the
31 state."

32
33 **Section 523.** Section 72-17-102, MCA, is amended to read:

34 **"72-17-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Department" means the department of public health and environmental sciences human services provided for in ~~Title 2, chapter 15, part 21~~ 2-15-2201.

(4) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(5) "Donor" means an individual who makes a gift of all or part of the individual's body.

(6) "Enucleator" means an individual who is certified pursuant to 72-17-311 to remove or process eyes or parts of eyes.

(7) "Hospital" means a facility licensed, accredited, or approved under the laws of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(8) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(9) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(10) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(11) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(12) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Technician" means an individual who is certified by the state board of medical examiners to remove or process a part."

Section 524. Section 75-2-103, MCA, is amended to read:

"75-2-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be

1 injurious to human health or welfare, animal or plant life, or property or would unreasonably interfere with the
2 enjoyment of life, property, or the conduct of business.

3 ~~(5) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

4 ~~(6)(5)~~ (a) "Commercial hazardous waste incinerator" means:

5 (i) an incinerator that burns hazardous waste; or

6 (ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

7 (b) Commercial hazardous waste incinerator does not include a research and development facility that receives
8 federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment
9 remediation technologies.

10 ~~(7)(6)~~ "Department" means the department of health and environmental sciences provided for in Title 2,
11 chapter 15, part 21.

12 ~~(8)(7)~~ "Emission" means a release into the outdoor atmosphere of air contaminants.

13 ~~(9)(8)~~ "Environmental protection law" means a law contained in or an administrative rule adopted pursuant
14 to Title 75, chapter 2, 5, 10, or 11.

15 ~~(10)(9)~~ "Hazardous waste" means:

16 (a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative
17 rules adopted pursuant to Title 75, chapter 10, part 4; or

18 (b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

19 ~~(11)(10)~~ (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible
20 material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of
21 removal, destruction, disposal, or volume reduction of all or any portion of the input material.

22 (b) Incinerator does not include:

23 (i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as
24 refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

25 (ii) space heaters that burn used oil;

26 (iii) wood-fired boilers; or

27 (iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

28 ~~(12)(11)~~ "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of
29 human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The
30 term includes:

31 (a) cultures and stocks of infectious agents;

32 (b) human pathological wastes;

33 (c) waste human blood or products of human blood;

34 (d) sharps;

1 (e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to
2 infectious agents during research;

3 (f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

4 (g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from
5 humans or animals.

6 ~~(13)~~(12) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private
7 corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal
8 government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

9 ~~(14)~~(13) "Principal" means a principal of a corporation, including but not limited to a partner, associate,
10 officer, parent corporation, or subsidiary corporation.

11 ~~(15)~~(14) "Small business stationary source" means a stationary source that:

12 (a) is owned or operated by a person who employs 100 or fewer individuals;

13 (b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

14 (c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661,
15 et seq.;

16 (d) emits less than 50 tons per year of an air pollutant;

17 (e) emits less than a total of 75 tons per year of all air pollutants combined; and

18 (f) is not excluded from this definition under 75-2-108(3).

19 ~~(16)~~(15) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes,
20 including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical
21 waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities;
22 construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter;
23 discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood
24 byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical
25 equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials;
26 treated lumber and timbers; and pathogenic or infectious waste.

27 (b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated
28 under the mining and reclamation laws administered by the department of state lands, or slash and forest debris
29 regulated under laws administered by the department of state lands."
30

31 **Section 525.** Section 75-5-103, MCA, is amended to read:

32 **"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

33 ~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

34 ~~(2)~~(1) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other

1 wastes, creating a hazard to human health.

2 ~~(3)~~(2) "Council" means the water pollution control advisory council provided for in 2-15-2107.

3 ~~(4)~~(3) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a
4 parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to
5 75-5-301(5)(c).

6 ~~(5)~~(4) "Department" means the department of health and environmental sciences provided for in Title 2,
7 chapter 15, part 21.

8 ~~(6)~~(5) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes
9 sewage systems and treatment works.

10 ~~(7)~~(6) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of
11 chemical, physical, biological, and other constituents which are discharged into state waters.

12 ~~(8)~~(7) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether
13 or not those uses are included in the water quality standards.

14 ~~(9)~~(8) "High-quality waters" means state waters whose quality for a parameter is better than standards
15 established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification
16 for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and
17 associated aquatic life.

18 ~~(10)~~(9) "Industrial waste" means a waste substance from the process of business or industry or from the
19 development of any natural resource, together with any sewage that may be present.

20 ~~(11)~~(10) "Interested person" means a person who has submitted oral or written comments on the
21 department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a
22 person who has requested authorization to degrade high-quality waters.

23 ~~(12)~~(11) "Local department of health" means the staff, including health officers, employed by a county, city,
24 city-county, or district board of health.

25 ~~(13)~~(12) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by
26 the department where water quality standards may be exceeded, subject to conditions that are imposed by the
27 department and that are consistent with the rules adopted by the board.

28 ~~(14)~~(13) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime,
29 sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment,
30 radioactive materials, solid waste, and all other substances that may pollute state waters.

31 ~~(15)~~(14) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point
32 source.

33 ~~(16)~~(15) "Parameter" means a physical, biological, or chemical property of state water when a value of that
34 property affects the quality of the state water.

~~(17)~~(16) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(18)~~(17) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(19)~~(18) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(20)~~(19) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(21)~~(20) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(22)~~(21) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

~~(23)~~(22) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

~~(24)~~(23) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(25)~~(24) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(26)~~(25) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or

otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

Section 526. Section 75-6-102, MCA, is amended to read:

"75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(2)(1)~~ "Community water system" means any public water supply system that serves at least 10 service connections used by year-round residents or regularly serves at least 25 year-round residents.

~~(3)(2)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

~~(4)(3)~~ "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(5)(4)~~ "Drainage" means rainfall, surface, and subsoil water.

~~(6)(5)~~ "Industrial waste" means any waste substance from the processes of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(7)(6)~~ "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water supply system.

~~(8)(7)~~ "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(9)(8)~~ "Person" means any individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

~~(10)(9)~~ "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

~~(11)(10)~~ "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 10 or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.

~~(12)(11)~~ "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is

1 designed to serve or serves 10 or more families or 25 or more persons daily or has at least 10 service connections at
2 least 60 days out of the calendar year.

3 ~~(13)~~(12) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations at Title 40, CFR, Parts 141 and
4 142.

5 ~~(14)~~(13) "Sewage" means water-carried waste products from residences, public buildings, institutions, or
6 other buildings, including discharge from human beings, together with ground water infiltration and surface water
7 present.

8 ~~(15)~~(14) "State waters" means any body of water, irrigation system, or drainage system, either surface or
9 underground.

10 ~~(16)~~(15) "Transient noncommunity water system" means any public water supply system that is not a
11 community water system and that serves persons on a transient basis."

12
13 **Section 527.** Section 75-10-103, MCA, is amended to read:

14 **"75-10-103. Definitions.** Unless the context clearly requires otherwise, in this part, the following definitions
15 apply:

16 ~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

17 ~~(2)~~(1) "Container site" means a solid waste management facility, generally open to the public, for the
18 collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container
19 with a total capacity of not more than 50 cubic yards.

20 ~~(3)~~(2) "Department" means the department of health and environmental sciences provided for in Title 2,
21 chapter 15, part 21.

22 ~~(4)~~(3) "Front-end implementation funds" means the money granted to local governments for purchase of
23 capital equipment to be used for a solid waste management system.

24 ~~(5)~~(4) "Front-end organizational funds" means the money to be loaned to local governments for initial operating
25 capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents,
26 final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private
27 operational managers, and financial and legal consultations.

28 ~~(6)~~(5) "Front-end planning funds" means the money granted to local governments for contract negotiations
29 between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract
30 negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal
31 consultations, opinions, and review of contracts.

32 ~~(7)~~(6) "Local government" means a county, incorporated city or town, or refuse disposal district organized
33 under the laws of this state.

34 ~~(8)~~(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local

governmental entity, or any other state, federal, or private entity, whether organized for profit or not.

~~(9)(8)~~ "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

~~(10)(9)~~ (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. ~~"Solid waste"~~

~~(b)~~ The term does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

~~(11)(10)~~ "Solid waste management system" means any system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

~~(12)(11)~~ "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

Section 528. Section 75-10-203, MCA, is amended to read:

"75-10-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(2)(1)~~ "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(3)(2)~~ "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

~~(4)(3)~~ "Household hazardous waste" means products commonly used in the home that due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.

~~(5)(4)~~ "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.

~~(6)(5)~~ "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles.

~~(7)(6)~~ "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(8)(7)~~ "Resource recovery" means the recovery of material or energy from solid waste.

~~(9)(8)~~ "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

~~(10)(9)~~ "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

~~(11)(10)~~ (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. ~~"Solid waste"~~

~~(b)~~ The term does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

~~(12)(11)~~ "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site, as defined in 75-10-103, is not a component of a solid waste management system.

~~(13)(12)~~ "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

~~(14)(13)~~ "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

~~(15)(14)~~ "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume."

Section 529. Section 75-10-403, MCA, is amended to read:

"75-10-403. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(2)(1)~~ "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(3)(2)~~ "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

~~(4)~~(3) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

~~(6)~~(4) "Generation" means the act or process of producing waste material.

~~(6)~~(5) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

~~(7)~~(6) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

~~(8)~~(7) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

~~(9)~~(8) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

~~(10)~~(9) "Manifest" means the shipping document originated and signed by the generator and which is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

~~(11)~~(10) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(12)~~(11) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under this part.

~~(13)~~(12) "Storage" means the actual or intended containment of regulated substances, hazardous wastes, or both, either on a temporary basis or for a period of years.

~~(14)~~(13) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

~~(16)(14)~~ "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

~~(16)(15)~~ "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

~~(17)(16)~~ "Underground storage tank":

(a) means, except as provided in subsections ~~(17)(b)(i)~~ (16)(b)(i) through ~~(17)(b)(viii)~~ (16)(b)(viii):

(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground;

(b) does not include:

(i) a septic tank;

(ii) a pipeline facility (including gathering lines) regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 ~~49~~ U.S.C. 1671, et seq.;

(B) the Hazardous Liquid Pipeline Safety Act of 1979 ~~49~~ U.S.C. 2001, et seq.; or

(C) state law comparable to the provisions of law referred to in subsection ~~(17)(b)(iii)(A)~~ (16)(b)(ii)(A) or ~~(17)(b)(iii)(B)~~ (16)(b)(ii)(B), if the facility is intrastate;

(iii) a surface impoundment, pit, pond, or lagoon;

(iv) a storm water or wastewater collection system;

(v) a flow-through process tank;

(vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(viii) any pipe connected to a tank described in subsections ~~(17)(b)(i)~~ (16)(b)(i) through ~~(17)(b)(vi)~~ (16)(b)(vi)."

Section 530. Section 75-10-501, MCA, is amended to read:

"75-10-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

~~(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(2)(1)~~ "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

~~(3)(2)~~ "Department" means the department of health and environmental sciences provided for in Title 2,

chapter 15, part 21.

~~(4)~~(3) "Junk vehicle" means a discarded, ruined, wrecked, or dismantled motor vehicle, including component parts, which is not lawfully and validly licensed and remains inoperative or incapable of being driven.

~~(5)~~(4) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

~~(6)~~(5) "Motor vehicle wrecking facility" means:

(a) a facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(b) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

~~(7)~~(6) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(8)~~(7) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

~~(9)~~(8) "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view."

Section 531. Section 75-10-903, MCA, is amended to read:

"75-10-903. Definitions. As used in 75-10-901 through 75-10-945, the following definitions apply:

(1) "Application" means an application for a certificate and license submitted in accordance with 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935 and the rules adopted under 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935.

~~(2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(3)~~(2) "Certificate" means the certificate of site acceptability issued by the board under 75-10-916 that is required for siting a megalandfill.

~~(4)~~(3) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site, except that the term does not mean changes for securing geological data, including necessary borings to ascertain subsurface conditions;

(b) the modification or upgrading of an existing solid waste disposal facility into a megalandfill, except that the term does not pertain to maintenance or repair of an existing facility.

~~(5)(4)~~ "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(6)(5)~~ "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any water, including ground waters.

~~(7)(6)~~ (a) "Megalandfill" or "facility" means, except as provided in subsection ~~(7)(b)~~ (6)(b), any new or existing solid waste landfill facility that accepts more than 200,000 tons a year of solid waste or any ash monofill that accepts 35,000 tons or more a year of solid waste incinerator ash, either fly ash or bottom ash.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

~~(8)(7)~~ "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(9)(8)~~ (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood products or wood byproducts; and inert materials.

(b) "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

~~(10)(9)~~ "Solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles."

Section 532. Section 75-10-921, MCA, is amended to read:

"75-10-921. Filing fee -- accountability -- refund -- use. (1) (a) The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application for a certificate. The filing fee must be deposited in the solid waste management account for the use of the department in administering 75-10-901 through 75-10-945. The initial filing fee may not exceed the following scale based upon the megalandfill's projected annual tonnage of waste:

(i) a base fee of \$40,000; plus

(ii) 20 cents per ton for every ton of waste over 200,000 tons for a new or existing megalandfill or facility not subject to 75-10-903~~(7)(b)~~ (6)(b); or

(iii) 20 cents per ton of waste over 300,000 tons for an existing megalandfill or facility pursuant to 75-10-903~~(7)(b)~~ (6)(b).

(b) The department may allow a credit against the fee payable under this section for the applicant's costs of developing information or providing services required under 75-10-901 through 75-10-945 or required for preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, part 1, or the National Environmental Policy Act, 42 U.S.C. 4321, et seq. The applicant may submit the information or a description of the services performed to the department, together with an accounting of the expenses incurred in preparing the information or performing the services. The department shall evaluate the applicability, validity, and usefulness of the data or services and determine the expenses that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that the amount to be credited is necessary to carry out its responsibilities under 75-10-901 through 75-10-945.

(2) (a) The department may contract with an applicant after the filing of a formal application for the development of information or the provision of services required under 75-10-901 through 75-10-945. The contract may continue an agreement entered into pursuant to 75-10-908. Payments made to the department under a contract must be credited against the fee payable under this section. The revenue derived from the filing fee must be sufficient to enable the department and the board to carry out their responsibilities under 75-10-901 through 75-10-945. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department; however, an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The applicant is entitled to an accounting of money spent and to a refund with interest at the rate of 6% a year of the portion of the filing fee not spent by the department in carrying out its responsibilities under 75-10-901 through 75-10-945. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(4) The revenue derived from the filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out other responsibilities of the department and the board under 75-10-901 through 75-10-945."

Section 533. Section 75-10-950, MCA, is amended to read:

"75-10-950. Definitions. As used in 75-10-950 through 75-10-954, the following definitions apply:

(1) "Applicant" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity that applies for a license to operate a megalandfill pursuant to 75-10-221.

~~(2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(3)~~(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(4)~~(3) (a) "Megalandfill" means, except as provided in subsection ~~(4)~~(b) ~~(3)~~(b), any new or existing solid waste management system licensed under 75-10-221 that accepts more than 200,000 tons of solid waste a year or an ash monofill that accepts more than 35,000 tons of ash a year.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

~~(5)~~(4) "Natural resource" means ground water, surface water, soil, wildlife, and other physical and biological resources as determined by the department by rule."

Section 534. Section 75-11-203, MCA, is amended to read:

"75-11-203. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

~~(1)~~ "Board" means the board of health and environmental sciences provided for in 2-15-2104.

~~(2)~~(1) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

~~(3)~~(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(4)~~(3) (a) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) The terms do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

~~(5)~~(4) "Installer" means an individual who installs or closes underground storage tank systems.

~~(6)~~(5) "License" means a license issued by the department under 75-11-210 to conduct the installation or closure of underground storage tank systems and the installation of leak detection devices or cathodic protection systems.

~~(7)~~(6) "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

~~(8)~~(7) "Operator" means a person in control of or having responsibility for the operation, maintenance, or

management of an underground storage tank system.

~~(9)~~(8) "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances.

~~(10)~~(9) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

~~(11)~~(10) "Regulated substance" means a regulated substance as defined in 75-10-403.

~~(12)~~(11) "Underground storage tank" or "underground storage tank system" means an underground storage tank, as defined in 75-10-403, and, for purposes of this part, includes a leak detection device that is external to and not attached to an underground storage tank system."

Section 535. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

~~(5) "Board of health" means the board of health and environmental sciences provided for in 2-16-2104.~~

~~(6)~~(5) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

~~(7)~~(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by ~~(b) or (c) of subsection (10)~~ (9)(b) or (9)(c),

1 including upgrading to a design capacity covered by subsection ~~(10)(b)~~ (9)(b), except that the term does not include
2 normal maintenance or repair of an existing facility.

3 ~~(8)(7)~~ "Department" means the department of natural resources and conservation provided for in Title 2,
4 chapter 15, part 33.

5 ~~(9)(8)~~ "Department of health" means the department of health and environmental sciences provided for in Title
6 2, chapter 15, part 21.

7 ~~(10)(9)~~ "Facility" means:

8 (a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and
9 Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable
10 of:

11 (i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities
12 approved by the department of health and environmental sciences added to an existing plant) having an estimated cost
13 in excess of \$10 million;

14 (ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having
15 an estimated cost in excess of \$10 million;

16 (iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having
17 an estimated cost in excess of \$10 million;

18 (iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of \$10 million; or

19 (v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated
20 cost in excess of \$10 million;

21 (b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts,
22 except that the term:

23 (i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts
24 or less and 10 miles or less in length; and

25 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts and up to
26 and including 115 kilovolts for which the person planning to construct the line has obtained right-of-way agreements
27 or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property
28 along the centerline;

29 (c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and
30 30 miles in length, and associated facilities;

31 (d) any use of geothermal resources, including the use of underground space in existence or to be created,
32 for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power
33 equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of \$750,000;

34 (e) any underground in situ gasification of coal.

1 ~~(11)~~(10) "Person" means any individual, group, firm, partnership, corporation, cooperative, association,
2 government subdivision, government agency, local government, or other organization or entity.

3 ~~(12)~~(11) "Transmission substation" means any structure, device, or equipment assemblage, commonly located
4 and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a
5 proposed transmission line.

6 ~~(13)~~(12) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or
7 furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

8
9 **Section 536.** Section 75-20-202, MCA, is amended to read:

10 **"75-20-202. Exemptions.** (1) A certificate is not required under this chapter for a facility under diligent onsite
11 physical construction or in operation on January 1, 1973.

12 (2) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation,
13 reconstruction, or upgrading of a facility that:

14 (a) would otherwise be covered by this chapter; and

15 (b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space
16 or right-of-way, or construction methods; or

17 (ii) utilizes coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result
18 in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

19 (3) A person proposing to construct an exempt facility shall pay to the department reasonable costs, if any,
20 incurred by the department in processing the exemption.

21 (4) This chapter does not apply to a facility defined in 75-20-104~~(10)(b)~~(9)(c) that has been designated by
22 the governor for environmental review by an executive agency of the state for the purpose of complying with Title 75,
23 chapter 1, pursuant to Executive Order 4-81 and prior to July 1, 1985."

24
25 **Section 537.** Section 75-20-205, MCA, is amended to read:

26 **"75-20-205. Centerline location.** (1) For all facilities defined in 75-20-104~~(10)(b)~~(9)(b) and ~~(10)(c)~~(9)(c) and
27 associated facilities certified under this chapter, the board shall condition the certificate upon board approval of a final
28 centerline location.

29 (2) The final centerline location must be determined in a noncontested case proceeding before the board after
30 the submission of a centerline location report by the department. Within 60 days after the commencement of a
31 noncontested case proceeding, the board shall render and record a decision approving a centerline location.

32 (3) The department shall consult with the certificate holder and the affected landowners prior to making its
33 report.

34 (4) The department's report must be prepared considering the criteria set forth in 75-20-301 and 75-20-503

1 and the findings of fact and conclusions of law set out in the board decision.

2 (5) The department report may be completed on segments of a certified facility as is convenient to the
3 certificate holder.

4 (6) The certificate holder shall initiate the final centerline location approval process by submitting a proposed
5 centerline location plan to the department. The certificate holder shall pay to the department the actual costs incurred
6 in processing a final centerline location not to exceed 25% of the filing fee paid under 75-20-215."

7
8 **Section 538.** Section 75-20-208, MCA, is amended to read:

9 **"75-20-208. Certain electric transmission lines -- verification of requirements.** (1) Prior to constructing a
10 transmission line under ~~75-20-104(10)(b)(iii)~~ 9(b)(ii), the person planning to construct the line must provide to the
11 department within 36 months of the date of the public notice provided under 75-20-207, unless extended by the board
12 for good cause:

13 (a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information to
14 establish landowner consent to construct the line; and

15 (b) sufficient information for the department to verify to the board that the requirements of
16 ~~75-20-104(10)(b)(iii)~~ 9(b)(ii) are satisfied.

17 (2) The provisions of ~~75-20-104(10)(b)(iii)~~ 9(b)(ii) do not apply to any facility for which public notice under
18 75-20-207 has been given but for which the requirements of subsection (1) have not been complied with."

19
20 **Section 539.** Section 75-20-211, MCA, is amended to read:

21 **"75-20-211. Application -- filing and contents -- proof of service and notice.** (1) (a) An applicant shall file with
22 the department and department of health a joint application for a certificate under this chapter and for the permits
23 required under the laws administered by the department of health and the board of health in ~~such~~ the form as the board
24 requires under applicable rules, containing the following information:

25 (i) a description of the proposed location and of the facility to be built thereon;

26 (ii) a summary of any studies which have been made of the environmental impact of the facility;

27 (iii) a statement explaining the need for the facility;

28 (iv) for facilities defined in ~~75-20-104(10)(b)~~ 9(b) and ~~(10)(c)~~ 9(c), a description of reasonable alternate
29 locations for the facility, a general description of the comparative merits and detriments of each location submitted,
30 and a statement of the reasons why the proposed location is best suited for the facility;

31 (v) (A) for facilities as defined in ~~75-20-104(10)(b)~~ 9(b) and ~~(10)(c)~~ 9(c), baseline data for the primary and
32 reasonable alternate locations; or

33 (B) for facilities as defined in ~~75-20-104(10)(a)~~ 9(a), ~~(10)(d)~~ 9(d), and ~~(10)(e)~~ 9(e), baseline data for the
34 proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the

1 facility;

2 (vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

3 (vii) ~~such~~ other information as the applicant considers relevant or as the board and board of health by order
4 or rule or the department and department of health by order or rule may require.

5 (b) A copy or copies of the studies referred to in subsection (1)(a)(ii) ~~above shall~~ must be filed with the
6 department, if ordered, and ~~shall~~ must be available for public inspection.

7 (2) An application may consist of an application for two or more facilities in combination which are physically
8 and directly attached to each other and are operationally a single operating entity.

9 (3) An application ~~shall~~ must be accompanied by proof of service of a copy of the application on the chief
10 executive officer of each unit of local government, county commissioner, city or county planning boards, and federal
11 agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion
12 of the proposed facility is proposed or is alternatively proposed to be located and on the following state government
13 agencies:

14 (a) environmental quality council;

15 (b) department of public service regulation;

16 (c) department of fish, wildlife, and parks;

17 (d) department of state lands;

18 (e) department of commerce;

19 (f) department of transportation.

20 (4) The copy of the application ~~shall~~ must be accompanied by a notice specifying the date on or about which
21 the application is to be filed.

22 (5) An application ~~shall~~ must also be accompanied by proof that public notice ~~thereof~~ was given to persons
23 residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located,
24 by publication of a summary of the application in those newspapers that will substantially inform those persons of the
25 application."
26

27 **Section 540.** Section 75-20-216, MCA, is amended to read:

28 **"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.** (1) After
29 receipt of an application, the department and department of health shall within 90 days notify the applicant in writing
30 that:

31 (a) the application is in compliance and is accepted as complete; or

32 (b) the application is not in compliance and list the deficiencies ~~therein~~; and upon correction of these
33 deficiencies and resubmission by the applicant, the department and department of health shall within 30 days notify
34 the applicant in writing that the application is in compliance and is accepted as complete.

1 (2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section,
2 the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering
3 all applicable criteria listed in 75-20-301 and 75-20-503 and the department of health shall commence a study to enable
4 ~~it or the board of health~~ to issue a decision, opinion, order, certification, or permit as provided in subsection (3). The
5 department and department of health shall use, to the extent they consider applicable, valid and useful existing studies
6 and reports submitted by the applicant or compiled by a state or federal agency.

7 (3) The department of health shall within 1 year following the date of acceptance of an application and the
8 board of health or department of health, if applicable, within an additional 6 months, issue any decision, opinion, order,
9 certification, or permit required under the laws administered by the department of health or the board of health and this
10 chapter. The department of health ~~and the board of health~~ shall determine compliance with all standards, permit
11 requirements, and implementation plans under their jurisdiction for the proposed location or any proposed alternate
12 location in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit,
13 with or without conditions, is conclusive on all matters that the department of health and board of health administer,
14 and any of the criteria specified in subsections (2) through (7) of 75-20-503 that are a part of the determinations made
15 under the laws administered by the department of health ~~and the board of health~~. Although the decision, opinion, order,
16 certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination
17 required under 75-20-301(2)(c). The decision, opinion, order, certification, or permit of the department of health ~~or the~~
18 ~~board of health~~ satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental
19 impact statement under the Montana Environmental Policy Act. A copy of the decision, opinion, order, certification,
20 or permit ~~shall must~~ be served upon the department and the board and ~~shall must~~ be ~~utilized~~ used as part of their final
21 site selection process. Prior to the issuance of a preliminary decision by the department of health and pursuant to rules
22 adopted ~~by the board of health~~, the department of health shall provide an opportunity for public review and comment.

23 (4) Within 22 months following acceptance of an application for a facility as defined in ~~(a) and (d) of~~
24 ~~75-20-104(10)(9)(a) and (9)(d)~~ and for a facility as defined in ~~(b) and (c) of~~ 75-20-104(10)(9)(b) and (9)(c) which is
25 more than 30 miles in length, and within 1 year for a facility as defined in ~~(b) and (c) of~~ 75-20-104(10)(9)(b) and (9)(c)
26 which is 30 miles or less in length, the department shall make a report to the board which shall contain the
27 department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation,
28 and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any.
29 If the application is for a combination of two or more facilities, the department shall make its report to the board within
30 the greater of the lengths of time provided for in this subsection for either of the facilities.

31 (5) The departments of transportation; commerce; fish, wildlife, and parks; state lands; revenue; and public
32 service regulation shall report to the department information relating to the impact of the proposed site on each
33 department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying
34 the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to

1 reimburse them for the costs of compiling information and issuing the required report."

2
3 **Section 541.** Section 75-20-225, MCA, is amended to read:

4 **"75-20-225. Certificate renewal -- application -- contents -- filing fee.** (1) Any certificate holder for a facility
5 as defined in 75-20-104(10)(a)(i) may apply for renewal of a certificate prior to the certificate lapsing.

6 (2) An applicant for a renewal of a certificate shall file with the department and department of health a joint
7 application in such form as the board requires by rule.

8 (3) An application for renewal of a certificate must include updated information on the matters listed in
9 75-20-211(1)(a) that have changed since the original application and such other information as the board requires by
10 rule for certification. The matters listed in 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate locations must be updated
11 only if the board determines that within the certified location significant changes have occurred to warrant a review
12 of alternate locations.

13 (4) An application filed under subsection (1) must comply with the provisions of 75-20-211(3) through (5).

14 (5) Except as provided in this subsection, the applicant shall pay a filing fee to the department in accordance
15 with 75-20-215(2). The fee is in addition to any previous filing fee paid for processing the original application for a
16 certificate pursuant to 75-20-215. The fee may not exceed the following scale:

17 (a) 0.125% of any estimated cost up to \$300 million; plus

18 (b) 0.063% of any estimated cost over \$300 million."

19
20 **Section 542.** Section 75-20-302, MCA, is amended to read:

21 **"75-20-302. Conditions imposed.** (1) If the board determines that the location of all or a part of the proposed
22 facility should be modified, it may condition its certificate upon ~~such~~ the modification, provided that the persons
23 residing in the area affected by the modification have been given reasonable notice of the modification.

24 (2) In making its findings under 75-20-301(2)(a) for a facility defined in 75-20-104(10)(a)(i), the board
25 may condition a certificate upon actual load growth reaching a specified level or on availability of other planned energy
26 resources."

27
28 **Section 543.** Section 75-20-303, MCA, is amended to read:

29 **"75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application for a
30 certificate, the board shall issue an opinion stating its reasons for the action taken.

31 (2) If the board has found that any regional or local law or regulation which would be otherwise applicable
32 is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

33 (3) Any certificate issued by the board shall include the following:

34 (a) an environmental evaluation statement related to the facility being certified. The statement shall include

1 but not be limited to analysis of the following information:

2 (i) the environmental impact of the proposed facility;

3 (ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

4 (iii) problems and objections raised by other federal and state agencies and interested groups; and

5 (iv) alternatives to the proposed facility;

6 (b) a plan for monitoring environmental effects of the proposed facility;

7 (c) a plan for monitoring the certified facility site between the time of certification and completion of
8 construction;

9 (d) a time limit as provided in subsection (4); and

10 (e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter
11 and the conditions of the certificate.

12 (4) (a) The board shall issue as part of the certificate the following time limits:

13 (i) For a facility as defined in ~~(b) or (c) of 75-20-104(10)~~ (9)(b) or (9)(c) that is more than 30 miles in length,
14 construction must be completed within 10 years.

15 (ii) For a facility as defined in ~~(b) of 75-20-104(10)~~ (9)(b) that is 30 miles or less in length, construction must
16 be completed within 5 years.

17 (iii) For a facility as defined in (a) of 75-20-104 ~~(10)~~ (9)(a), construction must begin within 6 years and continue
18 with due diligence in accordance with preliminary construction plans established in the certificate.

19 (b) Unless extended or renewed in accordance with subsection (4)(c) of this section or 75-20-225 through
20 75-20-227, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not
21 commenced within the time limits provided in this section.

22 (c) The time limit may be extended for a reasonable period upon a showing by the applicant to the board that
23 a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii) or to begin
24 construction under subsection (4)(a)(iii). Under this subsection, a good faith effort includes the process of acquiring
25 any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit
26 or certificate.

27 (5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for
28 which construction is yet to be commenced."

29
30 **Section 544.** Section 75-20-304, MCA, is amended to read:

31 **"75-20-304. Waiver of provisions of certification proceedings.** (1) The board may waive compliance with any
32 of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and
33 convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the
34 applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the

1 provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

2 (2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a
3 person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire,
4 flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate
5 need for construction of a new facility or associated facility or the relocation of a previously existing facility or
6 associated facility in order to promote the public welfare.

7 (3) The board shall waive compliance with the requirements of ~~subsections (2)(c), (3)(b), and (3)(c) of~~
8 75-20-301(2)(c), (3)(b), and (3)(c) and the requirements of ~~subsections (1)(a)(iv) and (v) of 75-20-211(1)(a)(iv) and~~
9 (1)(a)(v), 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a
10 clear and convincing showing to the board at a public hearing that:

11 (a) a proposed facility will be constructed in a county where a single employer within the county has
12 permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years at the
13 employer's operations within the preceding 10-year period;

14 (b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located
15 support by resolution such a waiver;

16 (c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been
17 curtailed; and

18 (d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is
19 proposed to be located.

20 (4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The
21 waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited
22 to construction jobs or job losses during labor disputes.

23 (5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum
24 adverse environmental impact for a facility defined in ~~subsections (10)(b), (c), (d), or (e) of 75-20-104(9)(b), (9)(c),~~
25 (9)(d), or (9)(e), for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility defined
26 in ~~subsection (10)(a) of 75-20-104(9)(a)~~ to the extent that the process or portion of the facility is not subject to a
27 permit issued by the department of health ~~or board of health~~.

28 (6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under
29 subsection (3). However, any payments made under this subsection ~~shall~~ must be credited toward the fee paid under
30 75-20-215 to the extent the data or evidence presented at the hearing or the decision of the board under subsection
31 (3) can be used in making a certification decision under this chapter.

32 (7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as
33 defined in subsection (3)(a)."
34

1 **Section 545.** Section 75-20-1202, MCA, is amended to read:

2 **"75-20-1202. Definitions.** As used in this part and 75-20-201 through 75-20-203, the following definitions
3 apply:

4 (1) "Facility", as defined in 75-20-104~~(10)~~(9), is further defined to include any nuclear facility as defined in
5 subsection (2)(a).

6 (2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

7 (i) generating 50 megawatts of electricity or more by means of nuclear fission;

8 (ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

9 (iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

10 (b) Nuclear facility does not include any small-scale facility used solely for educational, research, or medical
11 purposes not connected with the commercial generation of energy."

12
13 **Section 546.** Section 76-2-411, MCA, is amended to read:

14 **"76-2-411. Definition of community residential facility.** "Community residential facility" means:

15 (1) a community group home for developmentally, mentally, or severely disabled persons which does not
16 provide skilled or intermediate nursing care;

17 (2) a youth foster home or youth group home as defined in 41-3-1102;

18 (3) a halfway house operated in accordance with regulations of the department of public health and
19 ~~environmental sciences~~ human services for the rehabilitation of alcoholics or drug dependent persons; or

20 (4) a licensed adult foster family care home."

21
22 **Section 547.** Section 76-2-412, MCA, is amended to read:

23 **"76-2-412. Relationship of foster homes, youth group homes, community residential facilities, and day-care**
24 **homes to zoning.** (1) A foster or youth group home operated under the provisions of 41-3-1141 through 41-3-1143
25 or a community residential facility serving eight or fewer persons is considered a residential use of property for purposes
26 of zoning if the home provides care on a 24-hour-a-day basis.

27 (2) A family day-care home or a group day-care home registered by the department of ~~family~~ public health
28 and human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

29 (3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not
30 limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public
31 health and human services or any other agency of the state or a political subdivision ~~thereof which~~ of the state that
32 is not applicable to residential occupancies in general may not be applied to a community residential facility serving
33 eight or fewer persons or to a day-care home serving 12 or fewer children.

34 (4) ~~Nothing in this~~ This section shall may not be construed to prohibit a city or county from requiring a

conditional use permit in order to maintain a home pursuant to the provisions of subsection (1), ~~provided such if the~~
home is licensed by the department of ~~health and environmental sciences and the department of family public health~~
~~and human~~ services. ~~No~~ A city or county may not require a conditional use permit in order to maintain a day-care home
registered by the department of ~~family public health and human~~ services."

Section 548. Section 80-15-102, MCA, is amended to read:

"80-15-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;

(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water
to a well for a beneficial use.

(3) "Best management plans" and "best management practices" mean activities, procedures, and practices
established by the department of agriculture, in consultation with the Montana state university extension service, to
prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and
economically practical.

~~(4) "Board" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(5)~~(4) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water,
soil, and other related media.

~~(6)~~(5) "EPA" means the United States environmental protection agency.

~~(7)~~(6) "Ground water" means any water of the state occupying the voids within a geologic formation and
within the zone of saturation.

~~(8)~~(7) "Interim numerical standard" means a health-based number that expresses the concentration of an
agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to 80-15-201(3) or
(4).

~~(9)~~(8) "Margin of safety" means numerical margins that are applied to the no observable effect level in an
agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of
animals to humans, including sensitive individuals.

~~(10)~~(9) "No observable effect level" means the highest dose level of an agricultural chemical to which a
laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's pesticide
registration process.

~~(11)~~(10) "Nonpoint source" means a diffuse source of agricultural chemicals resulting from activities of man
over a relatively large area, the effects of which must normally be addressed or controlled by a management or

1 conservation practice.

2 ~~(12)~~(11) "Nonpromulgated federal standard" means a health advisory or a suggested no adverse response level
3 that is published but not promulgated by regulation by EPA and that is a suggested measure of the health risk
4 represented by the concentration of an agricultural chemical in water.

5 ~~(13)~~(12) "Numerical risk assessment" means a scientific procedure used to measure the statistical probability
6 of human health risk associated with exposure to an agricultural chemical.

7 ~~(14)~~(13) "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in laboratory
8 animals and the extrapolation of that potential to humans through use of statistical models and other evidence.

9 ~~(15)~~(14) "Person" means any individual, group, firm, cooperative, corporation, association, partnership,
10 political subdivision, state or federal government agency, or other organization or entity.

11 ~~(16)~~(15) "Point of standards application" means the specific location in an aquifer where ground water quality
12 and quantity are sampled, measured, evaluated, or otherwise used by either the department or the department of health
13 and environmental sciences to implement the provisions of this chapter.

14 ~~(17)~~(16) "Point source" means a point source as defined in 75-5-103, including but not limited to chemical
15 mixing, loading, and storage sites and sites of agricultural chemical spills.

16 ~~(18)~~(17) "Promulgated federal standard" means an agricultural chemical maximum contaminant level as
17 established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an interim drinking
18 water regulation or other EPA regulation based on federal law.

19 ~~(19)~~(18) "Registrant" means a person as defined in 80-8-102 and 80-10-101.

20 ~~(20)~~(19) "Standard" means the numerical value expressing the concentration of an agricultural chemical in
21 ground water that, when exceeded, presents a potential human health risk over a lifetime of consumption and that is
22 adopted by a rule of the board as required by 80-15-201.

23 ~~(21)~~(20) "Use" means any act of handling or release of an agricultural chemical or exposure of man or the
24 environment to an agricultural chemical, including but not limited to application, mixing, loading, storage, disposal, or
25 transportation."

26
27 **Section 549.** Section 81-2-106, MCA, is amended to read:

28 **"81-2-106. Cooperation by public officers.** The department of public health and environmental sciences, the
29 ~~board of health and environmental sciences~~, human services and local boards of health of a county, city, or town shall
30 cooperate with and assist the department of livestock in matters which relate to the execution of its sanitary powers
31 regarding livestock and their food products in the manner which the department of livestock prescribes, either by
32 general rule or direct order."

33
34 **Section 550.** Section 81-9-202, MCA, is amended to read:

1 **"81-9-202. Exceptions of certain producers of meats.** (1) The owners or operators of slaughterhouses,
2 packinghouses, meat depots, or other places of business engaged in the production, storage, or transportation of meats
3 or meat foods are not required to procure a license from the department of public health and environmental sciences,
4 ~~insofar as human services regarding~~ the business of production, storage, or transportation of these food products ~~is~~
5 ~~concerned.~~

6 (2) This section does not limit the:

7 (a) supervision or regulation by the department of public health and human services of the sanitary condition
8 of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale ~~thereat by the department~~
9 ~~of health and environmental sciences, nor does this section limit the~~ at those facilities; or

10 (b) duties imposed by law on the department of public health and environmental sciences human services to
11 make sanitary rules for the eradication or control of an epidemic of human disease which may exist in a community."

12
13 **Section 551.** Section 81-9-233, MCA, is amended to read:

14 **"81-9-233. Cooperation with state and federal authorities.** (1) In carrying out the provisions of 81-9-216
15 through 81-9-220 and 81-9-226 through 81-9-236, the chief shall consult with the department of public health and
16 ~~environmental sciences~~ human services and any appropriate state laboratory in matters relating to potability of water,
17 sewage systems, and other sanitary conditions of slaughtering and meat processing establishments that might endanger
18 public health. If any official establishment is failing to meet minimum applicable requirements of the department of
19 public health and environmental sciences human services, inspection service to the establishment must be suspended
20 as provided in 81-9-235 until the condition is remedied.

21 (2) The board is designated as the agency responsible for cooperating with the U.S. secretary of agriculture
22 in receiving advisory assistance in developing the state program, technical and laboratory assistance and training, and
23 financial assistance for administration of the program."

24
25 **Section 552.** Section 81-21-103, MCA, is amended to read:

26 **"81-21-103. Exceptions of certain producers of dairy products.** (1) The owners or operators of dairies,
27 creameries, butter factories, cheese factories, or other places of business engaged in the production, storage, or
28 transportation of dairy products are not required to procure a license from the department of public health and
29 ~~environmental sciences, insofar as human services regarding~~ the business of production, storage, or transportation of
30 these food products ~~is concerned.~~

31 (2) This section does not limit the:

32 (a) supervision or regulation by the department of public health and human services of the sanitary condition
33 of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale ~~thereat by the department~~
34 ~~of health and environmental sciences, nor does this section limit the~~ at those facilities; or

(b) duties imposed by law on the department of public health and ~~environmental sciences~~ human services to make sanitary rules for the eradication or control of an epidemic of human disease which may exist in a community."

Section 553. Section 81-22-208, MCA, is amended to read:

"81-22-208. Licenses and schedule of license fees. (1) Licenses and license fees required under this part must be established by the department for the following facilities and activities:

(a) a manufactured dairy products plant; ~~however~~ However, a plant license is not required of a food service establishment licensed by the ~~Montana~~ department of public health and ~~environmental sciences~~ human services, as defined in 50-50-102, and ~~no a~~ license is not required to manufacture nondairy products when only ~~such~~ nondairy products are manufactured;

(b) a cream station; ~~however~~ However, a license is not required if the cream station is owned and operated by a licensed plant; but the milk and cream, equipment, premises, and means of transporting milk or cream is subject to official inspection;

(c) a dairy producing milk for manufacturing purposes; ~~however~~ However, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in the form in which it is originally produced as required by 81-21-102; ~~and~~;

(d) a grader-weigher-sampler, tester, and hauler; ~~however~~ However, a separate grader-weigher-sampler, tester, and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant, or is self-employed.

(2) A license is valid on the date issued through December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date of December 31. A license renewal application form may be supplied by the department. When the license renewal application form is returned to the department, it ~~shall~~ must be accompanied by the correct license fee. A license ~~shall~~ must be posted in conspicuous view at the place of business. A license is not transferable from place to place or from person to person. A penalty fee in an amount established by a rule of the department may be imposed by it on a person who fails to apply for renewal of ~~his the person's~~ license if under this part that person is required to be licensed.

(3) All license fees collected ~~shall~~ must be deposited in the general fund."

Section 554. Section 81-22-209, MCA, is amended to read:

"81-22-209. License requirements applicable. The licenses required under this part apply only to those licenses issued by the department. This part does not repeal or abrogate the authority of or the issuance of licenses by the department of public health and ~~environmental sciences~~ human services."

Section 555. Section 81-22-404, MCA, is amended to read:

1 **"81-22-404. Removal or destruction of products in case of potential health hazards.** (1) When epidemiological
2 evidence indicates or the likelihood exists that a dairy or manufactured dairy products plant is producing,
3 manufacturing, storing, handling, or offering for sale milk or a manufactured dairy product which is adulterated or which
4 may be detrimental to the health or safety of the consumer, the department may request the department of public
5 health and ~~environmental sciences~~ human services to remove the product from the market or to hold, dispose of,
6 destroy, or treat the product so that it no longer constitutes a potential health hazard.

7 (2) It is unlawful for a person to violate an order which requires the product's removal from the market or its
8 retention, disposal, destruction, or treatment. Violation is punishable as a misdemeanor, and each violation is subject
9 to a fine of not less than \$25 or more than \$250 or to imprisonment in the county jail for not more than 30 days or
10 both fine and imprisonment."

11
12 **Section 556.** Section 81-22-414, MCA, is amended to read:

13 **"81-22-414. Pasteurization apparatus and records.** (1) The department may adopt rules which it considers
14 necessary to assure proper control and use of all equipment used in the process of pasteurization. The department may
15 require the operation of devices and apparatus which are needed to accurately record and indicate temperatures to
16 which and the length of time for which the pasteurized product has been heated, including those periods and
17 temperatures when the equipment is cleaned and sanitized by C.I.P. method. A person using pasteurizing equipment
18 in this state shall properly record and have available to the department for the preceding 2 months all records pertaining
19 to the pasteurization of any product. These records ~~shall~~ must at all times be open to the inspection of the department
20 of livestock, the department of public health and ~~environmental sciences~~ human services, and all other state, county,
21 and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public
22 health.

23 (2) Pasteurizing equipment ~~which~~ that records temperatures or controls the time of holding ~~shall~~ must be
24 timed, set, and sealed by the department. The seals may not be removed or broken without first notifying the
25 department."

26
27 **Section 557.** Section 81-22-421, MCA, is amended to read:

28 **"81-22-421. Labeling on manufactured dairy products to conform to requirements.** Labeling on manufactured
29 dairy products shall conform to requirements of the Food, Drug, and Cosmetic Act and to the other requirements which
30 are adopted by the department of livestock or the department of public health and ~~environmental sciences~~ human
31 services."

32
33 **Section 558.** Section 81-23-101, MCA, is amended to read:

34 **"81-23-101. Definitions.** (1) Unless the context requires otherwise, in this chapter, the following definitions

1 apply:

2 (a) "Board" means the board of milk control provided for in 2-15-1802.

3 (b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream,
4 commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not
5 specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.

6 (c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet,
7 eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

8 (d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock
9 feed, powdered skim other than for human consumption, and skim milk dumped.

10 (e) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or
11 use.

12 (f) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

13 (g) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

14 (h) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and
15 distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent
16 contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale
17 over the counter at retail or for consumption on the premises.

18 (i) "Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages,
19 to a jobber or independent contractor.

20 (j) "Licensee" means a person who holds a license from the department.

21 (k) "Market" means an area of the state designated by the department as a natural marketing area.

22 (l) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and
23 when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and
24 all of which is designated as grade A by a duly constituted health authority and also includes those secretions which
25 are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of
26 this or any other state or nation.

27 (m) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the
28 department of corrections ~~and human services~~ at the Montana state prison.

29 (n) "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

30 (o) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

31 (p) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

32 (q) "Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over
33 the counter at retail or for consumption on the premises.

34 (r) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption

1 on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities,
2 sororities, confectioneries, public and private schools, including colleges and universities, and both public and private
3 institutions and instrumentalities of all types and description.

4 (s) "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages,
5 to a retailer.

6 (2) The department may assign new milk products, not expressly included in one of the classes defined in this
7 section, to the class which in its discretion it determines to be proper."

8
9 **Section 559.** Section 81-23-103, MCA, is amended to read:

10 **"81-23-103. General powers of the department.** (1) The department shall supervise, regulate, and control the
11 milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for
12 consumption in this state. ~~Nothing in this~~ This chapter ~~abrogates or affects~~ does not affect the status, force, or
13 operation of any provision of public health laws or the law under which the department of livestock is constituted
14 together with the department of livestock rules, county board of health rules, or municipal ordinances for the promotion
15 or protection of the public health. The department may cooperate with the department of public health and
16 ~~environmental sciences~~ human services, the board of livestock, any county or city board of health, or the department
17 of agriculture in enforcing this chapter.

18 (2) The department shall investigate all matters pertaining to the production, processing, storage, distribution,
19 and sale of milk in this state and conduct hearings upon any subject pertinent to the administration of this chapter. The
20 department may subpoena milk dealers, their records, books, and accounts, and any other person from whom
21 information may be desired or considered necessary to carry out the purposes and intent of this chapter and may take
22 depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the
23 department at its offices. The department shall give at least 10 days' notice to the proposed witness."

24
25 **Section 560.** Section 87-1-226, MCA, is amended to read:

26 **"87-1-226. Disposition of meat of animals damaging property.** (1) The meat of all animals killed or destroyed
27 pursuant to 87-1-225 by the department or the authorized landholder shall be conserved and given to state institutions,
28 school lunch programs, the department of ~~social and rehabilitation~~ public health and human services, or charitable
29 institutions. The department shall provide transportation and distribution of the meat.

30 (2) Any meat not accepted by state institutions, school lunch programs, the department of ~~social and~~
31 ~~rehabilitation~~ public health and human services, or charitable institutions shall be sold as provided in 87-1-511."

32
33 **Section 561.** Section 87-1-303, MCA, is amended to read:

34 **"87-1-303. Rules for use of lands and waters.** (1) The commission may adopt and enforce rules governing

1 uses of lands acquired or held under easement by the commission or lands which it operates under agreement with or
2 in conjunction with a federal or state agency or private owner. The rules ~~shall~~ must be adopted in the interest of public
3 health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements
4 ~~shall~~ must itemize uses as listed in 87-1-209.

5 (2) The commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs,
6 public lakes, rivers, and streams which are legally accessible to the public or on reservoirs and lakes which it operates
7 under agreement with or in conjunction with a federal or state agency or private owner. These rules ~~shall~~ must be
8 adopted in the interest of public health, public safety, and protection of property in regulating swimming, hunting,
9 fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats,
10 waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and
11 streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant
12 to the authority contained in this section must be areas which are legally accessible to the public. These rules are
13 subject to review and approval by the department of public health and ~~environmental sciences~~ human services as to
14 public health and sanitation before becoming effective. Copies of the rules ~~shall~~ must show that endorsement."

15
16 **Section 562.** Section 87-2-802, MCA, is amended to read:

17 **"87-2-802. Veterans in VA hospitals and residents of state institutions.** Any veteran who is a patient residing
18 at a hospital operated by the department of veterans affairs, within or outside the state, and residents of all institutions
19 under the jurisdiction of the department of corrections and the department of public health and human services, except
20 the Montana state prison at Deer Lodge or the women's correctional system, will be entitled to fish without a license.
21 ~~Such~~ The residents shall carry a permit on a form prescribed by the department and signed by the superintendent of
22 the institution in lieu of a license."

23
24 **Section 563.** Section 90-4-201, MCA, is amended to read:

25 **"90-4-201. Weatherization money sources -- consolidation.** (1) All federal funds and grants available and
26 becoming eligible to Montana under the provisions of the U.S. department of energy low-income weatherization
27 assistance program, the U.S. department of health and human services low-income home energy assistance program,
28 and any other federal funds intended to increase the energy efficiency of dwellings occupied by persons of low and
29 fixed incomes, except for Title XX of the Social Security Act, are to be coordinated and are appropriated to the
30 department of ~~social and rehabilitation~~ public health and human services.

31 (2) The department of ~~social and rehabilitation~~ public health and human services shall allocate and spend for
32 home weatherization programs under this part at least 5% of the funds received from the U.S. department of health
33 and human services low-income home energy assistance program if federal law permits this allocation."

1 **Section 564.** Section 90-4-202, MCA, is amended to read:

2 **"90-4-202. Allocation formula.** (1) The department of ~~social and rehabilitation~~ public health and human
3 services may use not more than 5% of the total weatherization funds for administration of the weatherization program.

4 (2) Each of the human resource development councils or other public or nonprofit entities shall receive that
5 fraction of the remaining money as the number of eligible households in its geographic area bears to the total number
6 of eligible households in the state.

7 (3) The department of ~~social and rehabilitation~~ public health and human services may transfer weatherization
8 money among the human resource development councils or other public or nonprofit entities if it finds that the money
9 is not being expended in accordance with the terms of the agreements executed to carry out the provisions and
10 purposes of this section and federal laws and regulations.

11 (4) Each of the human resource development councils or other public or nonprofit entities shall submit plans
12 and proposed agreements to the units of local government in the district for review and comment before the
13 agreements are approved by the department of ~~social and rehabilitation~~ public health and human services."

14
15 **Section 565.** Section 90-4-215, MCA, is amended to read:

16 **"90-4-215. Account established -- use.** (1) There is created an energy conservation and energy assistance
17 account within the federal special revenue fund established in 17-2-102.

18 (2) The amounts deposited in the account and interest and earnings on the account are statutorily
19 appropriated, as provided in 17-7-502, to the department of ~~social and rehabilitation~~ public health and human services
20 to fund its low-income energy assistance and home weatherization programs created in 90-4-201. However, the
21 department may use the principal of the account only if the federal grants for either of those programs is reduced below
22 the federal fiscal year 1987 level. The department may not use the principal to increase expenditures to either program
23 above the level of the federal grant for that program for federal fiscal year 1987."

24
25 **Section 566.** Section 90-7-220, MCA, is amended to read:

26 **"90-7-220. Montana developmental center loan.** (1) The department of ~~corrections~~ public health and human
27 services may enter into a loan agreement with the Montana health facility authority for the purpose of financing the
28 costs of acquiring, constructing, and equipping facilities for the developmentally disabled at the Montana developmental
29 center in Boulder, including the establishment of reserves and the payment of costs of the financing. The maximum
30 principal amount of the loan may not exceed \$10.5 million for construction and related costs, plus the necessary
31 amounts for capitalized interest, debt service reserves, and financing costs, and the loan must be payable over a term
32 of not to exceed 30 years and must bear interest and contain other terms and provisions with respect to prepayment
33 or otherwise as are not inconsistent with this section and as the department approves. Investment earnings on the
34 authority's bonds or on funds held for the bonds must be used to pay the principal and interest on the loan as provided

1 in the loan agreement.

2 (2) The loan may be secured by a mortgage on the Montana developmental center facility, including the land
3 on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest
4 payments required by that agreement are payable solely from the facility revenues obtained by the department from
5 the ownership and operation of and the provision of services at the Montana developmental center, including payments
6 or reimbursements from private users, insurers, and the federal government. All facility revenues obtained from services
7 provided by the Montana developmental center must be deposited in a special revenue fund and must be applied to
8 the payment of the principal and interest payments as due under the loan agreement. Principal and interest payments
9 constitute a statutory appropriation within the meaning of 17-7-502. Whenever the foregoing facility revenues exceed
10 the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be
11 deposited to the general fund. As long as the loan remains outstanding and the department provides services for the
12 developmentally disabled, the department shall use the Montana developmental center for those purposes or for other
13 purposes as permitted by the loan agreement and state law, except when foreclosure occurs under the agreement or
14 the mortgage. Notwithstanding 77-2-302(1) and upon foreclosure of a mortgage given to secure the loan agreement,
15 there must be paid to the board of land commissioners as a first and prior claim against the mortgaged land an amount
16 equal to the full market value of the land as determined by the board prior to the execution of the mortgage and after
17 appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the
18 department determines are necessary and that are not inconsistent with the provisions of Title 90, chapter 7.

19 (3) The obligations of the department under the agreement are special limited obligations payable solely from
20 the facility revenues and do not constitute a debt of the state or obligate the state to appropriate or apply any funds
21 or revenues of the state, except the facility revenues as provided in this section."
22

23 NEW SECTION. Section 567. Transition. The provisions of 2-15-131 through 2-15-137 apply to [this act].
24

25 NEW SECTION. Section 568. Repealer. Sections 2-15-2104, 2-15-2401, 50-1-301, 50-1-302, 50-70-106,
26 52-1-105, and 53-1-101, MCA, are repealed.
27

28 NEW SECTION. Section 569. Coordination. (1) If [this act] is passed and approved but Senate Bill No. 234
29 is not passed and approved, the code commissioner is instructed to remove all references to the board of health and
30 environmental sciences in the Montana Code Annotated and in material enacted by the 54th legislature. The code
31 commissioner shall make corresponding changes in style and arrangement to accommodate the changes.

32 (2) The code commissioner is instructed to renumber the following sections into Title 2, chapter 15, part 22:
33 2-15-2109 and 2-15-2402.

34 (3) If [this act] is passed and approved but Senate Bill No. 234 is not passed and approved, all references in

1 the Montana Code Annotated and in material enacted by the 54th legislature to "department of health and
2 environmental sciences" are changed to "department of environmental sciences".

3 (4) If both bills are passed and approved, the department of health and environmental sciences is abolished,
4 2-15-104(1)(h) is eliminated, and 2-15-2101 is repealed. Any reference in this bill to "department of health and
5 environmental sciences" or "department of environmental sciences", except in 2-15-104 and 2-15-2101, is changed
6 to "department of environmental quality".

7
8 **NEW SECTION. Section 570. Executive orders -- code commissioner instruction.** (1) In all material enacted
9 by the 54th legislature that assigns duties or functions to the department of family services, department of health and
10 environmental sciences, department of social and rehabilitation services, or department of corrections and human
11 services, the governor shall by executive order designate the department of public health and human services or the
12 department of corrections as the agency to perform each duty or function.

13 (2) The governor shall provide a copy of each executive order to the code commissioner, who shall make the
14 changes necessary to reflect the assignment of each duty or function. The code commissioner shall recodify and
15 rearrange material as necessary to reflect the provisions of [this act].

16
17 **NEW SECTION. Section 571. Codification instruction.** [Sections 399 through 402] are intended to be codified
18 as an integral part of Title 53, chapter 1, and the provisions of Title 53, chapter 1, apply to [sections 399 through 402].

19
20 **NEW SECTION. Section 572. Saving clause.** [This act] does not affect rights and duties that matured,
21 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

22
23 **NEW SECTION. Section 573. Effective date.** [This act] is effective July 1, 1995.

24 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0345, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act implementing the recommendation of the Governor's Task Force to Renew State Government by generally revising the public health and human services functions of state government. The bill creates the new Department of Public Health and Human Services (DPHHS), while eliminating two: Social and Rehabilitation Services (SRS) and Family Services (DFS); and partially eliminating the Department of Health and Environmental Sciences (DHES).

ASSUMPTIONS:

1. The reorganization will commence July 1, 1995. At least by June 30, 1996, moving will be complete and FTE reductions will be made.
2. Approximately 25 FTEs will be eliminated in the new department as a result of anticipated duplications stemming from the reorganization. Specific positions have not been identified for elimination. Once the reorganization commences, management will identify positions taking into account vacancies and current employees desiring to take advantage of early retirement.
3. The vacancy savings realized in FY96 will be sufficient to pay for the moving costs and related expenditures, plus the annual leave and sick leave payouts for those RIFd. Thus, the net fiscal impact in FY96 will be zero.
4. Existing equipment will be moved with positions and/or functions.
5. Revenues and federal grants associated with the current functions will be transferred intact with the new departments resulting in no fiscal impact.

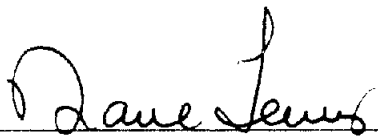
NET FISCAL IMPACT:

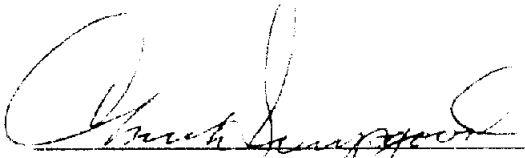
	<u>FY96</u>	<u>FY97</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTEs	(12.00)	(25.00)
Personal services	(200,000)	(825,000)
Operating expenses	200,000	0
Equipment	0	0
Total	0	(825,000)

Funding:

General fund (01)	(412,500)
Federal special Revenue (03)	(412,500)
Total	(825,000)

(Continued)

 2-14-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-14-95
CHARLES SWYSGOOD, PRIMARY SPONSOR DATE

Fiscal Note for SB0345, as introduced

SB 345

(continued)

FISCAL IMPACT:

The attached schedules show the departments being fully eliminated (SRS and DFS) and partially eliminated (DHES and Corrections) in brackets (0), while the created new department (DPHHS) and the spin-off of the Department of Corrections are shown as positive numbers. The net figures are in brackets representing an expenditure savings.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The optimum efficiencies of the reorganization, in terms of improved services to the citizens of the state, though visibly apparent in the 1997 biennium, will be fully realized in the 1999 biennium and beyond.

(Continued)

	New Department of: Public Health & Human Serv.		Corrections (Juvenile Correct.) (from Family Services)		Total New/Increased Departments (see detail to the left)	
	FY96	FY97	FY96	FY97	FY96	FY97
TE	2,778.91	2,698.64	180.06	180.06	2,958.97	2,878.70
Personal Serv.	87,725,616	85,592,821	5,612,030	5,653,830	93,337,646	91,246,651
Operating	60,274,387	61,703,847	2,730,600	2,776,518	63,004,987	64,480,365
Equipment	1,534,371	1,231,343	60,135	(29,740)	1,594,506	1,201,603
Grants	46,153,436	48,264,978			46,153,436	48,264,978
Benefits & Claims	515,849,442	561,712,975			515,849,442	561,712,975
Debt Service	10,378	10,378			10,378	10,378
Transfers	4,093,159	4,184,449			4,093,159	4,184,449
Total	<u>715,640,789</u>	<u>762,700,791</u>	<u>8,402,765</u>	<u>8,400,608</u>	<u>724,043,554</u>	<u>771,101,399</u>

UNDING:

General fund (01)	228,375,762	244,252,947	7,808,537	7,806,506	236,184,299	252,059,453
State Spec. (02)	33,461,328	35,003,075	346,603	346,477	33,807,931	35,349,552
Ed. Spec. (03)	453,198,492	482,781,207	247,625	247,625	453,446,117	483,028,832
Proprietary (06)	<u>605,207</u>	<u>663,562</u>			<u>605,207</u>	<u>663,562</u>
Total	<u>715,640,789</u>	<u>762,700,791</u>	<u>8,402,765</u>	<u>8,400,608</u>	<u>724,043,554</u>	<u>771,101,399</u>

Total Decreased Departments
(see following detail page)

	FY96	FY97	Net Changes	
	FY96	FY97	FY96	FY97
TE	(2,970.97)	(2,903.70)	(12.00)	(25.00)
Personal Serv.	(93,537,646)	(92,071,651)	(200,000)	(825,000)
Operating	(62,804,987)	(64,480,365)	200,000	0
Equipment	(1,594,506)	(1,201,603)	0	0
Grants	(46,153,436)	(48,264,978)	0	0
Benefits & Claims	(515,849,442)	(561,712,975)	0	0
Debt Service	(10,378)	(10,378)	0	0
Transfers	(4,093,159)	(4,184,449)	0	0
Total	<u>(724,043,554)</u>	<u>(771,926,399)</u>	<u>0</u>	<u>(825,000)</u>

UNDING:

General fund (01)	(236,184,299)	(252,471,953)	0	(412,500)
State Spec. (02)	(33,807,931)	(35,349,552)	0	0
Ed. Spec. (03)	(453,446,117)	(483,441,332)	0	(412,500)
Proprietary (06)	<u>(605,207)</u>	<u>(663,562)</u>	0	0
Total	<u>(724,043,554)</u>	<u>(771,926,399)</u>	<u>0</u>	<u>(825,000)</u>

(continued)

	<u>Social & Rehab. Services (all)</u>		<u>Family Services (all)</u>		<u>DHES (Public Health)</u>	
	FY96	FY97	FY96	FY97	FY96	FY97
FTE	(975.95)	(975.95)	(565.76)	(570.76)	(184.47)	(184.47)
Personal Serv.	(29,083,646)	(29,224,620)	(17,919,556)	(18,179,548)	(6,275,569)	(6,306,195)
Operating	(30,217,480)	(32,299,318)	(11,931,550)	(10,983,862)	(11,639,561)	(11,461,891)
Equipment	(799,298)	(642,874)	(124,822)	(28,140)	(410,294)	(380,072)
Grants	(26,936)	(26,936)	(12,019,318)	(12,118,594)	(13,308,772)	(14,374,402)
Benefits & Claims	(482,244,404)	(526,412,014)	(24,631,563)	(26,327,486)	(8,973,475)	(8,973,475)
Debt Service	(10,378)	(10,378)				
Transfers	(3,956,159)	(4,047,449)	(137,000)	(137,000)		
Total	<u>(546,338,301)</u>	<u>(592,663,589)</u>	<u>(66,763,809)</u>	<u>(67,774,630)</u>	<u>(40,607,671)</u>	<u>(41,496,035)</u>

FUNDING:

General fund (01)	(133,933,877)	(149,460,393)	(40,078,080)	(41,880,011)	(4,027,149)	(3,894,479)
State Spec. (02)	(23,698,086)	(25,267,796)	(3,028,325)	(3,028,201)	(1,575,078)	(1,468,464)
Fed. Spec. (03)	(388,706,338)	(417,935,400)	(23,657,404)	(22,866,418)	(34,400,237)	(35,469,530)
Proprietary (06)					(605,207)	(663,562)
Total	<u>(546,338,301)</u>	<u>(592,663,589)</u>	<u>(66,763,809)</u>	<u>(67,774,630)</u>	<u>(40,607,671)</u>	<u>(41,496,035)</u>

	<u>Corrections (Human Services)</u>		<u>Total: Departments Eliminated/ Reduced by Reorganization</u>	
	FY96	FY97	FY96	FY97
FTE	(1,244.79)	(1,172.52)	(2,970.97)	(2,903.70)
Personal Serv.	(40,258,875)	(38,361,288)	(93,537,646)	(92,071,651)
Operating	(9,016,396)	(9,735,294)	(62,804,987)	(64,480,365)
Equipment	(260,092)	(150,517)	(1,594,506)	(1,201,603)
Grants	(20,798,410)	(21,745,046)	(46,153,436)	(48,264,978)
Benefits & Claims			(515,849,442)	(561,712,975)
Debt Service			(10,378)	(10,378)
Transfers			(4,093,159)	(4,184,449)
Total	<u>(70,333,773)</u>	<u>(69,992,145)</u>	<u>(724,043,554)</u>	<u>(771,926,399)</u>

FUNDING:

General fund (01)	(58,145,193)	(57,237,070)	(236,184,299)	(252,471,953)
State Spec. (02)	(5,506,442)	(5,585,091)	(33,807,931)	(35,349,552)
Fed. Spec. (03)	(6,682,138)	(7,169,984)	(453,446,117)	(483,441,332)
Proprietary (06)			(605,207)	(663,562)
Total	<u>(70,333,773)</u>	<u>(69,992,145)</u>	<u>(724,043,554)</u>	<u>(771,926,399)</u>

APPROVED BY COM ON
STATE ADMINISTRATION

SENATE BILL NO. 345

INTRODUCED BY

BY REQUEST OF THE OFFICE OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE GOVERNOR'S TASK
 FORCE TO RENEW MONTANA GOVERNMENT BY CREATING A NEW DEPARTMENT OF PUBLIC HEALTH AND HUMAN
 SERVICES; TRANSFERRING ALL PROGRAMS CURRENTLY ADMINISTERED BY THE DEPARTMENT OF SOCIAL AND
 REHABILITATION SERVICES TO THE NEW DEPARTMENT; TRANSFERRING ALL PROGRAMS CURRENTLY
 ADMINISTERED BY THE DEPARTMENT OF FAMILY SERVICES TO THE NEW DEPARTMENT, WITH THE EXCEPTION
 OF JUVENILE CORRECTIONS PROGRAMS; TRANSFERRING JUVENILE CORRECTIONS PROGRAMS TO THE
 DEPARTMENT OF CORRECTIONS; TRANSFERRING THE MENTAL HEALTH PROGRAMS, SUBSTANCE ABUSE
 PROGRAMS, AND DEVELOPMENTAL DISABILITIES PROGRAMS AND ASSOCIATED PROGRAMS AND SUPPORT STAFF
 CURRENTLY ADMINISTERED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO THE NEW
 DEPARTMENT; TRANSFERRING ALL HEALTH SERVICES PROGRAMS CURRENTLY ADMINISTERED BY THE
 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO THE NEW DEPARTMENT, EXCEPT FOR
 LABORATORY SERVICES; ABOLISHING THE EXISTING DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
 AND THE EXISTING DEPARTMENT OF FAMILY SERVICES; CONTINGENTLY ABOLISHING THE BOARD OF HEALTH
 AND ENVIRONMENTAL SCIENCES AND TRANSFERRING ITS DUTIES TO THE NEW DEPARTMENT; CHANGING THE
 NAME OF THE BOARD OF SOCIAL AND REHABILITATION APPEALS TO THE BOARD OF PUBLIC ASSISTANCE;
 CHANGING THE NAME OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO THE DEPARTMENT OF
 CORRECTIONS; CHANGING THE NAME OF THE BOARD OF PARDONS TO THE BOARD OF PARDONS AND PAROLE;
 CHANGING THE NAME OF THE WOMEN'S CORRECTIONAL CENTER TO THE WOMEN'S CORRECTIONAL SYSTEM;
 AMENDING SECTIONS 2-4-102, 2-15-104, 2-15-211, 2-15-225, 2-15-231, 2-15-232, 2-15-1845, 2-15-1875,

THERE ARE NO CHANGES IN THIS BILL AND IT
 WILL NOT BE REPRINTED. PLEASE REFER TO
 INTRODUCED COPY (WHITE) FOR COMPLETE TEXT.

SENATE BILL NO. 345

INTRODUCED BY SWYSGOOD, GRIMES, FOSTER, GRINDE, MCKEE, AKLESTAD, CHRISTIAENS, WELLS, QUILICI,
MERCER, KASTEN, BRAINARD, REHBEIN, HARP, CRIPPEN, BROWN, R. JOHNSON, TREXLER, GRADY
BY REQUEST OF THE OFFICE OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE GOVERNOR'S TASK
FORCE TO RENEW MONTANA GOVERNMENT BY CREATING A NEW DEPARTMENT OF PUBLIC HEALTH AND HUMAN
SERVICES; TRANSFERRING ALL PROGRAMS CURRENTLY ADMINISTERED BY THE DEPARTMENT OF SOCIAL AND
REHABILITATION SERVICES TO THE NEW DEPARTMENT; TRANSFERRING ALL PROGRAMS CURRENTLY
ADMINISTERED BY THE DEPARTMENT OF FAMILY SERVICES TO THE NEW DEPARTMENT, WITH THE EXCEPTION
OF JUVENILE CORRECTIONS PROGRAMS; TRANSFERRING JUVENILE CORRECTIONS PROGRAMS TO THE
DEPARTMENT OF CORRECTIONS; TRANSFERRING THE MENTAL HEALTH PROGRAMS, SUBSTANCE ABUSE
PROGRAMS, AND DEVELOPMENTAL DISABILITIES PROGRAMS AND ASSOCIATED PROGRAMS AND SUPPORT STAFF
CURRENTLY ADMINISTERED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO THE NEW
DEPARTMENT; TRANSFERRING ALL HEALTH SERVICES PROGRAMS CURRENTLY ADMINISTERED BY THE
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO THE NEW DEPARTMENT, EXCEPT FOR
LABORATORY SERVICES; ABOLISHING THE EXISTING DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
AND THE EXISTING DEPARTMENT OF FAMILY SERVICES; CONTINGENTLY ABOLISHING THE BOARD OF HEALTH
AND ENVIRONMENTAL SCIENCES AND TRANSFERRING ITS DUTIES TO THE NEW DEPARTMENT; CHANGING THE
NAME OF THE BOARD OF SOCIAL AND REHABILITATION APPEALS TO THE BOARD OF PUBLIC ASSISTANCE;
CHANGING THE NAME OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO THE DEPARTMENT OF
CORRECTIONS; CHANGING THE NAME OF THE BOARD OF PARDONS TO THE BOARD OF PARDONS AND PAROLE;
CHANGING THE NAME OF THE WOMEN'S CORRECTIONAL CENTER TO THE WOMEN'S CORRECTIONAL SYSTEM;

CHANGES IN SB 345 OCCUR ON THE
FOLLOWING PAGES: 2, 3, 4, 5, 244, & 352.
PLEASE REFER TO INTRODUCED COPY (WHITE)
FOR COMPLETE TEXT OF SB 345.

1 39-71-2001, 40-1-107, 40-1-203, 40-1-204, 40-1-206, 40-1-208, 40-1-209, 40-4-204, 40-4-205, 40-4-208,
 2 40-4-209, 40-4-215, 40-4-218, 40-5-103, 40-5-143, 40-5-158, 40-5-161, 40-5-162, 40-5-164, 40-5-165, 40-5-173,
 3 40-5-185, 40-5-196, 40-5-201, 40-5-202, 40-5-235, 40-5-303, 40-5-315, 40-5-402, 40-5-403, 40-5-701, 40-5-704,
 4 40-6-105, 40-6-106, 40-6-107, 40-6-110, 40-6-116, 40-6-123, 40-6-126, 40-6-128, 40-6-135, 40-8-103, 40-8-110,
 5 40-8-111, 40-8-121, 40-8-124, 40-8-126, 40-9-102, 41-3-102, 41-3-107, 41-3-108, 41-3-201, 41-3-202, 41-3-205,
 6 41-3-208, 41-3-301, 41-3-302, 41-3-401, 41-3-402, 41-3-406, 41-3-702, 41-3-704, 41-3-1003, 41-3-1004,
 7 41-3-1006, 41-3-1008, 41-3-1010, 41-3-1011, 41-3-1012, 41-3-1013, 41-3-1014, 41-3-1101, 41-3-1102,
 8 41-3-1103, 41-3-1104, 41-3-1114, 41-3-1122, 41-3-1132, 41-4-103, 41-4-104, 41-5-103, 41-5-206, 41-5-301,
 9 41-5-403, 41-5-523, 41-5-530, 44-5-202, 44-5-213, 45-5-621, 45-5-625, 45-8-109, 45-9-202, 46-1-202, 46-14-221,
 10 46-14-222, 46-14-301, 46-14-302, 46-14-303, 46-14-304, 46-14-312, 46-18-101, 46-18-105, 46-18-111,
 11 46-18-201, 46-18-225, 46-18-235, 46-18-254, 46-18-1001, 46-18-1004, 46-19-202, 46-19-303, 46-19-305,
 12 46-19-402, 46-23-103, 46-23-104, 46-23-106, 46-23-201, 46-23-302, 46-23-315, 46-23-401, 46-23-502,
 13 46-23-503, 46-23-1001, 46-23-1024, 49-3-204, 49-4-502, 49-4-507, 50-1-101, 50-1-102, 50-1-103, 50-1-104,
 14 50-1-202, 50-2-101, 50-3-102, 50-4-102, 50-4-201, 50-4-304, 50-4-310, 50-4-402, 50-5-101, 50-5-106, 50-5-114,
 15 50-5-207, 50-5-208, 50-5-226, 50-5-227, 50-5-301, 50-5-602, 50-5-1103, 50-6-102, 50-6-103, 50-6-104, 50-6-203,
 16 50-6-207, 50-6-302, 50-6-308, 50-6-310, 50-6-314, 50-6-315, 50-6-316, 50-6-324, 50-6-325, 50-6-326, 50-6-327,
 17 50-8-101, 50-8-102, 50-9-102, 50-10-101, 50-15-101, 50-15-113, 50-15-206, 50-15-304, 50-15-702, 50-16-101,
 18 50-16-102, 50-16-602, 50-16-701, 50-16-1003, 50-17-102, 50-18-102, 50-18-103, 50-18-104, 50-18-105,
 19 50-18-109, 50-18-113, 50-19-101, 50-19-201, 50-19-303, 50-20-104, 50-21-102, 50-21-103, 50-23-101,
 20 50-23-103, 50-23-105, 50-23-106, 50-30-102, 50-31-103, 50-31-307, 50-31-501, 50-34-101, 50-36-101,
 21 50-40-103, 50-44-102, 50-49-103, 50-50-102, 50-51-102, 50-52-101, 50-53-102, 50-60-204, 50-70-103,
 22 50-70-105, 50-70-108, 50-70-109, 50-70-110, 50-70-111, 50-70-112, 50-70-113, 50-70-114, 50-70-116,
 23 50-70-117, 50-71-109, 50-78-102, 52-1-101, 52-1-102, 52-1-103, 52-1-110, 52-2-101, 52-2-111, 52-2-202,
 24 52-2-203, 52-2-211, 52-2-303, 52-2-401, 52-2-503, 52-2-522, 52-2-523, 52-2-527, 52-2-703, 52-2-704, 52-2-731,
 25 52-2-733, 52-2-735, 52-3-101, 52-3-102, 52-3-103, 52-3-111, 52-3-202, 52-3-302, 52-3-401, 52-3-502, 52-3-603,
 26 52-3-605, 52-3-804, 52-3-805, 52-3-811, 52-3-813, 52-4-101, 52-4-202, 52-4-204, 52-4-205, 52-5-101, 52-5-102,
 27 52-5-103, 52-5-107, 52-5-108, 52-5-109, 52-5-110, 52-5-111, 52-5-112, 52-5-113, 52-5-120, 52-5-121, 52-5-126,
 28 52-5-127, 52-5-128, 52-5-129, 52-6-101, 52-6-102, 52-6-103, 52-6-104, ~~52-1-101~~, 53-1-105, 53-1-106, 53-1-201,
 29 53-1-202, 53-1-203, 53-1-204, 53-1-206, 53-1-301, 53-1-303, 53-1-304, 53-1-401, 53-1-501, 53-1-502, 53-2-101,
 30 53-2-303, 53-2-304, 53-2-305, 53-2-306, 53-2-322, 53-2-501, 53-2-503, 53-2-602, 53-2-606, 53-2-608, 53-2-609,
 31 53-2-610, 53-2-613, 53-2-801, 53-2-802, 53-2-803, 53-2-811, 53-2-812, 53-2-813, 53-3-115, 53-4-201, 53-4-203,
 32 53-4-222, 53-4-242, 53-4-244, 53-4-246, 53-4-702, 53-4-719, 53-5-401, 53-6-101, 53-6-104, 53-6-106, 53-6-107,
 33 53-6-108, 53-6-110, 53-6-111, 53-6-112, 53-6-113, 53-6-114, 53-6-115, 53-6-116, 53-6-117, 53-6-131, 53-6-132,
 34 53-6-133, 53-6-134, 53-6-142, 53-6-143, 53-6-150, 53-6-401, 53-7-101, 53-7-202, 53-7-301, 53-9-105, 53-10-501,

1 53-18-101, 53-18-103, 53-19-102, 53-20-102, 53-20-104, 53-20-106, 53-20-125, 53-20-128, 53-20-133,
2 53-20-161, 53-20-163, 53-20-202, 53-20-213, 53-20-214, 53-20-302, 53-20-303, 53-20-304, 53-20-305,
3 53-20-306, 53-20-307, 53-20-504, 53-20-505, 53-21-102, 53-21-106, 53-21-138, 53-21-139, 53-21-145,
4 53-21-165, 53-21-201, 53-21-202, 53-21-204, 53-21-212, 53-21-402, 53-21-411, 53-21-412, 53-21-413,
5 53-21-601, 53-22-102, 53-22-104, 53-24-103, 53-24-204, 53-30-101, 53-30-102, 53-30-105, 53-30-106,
6 53-30-110, 53-30-111, 53-30-131, 53-30-132, 53-30-133, 53-30-141, 53-30-303, 53-30-401, 61-8-714, 61-8-722,
7 69-3-1002, 69-3-1006, 72-16-217, 72-17-102, 75-2-103, 75-5-103, 75-6-102, 75-10-103, 75-10-203, 75-10-403,
8 75-10-501, 75-10-903, 75-10-921, 75-10-950, 75-11-203, 75-20-104, 75-20-202, 75-20-205, 75-20-208,
9 75-20-211, 75-20-216, 75-20-225, 75-20-302, 75-20-303, 75-20-304, 75-20-1202, 76-2-411, 76-2-412, 80-15-102,
10 81-2-106, 81-9-202, 81-9-233, 81-21-103, 81-22-208, 81-22-209, 81-22-404, 81-22-414, 81-22-421, 81-23-101,
11 81-23-103, 87-1-226, 87-1-303, 87-2-802, 90-4-201, 90-4-202, 90-4-215, AND 90-7-220, MCA; REPEALING
12 SECTIONS 2-15-2104, 2-15-2401, 50-1-301, 50-1-302, 50-70-106, 52-1-105, AND 53-1-101, MCA; AND PROVIDING
13 AN EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **NEW SECTION. Section 1. Department of social and rehabilitation services abolished -- functions transferred**
18 **to department of public health and human services.** (1) The department of social and rehabilitation services is
19 abolished, and its functions are transferred to the department of public health and human services, as established in
20 2-15-2201.

21 (2) Unless inconsistent with [sections 1 through ~~569~~ 568], any reference in the Montana Code Annotated or
22 in legislation enacted by the 1995 legislature to the "department of social and rehabilitation services" or "department"
23 (of social and rehabilitation services) or "director of social and rehabilitation services" or "director" (of social and
24 rehabilitation services) or "board of social and rehabilitation appeals" or "board" (of social and rehabilitation appeals)
25 is changed to the "department of public health and human services", "department" (of public health and human
26 services), "director of public health and human services", "director" (of public health and human services), "board of
27 public assistance", or "board" (of public assistance), as appropriate. The code commissioner shall conform internal
28 references and grammar to these changes.

29
30 **NEW SECTION. Section 2. Department of family services abolished -- functions transferred.** (1) The
31 department of family services is abolished, and its functions are transferred to the department of public health and
32 human services, as established in 2-15-2201, except juvenile corrections division programs, which are transferred to
33 the department of corrections.

34 (2) Unless inconsistent with [sections 1 through ~~569~~ 568], any reference in the Montana Code Annotated or

1 in legislation enacted by the 1995 legislature to the "department of family services" or "department" (of family services)
2 or "director of family services" or "director" (of family services) is changed to:

- 3 (a) the "department of public health and human services", "department" (of public health and human services),
4 "director of public health and human services", or "director" (of public health and human services), as appropriate; or
5 (b) the "department of corrections", "department" (of corrections), "director of corrections", or "director" (of
6 corrections), as appropriate. The code commissioner shall conform internal references and grammar to these changes.

7
8 **NEW SECTION. Section 3. Certain functions of director and department of health and environmental sciences**
9 **transferred to director or department of public health and human services -- board of health and environmental sciences**
10 **abolished.** (1) The public health functions of the director and department of health and environmental sciences are
11 transferred to the director or department of public health and human services, established in 2-15-2201, as appropriate,
12 relating to and including but not limited to the following:

13 (a) preventive health services, including the chronic disease prevention and health promotion program,
14 surveillance and control of communicable diseases, immunizations, epidemiology services, and support for rape crisis
15 programs;

16 (b) family and maternal and child health programs, including the women, infants, and children program, the
17 child nutrition and child food care program, family planning services, perinatal services, and children's special health
18 services;

19 (c) health services, including planning and implementation of a statewide emergency medical system and
20 development of a state health plan;

21 (d) food and consumer safety programs, including:

22 (i) administration of food programs and nutrition services under Title 50, chapter 49;

23 (ii) regulation of food establishments under Title 50, chapter 50;

24 (iii) regulation of hotels, motels, and roominghouses under Title 50, chapter 51;

25 (iv) regulation of tourist campgrounds and trailer courts under Title 50, chapter 52; and

26 (v) regulation of public swimming pools and swimming areas under Title 50, chapter 53.

27 (e) records and statistics services;

28 (f) administration of the certificate of need program; and

29 (g) health facility regulation, including licensing, medicaid certification, approval of health facility renovation,
30 and new construction.

31 (2) Unless inconsistent with [sections 1 through ~~569~~ 568] and with respect to public health functions, any
32 reference in the Montana Code Annotated or in legislation enacted by the 1995 legislature to the "department of health
33 and environmental sciences" or "department" (of health and environmental sciences) or "director of health and
34 environmental sciences" or "director" (of health and environmental sciences) is changed to the "department of public

1 health and human services", "department" (of public health and human services), "director of public health and human
2 services", or "director" (of public health and human services), as appropriate. The code commissioner shall conform
3 internal references and grammar to these changes.

4 (3) The board of health and environmental sciences is abolished.

5
6 **NEW SECTION. Section 4. Certain functions of director and department of corrections and human services**
7 **transferred to director or department of public health and human services.** (1) The human services functions of the
8 director and department of corrections and human services are transferred to the director or department of public health
9 and human services, established in 2-15-2201, as appropriate, relating to and including but not limited to the following:

10 (a) developmental disabilities services, including institutional and residential care, pursuant to Title 53, chapter
11 20, provided at the Montana developmental center and Eastmont human services center;

12 (b) mental health services, including the care and treatment of the mentally ill, pursuant to Title 53, chapter
13 21, provided at the Montana state hospital and the Montana center for the aged and through community-based services
14 at private, nonprofit regional mental health centers;

15 (c) chemical dependency services pursuant to Title 53, chapter 24; and

16 (d) veterans' long-term care services, including those provided at the Montana veterans' home and eastern
17 Montana veterans' home at Glendive.

18 (2) Unless inconsistent with [sections 1 through ~~569~~ 568] and with respect to human services functions, any
19 reference in the Montana Code Annotated or in legislation enacted by the 1995 legislature to the "department of
20 corrections and human services" or "department" (of corrections and human services) or "director of corrections and
21 human services" or "director" (of corrections and human services) is changed to the "department of public health and
22 human services", "department" (of public health and human services), "director of public health and human services",
23 or "director" (of public health and human services), as appropriate. The code commissioner shall conform internal
24 references and grammar to these changes.

25
26 **NEW SECTION. Section 5. Department and director of corrections and human services -- names changed.**
27 Except as provided in [section 4] and with respect to functions that are not related to human services, the names of
28 the department and the director of corrections and human services are changed to the department and director of
29 corrections, respectively. Unless inconsistent with [sections 1 through ~~569~~ 568], any reference in the Montana Code
30 Annotated or in legislation enacted by the 1995 legislature to the "department of corrections and human services" or
31 "department" (of corrections and human services) or "director of corrections and human services" or "director" (of
32 corrections and human services) is changed to the "department of corrections", "department" (of corrections), "director
33 of corrections", or "director" (of corrections), as appropriate. The code commissioner shall conform internal references
34 and grammar to these changes.

- (2) may spend no more than 5% of the appropriated funds for administrative costs of the program;
- (3) shall accept federal funds that may be available for use in carrying out the provisions of this part;
- (4) may use state funds as a match for federal funds if required; and
- (5) may conduct research and compile statistics relating to battered spouses and domestic violence."

Section 389. Section 52-6-103, MCA, is amended to read:

"52-6-103. Authorized grantees -- criteria for grants. (1) The department of ~~family~~ public health and human services ~~must~~ shall award battered spouses and domestic violence grants only to local domestic abuse programs that are locally controlled. Grants may be awarded to governmental or nongovernmental agencies or persons.

(2) Battered spouses and domestic violence grants are to be awarded on the following basis:

- (a) demonstrated need;
- (b) project merit;
- (c) administrative design; and
- (d) efficiency of administration."

Section 390. Section 52-6-104, MCA, is amended to read:

"52-6-104. Authorized services of programs. (1) Local battered spouses and domestic violence programs may provide services that include but are not limited to the following:

- (a) counseling for victims or their spouses;
- (b) shelters or safe homes for victims;
- (c) advocacy programs that assist victims in obtaining services and information; and
- (d) educational programs relating to battered spouses and domestic violence designed for both the community at large and specialized groups such as hospital personnel and law enforcement officials.

(2) The services authorized in subsection (1) may be provided on a regional basis by a local battered spouses and domestic violence program if ~~so~~ authorized by the department of ~~family~~ public health and human services according to regional boundaries established by the department."

~~**Section 391.** Section 53-1-101, MCA, is amended to read:~~

~~**"53-1-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:~~

- ~~(1) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.~~
- ~~(2) "Director" means the director of corrections and human services provided for in 2-15-2301.~~
- ~~(3) "Institution" means any of the institutions listed in 53-1-202."~~

1 **Section 391.** Section 53-1-105, MCA, is amended to read:

2 **"53-1-105. Disposition of contraband in correctional institution.** (1) Cash possessed in excess of the amount
3 allowed by the policy of an adult or youth correctional institution or obtained in violation of ~~such~~ a policy may be
4 confiscated and deposited in an inmate or resident welfare fund to be used for the intended purpose of that fund.

5 (2) The department of corrections ~~and human services~~ shall adopt policies for the disposition of other
6 contraband confiscated from inmates or residents in adult or youth correctional institutions. Receipts from the sale of
7 contraband must be deposited in an inmate or resident welfare fund to be used for the intended purpose of that fund."

8
9 **Section 392.** Section 53-1-106, MCA, is amended to read:

10 **"53-1-106. Exchange of offenders under treaty.** If a treaty in effect between the United States and a foreign
11 country provides for the transfer, by exchange or otherwise, of convicted offenders to the country of which they are
12 citizens or nationals, the governor may, on behalf of the state and subject to the terms of the treaty, authorize the
13 director of the department of corrections ~~and human services~~ to consent to the transfer or exchange of offenders in
14 Montana institutions and take any other action necessary to initiate the participation of this state in the treaty."

15
16 **Section 393.** Section 53-1-201, MCA, is amended to read:

17 **"53-1-201. Purpose of department of corrections.** The department of corrections shall utilize at maximum
18 efficiency the resources of state government in a coordinated effort to:

19 (1) develop and maintain comprehensive services and programs in the ~~fields~~ field of:

20 ~~(a) adult and youth corrections; and~~

21 ~~(b) mental health; and~~

22 ~~(c) chemical dependency;~~

23 ~~(2) provide inpatient institutional care for developmentally disabled persons who require that care according~~
24 ~~to the requirements of Title 53, chapter 20; and~~

25 ~~(3) provide nursing home care for honorably discharged veterans as provided by law.~~

26 (2) provide for the care, protection, and mental and physical development of youth alleged to be youth in need
27 of supervision or delinquent youth who are referred or committed to the department."

28
29 **Section 394.** Section 53-1-202, MCA, is amended to read:

30 **"53-1-202. Department of corrections and human services.** (1) ~~The following components.~~ Adult and youth
31 correctional services are in the department of corrections ~~and human services~~ to carry out the purposes of the
32 department;

33 ~~(a)(2) adult~~ Adult corrections services ~~consisting~~ consist of the following institutional components to
34 incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

1 the Montana Code Annotated and in material enacted by the 54th legislature to "department of health and
2 environmental sciences" are changed to "department of environmental sciences".

3 (4) If both bills are passed and approved, the department of health and environmental sciences is abolished,
4 2-15-104(1)(h) is eliminated, and 2-15-2101 is repealed. Any reference in this bill to "department of health and
5 environmental sciences" or "department of environmental sciences", except in 2-15-104 and 2-15-2101, is changed
6 to "department of environmental quality".

7
8 **NEW SECTION. Section 569. Executive orders -- code commissioner instruction.** (1) In all material enacted
9 by the 54th legislature that assigns duties or functions to the department of family services, department of health and
10 environmental sciences, department of social and rehabilitation services, or department of corrections and human
11 services, the governor shall by executive order designate the department of public health and human services or the
12 department of corrections as the agency to perform each duty or function.

13 (2) The governor shall provide a copy of each executive order to the code commissioner, who shall make the
14 changes necessary to reflect the assignment of each duty or function. The code commissioner shall recodify and
15 rearrange material as necessary to reflect the provisions of [this act].

16
17 **NEW SECTION. Section 570. Codification instruction.** [Sections ~~399 398~~ through ~~402 401~~] are intended
18 to be codified as an integral part of Title 53, chapter 1, and the provisions of Title 53, chapter 1, apply to [sections
19 ~~399 398~~ through ~~402 401~~].

20
21 **NEW SECTION. Section 571. Saving clause.** [This act] does not affect rights and duties that matured,
22 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

23
24 **NEW SECTION. Section 572. Effective date.** [This act] is effective July 1, 1995.

25 -END-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

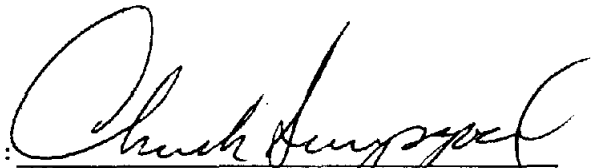
March 3, 1995 11:08 am

Mr. Chairman: I move to amend SB 345 (second reading copy -- yellow).

ADOPT

REJECT

Signed:


Senator Swysgood

That such amendments read:

1. Page 2, line 27.
Strike: "53-1-101,"
2. Page 3, lines 20 and 33.
Page 4, line 30.
Page 5, lines 17 and 28.
Strike: "569"
Insert: "568"
3. Page 244, lines 28 through 33.
Strike: section 391 in its entirety
Renumber: subsequent sections
4. Page 352, lines 17 and 18.
Strike: "399"
Insert: "398"
Strike: "402"
Insert: "401"

-END-

 Amd. Coord.

501108CW.SPV



HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 345
Representative Cobb

March 27, 1995 10:50 am
Page 1 of 5

Mr. Chairman: I move to amend Senate Bill 345 (third reading copy -- blue).

Signed: _____

A handwritten signature in cursive script, appearing to read "Cobb".

Representative Cobb

And, that such amendments to Senate Bill 345 read as follows:

1. Title, lines 10 through 12.
Following: "NEW DEPARTMENT" on line 10
Strike: remainder of line 10 through "CORRECTIONS" on line 12
2. Title, page 2, line 8.
Strike: "41-3-1103,"
3. Title, page 2, line 23.
Strike: "52-1-101,"
Strike: "52-1-103,"
4. Page 3, lines 21 and 34.
Strike: "568"
Insert: "565"
5. Page 3, lines 32 and 33.
Following: "2-15-2201" on line 31
Strike: remainder of line 31 through "corrections" on line 32
6. Page 4, line 2.
Strike: ":"
7. Page 4, line 3.
Strike: "(a)"
8. Page 4, lines 4 through 6.
Following: "appropriate" on line 4
Strike: remainder of line 4 through "appropriate" on line 6

ADOPT

50-45

SB 345

REJECT

HOUSE

9. Page 4, line 31.

Strike: "568"

Insert: "565"

10. Page 5, lines 18 and 29.

Strike: "568"

Insert: "565"

11. Page 44, line 11.

Strike: "corrections"

Insert: "public health and human services"

12. Page 51, lines 11 and 12.

Following: "of" on line 11

Strike: remainder of line 11 through "or" on line 12

13. Page 121, line 14 through page 122, line 11.

Strike: section 184, amending 41-3-1103, MCA, in its entirety

Renumber: subsequent sections

14. Page 122, lines 14, 17, and 21.

Strike: "corrections"

Insert: "public health and human services"

15. Page 122, lines 28 and 29.

Strike: "or" on line 28 through "corrections" on line 29

Strike: "making the placement"

16. Page 122, lines 32 and 33.

Following: "services" on line 32

Strike: remainder of line 32 through "corrections" on line 33

17. Page 123, line 15.

Strike: "and the department of corrections"

18. Page 123, line 17.

Strike: "are"

Insert: "is"

19. Page 124, line 20.

Strike: "corrections"

Insert: "public health and human services"

Strike: "2-15-2301"

Insert: "2-15-2201"

20. Page 158, line 21.

Following: "services"

Insert: "or the department of public health and human services"

21. Page 178, line 30.
Following: "~~services~~"
Insert: "or the department of public health and human services".
22. Page 218, line 34 through page 219, line 9.
Strike: section 333, amending 52-1-101, MCA, in its entirety
Renumber: subsequent sections
23. Page 219, line 18 through page 220, line 34.
Strike: section 335, amending 52-1-103, MCA, in its entirety
Renumber: subsequent sections
24. Page 223, line 32.
Following: "~~and~~"
Insert: "and"
25. Page 223, lines 33 and 34.
Following: "districts" on line 33
Strike: remainder of line 33 through "corrections" on line 34
26. Page 238, lines 5, 15, 23, and 32.
Strike: "corrections"
Insert: "public health and human services"
27. Page 239, lines 1, 6, 14, 22, 31, and 32.
Strike: "corrections"
Insert: "public health and human services"
28. Page 239, line 34.
Following: "~~services~~"
Insert: "and the department of public health and human services"
29. Page 240, lines 5, 11, and 15.
Following: "~~services~~"
Insert: "and the department of public health and human services"
30. Page 240, lines 7, 19, 31, and 33.
Strike: "corrections"
Insert: "public health and human services"
31. Page 241, lines 4, 17, and 28.
Strike: "corrections"
Insert: "public health and human services"
32. Page 242, lines 7, 14, and 25.
Strike: "corrections"
Insert: "public health and human services"

33. Page 245, line 18.
Strike: ":"

34. Page 245, line 19.
Strike: "(1)"

35. Page 245, line 20.
Strike: "and youth"
Strike: "; and"
Insert: "."

36. Page 245, lines 26 and 27.
Strike: subsection (2) in its entirety

37. Page 245, line 30.
Strike: "and youth"

38. Page 246, lines 25 through 29.
Strike: subsection (3) in its entirety
Renumber: subsequent subsection

39. Page 246, line 34.
Strike: "(1)"

40. Page 247, line 1.
Strike: "(a)"
Insert: "(1)"
Strike: "rules" through "and"
Renumber: subsequent subsections

41. Page 247, line 23.
Strike: "i"
Insert: "."

42. Page 247, line 24 through page 248, line 6.
Strike: subsections (g) through (2) in their entirety

43. Page 248, line 28.
Following: line 27
Insert: "(a) youth corrections;"
Renumber: subsequent subsections

44. Page 249, line 2.
Following: line 1
Insert: "(a) youth correctional services, consisting of the following institutional components to diagnose, care for, train, educate, and rehabilitate youth pursuant to Title 52, chapter 5:

(i) Mountain View school;
(ii) Pine Hills school; and
(iii) any other institution that provides care and services
for delinquent youth;"

Renumber: subsequent subsections

45. Page 352, lines 17 and 19.

Strike: "398" through "401"

Insert: "395 through 398"

-END-

SENATE BILL NO. 345

INTRODUCED BY SWYSGOOD, GRIMES, FOSTER, GRINDE, MCKEE, AKLESTAD, CHRISTIAENS, WELLS, QUILICI,
MERCER, KASTEN, BRAINARD, REHBEIN, HARP, CRIPPEN, BROWN, R. JOHNSON, TREXLER, GRADY
BY REQUEST OF THE OFFICE OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE GOVERNOR'S TASK
FORCE TO RENEW MONTANA GOVERNMENT BY CREATING A NEW DEPARTMENT OF PUBLIC HEALTH AND HUMAN
SERVICES; TRANSFERRING ALL PROGRAMS CURRENTLY ADMINISTERED BY THE DEPARTMENT OF SOCIAL AND
REHABILITATION SERVICES TO THE NEW DEPARTMENT; TRANSFERRING ALL PROGRAMS CURRENTLY
ADMINISTERED BY THE DEPARTMENT OF FAMILY SERVICES TO THE NEW DEPARTMENT, ~~WITH THE EXCEPTION~~
~~OF JUVENILE CORRECTIONS PROGRAMS; TRANSFERRING JUVENILE CORRECTIONS PROGRAMS TO THE~~
~~DEPARTMENT OF CORRECTIONS;~~ TRANSFERRING THE MENTAL HEALTH PROGRAMS, SUBSTANCE ABUSE
PROGRAMS, AND DEVELOPMENTAL DISABILITIES PROGRAMS AND ASSOCIATED PROGRAMS AND SUPPORT STAFF

DUE TO THE LARGE SIZE OF SB 345,
IT WILL NOT BE REPRINTED IN FULL
AT THIS TIME. PLEASE REFER TO
THIRD READING COPY (BLUE) ALONG
WITH (H) COM OF WHOLE AMEND. FOR
COMPLETE TEXT OF BILL.

Conference Committee
on SB 345
Report No. 1, April 7, 1995

Page 1 of 10

Mr. President and Mr. Speaker:

We, your Conference Committee on SB 345, met April 7, 1995, and considered:

House Committee of the Whole amendments to the third reading copy dated March 27, 1995.

We recommend that SB 345 (reference copy - salmon) be amended as follows:

1. Title, line 12.

Following: "CORRECTIONS"

Insert: ", WITH THE EXCEPTION OF JUVENILE CORRECTIONS PROGRAMS;
TRANSFERRING JUVENILE CORRECTIONS PROGRAMS TO THE DEPARTMENT
OF CORRECTIONS"

2. Title, page 2, line 8.

Following: "~~41-3-1103,~~"

Insert: "41-3-1103,"

3. Title, page 2, line 23.

Following: "~~52-1-101,~~"

Insert: "52-1-101,"

Following: "~~52-1-103,~~"

Insert: "52-1-103,"

4. Page 3, lines 21 and 34.

Strike: "565"

Insert: "568"

5. Page 3, line 33.

Following: "~~corrections~~"

Insert: ", except juvenile corrections division programs, which
are transferred to the department of corrections"

6. Page 4, line 2.

Following: "to+"

Insert: ":",

7. Page 4, line 3.

Following: "~~(a)~~"

Insert: "(a)"

8. Page 4, line 4.

Following: "~~or~~"

Insert: "; or"

ADOPT

REJECT

SB 345

CCR#1

801027CC.SPV

9. Page 4, line 6.

Following: "~~appropriate~~"

Insert: "(b) the "department of corrections", "department" (of corrections), "director of corrections", or "director" (of corrections), as appropriate"

10. Page 4, line 31.

Strike: "565"

Insert: "568"

11. Page 5, line 18 and 29.

Strike: "565"

Insert: "568"

12. Page 44, lines 11 and 12.

Following: "~~corrections~~" on line 11

Strike: remainder of line 11 through "SERVICES" on line 12

Insert: "corrections"

13. Page 51, line 13.

Following: "~~family~~"

Insert: "the department of corrections or"

14. Page 122, line 16.

Insert: "**Section 184.** Section 41-3-1103, MCA, is amended to read:

"41-3-1103. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, ~~youth in need of supervision, and delinquent youth~~, as defined in 41-5-103;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, ~~youth in need of supervision, and delinquent youth~~;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the ~~breakdown number~~ of youth in need of care, ~~youth in need of supervision, and delinquent youth by category~~ in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and
(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care, ~~youth in need of supervision, and delinquent youth~~ in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under this subsection may not exceed appropriations for the purposes of this subsection."

Renumber: subsequent sections

15. Page 122, lines 18 and 19.

Following: "corrections" on line 18

Strike: "PUBLIC HEALTH AND HUMAN SERVICES"

Insert: "corrections"

16. Page 122, lines 21 and 25.

Following: "corrections"

Strike: "PUBLIC HEALTH AND HUMAN SERVICES"

Insert: "corrections"

17. Page 122, line 33.

Following: "corrections"

Insert: "or the department of corrections"

Following: "placement"

Insert: "making the placement"

18. Page 123, line 3.

Following: "corrections"

Insert: "or the department of corrections"

19. Page 123, line 19.

Following: "corrections"

Insert: "and the department of corrections"

20. Page 123, line 21.

Strike: "IS"
Insert: "are"

21. Page 124, lines 24 and 25.
Following: "~~corrections~~" on line 24
Strike: remainder of line 24 through "SERVICES" on line 25
Insert: "corrections"
Strike: "2-15-2201"
Insert: "2-15-2301"

22. Page 158, line 25.
Strike: "OR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES"

23. Page 178, line 34.
Following: "services"
Strike: "OR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES"

24. Page 219, line 15.
Insert: "**Section 333.** Section 52-1-101, MCA, is amended to read:
 "**52-1-101. Purpose.** It is the public policy of the legislature to reduce duplication and fragmentation of services to youth, families, and senior citizens by creating a department that shall develop and maintain consolidated programs and services, except youth correctional services, within available resources, and a planned continuum of services to:
 (1) provide protective services to ensure the health, welfare, and safety of children and adults who are in danger of abuse, neglect, or exploitation within communities; and
 ~~(2) provide for the care, protection, and mental and physical development of youth alleged to be youth in need of supervision or delinquent youth who are referred or committed to the department; and~~
 ~~(3)~~ (2) provide supportive services to enable senior citizens to maintain their independence.""

Renumber: subsequent sections

25. Page 221, line 6.
Insert: "**Section 335.** Section 52-1-103, MCA, is amended to read:
 "**52-1-103. Powers and duties of department.** The department shall:
 (1) administer and supervise all forms of child and adult protective services;
 (2) act as the lead agency in coordinating and planning services to children with multiagency service needs;
 ~~(3) provide funding for and place youth alleged or adjudicated to be delinquent or in need of supervision who are referred or committed to the department;~~
 ~~(4)~~ (3) provide the following functions, as necessary, for youth in need of care:
 (a) intake, investigation, case management, and client

supervision;

- (b) placement in youth care facilities;
- (c) contracting for necessary services;
- (d) protective services day care; and
- (e) adoption;

~~(5) administer youth correctional facilities;~~

~~(6) provide supervision, care, and control of youth released from a state youth correctional facility;~~

~~(7)~~ (4) license youth care facilities, child-placing agencies, day-care facilities, community homes for developmentally disabled persons, community homes for severely disabled persons, and adult foster care facilities;

~~(8)~~ (5) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

~~(9)~~ (6) administer the interstate ~~compacts~~ compact for children and delinquent youth;

~~(10)~~ (7) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

(b) administer elder abuse prevention services;

~~(11)~~ (8) (a) make a written evaluation of each plan developed by the local family services advisory councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the department, those portions that will not be implemented, and the reasons for not implementing those portions;

(b) develop a statewide youth services and resources plan that takes into consideration local needs as reflected in plans developed by the local family services advisory councils;

~~(12)~~ (9) administer services to the aged;

~~(13)~~ (10) provide consultant services to:

(a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

(b) youth care facilities;

~~(14) utilize at maximum efficiency the resources of state government in a coordinated effort to:~~

~~(a) provide for children in need of temporary protection or correctional services; and~~

~~(b) coordinate and apply the principles of modern institutional administration to the institutions in the department;~~

~~(15) subject to the functions of the department of administration, lease or purchase lands for use by institutions in the department and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration:~~

~~(a) the needs of all institutions in the department for the food products that can be grown or produced on the lands; and~~

~~(b) the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions in the department;~~

~~(16)~~ (11) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

~~(17) propose programs with specific goals and objectives to the legislature to meet the projected long range needs of institutions in the department, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions in the department;~~

~~(18)~~ (12) contract, as necessary, with the county board of welfare for administration of child and adult protection services for that county; and

~~(19)~~ (13) adopt rules necessary to carry out the purposes of 41-3-1126, ~~41-5-527 through 41-5-529~~, and this chapter."

Renumber: subsequent sections

26. Page 224, line 4.

Strike: "AND"

27. Page 224, line 5.

Following: "and"

Insert: "; and"

28. Page 224, line 6.

Following: "corrections"

Insert: "(h) the department of corrections"

29. Page 238, lines 11, 22, and 30.

Following: "corrections"

Strike: "PUBLIC HEALTH AND HUMAN SERVICES"

Insert: "corrections"

30. Page 239, lines 5 and 6.

Following: "corrections" on line 5

Strike: remainder of line 5 through "SERVICES" on line 6

Insert: "corrections"

31. Page 239, line 9.

Strike: "PUBLIC HEALTH AND HUMAN SERVICES"

Insert: "corrections"

32. Page 239, lines 14 and 15.

Following: "corrections" on line 14

Strike: remainder of line 14 through "SERVICES" on line 15

Insert: "corrections"

33. Page 239, lines 23 and 24.

Following: "corrections" on line 23

Strike: remainder of line 23 through "SERVICES" on line 24

Insert: "corrections"

34. Page 239, line 31.

Following: "~~corrections~~"

Strike: "PUBLIC HEALTH AND HUMAN SERVICES"

Insert: "corrections"

35. Page 240, line 7.

Following: "~~corrections~~"

Strike: "PUBLIC HEALTH AND HUMAN SERVICES"

Insert: "corrections"

36. Page 240, lines 9 and 10.

Following: "~~corrections~~" on line 9

Strike: remainder of line 9 through "SERVICES" on line 10

Insert: "corrections"

37. Page 240, line 12.

Strike: "AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES"

38. Page 240, line 17.

Strike: "AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES"

39. Page 240, line 20.

Strike: "PUBLIC HEALTH AND HUMAN SERVICES"

Insert: "corrections"

40. Page 240, line 24.

Strike: "AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES"

41. Page 240, lines 29 and 30.

Following: "~~services~~" on line 29

Strike: remainder of line 29 through "SERVICES" on line 30

42. Page 240, lines 33 and 34.

Following: "~~corrections~~" on line 33

Strike: remainder of line 33 through "SERVICES" on line 34

Insert: "corrections"

43. Page 241, lines 11 and 12.

Following: "~~corrections~~" on line 11

Strike: remainder of line 11 through "SERVICES" on line 12

Insert: "corrections"

44. Page 241, line 14.

Following: "~~corrections~~"

Strike: "PUBLIC HEALTH AND HUMAN SERVICES"

Insert: "corrections"

45. Page 241, lines 18 and 19.

Following: "~~corrections~~" on line 18

Strike: remainder of line 18 through "SERVICES" on line 19

Insert: "corrections"

46. Page 241, lines 32 and 33.

Following: "~~corrections~~" on line 32

Strike: remainder of line 32 through "SERVICES" on line 33

Insert: "corrections"

47. Page 242, line 10.

Strike: "PUBLIC HEALTH AND HUMAN SERVICES"

Insert: "corrections"

48. Page 242, line 22.

Following: "~~corrections~~"

Strike: "PUBLIC HEALTH AND HUMAN SERVICES"

Insert: "corrections"

49. Page 242, line 30.

Strike: "PUBLIC HEALTH AND HUMAN SERVICES"

Insert: "corrections"

50. Page 243, lines 7 and 8.

Following: "~~corrections~~" on line 7

Strike: remainder of line 7 through "SERVICES" on line 8

Insert: "corrections"

51. Page 246, line 1.

Following: "to+"

Insert: ":"

52. Page 246, line 2.

Following: "{1}"

Insert: "(1)"

53. Page 246, line 3.

Following: "youth"

Insert: "and youth"

Following: "and"

Strike: "._"

Insert: "; and"

54. Page 246, line 11.

Following: line 10

Insert: "(2) provide for the care, protection, and mental and physical development of youth alleged to be youth in need of supervision or delinquent youth who are referred or committed to the department."

55. Page 246, line 13.

Following: "youth"

Insert: "and youth"

56. Page 247, line 13.

Following: line 12

Insert: "(3) Youth correctional services consist of the following institutional components to diagnose, care for, train, educate, and rehabilitate youth pursuant to Title 52, chapter 5:
 (a) Mountain View school;
 (b) Pine Hills school; and
 (c) any other institution that provides care and services for delinquent youth."

Renumber: subsequent subsection

57. Page 247, line 17.

Following: "~~(1)~~"

Insert: "(1)"

58. Page 247, line 18.

Strike: "~~(1)~~"

Insert: "(a)"

Following: "~~and~~"

Insert: "rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and"

Renumber: subsequent subsections

59. Page 248, line 6.

Following: "~~+~~"

Strike: "~~.~~"

Insert: ";

60. Page 248, line 24.

Following: line 23

Insert: "(g) administer all state and federal funds allocated to the department for youth in need of supervision and delinquent youth, as defined in 41-5-103;

 (h) collect and disseminate information relating to youth in need of supervision and delinquent youth;

 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of supervision and delinquent youth in out-of-home care facilities;

 (j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need of supervision and who are referred or committed to the department;

 (k) administer youth correctional facilities;

 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

 (i) provide for children in need of temporary protection or correctional services; and

(ii) coordinate and apply the principles of modern institutional administration to the institutions in the department.

(2) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of supervision and delinquent youth in youth care facilities."

61. Page 249, line 11.
Strike: subsection (a) in its entirety
Renumber: subsequent subsections

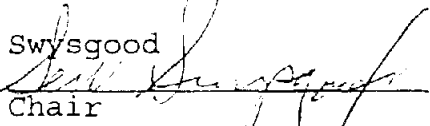
62. Page 249, lines 20 through 24.
Strike: subsection (a) in its entirety
Renumber: subsequent subsections

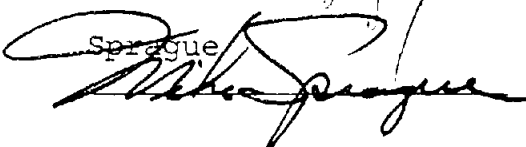
63. Page 353, lines 9 and 10.
Strike: "395 THROUGH 398"
Insert: "398 through 401"

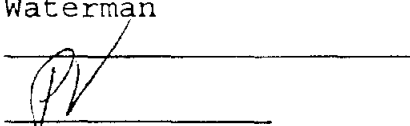
64. Page 353, line 11.
Strike: "395 THROUGH 398"
Insert: "398 through 401"

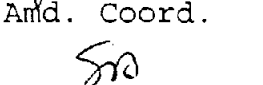
And that this Conference Committee report be adopted.

For the Senate:

Swysgood

Chair

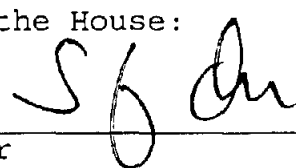

Sprague

Waterman


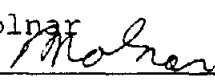
Amd. Coord.


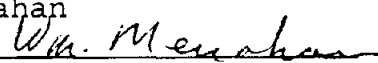
Sec. of Senate

For the House:

Orr


Chair

Molnar


Menahan


1 SENATE BILL NO. 345

2 INTRODUCED BY SWYSGOOD, GRIMES, FOSTER, GRINDE, MCKEE, AKLESTAD, CHRISTIAENS, WELLS, QUILICI,
3 MERCER, KASTEN, BRAINARD, REHBEIN, HARP, CRIPPEN, BROWN, R. JOHNSON, TREXLER, GRADY

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10 ADMINISTERED BY THE DEPARTMENT OF FAMILY SERVICES TO THE NEW DEPARTMENT, ~~WITH THE EXCEPTION~~
11 ~~OF JUVENILE CORRECTIONS PROGRAMS; TRANSFERRING JUVENILE CORRECTIONS PROGRAMS TO THE~~
12 ~~DEPARTMENT OF CORRECTIONS, WITH THE EXCEPTION OF JUVENILE CORRECTIONS PROGRAMS; TRANSFERRING~~
13 ~~JUVENILE CORRECTIONS PROGRAMS TO THE DEPARTMENT OF CORRECTIONS; TRANSFERRING THE MENTAL~~
14 HEALTH PROGRAMS, SUBSTANCE ABUSE PROGRAMS, AND DEVELOPMENTAL DISABILITIES PROGRAMS AND
15 ASSOCIATED PROGRAMS AND SUPPORT STAFF CURRENTLY ADMINISTERED BY THE DEPARTMENT OF
16 CORRECTIONS AND HUMAN SERVICES TO THE NEW DEPARTMENT; TRANSFERRING ALL HEALTH SERVICES

DUE TO THE LARGE SIZE OF SB 345 (357 PAGES), ONLY A LIMITED NUMBER
OF COPIES WILL BE PRINTED.

PLEASE LET US KNOW AS SOON AS POSSIBLE IF YOU ARE GOING TO NEED A
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