

## 1 HOUSE BILL NO. 122

2 INTRODUCED BY MCGEE

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE  
 6 DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL  
 7 PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT;  
 8 PROVIDING THAT AN AWARD OF MONEY DAMAGES RECEIVED BY A PRISONER WHO WAS INJURED  
 9 WHILE UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS BE SUBJECT TO  
 10 GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION AND PER DIEM COSTS OF IMPRISONMENT;  
 11 PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF COMMERCE AGAINST  
 12 PROFESSIONAL LICENSE HOLDERS OR WITH THE HUMAN RIGHTS COMMISSION; CLARIFYING THE USE  
 13 OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS CORPUS FOR INMATES  
 14 TO TESTIFY IN CIVIL PROCEEDINGS; AND AMENDING SECTIONS 25-10-404, 37-1-308, 49-2-501, AND  
 15 53-9-109, MCA."

16

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

18

19 NEW SECTION. **Section 1. Prisoner attendance at civil proceeding prohibited -- exceptions --**

20 **costs.** (1) A person incarcerated in a correctional facility of the department of corrections may not attend  
 21 a civil proceeding unless the person is:

22 (a) a respondent in a proceeding to terminate parental rights; or

23 (b) a party to the civil proceeding and the court determines that the person will be substantially  
 24 and irreparably prejudiced by not attending the civil proceeding.

25 (2) A court may not issue a writ of habeas corpus ordering a person in the legal custody of the  
 26 department of corrections to attend a court proceeding without first:

27 (a) notifying the department and allowing the department 15 days to file a written objection; and

28 (b) if requested, granting the department an opportunity to appear and present evidence that the  
 29 person's attendance at the proceeding represents a security risk.

30 (3) A person who requests that a person in the legal custody of the department of corrections

1 attend a civil proceeding shall pay all costs associated with security.

2

3 **NEW SECTION. Section 2. Report by supervising authority required.** (1) Subsequent to any  
4 judgment awarding money damages to a prisoner under the legal custody of the department of corrections,  
5 the prisoner's supervising authority shall, upon request of the court, submit a report identifying:

6 (a) the total costs incurred by the state or county during the prisoner's incarceration;

7 (b) the criminal sentences imposed upon the prisoner, including:

8 (i) the amount of restitution, if any, ordered in each sentence;

9 (ii) the name and current address of each victim or other person to whom restitution is owed;

10 (iii) the amount of restitution paid by the incarcerated person; and

11 (iv) the amount of restitution currently owed by the incarcerated person for each sentence.

12 (2) The court shall provide a copy of the report to the prisoner, who has 15 days following receipt  
13 to file an objection. The court may hold a hearing to consider objections raised by the prisoner.

14 (3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the  
15 amount of restitution and repayment for per diem costs owed by the prisoner. The court shall issue an  
16 order:

17 (a) reducing the judgment awarding damages to the prisoner by the amount owed in restitution  
18 and repayment costs; and

19 (b) ordering the party owing money damages to the prisoner to pay an amount equal to the  
20 restitution owed by the prisoner to the crime victims compensation and assistance account established in  
21 53-9-109 and to pay per diem costs owed by the prisoner. All restitution owned by the prisoner must be  
22 paid prior to payment of any per diem costs.

23

24 **Section 3.** Section 25-10-404, MCA, is amended to read:

25 **"25-10-404. Poor persons not required to prepay fees -- definition.** (1) Except as provided in  
26 ~~subsection~~ subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported  
27 by a financial statement, stating that the person has a good cause of action or defense and is unable to pay  
28 the costs or procure security to secure the cause of action or defense. Except as provided in ~~subsection~~  
29 subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a  
30 request for waiver of fees, the person may commence and prosecute or defend an action in any of the

1 courts and administrative tribunals of this state and the officers of the courts and administrative tribunals  
2 shall issue and serve all writs and perform all services in the action without demanding or receiving their  
3 fees in advance.

4 (2) If a judge or presiding officer of an administrative tribunal is not available to approve a request  
5 for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval.  
6 If the request is subsequently denied, the fees must be paid before the case may proceed further.

7 (3) A person represented by an entity that provides free legal services to indigent persons is not  
8 required to file the financial statement required by subsection (1).

9 (4) The department of justice shall, by rule, prescribe the form of the financial statement required  
10 by subsection (1) for use in determining indigence. The form may require the disclosure of income and  
11 assets, including but not limited to the ownership of real and personal property, cash, and savings.

12 (5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals  
13 a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition  
14 to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account  
15 statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately  
16 preceding any filing.

17 (6) If an indigent prisoner in the legal custody of the department of corrections files a civil  
18 complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a  
19 prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of  
20 any fees required by law when funds exist. The court shall consider the indigence policy of the department  
21 when determining whether funds exist.

22 (7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or  
23 criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall  
24 dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by  
25 the court.

26 (8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or  
27 adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial  
28 release, or a diversionary program and who is subject to incarceration, detention, or admission to any  
29 facility."

30

1           **Section 4.** Section 37-1-308, MCA, is amended to read:

2           **"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exception.** (1) A  
3 person, government, or private entity may submit a written complaint to the department charging a licensee  
4 or license applicant with a violation of this part and specifying the grounds for the complaint.

5           (2) If the department receives a written complaint or otherwise obtains information that a licensee  
6 or license applicant may have committed a violation of this part, the department may, with the concurrence  
7 of a member of the screening panel established in 37-1-307, investigate to determine whether there is  
8 reasonable cause to believe that the licensee or license applicant has committed the violation. A person or  
9 private entity, but not a government entity, filing a complaint under this section in good faith is immune  
10 from suit in a civil action related to the filing or contents of the complaint.

11           (3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated."

12

13           **Section 5.** Section 49-2-501, MCA, is amended to read:

14           **"49-2-501. Filing complaints -- exception.** (1) A complaint may be filed by or on behalf of any  
15 person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint  
16 must be in the form of a written, verified complaint stating the name and address of the person, and the  
17 educational institution, financial institution, or governmental entity or agency alleged to have engaged in  
18 the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff  
19 may file a complaint in like manner when a discriminatory practice comes to its attention.

20           (2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this  
21 chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory  
22 practice occurred or was discovered.

23           (b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing  
24 a grievance in accordance with any grievance procedure established by a collective bargaining agreement,  
25 contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the  
26 grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful  
27 discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within  
28 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice  
29 occurred or was discovered.

30           (c) Any complaint not filed within the times set forth ~~herein~~ in this subsection (2) may not be

1 considered by the commission.

2 (3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated."

3

4 **Section 6.** Section 53-9-109, MCA, is amended to read:

5 **"53-9-109. Crime victims compensation and assistance account.** (1) There is a crime victims  
6 compensation and assistance account in the state special revenue fund. There must be paid into this  
7 account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses  
8 involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result  
9 of citations or tickets issued by the highway patrol. Except as provided in ~~subsection~~ subsections (2) and  
10 (3), the money in the account must be used solely for the purposes of this part and for victims' assistance  
11 program coordination and planning provided by the division.

12 (2) The fund balance in the account as of March 31 of each year is limited to \$500,000. Whenever  
13 the fund balance on March 31 exceeds \$500,000, the amount of the fund balance in excess of \$500,000  
14 must be deposited in the general fund. (See compiler's comments for contingent termination of certain  
15 text.)

16 (3) Funds deposited into the account pursuant to [section 2] must be distributed to a victim or  
17 person who is qualified to receive restitution. If funds are insufficient to satisfy the claims of all qualified  
18 victims or persons, the funds must be distributed on a pro rata basis to each qualified victim or person.  
19 If a qualified victim or person cannot be located, that victim's or person's share of restitution must be  
20 retained in the account."

21

22 **NEW SECTION. Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as  
23 an integral part of Title 25, chapter 1, part 1, and the provisions of Title 25, chapter 1, part 1, apply to  
24 [sections 1].

25 (2) [Section 2] is intended to be codified as an integral part of Title 25, chapter 10, and the  
26 provisions of Title 25, chapter 10, apply to [section 2].

27

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0122, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act requiring a prisoner in the legal custody of the Department of Corrections to either pay a filing fee to file a complaint in a civil proceeding or submit a certified copy of the prisoner's trust fund account statement; providing that an award of money damages received by a prisoner who was injured while under the supervision of the Department of Corrections be subject to garnishment for payment of victim restitution and per diem costs of imprisonment; prohibiting prisoners from filing complaints with the Department of Commerce against professional license holders or with the Human Rights Commission; clarifying the use of and providing limitations on the issuance of writs of habeas corpus for inmates to testify in civil proceedings.

ASSUMPTIONS:

1. This bill will reduce the cost of transporting inmates to court proceedings. Currently, there are approximately 30 court proceedings per year where an inmate has to be transported. The Department of Corrections (DOC) assumes that 50% of these trips could be avoided under this bill. However, there will be no corresponding cost savings because the correctional officers would be performing other regular duties in lieu of transporting inmates. This bill will increase safety to the facility and the public at large by reducing the number of inmates who must be supervised outside correctional facilities.
2. New Section 3 of this bill will allow the DOC to recoup costs of incarceration from inmates who are awarded judgments. Two inmates have been awarded judgments in the last 6 years for a total of \$9,259. The DOC assumes that it will recoup costs from one award to an inmate in the 1999 biennium.
3. This bill will eliminate complaints filed by inmates against professionals. Over the past two years, there have been approximately 10 complaints filed by inmates. These complaints usually are filed against contracted medical personnel. Each complaint requires 1 day of work by the professional to respond to the complaint. The average hourly salary of DOC contracted medical professionals is \$60. This will be a savings of \$2,400 per year.
4. This bill will also eliminate the number of Human Rights complaints filed by inmates. There are approximately 7 of these filed per year. There would be no fiscal savings to the DOC by eliminating these complaints. However, DOC legal and professional personnel would spend less time responding to frivolous complaints. Also, the backlog of work at the Human Rights Commission would be reduced.
5. This bill has no impact on the Department of Administration.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Incarceration cost abatement	(4,630)	0
Contracted Services	<u>(2,400)</u>	<u>(2,400)</u>
Total	(7,030)	(2,400)
<u>Funding:</u>		
General Fund (01)	(7,030)	(2,400)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Savings generated by this bill will continue into future years.

*Dave Lewis* 1-12-97  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

*Dan McGee* 1/4/97  
 DAN MCGEE, PRIMARY SPONSOR      DATE

Fiscal Note for HB0122, as introduced

**HB 122**

APPROVED BY COM  
ON JUDICIARY

1 HOUSE BILL NO. 122

2 INTRODUCED BY MCGEE

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE  
6 DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL  
7 PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT;  
8 PROVIDING THAT AN AWARD OF MONEY DAMAGES RECEIVED BY A PRISONER WHO WAS INJURED  
9 WHILE UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS BE SUBJECT TO  
10 GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF  
11 IMPRISONMENT; PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF  
12 COMMERCE AGAINST PROFESSIONAL LICENSE HOLDERS OR WITH THE HUMAN RIGHTS COMMISSION;  
13 CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS  
14 CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; ~~AND~~ AMENDING SECTIONS 25-10-404,  
15 37-1-308, 49-2-501, AND 53-9-109, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

16

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

18

19 NEW SECTION. **Section 1. Prisoner attendance at civil proceeding prohibited -- exceptions --**  
20 **costs.** (1) A person incarcerated in a correctional facility of the department of corrections may not attend  
21 a civil proceeding IN WHICH THE PERSON IS A PARTY unless ~~the person is:~~

22 (a) THE PERSON IS a respondent in a proceeding to terminate parental rights; or

23 (b) ~~a party to the civil proceeding and~~ the court determines that ~~the person~~ A PARTY will be  
24 substantially and irreparably prejudiced by not attending the civil proceeding.

25 (2) A court may not issue a writ of habeas corpus ordering a person in the legal custody of the  
26 department of corrections to attend a court proceeding without first:

27 (a) notifying the department and allowing the department 15 days to file a written objection; and

28 (b) if requested, granting the department an opportunity to appear and present evidence that the  
29 person's attendance at the proceeding represents a security risk.

30 (3) A person who requests that a person in the legal custody of the department of corrections

1 attend a civil proceeding shall pay all costs associated with security.

2

3 **NEW SECTION. Section 2. Report by supervising authority required.** (1) Subsequent to any  
4 judgment awarding money damages to a prisoner under the legal custody of the department of corrections,  
5 the prisoner's supervising authority shall, upon request of the court, submit a report identifying:

6 (a) the total costs incurred by the state or county during the prisoner's incarceration;

7 (b) the criminal sentences imposed upon the prisoner, including:

8 (i) the amount of restitution, if any, ordered in each sentence;

9 (ii) the name and current address of each victim or other person to whom restitution is owed;

10 (iii) the amount of restitution paid by the incarcerated person; and

11 (iv) the amount of restitution currently owed by the incarcerated person for each sentence;

12 **(C) THE AMOUNT OF ANY CHILD SUPPORT OWED BY THE PRISONER.**

13 (2) The court shall provide a copy of the report to the prisoner, who has 15 days following receipt  
14 to file an objection. The court may hold a hearing to consider objections raised by the prisoner.

15 (3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the  
16 amount of restitution, CHILD SUPPORT, and repayment for per diem costs owed by the prisoner. The court  
17 shall issue an order:

18 (a) reducing the judgment awarding damages to the prisoner by the amount owed in restitution,  
19 CHILD SUPPORT, and repayment costs; and

20 (b) ordering the party owing money damages to the prisoner to pay an amount equal to the  
21 restitution owed by the prisoner to the crime victims compensation and assistance account established in  
22 53-9-109, TO PAY ANY OUTSTANDING CHILD SUPPORT PAYMENTS TO THE DEPARTMENT OF PUBLIC  
23 HEALTH AND HUMAN SERVICES FOR DISBURSEMENT TO THE OBLIGEE, and to pay per diem costs owed  
24 by the prisoner. All restitution ~~owned~~ OWED by the prisoner must be paid prior to payment of any CHILD  
25 SUPPORT PAYMENTS. ALL CHILD SUPPORT OWED BY THE PRISONER MUST BE PAID PRIOR TO THE  
26 PAYMENT OF ANY per diem costs.

27

28 **Section 3.** Section 25-10-404, MCA, is amended to read:

29 "**25-10-404. Poor persons not required to prepay fees -- definition.** (1) Except as provided in  
30 ~~subsection~~ subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported



1 by a financial statement, stating that the person has a good cause of action or defense and is unable to pay  
2 the costs or procure security to secure the cause of action or defense. Except as provided in ~~subsection~~  
3 subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a  
4 request for waiver of fees, the person may commence and prosecute or defend an action in any of the  
5 courts and administrative tribunals of this state and the officers of the courts and administrative tribunals  
6 shall issue and serve all writs and perform all services in the action without demanding or receiving their  
7 fees in advance.

8 (2) If a judge or presiding officer of an administrative tribunal is not available to approve a request  
9 for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval.  
10 If the request is subsequently denied, the fees must be paid before the case may proceed further.

11 (3) A person represented by an entity that provides free legal services to indigent persons is not  
12 required to file the financial statement required by subsection (1).

13 (4) The department of justice shall, by rule, prescribe the form of the financial statement required  
14 by subsection (1) for use in determining indigence. The form may require the disclosure of income and  
15 assets, including but not limited to the ownership of real and personal property, cash, and savings.

16 (5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals  
17 a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition  
18 to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account  
19 statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately  
20 preceding any filing.

21 (6) If an indigent prisoner in the legal custody of the department of corrections files a civil  
22 complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a  
23 prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of  
24 any fees required by law when funds exist. The court shall consider the indigence policy of the department  
25 when determining whether funds exist.

26 (7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or  
27 criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall  
28 dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by  
29 the court.

30 (8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or

1 adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial  
 2 release, or a diversionary program and who is subject to incarceration, detention, or admission to any  
 3 facility."

4

5 **Section 4.** Section 37-1-308, MCA, is amended to read:

6 **"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exception.** (1) A  
 7 person, government, or private entity may submit a written complaint to the department charging a licensee  
 8 or license applicant with a violation of this part and specifying the grounds for the complaint.

9 (2) If the department receives a written complaint or otherwise obtains information that a licensee  
 10 or license applicant may have committed a violation of this part, the department may, with the concurrence  
 11 of a member of the screening panel established in 37-1-307, investigate to determine whether there is  
 12 reasonable cause to believe that the licensee or license applicant has committed the violation. A person or  
 13 private entity, but not a government entity, filing a complaint under this section in good faith is immune  
 14 from suit in a civil action related to the filing or contents of the complaint.

15 (3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS  
 16 A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."

17

18 **Section 5.** Section 49-2-501, MCA, is amended to read:

19 **"49-2-501. Filing complaints -- exception.** (1) A complaint may be filed by or on behalf of any  
 20 person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint  
 21 must be in the form of a written, verified complaint stating the name and address of the person, ~~and the~~  
 22 educational institution, financial institution, or governmental entity or agency alleged to have engaged in  
 23 the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff  
 24 may file a complaint in like manner when a discriminatory practice comes to its attention.

25 (2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this  
 26 chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory  
 27 practice occurred or was discovered.

28 (b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing  
 29 a grievance in accordance with any grievance procedure established by a collective bargaining agreement,  
 30 contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the

1 grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful  
 2 discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within  
 3 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice  
 4 occurred or was discovered.

5 (c) Any complaint not filed within the times set forth ~~herein~~ in this subsection (2) may not be  
 6 considered by the commission.

7 (3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS  
 8 A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."

9

10 **Section 6.** Section 53-9-109, MCA, is amended to read:

11 **"53-9-109. Crime victims compensation and assistance account.** (1) There is a crime victims  
 12 compensation and assistance account in the state special revenue fund. There must be paid into this  
 13 account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses  
 14 involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result  
 15 of citations or tickets issued by the highway patrol. Except as provided in ~~subsection~~ subsections (2) and  
 16 (3), the money in the account must be used solely for the purposes of this part and for victims' assistance  
 17 program coordination and planning provided by the division.

18 (2) The fund balance in the account as of March 31 of each year is limited to \$500,000. Whenever  
 19 the fund balance on March 31 exceeds \$500,000, the amount of the fund balance in excess of \$500,000  
 20 must be deposited in the general fund. (See compiler's comments for contingent termination of certain  
 21 text.)

22 (3) Funds deposited into the account pursuant to [section 2] must be distributed to a victim or  
 23 person who is qualified to receive restitution. If funds are insufficient to satisfy the claims of all qualified  
 24 victims or persons, the funds must be distributed on a pro rata basis to each qualified victim or person.  
 25 If a qualified victim or person cannot be located, that victim's or person's share of restitution must be  
 26 retained in the account."

27

28 **NEW SECTION. Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as  
 29 an integral part of Title 25, chapter 1, part 1, and the provisions of Title 25, chapter 1, part 1, apply to  
 30 [sections 1].

1           (2) [Section 2] is intended to be codified as an integral part of Title 25, chapter 10, and the  
2 provisions of Title 25, chapter 10, apply to [section 2].

3

4           NEW SECTION. SECTION 8. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID  
5 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]  
6 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID  
7 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

8

9           NEW SECTION. SECTION 9. RETROACTIVE APPLICABILITY. [SECTIONS 2, 4, AND 5] APPLY  
10 RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO CAUSES OF ACTION THAT ACCRUED AND  
11 JUDGMENTS THAT OCCURRED AFTER JANUARY 1, 1990.

12

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0122, second reading - second house

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act requiring a prisoner in the legal custody of the Department of Corrections to either pay a filing fee to file a complaint in a civil proceeding or submit a certified copy of the prisoner's trust fund account statement; providing that money received by a prisoner be subject to garnishment for payment of victim restitution, child support, and per diem costs of imprisonment; clarifying the use of and providing limitations on the issuance of writs of habeas corpus for inmates to testify in civil proceedings and providing an immediate effective date.

ASSUMPTIONS:

1. This bill could reduce the cost of transporting inmates to court proceedings. This savings is negligible. Currently, there are approximately 30 court proceedings per year where an inmate has to be transported. The Department of Corrections (DOC) assumes that 50% of these trips could be avoided under this bill. However, there will be no corresponding cost savings because the correctional officers would be performing other regular duties in lieu of transporting inmates. This bill will increase safety to the facility and the public at large by reducing the number of inmates who must be supervised outside correctional facilities.
2. New Section 3 of this bill will allow the DOC to recoup costs of incarceration from inmates who receive money from any source. Two inmates have been awarded judgments in the last 6 years for a total of \$9,259. The DOC assumes that it will recoup costs from one award to an inmate in the 1999 biennium. The department is unable to estimate the amount of money that inmates will receive from other sources. Therefore the amount of money the courts will allow to be garnished for per diem costs of incarceration is unknown.
3. This bill has no impact on the Department of Administration.
4. This bill has no impact on the Department of Commerce.

FISCAL IMPACT:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Incarceration cost abatement	(4,630)	0

Funding:

General Fund (01)	(4,630)	0
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LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Savings generated by this bill will continue into future years.

*Dave Lewis* 3-14-97

DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

DAN MCGEE, PRIMARY SPONSOR DATE

Fiscal Note for HB0122, second reading  
- second house

Am HB 122 #2

1 HOUSE BILL NO. 122

2 INTRODUCED BY MCGEE

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE  
6 DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL  
7 PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT;  
8 PROVIDING THAT AN AWARD OF MONEY DAMAGES RECEIVED BY A PRISONER WHO WAS INJURED  
9 WHILE UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS BE SUBJECT TO  
10 GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF  
11 IMPRISONMENT; PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF  
12 COMMERCE AGAINST PROFESSIONAL LICENSE HOLDERS OR WITH THE HUMAN RIGHTS COMMISSION;  
13 CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS  
14 CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; ~~AND~~ AMENDING SECTIONS 25-10-404,  
15 37-1-308, 49-2-501, AND 53-9-109, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

16

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE  
REPRINTED. PLEASE REFER TO SECOND READING COPY  
(YELLOW) FOR COMPLETE TEXT.**

APPROVED BY COM  
ON JUDICIARY

HOUSE BILL NO. 122

INTRODUCED BY MCGEE

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT; PROVIDING THAT ~~AN AWARD OF MONEY DAMAGES RECEIVED BY A PRISONER WHO WAS INJURED WHILE UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS~~ BE SUBJECT TO GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF IMPRISONMENT; ~~PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF COMMERCE AGAINST PROFESSIONAL LICENSE HOLDERS OR WITH THE HUMAN RIGHTS COMMISSION;~~ CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; ~~AND AMENDING SECTIONS~~ SECTION 25-10-404, 37-1-308, 49-2-601, AND 53-9-109, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Prisoner attendance at civil proceeding prohibited -- exceptions -- costs.** (1) A person incarcerated in a correctional facility of the department of corrections may not attend a civil proceeding IN WHICH THE PERSON IS A PARTY unless ~~the person is:~~

(a) THE PERSON IS a respondent in a proceeding to terminate parental rights; or

(b) ~~a party to the civil proceeding and~~ the court determines that ~~the person~~ A PARTY will be substantially and irreparably prejudiced by not attending the civil proceeding.

(2) A court may not issue a writ of habeas corpus ordering a person in the legal custody of the department of corrections to attend a court proceeding without first:

(a) notifying the department and allowing the department 15 days to file a written objection; and

(b) if requested, granting the department an opportunity to appear and present evidence that the person's attendance at the proceeding represents a security risk.

1 (3) A person who requests that a person in the legal custody of the department of corrections  
2 attend a civil proceeding shall pay all costs associated with security.

3  
4 NEW SECTION. Section 2. Report by supervising authority required. (1) ~~Subsequent to any~~  
5 ~~judgment awarding money damages to~~ IF a prisoner under the legal custody of the department of  
6 corrections BECOMES ENTITLED TO RECEIVE MONEY FROM ANY SOURCE, the prisoner's supervising  
7 authority shall, ~~upon request of the court, submit~~ PREPARE a report identifying:

8 (a) the total costs incurred by the state or county during the prisoner's incarceration;

9 (b) the criminal sentences imposed upon the prisoner, including:

10 (i) the amount of restitution, if any, ordered in each sentence;

11 (ii) the name and current address of each victim or other person to whom restitution is owed;

12 (iii) the amount of restitution paid by the incarcerated person; and

13 (iv) the amount of restitution currently owed by the incarcerated person for each sentence;

14 (C) THE AMOUNT OF ANY CHILD SUPPORT OWED BY THE PRISONER.

15 (2) The SUPERVISING AUTHORITY SHALL SUBMIT THE REPORT ALONG WITH A PETITION FOR  
16 GARNISHMENT TO THE COURT THAT SENTENCED THE PRISONER. THE COURT MAY ORDER  
17 GARNISHMENT OF THE PRISONER'S MONEY FOR THE PAYMENT OF RESTITUTION, CHILD SUPPORT,  
18 AND PER DIEM COSTS OF INCARCERATION OWED BY THE PRISONER. UPON RECEIPT OF THE PETITION,  
19 THE court shall provide a copy of the report to the prisoner, who has 15 days following receipt to file an  
20 objection. The court may hold a hearing to consider objections raised by the prisoner.

21 (3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the  
22 amount of restitution, CHILD SUPPORT, and repayment for per diem costs owed by the prisoner. The court  
23 shall ~~issue an order,~~ UP TO THE AMOUNT OF MONEY AVAILABLE,

24 ~~(a) reducing the judgment awarding damages to the prisoner by the amount owed in restitution,~~  
25 CHILD SUPPORT, and repayment costs; and

26 ~~(b) ordering the party owing money damages to the prisoner to pay~~ PAYMENT OF an amount equal  
27 to the restitution owed by the prisoner to the ~~crime victims compensation and assistance account~~  
28 ~~established in 53-9-109,~~ TO PAY PERSON DESIGNATED UNDER 46-18-245 TO SUPERVISE THE MAKING  
29 OF RESTITUTION PAYMENTS, ANY OUTSTANDING CHILD SUPPORT PAYMENTS TO THE DEPARTMENT  
30 OF PUBLIC HEALTH AND HUMAN SERVICES FOR DISBURSEMENT TO THE OBLIGEE, and ~~to pay~~ per diem



1 costs owed by the prisoner. All restitution ~~owed~~ OWED by the prisoner must be paid prior to payment  
2 of any CHILD SUPPORT PAYMENTS. ALL CHILD SUPPORT OWED BY THE PRISONER MUST BE PAID  
3 PRIOR TO THE PAYMENT OF ANY per diem costs.

4  
5 **Section 3.** Section 25-10-404, MCA, is amended to read:

6 **"25-10-404. Poor persons not required to prepay fees -- definition.** (1) Except as provided in  
7 ~~subsection~~ subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported  
8 by a financial statement, stating that the person has a good cause of action or defense and is unable to pay  
9 the costs or procure security to secure the cause of action or defense. Except as provided in ~~subsection~~  
10 subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a  
11 request for waiver of fees, the person may commence and prosecute or defend an action in any of the  
12 courts and administrative tribunals of this state and the officers of the courts and administrative tribunals  
13 shall issue and serve all writs and perform all services in the action without demanding or receiving their  
14 fees in advance.

15 (2) If a judge or presiding officer of an administrative tribunal is not available to approve a request  
16 for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval.  
17 If the request is subsequently denied, the fees must be paid before the case may proceed further.

18 (3) A person represented by an entity that provides free legal services to indigent persons is not  
19 required to file the financial statement required by subsection (1).

20 (4) The department of justice shall, by rule, prescribe the form of the financial statement required  
21 by subsection (1) for use in determining indigence. The form may require the disclosure of income and  
22 assets, including but not limited to the ownership of real and personal property, cash, and savings.

23 (5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals  
24 a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition  
25 to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account  
26 statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately  
27 preceding any filing.

28 (6) If an indigent prisoner in the legal custody of the department of corrections files a civil  
29 complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a  
30 prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of

1 any fees required by law when funds exist. The court shall consider the indigence policy of the department  
 2 when determining whether funds exist.

3 (7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or  
 4 criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall  
 5 dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by  
 6 the court.

7 (8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or  
 8 adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial  
 9 release, or a diversionary program and who is subject to incarceration, detention, or admission to any  
 10 facility."

11  
 12 **Section 4.** ~~Section 37-1-308, MCA, is amended to read:~~

13 ~~"37-1-308. Unprofessional conduct — complaint — investigation — immunity — exception. (1) A~~  
 14 ~~person, government, or private entity may submit a written complaint to the department charging a licensee~~  
 15 ~~or license applicant with a violation of this part and specifying the grounds for the complaint.~~

16 ~~(2) If the department receives a written complaint or otherwise obtains information that a licensee~~  
 17 ~~or license applicant may have committed a violation of this part, the department may, with the concurrence~~  
 18 ~~of a member of the screening panel established in 37-1-307, investigate to determine whether there is~~  
 19 ~~reasonable cause to believe that the licensee or license applicant has committed the violation. A person or~~  
 20 ~~private entity, but not a government entity, filing a complaint under this section in good faith is immune~~  
 21 ~~from suit in a civil action related to the filing or contents of the complaint.~~

22 ~~(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS~~  
 23 ~~**A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."**~~

24  
 25 **Section 5.** ~~Section 49-2-501, MCA, is amended to read:~~

26 ~~"49-2-501. Filing complaints — exception. (1) A complaint may be filed by or on behalf of any~~  
 27 ~~person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint~~  
 28 ~~must be in the form of a written, verified complaint stating the name and address of the person, and the,~~  
 29 ~~educational institution, financial institution, or governmental entity or agency alleged to have engaged in~~  
 30 ~~the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff~~

1 may file a complaint in like manner when a discriminatory practice comes to its attention.

2 ~~(2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this~~  
 3 ~~chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory~~  
 4 ~~practice occurred or was discovered.~~

5 ~~(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing~~  
 6 ~~a grievance in accordance with any grievance procedure established by a collective bargaining agreement,~~  
 7 ~~contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the~~  
 8 ~~grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful~~  
 9 ~~discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within~~  
 10 ~~120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice~~  
 11 ~~occurred or was discovered.~~

12 ~~(c) Any complaint not filed within the times set forth herein in this subsection (2) may not be~~  
 13 ~~considered by the commission.~~

14 ~~(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS~~  
 15 ~~A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE.~~

16

17 **Section 6.** Section 53-9-109, MCA, is amended to read:

18 ~~"53-9-109. Crime victims compensation and assistance account. (1) There is a crime victims~~  
 19 ~~compensation and assistance account in the state special revenue fund. There must be paid into this~~  
 20 ~~account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses~~  
 21 ~~involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result~~  
 22 ~~of citations or tickets issued by the highway patrol. Except as provided in subsection subsections (2) and~~  
 23 ~~(3), the money in the account must be used solely for the purposes of this part and for victims' assistance~~  
 24 ~~program coordination and planning provided by the division.~~

25 ~~(2) The fund balance in the account as of March 31 of each year is limited to \$500,000. Whenever~~  
 26 ~~the fund balance on March 31 exceeds \$500,000, the amount of the fund balance in excess of \$500,000~~  
 27 ~~must be deposited in the general fund. (See compiler's comments for contingent termination of certain~~  
 28 ~~text.)~~

29 ~~(3) Funds deposited into the account pursuant to [section 2] must be distributed to a victim or~~  
 30 ~~person who is qualified to receive restitution. If funds are insufficient to satisfy the claims of all qualified~~

1 ~~victims or persons, the funds must be distributed on a pro rata basis to each qualified victim or person.~~  
2 ~~If a qualified victim or person cannot be located, that victim's or person's share of restitution must be~~  
3 ~~retained in the account."~~

4  
5 NEW SECTION. Section 4. Codification instruction. (1) [Section 1] is intended to be codified as  
6 an integral part of Title 25, chapter 1, part 1, and the provisions of Title 25, chapter 1, part 1, apply to  
7 [sections 1].

8 (2) [Section 2] is intended to be codified as an integral part of Title 25, chapter 10, and the  
9 provisions of Title 25, chapter 10, apply to [section 2].

10  
11 NEW SECTION. SECTION 5. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID  
12 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]  
13 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID  
14 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

15  
16 NEW SECTION. SECTION 9. RETROACTIVE APPLICABILITY. [SECTIONS 2, 4, AND 5] APPLY  
17 RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO CAUSES OF ACTION THAT ACCRUED AND  
18 JUDGMENTS THAT OCCURRED AFTER JANUARY 1, 1990.

19  
20 NEW SECTION. SECTION 6. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND  
21 APPROVAL.

22 -END-

## 1 HOUSE BILL NO. 122

2 INTRODUCED BY MCGEE

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE  
 6 DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL  
 7 PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT;  
 8 PROVIDING THAT ~~AN AWARD OF MONEY DAMAGES RECEIVED BY A PRISONER WHO WAS INJURED~~  
 9 ~~WHILE UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS~~ BE SUBJECT TO  
 10 GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF  
 11 IMPRISONMENT; ~~PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF~~  
 12 ~~COMMERCE AGAINST PROFESSIONAL LICENSE HOLDERS OR WITH THE HUMAN RIGHTS COMMISSION;~~  
 13 CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS  
 14 CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; ~~AND AMENDING SECTIONS~~ SECTION  
 15 25-10-404, 37-1-308, 49-2-501, AND 53-9-109, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY  
 16 AN IMMEDIATE EFFECTIVE DATE."

17  
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19  
 20 NEW SECTION. **Section 1. Prisoner attendance at civil proceeding prohibited -- exceptions --**  
 21 **costs.** (1) A person incarcerated in a correctional facility of the department of corrections may not attend  
 22 a civil proceeding IN WHICH THE PERSON IS A PARTY unless ~~the person is:~~  
 23 (a) THE PERSON IS a respondent in a proceeding to terminate parental rights; or  
 24 (b) ~~a party to the civil proceeding and~~ the court determines that ~~the person~~ A PARTY will be  
 25 substantially and irreparably prejudiced by not attending the civil proceeding.  
 26 (2) A court may not issue a writ of habeas corpus ordering a person in the legal custody of the  
 27 department of corrections to attend a court proceeding without first:  
 28 (a) notifying the department and allowing the department 15 days to file a written objection; and  
 29 (b) if requested, granting the department an opportunity to appear and present evidence that the  
 30 person's attendance at the proceeding represents a security risk.

1 (3) A person who requests that a person in the legal custody of the department of corrections  
2 attend a civil proceeding shall pay all costs associated with security.

3  
4 NEW SECTION. Section 2. Report by supervising authority required. (1) ~~Subsequent to any~~  
5 ~~judgment awarding money damages to~~ IF a prisoner under the legal custody of the department of  
6 corrections BECOMES ENTITLED TO RECEIVE MONEY FROM ANY SOURCE, the prisoner's supervising  
7 authority shall, ~~upon request of the court, submit~~ PREPARE a report identifying:

8 (a) the total costs incurred by the state or county during the prisoner's incarceration;

9 (b) the criminal sentences imposed upon the prisoner, including:

10 (i) the amount of restitution, if any, ordered in each sentence;

11 (ii) the name and current address of each victim or other person to whom restitution is owed;

12 (iii) the amount of restitution paid by the incarcerated person; and

13 (iv) the amount of restitution currently owed by the incarcerated person for each sentence;

14 (C) THE AMOUNT OF ANY CHILD SUPPORT OWED BY THE PRISONER.

15 (2) The SUPERVISING AUTHORITY SHALL SUBMIT THE REPORT ALONG WITH A PETITION FOR  
16 GARNISHMENT TO THE COURT THAT SENTENCED THE PRISONER. THE COURT MAY ORDER  
17 GARNISHMENT OF THE PRISONER'S MONEY FOR THE PAYMENT OF RESTITUTION, CHILD SUPPORT,  
18 AND PER DIEM COSTS OF INCARCERATION OWED BY THE PRISONER. UPON RECEIPT OF THE PETITION,  
19 THE court shall provide a copy of the report to the prisoner, who has 15 days following receipt to file an  
20 objection. The court may hold a hearing to consider objections raised by the prisoner.

21 (3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the  
22 amount of restitution, CHILD SUPPORT, and repayment for per diem costs owed by the prisoner. The court  
23 shall ~~issue an order,~~ UP TO THE AMOUNT OF MONEY AVAILABLE,

24 ~~(a) reducing the judgment awarding damages to the prisoner by the amount owed in restitution,~~  
25 CHILD SUPPORT, and repayment costs; and

26 ~~(b) ordering the party owing money damages to the prisoner to pay~~ PAYMENT OF an amount equal  
27 to the restitution owed by the prisoner to the ~~crime victims compensation and assistance account~~  
28 ~~established in 53-9-109,~~ TO PAY PERSON DESIGNATED UNDER 46-18-245 TO SUPERVISE THE MAKING  
29 OF RESTITUTION PAYMENTS, ANY OUTSTANDING CHILD SUPPORT PAYMENTS TO THE DEPARTMENT  
30 OF PUBLIC HEALTH AND HUMAN SERVICES FOR DISBURSEMENT TO THE OBLIGEE, and ~~to pay~~ per diem

1 costs owed by the prisoner. All restitution ~~owned~~ OWED by the prisoner must be paid prior to payment  
2 of any CHILD SUPPORT PAYMENTS. ALL CHILD SUPPORT OWED BY THE PRISONER MUST BE PAID  
3 PRIOR TO THE PAYMENT OF ANY per diem costs.

4  
5 **Section 3.** Section 25-10-404, MCA, is amended to read:

6 **"25-10-404. Poor persons not required to prepay fees -- definition.** (1) Except as provided in  
7 ~~subsection~~ subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported  
8 by a financial statement, stating that the person has a good cause of action or defense and is unable to pay  
9 the costs or procure security to secure the cause of action or defense. Except as provided in ~~subsection~~  
10 subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a  
11 request for waiver of fees, the person may commence and prosecute or defend an action in any of the  
12 courts and administrative tribunals of this state and the officers of the courts and administrative tribunals  
13 shall issue and serve all writs and perform all services in the action without demanding or receiving their  
14 fees in advance.

15 (2) If a judge or presiding officer of an administrative tribunal is not available to approve a request  
16 for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval.  
17 If the request is subsequently denied, the fees must be paid before the case may proceed further.

18 (3) A person represented by an entity that provides free legal services to indigent persons is not  
19 required to file the financial statement required by subsection (1).

20 (4) The department of justice shall, by rule, prescribe the form of the financial statement required  
21 by subsection (1) for use in determining indigence. The form may require the disclosure of income and  
22 assets, including but not limited to the ownership of real and personal property, cash, and savings.

23 (5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals  
24 a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition  
25 to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account  
26 statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately  
27 preceding any filing.

28 (6) If an indigent prisoner in the legal custody of the department of corrections files a civil  
29 complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a  
30 prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of

1 any fees required by law when funds exist. The court shall consider the indigence policy of the department  
 2 when determining whether funds exist.

3 (7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or  
 4 criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall  
 5 dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by  
 6 the court.

7 (8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or  
 8 adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial  
 9 release, or a diversionary program and who is subject to incarceration, detention, or admission to any  
 10 facility."

11  
 12 **Section 4.** ~~Section 37-1-308, MCA, is amended to read:~~

13 ~~"37-1-308. Unprofessional conduct complaint investigation immunity exception. (1) A~~  
 14 ~~person, government, or private entity may submit a written complaint to the department charging a licensee~~  
 15 ~~or license applicant with a violation of this part and specifying the grounds for the complaint.~~

16 ~~(2) If the department receives a written complaint or otherwise obtains information that a licensee~~  
 17 ~~or license applicant may have committed a violation of this part, the department may, with the concurrence~~  
 18 ~~of a member of the screening panel established in 37-1-307, investigate to determine whether there is~~  
 19 ~~reasonable cause to believe that the licensee or license applicant has committed the violation. A person or~~  
 20 ~~private entity, but not a government entity, filing a complaint under this section in good faith is immune~~  
 21 ~~from suit in a civil action related to the filing or contents of the complaint.~~

22 ~~(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS~~  
 23 ~~**A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."**~~

24  
 25 **Section 5.** ~~Section 49-2-501, MCA, is amended to read:~~

26 ~~"49-2-501. Filing complaints exception. (1) A complaint may be filed by or on behalf of any~~  
 27 ~~person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint~~  
 28 ~~must be in the form of a written, verified complaint stating the name and address of the person, and the,~~  
 29 ~~educational institution, financial institution, or governmental entity or agency alleged to have engaged in~~  
 30 ~~the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff~~



1 may file a complaint in like manner when a discriminatory practice comes to its attention.

2 ~~(2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this~~  
 3 ~~chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory~~  
 4 ~~practice occurred or was discovered.~~

5 ~~(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing~~  
 6 ~~a grievance in accordance with any grievance procedure established by a collective bargaining agreement,~~  
 7 ~~contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the~~  
 8 ~~grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful~~  
 9 ~~discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within~~  
 10 ~~120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice~~  
 11 ~~occurred or was discovered.~~

12 ~~(c) Any complaint not filed within the times set forth herein in this subsection (2) may not be~~  
 13 ~~considered by the commission.~~

14 ~~(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS~~  
 15 ~~A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE.~~

16

17 ~~Section 6. Section 53-9-109, MCA, is amended to read:~~

18 ~~"53-9-109. Crime victims compensation and assistance account. (1) There is a crime victims~~  
 19 ~~compensation and assistance account in the state special revenue fund. There must be paid into this~~  
 20 ~~account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses~~  
 21 ~~involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result~~  
 22 ~~of citations or tickets issued by the highway patrol. Except as provided in subsection subsections (2) and~~  
 23 ~~(3), the money in the account must be used solely for the purposes of this part and for victims' assistance~~  
 24 ~~program coordination and planning provided by the division.~~

25 ~~(2) The fund balance in the account as of March 31 of each year is limited to \$500,000. Whenever~~  
 26 ~~the fund balance on March 31 exceeds \$500,000, the amount of the fund balance in excess of \$500,000~~  
 27 ~~must be deposited in the general fund. (See compiler's comments for contingent termination of certain~~  
 28 ~~text.)~~

29 ~~(3) Funds deposited into the account pursuant to (section 2) must be distributed to a victim or~~  
 30 ~~person who is qualified to receive restitution. If funds are insufficient to satisfy the claims of all qualified~~

1 ~~victims or persons, the funds must be distributed on a pro rata basis to each qualified victim or person.~~  
 2 ~~If a qualified victim or person cannot be located, that victim's or person's share of restitution must be~~  
 3 ~~retained in the account."~~

4  
 5 **NEW SECTION. Section 4. Codification instruction.** (1) [Section 1] is intended to be codified as  
 6 an integral part of Title 25, chapter 1, part 1, and the provisions of Title 25, chapter 1, part 1, apply to  
 7 [sections 1].

8 (2) [Section 2] is intended to be codified as an integral part of Title 25, chapter 10, and the  
 9 provisions of Title 25, chapter 10, apply to [section 2].

10  
 11 **NEW SECTION. SECTION 5. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID**  
 12 **PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]**  
 13 **IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID**  
 14 **APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.**

15  
 16 ~~**NEW SECTION. SECTION 9. RETROACTIVE APPLICABILITY. [SECTIONS 2, 4, AND 5] APPLY**~~  
 17 ~~**RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO CAUSES OF ACTION THAT ACCRUED AND**~~  
 18 ~~**JUDGMENTS THAT OCCURRED AFTER JANUARY 1, 1990.**~~

19  
 20 **NEW SECTION. SECTION 6. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND**  
 21 **APPROVAL.**

22 -END-



## FREE CONFERENCE COMMITTEE

on House Bill 122

Report No. 1, April 17, 1997

Page 1 of 3

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 122** (reference copy -- salmon) and recommend that **House Bill 122** be amended as follows:

1. Title.

Following: line 12

Insert: "PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF COMMERCE AGAINST CERTAIN PROFESSIONALS;"

2. Title, line 14.

Strike: "SECTION"

Insert: "SECTIONS"

3. Title, line 15.

Following: "25-10-404"

Insert: "AND 37-1-308"

4. Page 2, line 4.

Strike: "Report"

Insert: "Garnishment -- report"

Following: "authority"

Strike: "required"

5. Page 2, line 5.

Following: "IF"

Insert: "the department of corrections becomes aware that"

Following: "prisoner"

Insert: "while incarcerated"

6. Page 2, line 6.

Strike: "BECOMES"

Insert: "is"

ADOPT

REJECT

FCCR#1

AC HB 122-1

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HB 122

7. Page 2, line 7.

Strike: "shall"

Following: "~~submit~~"

Insert: "may"

8. Page 2, line 12.

Page 2, line 13.

Strike: "incarcerated person"

Insert: "prisoner"

9. Page 2, line 15.

Following: "SHALL"

Insert: "provide notice and a copy of the report to the board of crime control and the county attorney for the county in which the prisoner was sentenced, either of whom may"

10. Page 6.

Following: line 3

Insert: "**Section 4.** Section 37-1-308, MCA, is amended to read:

"**37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exception.** (1) A Except as provided in subsection (3), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation. A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(3) A person may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while incarcerated under the legal custody of the department of corrections. If the department of corrections has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person incarcerated under the legal custody of the department of corrections, the department of corrections shall report the possible violation to the department for appropriate action under subsection (2)."


Renumber: subsequent sections


11. Page 6, line 6.  
Following: "chapter" in two places  
Strike: "1, part 1"  
Insert: "10"

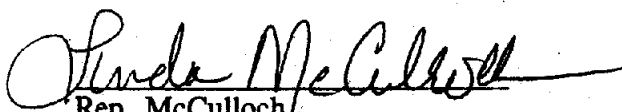
12. Page 6, lines 8 and 9.  
Strike: "Title 25, chapter 10"  
Insert: "Title 46, chapter 18"

And this FREE Conference Committee report be adopted.

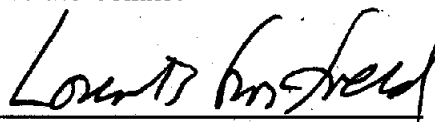
For the House:


  
Rep. Smith, Chair

  
Rep. Ahner

  
Rep. McCulloch

For the Senate:

  
Senator Grosfield, Chair

  
Senator McNutt

  
Senator Bartlett

## 1 HOUSE BILL NO. 122

2 INTRODUCED BY MCGEE

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE  
 6 DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL  
 7 PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT;  
 8 PROVIDING THAT AN AWARD OF MONEY DAMAGES RECEIVED BY A PRISONER WHO WAS INJURED  
 9 WHILE UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS BE SUBJECT TO  
 10 GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF  
 11 IMPRISONMENT; ~~PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF~~  
 12 ~~COMMERCE AGAINST PROFESSIONAL LICENSE HOLDERS OR WITH THE HUMAN RIGHTS COMMISSION;~~  
 13 PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF COMMERCE AGAINST  
 14 CERTAIN PROFESSIONALS; CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE  
 15 OF WRITS OF HABEAS CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; ~~AND AMENDING~~  
 16 ~~SECTIONS SECTION SECTIONS 25-10-404 AND 37-1-308, 37-1-308, 49-2-501, AND 53-9-109, MCA;~~  
 17 AND PROVIDING A RETROACTIVE APPLICABILITY AN IMMEDIATE EFFECTIVE DATE."

18  
 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

- 20  
 21 NEW SECTION. Section 1. Prisoner attendance at civil proceeding prohibited -- exceptions --  
 22 costs. (1) A person incarcerated in a correctional facility of the department of corrections may not attend  
 23 a civil proceeding IN WHICH THE PERSON IS A PARTY unless ~~the person is:~~
- 24 (a) THE PERSON IS a respondent in a proceeding to terminate parental rights; or  
 25 (b) ~~a party to the civil proceeding and~~ the court determines that ~~the person~~ A PARTY will be  
 26 substantially and irreparably prejudiced by not attending the civil proceeding.
- 27 (2) A court may not issue a writ of habeas corpus ordering a person in the legal custody of the  
 28 department of corrections to attend a court proceeding without first:
- 29 (a) notifying the department and allowing the department 15 days to file a written objection; and  
 30 (b) if requested, granting the department an opportunity to appear and present evidence that the

1 person's attendance at the proceeding represents a security risk.

2 (3) A person who requests that a person in the legal custody of the department of corrections  
3 attend a civil proceeding shall pay all costs associated with security.

4

5 **NEW SECTION. Section 2. Report GARNISHMENT -- REPORT by supervising authority required.**

6 (1) ~~Subsequent to any judgment awarding money damages to~~ **IF THE DEPARTMENT OF CORRECTIONS**  
7 **BECOMES AWARE THAT** a prisoner **WHILE INCARCERATED** under the legal custody of the department of  
8 corrections ~~BECOMES~~ **IS ENTITLED TO RECEIVE MONEY FROM ANY SOURCE**, the prisoner's supervising  
9 authority ~~shall, upon request of the court, submit~~ **MAY PREPARE** a report identifying:

- 10 (a) the total costs incurred by the state or county during the prisoner's incarceration;  
11 (b) the criminal sentences imposed upon the prisoner, including:  
12 (i) the amount of restitution, if any, ordered in each sentence;  
13 (ii) the name and current address of each victim or other person to whom restitution is owed;  
14 (iii) the amount of restitution paid by the ~~incarcerated person~~ **PRISONER**; and  
15 (iv) the amount of restitution currently owed by the ~~incarcerated person~~ **PRISONER** for each  
16 sentence;

17 **(C) THE AMOUNT OF ANY CHILD SUPPORT OWED BY THE PRISONER.**

18 (2) The **SUPERVISING AUTHORITY SHALL PROVIDE NOTICE AND A COPY OF THE REPORT TO**  
19 **THE BOARD OF CRIME CONTROL AND THE COUNTY ATTORNEY FOR THE COUNTY IN WHICH THE**  
20 **PRISONER WAS SENTENCED, EITHER OF WHOM MAY SUBMIT THE REPORT ALONG WITH A PETITION**  
21 **FOR GARNISHMENT TO THE COURT THAT SENTENCED THE PRISONER. THE COURT MAY ORDER**  
22 **GARNISHMENT OF THE PRISONER'S MONEY FOR THE PAYMENT OF RESTITUTION, CHILD SUPPORT,**  
23 **AND PER DIEM COSTS OF INCARCERATION OWED BY THE PRISONER. UPON RECEIPT OF THE PETITION,**  
24 **THE** court shall provide a copy of the report to the prisoner, who has 15 days following receipt to file an  
25 objection. The court may hold a hearing to consider objections raised by the prisoner.

26 (3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the  
27 amount of restitution, **CHILD SUPPORT**, and repayment for per diem costs owed by the prisoner. The court  
28 shall ~~issue an order,~~ **UP TO THE AMOUNT OF MONEY AVAILABLE,**

29 ~~(a) reducing the judgment awarding damages to the prisoner by the amount owed in restitution,~~  
30 **CHILD SUPPORT, and repayment costs; and**

1 ~~(b) ordering the party owing money damages to the prisoner to pay~~ PAYMENT OF an amount equal  
 2 to the restitution owed by the prisoner to the ~~crime victims compensation and assistance account~~  
 3 ~~established in 53-9-109,~~ TO PAY PERSON DESIGNATED UNDER 46-18-245 TO SUPERVISE THE MAKING  
 4 OF RESTITUTION PAYMENTS, ANY OUTSTANDING CHILD SUPPORT PAYMENTS TO THE DEPARTMENT  
 5 OF PUBLIC HEALTH AND HUMAN SERVICES FOR DISBURSEMENT TO THE OBLIGEE, and ~~to pay~~ per diem  
 6 costs owed by the prisoner. All restitution ~~owned~~ OWED by the prisoner must be paid prior to payment  
 7 of any CHILD SUPPORT PAYMENTS. ALL CHILD SUPPORT OWED BY THE PRISONER MUST BE PAID  
 8 PRIOR TO THE PAYMENT OF ANY per diem costs.

9  
 10 **Section 3.** Section 25-10-404, MCA, is amended to read:

11 **"25-10-404. Poor persons not required to prepay fees -- definition.** (1) Except as provided in  
 12 ~~subsection~~ subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported  
 13 by a financial statement, stating that the person has a good cause of action or defense and is unable to pay  
 14 the costs or procure security to secure the cause of action or defense. Except as provided in ~~subsection~~  
 15 subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a  
 16 request for waiver of fees, the person may commence and prosecute or defend an action in any of the  
 17 courts and administrative tribunals of this state and the officers of the courts and administrative tribunals  
 18 shall issue and serve all writs and perform all services in the action without demanding or receiving their  
 19 fees in advance.

20 (2) If a judge or presiding officer of an administrative tribunal is not available to approve a request  
 21 for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval.  
 22 If the request is subsequently denied, the fees must be paid before the case may proceed further.

23 (3) A person represented by an entity that provides free legal services to indigent persons is not  
 24 required to file the financial statement required by subsection (1).

25 (4) The department of justice shall, by rule, prescribe the form of the financial statement required  
 26 by subsection (1) for use in determining indigence. The form may require the disclosure of income and  
 27 assets, including but not limited to the ownership of real and personal property, cash, and savings.

28 (5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals  
 29 a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition  
 30 to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account



1 statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately  
 2 preceding any filing.

3 (6) If an indigent prisoner in the legal custody of the department of corrections files a civil  
 4 complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a  
 5 prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of  
 6 any fees required by law when funds exist. The court shall consider the indigence policy of the department  
 7 when determining whether funds exist.

8 (7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or  
 9 criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall  
 10 dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by  
 11 the court.

12 (8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or  
 13 adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial  
 14 release, or a diversionary program and who is subject to incarceration, detention, or admission to any  
 15 facility."

16  
 17 ~~Section 4. Section 37-1-308, MCA, is amended to read:~~

18 ~~"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exception. (1) A~~  
 19 ~~person, government, or private entity may submit a written complaint to the department charging a licensee~~  
 20 ~~or license applicant with a violation of this part and specifying the grounds for the complaint.~~

21 ~~(2) If the department receives a written complaint or otherwise obtains information that a licensee~~  
 22 ~~or license applicant may have committed a violation of this part, the department may, with the concurrence~~  
 23 ~~of a member of the screening panel established in 37-1-307, investigate to determine whether there is~~  
 24 ~~reasonable cause to believe that the licensee or license applicant has committed the violation. A person or~~  
 25 ~~private entity, but not a government entity, filing a complaint under this section in good faith is immune~~  
 26 ~~from suit in a civil action related to the filing or contents of the complaint.~~

27 ~~(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS~~  
 28 ~~A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."~~

29  
 30 ~~Section 5. Section 49-2-501, MCA, is amended to read:~~

1 ~~"49-2-501. Filing complaints exception. (1) A complaint may be filed by or on behalf of any~~  
 2 ~~person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint~~  
 3 ~~must be in the form of a written, verified complaint stating the name and address of the person, and the~~  
 4 ~~educational institution, financial institution, or governmental entity or agency alleged to have engaged in~~  
 5 ~~the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff~~  
 6 ~~may file a complaint in like manner when a discriminatory practice comes to its attention.~~

7 ~~(2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this~~  
 8 ~~chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory~~  
 9 ~~practice occurred or was discovered.~~

10 ~~(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing~~  
 11 ~~a grievance in accordance with any grievance procedure established by a collective bargaining agreement,~~  
 12 ~~contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the~~  
 13 ~~grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful~~  
 14 ~~discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within~~  
 15 ~~120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice~~  
 16 ~~occurred or was discovered.~~

17 ~~(c) Any complaint not filed within the times set forth herein in this subsection (2) may not be~~  
 18 ~~considered by the commission.~~

19 ~~(3) The provisions of subsections (1) and (2) do not apply to an individual who is incarcerated AS~~  
 20 ~~A RESULT OF A CONVICTION FOR A CRIMINAL OFFENSE."~~

21  
 22 ~~Section 6. Section 53-9-109, MCA, is amended to read:~~

23 ~~"53-9-109. Crime victims compensation and assistance account. (1) There is a crime victims~~  
 24 ~~compensation and assistance account in the state special revenue fund. There must be paid into this~~  
 25 ~~account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses~~  
 26 ~~involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result~~  
 27 ~~of citations or tickets issued by the highway patrol. Except as provided in subsection subsections (2) and~~  
 28 ~~(3), the money in the account must be used solely for the purposes of this part and for victims' assistance~~  
 29 ~~program coordination and planning provided by the division.~~

30 ~~(2) The fund balance in the account as of March 31 of each year is limited to \$500,000. Whenever~~

1 the fund balance on March 31 exceeds \$500,000, the amount of the fund balance in excess of \$500,000  
 2 must be deposited in the general fund. (See compiler's comments for contingent termination of certain  
 3 text.)

4 ~~(3) Funds deposited into the account pursuant to [section 2] must be distributed to a victim or~~  
 5 ~~person who is qualified to receive restitution. If funds are insufficient to satisfy the claims of all qualified~~  
 6 ~~victims or persons, the funds must be distributed on a pro rata basis to each qualified victim or person.~~  
 7 ~~If a qualified victim or person cannot be located, that victim's or person's share of restitution must be~~  
 8 ~~retained in the account."~~

9

10 **SECTION 4. SECTION 37-1-308, MCA, IS AMENDED TO READ:**

11 **"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exception.** (1) A  
 12 Except as provided in subsection (3), a person, government, or private entity may submit a written  
 13 complaint to the department charging a licensee or license applicant with a violation of this part and  
 14 specifying the grounds for the complaint.

15 (2) If the department receives a written complaint or otherwise obtains information that a licensee  
 16 or license applicant may have committed a violation of this part, the department may, with the concurrence  
 17 of a member of the screening panel established in 37-1-307, investigate to determine whether there is  
 18 reasonable cause to believe that the licensee or license applicant has committed the violation. A person or  
 19 private entity, but not a government entity, filing a complaint under this section in good faith is immune  
 20 from suit in a civil action related to the filing or contents of the complaint.

21 (3) A person may not file a complaint under subsection (1) against a licensed or certified provider  
 22 of health care or rehabilitative services for services that were provided to the person while incarcerated  
 23 under the legal custody of the department of corrections. If the department of corrections has reason to  
 24 believe that there has been a violation of this part arising out of health care or rehabilitative services  
 25 provided to a person incarcerated under the legal custody of the department of corrections, the department  
 26 of corrections shall report the possible violation to the department for appropriate action under subsection  
 27 (2)."

28

29 **NEW SECTION. Section 5. Codification instruction.** (1) [Section 1] is intended to be codified as  
 30 an integral part of Title 25, chapter 1, ~~part 1 10~~, and the provisions of Title 25, chapter 1, ~~part 1 10~~, apply

1 to [section 1].

2 (2) [Section 2] is intended to be codified as an integral part of ~~Title 25, chapter 10~~ TITLE 46,  
3 CHAPTER 18, and the provisions of ~~Title 25, chapter 10~~ TITLE 46, CHAPTER 18, apply to [section 2].

4  
5 NEW SECTION. SECTION 6. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID  
6 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]  
7 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID  
8 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

9  
10 ~~NEW SECTION. SECTION 9. RETROACTIVE APPLICABILITY. [SECTIONS 2, 4, AND 5] APPLY~~  
11 ~~RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO CAUSES OF ACTION THAT ACCRUED AND~~  
12 ~~JUDGMENTS THAT OCCURRED AFTER JANUARY 1, 1990.~~

13  
14 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND  
15 APPROVAL.

16 -END-