

1 HOUSE BILL NO. 382

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5

6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TERMINOLOGY RELATING TO MENTAL ILLNESS;
7 REPLACING REFERENCES TO "MENTAL DISEASE OR DEFECT", "MENTAL DEFECT", AND SIMILAR
8 PHRASES WITH REFERENCES TO "MENTAL DISEASE OR DISORDER", "MENTAL DISORDER", AND
9 SIMILAR PHRASES; AMENDING SECTIONS 37-3-103, 37-60-303, 39-3-406, 39-30-103, 44-5-103, 45-2-101,
10 45-2-211, 45-5-501, 45-8-321, 46-14-101, 46-14-102, 46-14-103, 46-14-202, 46-14-204, 46-14-206, 46-14-214,
11 46-14-217, 46-14-301, 46-14-302, 46-14-304, 46-14-311, 46-14-312, 46-15-323, 53-1-104, 80-20-102, AND
12 81-30-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15

16 **Section 1.** Section 37-3-103, MCA, is amended to read:

17 **"37-3-103. Exemptions from licensing requirements.** (1) This chapter does not prohibit or require a
18 license with respect to any of the following acts:

19 (a) the gratuitous rendering of services in cases of emergency or catastrophe;

20 (b) the rendering of services in this state by a physician lawfully practicing medicine in another state or
21 territory. However, if the physician does not limit the services to an occasional case or if the physician has any
22 established or regularly used hospital connections in this state or maintains or is provided with, for the physician's
23 regular use, an office or other place for rendering the services, the physician must possess a license to practice
24 medicine in this state.

25 (c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

26 (d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

27 (e) the practice of optometry under the conditions and limitations defined by the laws of this state;

28 (f) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

29 (g) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

30 (h) the practice of medicine by a physician licensed in another state and employed by the federal

1 government;

2 (i) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties
3 as nurses or of midwife services by registered nurse-midwives under the conditions and limitations defined by
4 law;

5 (j) the rendering of services by interns or resident physicians in a hospital or clinic in which they are
6 training, subject to the conditions and limitations of this chapter. The board may require a resident physician to
7 be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.

8 (k) the rendering of services by a physical therapist, technician, medical assistant, as provided in
9 37-3-104, or other paramedical specialist under the appropriate amount and type of supervision of a person
10 licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a
11 paramedical specialist;

12 (l) the rendering of services by a physician assistant in accordance with Title 37, chapter 20;

13 (m) the practice by persons licensed under the laws of this state to practice a limited field of the healing
14 arts, and not specifically designated, under the conditions and limitations defined by law;

15 (n) the execution of a death sentence pursuant to 46-19-103;

16 (o) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry
17 midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or
18 the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer
19 a prescription drug, as those terms are defined in 37-7-101.

20 (p) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

21 (2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall
22 confine themselves to the field for which they are licensed or registered and to the scope of their respective
23 licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D.",
24 "D.O.", or any word or abbreviation to indicate or to induce others to believe that they are engaged in the
25 diagnosis or treatment of persons afflicted with disease, injury, or defect of body or disorder of mind except to
26 the extent and under the conditions expressly provided by the law under which they are licensed."
27

28 **Section 2.** Section 37-60-303, MCA, is amended to read:

29 **"37-60-303. License or registration qualifications.** (1) Except as provided in subsection (7)(a), an
30 applicant for licensure under this chapter or an applicant for registration as a process server under this chapter

1 is subject to the provisions of this section and shall submit evidence that the applicant:

2 (a) is at least 18 years of age;

3 (b) is a citizen of the United States or a legal, permanent resident of the United States;

4 (c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal
5 use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

6 (d) has not been judicially declared incompetent by reason of any mental ~~defect~~ or disease or disorder
7 or, if so declared, has been fully restored;

8 (e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

9 (f) is of good moral character; and

10 (g) has complied with other experience qualifications as may be set by the rules of the board.

11 (2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private
12 security guard, security alarm installer, or alarm response runner shall:

13 (a) complete the requirements of a training program certified by the board and provide, on a form
14 prescribed by the department, written notice of satisfactory completion of the training; and

15 (b) fulfill other requirements as the board may by rule prescribe.

16 (3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a
17 private investigator shall submit evidence under oath that the applicant:

18 (a) is at least 21 years of age;

19 (b) has at least a high school education or the equivalent;

20 (c) has not been dishonorably discharged from any branch of the United States military service; and

21 (d) has fulfilled any other requirements as the board may by rule prescribe.

22 (4) The board may require an applicant to demonstrate by written examination additional qualifications
23 as the board may by rule require.

24 (5) An applicant for a license as a private security patrol officer or private investigator who will wear,
25 carry, or possess a firearm in performance of the applicant's duties shall submit written notice of satisfactory
26 completion of a firearms training program certified by or satisfactory to the board, as the board may by rule
27 prescribe.

28 (6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a
29 background investigation of each applicant for licensure or registration under this chapter that includes a
30 fingerprint check by the Montana department of justice and the federal bureau of investigation.

1 (7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity
 2 that intends to engage in business governed by the provisions of this chapter must be incorporated under the
 3 laws of this state or qualified to do business within this state and must be licensed by the board or, if doing
 4 business as a process server, must be registered by the board.

5 (b) Individual employees, officers, directors, agents, or other representatives of an entity described in
 6 subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant
 7 to the requirements of this part or, if doing business as a process server, must be registered by the board."
 8

9 **Section 3.** Section 39-3-406, MCA, is amended to read:

10 **"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

11 (a) students participating in a distributive education program established under the auspices of an
 12 accredited educational agency;

13 (b) persons employed in private homes whose duties consist of menial chores, such as babysitting,
 14 mowing lawns, and cleaning sidewalks;

15 (c) persons employed directly by the head of a household to care for children dependent upon the head
 16 of the household;

17 (d) immediate members of the family of an employer or persons dependent upon an employer for half
 18 or more of their support in the customary sense of being a dependent;

19 (e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their
 20 services to a nonprofit organization on a fully or partially reimbursed basis;

21 (f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose
 22 earning capacity is so severely impaired that they are unable to engage in competitive employment;

23 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30
 24 days of their employment;

25 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may
 26 not exceed 180 days from their initial date of employment and further provided that during this exclusion period,
 27 wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

28 (i) retired or semiretired persons performing part-time incidental work as a condition of their residence
 29 on a farm or ranch;

30 (j) an individual employed in a bona fide executive, administrative, or professional capacity, as these

1 terms are defined by regulations of the commissioner, a computer systems analyst, computer programmer,
2 software engineer, network administrator, or other similarly skilled computer employee who earns not less than
3 \$27.63 an hour pursuant to 29 CFR 541.400 or 541.402, or an individual employed in an outside sales capacity
4 pursuant to 29 CFR 541.500;

5 (k) an individual employed by the United States of America;

6 (l) resident managers employed in lodging establishments or assisted living facilities who, under the
7 terms of their employment, live in the establishment or facility;

8 (m) a direct seller as defined in 26 U.S.C. 3508;

9 (n) a person placed as a participant in a public assistance program authorized by Title 53 into a work
10 setting for the purpose of developing employment skills. The placement may be with either a public or private
11 employer. The exclusion does not apply to an employment relationship formed in the work setting outside the
12 scope of the employment skills activities authorized by Title 53.

13 (o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621,
14 and providing care without wage compensation to no more than six foster children in the provider's own
15 residence. The person may receive reimbursement for providing room and board, obtaining training, respite care,
16 leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home
17 foster care.

18 (p) an employee employed in domestic service employment to provide companionship services, as
19 defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for
20 themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the
21 person providing the service is employed directly by a family member or an individual who is a legal guardian.

22 (2) The provisions of 39-3-405 do not apply to:

23 (a) an employee with respect to whom the United States secretary of transportation has power to
24 establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

25 (b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part
26 I of the Interstate Commerce Act;

27 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural
28 state;

29 (d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily
30 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if

1 the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged
2 in the business of selling the vehicles or implements to ultimate purchasers;

3 (e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed
4 by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to
5 ultimate purchasers;

6 (f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising
7 for a radio or television station employer;

8 (g) an employee employed as a driver or driver's helper making local deliveries who is compensated for
9 the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan
10 has the general purpose and effect of reducing hours worked by the employees to or below the maximum
11 workweek applicable to them under 39-3-405;

12 (h) an employee employed in agriculture or in connection with the operation or maintenance of ditches,
13 canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop
14 basis, and that are used exclusively for supply and storing of water for agricultural purposes;

15 (i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee
16 in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of
17 livestock, either alone or in conjunction with other farmers, if the employee is:

18 (i) primarily employed during a workweek in agriculture by a farmer; and

19 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less than
20 that prescribed by 39-3-404;

21 (j) an employee of an establishment commonly recognized as a country elevator, including an
22 establishment that sells products and services used in the operation of a farm if no more than five employees are
23 employed by the establishment;

24 (k) a driver employed by an employer engaged in the business of operating taxicabs;

25 (l) an employee who is employed with the employee's spouse by a nonprofit educational institution to
26 serve as the parents of children who are orphans or one of whose natural parents is deceased or who are
27 enrolled in the institution and reside in residential facilities of the institution so long as the children are in
28 residence at the institution and so long as the employee and the employee's spouse reside in the facilities and
29 receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at
30 an annual rate of not less than \$10,000;

1 (m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
2 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal
3 if the number of employees employed by the employer in the forestry or lumbering operations does not exceed
4 eight;

5 (n) an employee of a sheriff's office who is working under an established work period in lieu of a
6 workweek pursuant to 7-4-2509(1);

7 (o) an employee of a municipal or county government who is working under a work period not exceeding
8 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining
9 unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is
10 not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a
11 rate of not less than 1 1/2 times the hourly wage rate for the employee.

12 (p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled,
13 aged, or mentally ill or ~~defective~~ disordered who is working under a work period not exceeding 80 hours in a
14 14-day period established through either a collective bargaining agreement when a collective bargaining unit
15 represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not
16 recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at
17 a rate of not less than 1 1/2 times the hourly wage rate for the employee.

18 (q) a firefighter who is working under a work period established in a collective bargaining agreement
19 entered into between a public employer and a firefighters' organization or its exclusive representative;

20 (r) an officer or other employee of a police department in a city of the first or second class who is working
21 under a work period established by the chief of police under 7-32-4118;

22 (s) an employee of a department of public safety working under a work period established pursuant to
23 7-32-115;

24 (t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the
25 minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and
26 if more than half of the employee's compensation for a period of not less than 1 month is derived from
27 commissions on goods and services;

28 (u) a person employed as a guide, cook, camp tender, [outfitter's assistant,] or livestock handler by a
29 licensed outfitter as defined in 37-47-101;

30 (v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a

1 second- or third-class city or a town;
2 (w) an employee of the consolidated legislative branch as provided in 5-2-503;
3 (x) an employee of the state or its political subdivisions employed, at the employee's option, on an
4 occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the
5 employee was employed in a capacity other than the employee's regular occupation may be excluded from the
6 calculation of hours to determine overtime compensation. (Bracketed language in subsection (2)(u) terminates
7 August 31, 2015--sec. 11, Ch. 241, L. 2013.)"

8

9 **Section 4.** Section 39-30-103, MCA, is amended to read:

10 **"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

11 (1) "Eligible spouse" means the spouse of a person with a disability determined by the department of
12 public health and human services to have a 100% disability and who is unable to use the employment preference
13 because of the person's disability.

14 (2) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks
15 of the current employees of:

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

17 (ii) a legislative agency for a position within the legislative branch;

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

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

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

22 (b) A personnel action limited to current employees of a specific public entity identified in this subsection
23 (2), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified
24 in this subsection (2), or current participants in a federally authorized employment program is not an initial hiring.

25 (3) (a) "Mental impairment" means:

26 (i) a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or any other
27 neurologically disabling condition closely related to intellectual disability and requiring treatment similar to that
28 required by intellectually disabled individuals; or

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

1 (b) The term mental impairment does not include alcoholism or drug addiction and does not include any
2 mental impairment, ~~disease, or defect~~ or mental disease or disorder that has been asserted by the individual
3 claiming the preference as a defense to any criminal charge.

4 (4) "Person with a disability" means:

5 (a) an individual certified by the department of public health and human services to have a physical or
6 mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing,
7 speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment; or

8 (b) any disabled veteran as defined in 39-29-101, except that the disabled veteran must be discharged
9 under honorable conditions as defined in 39-29-101.

10 (5) "Position" means a position occupied by a permanent or seasonal employee as defined in 2-18-101
11 for the state or a position occupied by a similar permanent or seasonal employee with a public employer other
12 than the state. However, the term does not include:

13 (a) a position occupied by a temporary employee as defined in 2-18-101 for the state or a similar
14 temporary employee with a public employer other than the state;

15 (b) a state or local elected official;

16 (c) employment as an elected official's immediate secretary, legal adviser, court reporter, or
17 administrative, legislative, or other immediate or first-line aide;

18 (d) appointment by an elected official to a body such as a board, commission, committee, or council;

19 (e) appointment by an elected official to a public office if the appointment is provided for by law;

20 (f) a department head appointment by the governor or an executive department head appointment by
21 a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local
22 government;

23 (g) engagement as an independent contractor or employment by an independent contractor; or

24 (h) a position occupied by a student intern, as defined in 2-18-101.

25 (6) (a) "Public employer" means:

26 (i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive,
27 judicial, or legislative branch of the government of the state of Montana; and

28 (ii) any county, city, or town.

29 (b) The term does not include a school district, a vocational-technical program, a community college, the
30 board of regents of higher education, the Montana university system, a special purpose district, an authority, or

1 any political subdivision of the state other than a county, city, or town.

2 (7) "Substantially equal qualifications" means the qualifications of two or more persons among whom
3 the public employer cannot make a reasonable determination that the qualifications held by one person are
4 significantly better suited for the position than the qualifications held by the other persons."

5

6 **Section 5.** Section 44-5-103, MCA, is amended to read:

7 **"44-5-103. Definitions.** As used in this chapter, the following definitions apply:

8 (1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice
9 information maintained by criminal justice agencies.

10 (2) "Administration of criminal justice" means the performance of any of the following activities: detection,
11 apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision,
12 or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the
13 collection, storage, and dissemination of criminal justice information.

14 (3) "Confidential criminal justice information" means:

15 (a) criminal investigative information;

16 (b) criminal intelligence information;

17 (c) fingerprints and photographs;

18 (d) criminal justice information or records made confidential by law; and

19 (e) any other criminal justice information not clearly defined as public criminal justice information.

20 (4) (a) "Criminal history record information" means information about individuals collected by criminal
21 justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints,
22 indictments, or informations and dispositions arising from complaints, indictments, or informations; sentences;
23 correctional status; and release. It includes identification information, such as fingerprint records or photographs,
24 unless the information is obtained for purposes other than the administration of criminal justice.

25 (b) Criminal history record information does not include:

26 (i) records of traffic offenses maintained by the department of justice; or

27 (ii) court records.

28 (5) (a) "Criminal intelligence information" means information associated with an identifiable individual,
29 group, organization, or event compiled by a criminal justice agency:

30 (i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential

1 criminal operation, or producing an estimate of future major criminal activities; or

2 (ii) in relation to the reliability of information, including information derived from reports of informants or
3 investigators or from any type of surveillance.

4 (b) Criminal intelligence information does not include information relating to political surveillance or
5 criminal investigative information.

6 (6) (a) "Criminal investigative information" means information associated with an individual, group,
7 organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a
8 crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators
9 or from any type of surveillance.

10 (b) The term does not include criminal intelligence information.

11 (7) "Criminal justice agency" means:

12 (a) any court with criminal jurisdiction;

13 (b) any federal, state, or local government agency designated by statute or by a governor's executive
14 order to perform as its principal function the administration of criminal justice, including a governmental fire
15 agency organized under Title 7, chapter 33, or a fire marshal who conducts criminal investigations of fires;

16 (c) any local government agency not included under subsection (7)(b) that performs as its principal
17 function the administration of criminal justice pursuant to an ordinance or local executive order; or

18 (d) any agency of a foreign nation that has been designated by that nation's law or chief executive officer
19 to perform as its principal function the administration of criminal justice and that has been approved for the receipt
20 of criminal justice information by the Montana attorney general, who may consult with the United States
21 department of justice.

22 (8) (a) "Criminal justice information" means information relating to criminal justice collected, processed,
23 or preserved by a criminal justice agency.

24 (b) The term does not include the administrative records of a criminal justice agency.

25 (9) "Criminal justice information system" means a system, automated or manual, operated by foreign,
26 federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving,
27 or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

28 (10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have
29 terminated and describing the nature of the termination or information relating to sentencing, correctional
30 supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal

1 proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to
2 bring charges or if criminal proceedings have been concluded, abandoned, or indefinitely postponed.

3 (b) Particular dispositions include but are not limited to:

4 (i) conviction at trial or on a plea of guilty;

5 (ii) acquittal;

6 (iii) acquittal by reason of mental disease or ~~defect~~ disorder;

7 (iv) acquittal by reason of mental incompetence;

8 (v) the sentence imposed, including all conditions attached to the sentence by the sentencing judge;

9 (vi) deferred imposition of sentence with any conditions of deferral;

10 (vii) nolle prosequi;

11 (viii) a nolo contendere plea;

12 (ix) deferred prosecution or diversion;

13 (x) bond forfeiture;

14 (xi) death;

15 (xii) release as a result of a successful collateral attack;

16 (xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action
17 for determination of mental incompetence or mental illness;

18 (xiv) a finding of civil incompetence or mental illness;

19 (xv) exercise of executive clemency;

20 (xvi) correctional placement on probation or parole or release; or

21 (xvii) revocation of probation or parole.

22 (c) A single arrest of an individual may result in more than one disposition.

23 (11) "Dissemination" means the communication or transfer of criminal justice information to individuals
24 or agencies other than the criminal justice agency that maintains the information. It includes confirmation of the
25 existence or nonexistence of criminal justice information.

26 (12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.

27 (13) "Public criminal justice information" means:

28 (a) information made public by law;

29 (b) information of court records and proceedings;

30 (c) information of convictions, deferred sentences, and deferred prosecutions;

- 1 (d) information of postconviction proceedings and status;
- 2 (e) information originated by a criminal justice agency, including:
- 3 (i) initial offense reports;
- 4 (ii) initial arrest records;
- 5 (iii) bail records; and
- 6 (iv) daily jail occupancy rosters;
- 7 (f) information considered necessary by a criminal justice agency to secure public assistance in the
- 8 apprehension of a suspect; or
- 9 (g) statistical information.

10 (14) "State repository" means the recordkeeping systems maintained by the department of justice

11 pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and

12 disseminated.

13 (15) "Statistical information" means data derived from records in which individuals are not identified or

14 identification is deleted and from which neither individual identity nor any other unique characteristic that could

15 identify an individual is ascertainable."

16

17 **Section 6.** Section 45-2-101, MCA, is amended to read:

18 **"45-2-101. General definitions.** Unless otherwise specified in the statute, all words must be taken in

19 the objective standard rather than in the subjective, and unless a different meaning plainly is required, the

20 following definitions apply in this title:

21 (1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of

22 communication, and when relevant, a failure or omission to take action.

23 (2) "Administrative proceeding" means a proceeding the outcome of which is required to be based on

24 a record or documentation prescribed by law or in which a law or a regulation is particularized in its application

25 to an individual.

26 (3) "Another" means a person or persons other than the offender.

27 (4) (a) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage,

28 including benefit to another person or entity in whose welfare the beneficiary is interested.

29 (b) Benefit does not include an advantage promised generally to a group or class of voters as a

30 consequence of public measures that a candidate engages to support or oppose.

1 (5) "Bodily injury" means physical pain, illness, or an impairment of physical condition and includes
2 mental illness or impairment.

3 (6) "Child" or "children" means any individual or individuals under 18 years of age, unless a different age
4 is specified.

5 (7) "Cohabit" means to live together under the representation of being married.

6 (8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a
7 single criminal objective or by a common purpose or plan that results in the repeated commission of the same
8 offense or that affects the same person or the same persons or the property of the same person or persons.

9 (9) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by
10 the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software,
11 or communication facilities that are connected or related to that device in a system or network.

12 (10) "Computer network" means the interconnection of communication systems between computers or
13 computers and remote terminals.

14 (11) "Computer program" means an instruction or statement or a series of instructions or statements, in
15 a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer
16 system and causes it to perform specified functions.

17 (12) "Computer services" include but are not limited to computer time, data processing, and storage
18 functions.

19 (13) "Computer software" means a set of computer programs, procedures, and associated documentation
20 concerned with the operation of a computer system.

21 (14) "Computer system" means a set of related, connected, or unconnected devices, computer software,
22 or other related computer equipment.

23 (15) "Conduct" means an act or series of acts and the accompanying mental state.

24 (16) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo
25 contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court
26 of competent jurisdiction authorized to try the case without a jury.

27 (17) "Correctional institution" means a state prison, detention center, multijurisdictional detention center,
28 private detention center, regional correctional facility, private correctional facility, or other institution for the
29 incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for
30 offenses.

- 1 (18) "Deception" means knowingly to:
2 (a) create or confirm in another an impression that is false and that the offender does not believe to be
3 true;
4 (b) fail to correct a false impression that the offender previously has created or confirmed;
5 (c) prevent another from acquiring information pertinent to the disposition of the property involved;
6 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal
7 impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter
8 of official record; or
9 (e) promise performance that the offender does not intend to perform or knows will not be performed.
10 Failure to perform, standing alone, is not evidence that the offender did not intend to perform.
- 11 (19) "Defamatory matter" means anything that exposes a person or a group, class, or association to
12 hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or
13 occupation.
- 14 (20) "Deprive" means:
15 (a) to withhold property of another:
16 (i) permanently;
17 (ii) for such a period as to appropriate a portion of its value; or
18 (iii) with the purpose to restore it only upon payment of reward or other compensation; or
19 (b) to dispose of the property of another and use or deal with the property so as to make it unlikely that
20 the owner will recover it.
- 21 (21) "Deviate sexual relations" means any form of sexual intercourse with an animal.
- 22 (22) "Document" means, with respect to offenses involving the medicaid program, any application, claim,
23 form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.
- 24 (23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment
25 in a state prison for a term exceeding 1 year.
- 26 (24) "Forcible felony" means a felony that involves the use or threat of physical force or violence against
27 any individual.
- 28 (25) A "frisk" is a search by an external patting of a person's clothing.
- 29 (26) "Government" includes a branch, subdivision, or agency of the government of the state or a locality
30 within it.

1 (27) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including
2 loss, disadvantage, or injury to a person or entity in whose welfare the affected person is interested.

3 (28) A "house of prostitution" means a place where prostitution or promotion of prostitution is regularly
4 carried on by one or more persons under the control, management, or supervision of another.

5 (29) "Human being" means a person who has been born and is alive.

6 (30) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the
7 possession of a person subject to official detention.

8 (31) "Inmate" means a person who is confined in a correctional institution.

9 (32) (a) "Intoxicating substance" means a controlled substance, as defined in Title 50, chapter 32, and
10 an alcoholic beverage, including but not limited to a beverage containing 1/2 of 1% or more of alcohol by volume.

11 (b) Intoxicating substance does not include dealcoholized wine or a beverage or liquid produced by the
12 process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

13 (33) An "involuntary act" means an act that is:

14 (a) a reflex or convulsion;

15 (b) a bodily movement during unconsciousness or sleep;

16 (c) conduct during hypnosis or resulting from hypnotic suggestion; or

17 (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either
18 conscious or habitual.

19 (34) "Juror" means a person who is a member of a jury, including a grand jury, impaneled by a court in
20 this state in an action or proceeding or by an officer authorized by law to impanel a jury in an action or
21 proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective
22 juror.

23 (35) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a
24 statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists.
25 A person acts knowingly with respect to the result of conduct described by a statute defining an offense when
26 the person is aware that it is highly probable that the result will be caused by the person's conduct. When
27 knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person
28 is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the
29 same meaning.

30 (36) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

1 (37) "Medicaid agency" has the meaning in 53-6-155.

2 (38) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient
3 under the medicaid program.

4 (39) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other
5 form:

6 (i) that is used to claim specific services or items as payable or reimbursable under the medicaid
7 program; or

8 (ii) that states income, expense, or other information that is or may be used to determine entitlement to
9 or the rate of payment under the medicaid program.

10 (b) The term includes related documents submitted as a part of or in support of the claim.

11 (40) "Mentally ~~defective~~ disordered" means that a person suffers from a mental disease or ~~defect~~ disorder
12 that renders the person incapable of appreciating the nature of the person's own conduct.

13 (41) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or
14 controlling the person's own conduct as a result of the influence of an intoxicating substance.

15 (42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment
16 in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison
17 for a term of 1 year or less.

18 (43) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by
19 a statute defining an offense when the person consciously disregards a risk that the result will occur or that the
20 circumstance exists or when the person disregards a risk of which the person should be aware that the result will
21 occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross
22 deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross
23 deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as
24 "negligent" and "with negligence", have the same meaning.

25 (44) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges
26 against the defendant and neither admits nor denies the charge or charges.

27 (45) "Obtain" means:

28 (a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or
29 to another; and

30 (b) in relation to labor or services, to secure the performance of the labor or service.

1 (46) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale,
2 conveyance, or transfer of title to, interest in, or possession of property.

3 (47) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or
4 night lodging of persons or for carrying on business, whether or not a person is actually present, including any
5 outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually
6 used for personal use or employment. Each unit of a building consisting of two or more units separately secured
7 or occupied is a separate occupied structure.

8 (48) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished
9 for a public offense.

10 (49) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized.
11 Offenses are classified as felonies or misdemeanors.

12 (50) (a) "Official detention" means imprisonment resulting from a conviction for an offense, confinement
13 for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest,
14 detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the
15 person detained or for the protection of society.

16 (b) Official detention does not include supervision of probation or parole, constraint incidental to release
17 on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or
18 a weapon to escape.

19 (51) "Official proceeding" means a proceeding heard or that may be heard before a legislative, a judicial,
20 an administrative, or another governmental agency or official authorized to take evidence under oath, including
21 any referee, hearings examiner, commissioner, notary, or other person taking testimony or deposition in
22 connection with the proceeding.

23 (52) "Other state" means a state or territory of the United States, the District of Columbia, and the
24 Commonwealth of Puerto Rico.

25 (53) "Owner" means a person other than the offender who has possession of or other interest in the
26 property involved, even though the interest or possession is unlawful, and without whose consent the offender
27 has no authority to exert control over the property.

28 (54) "Party official" means a person who holds an elective or appointive post in a political party in the
29 United States by virtue of which the person directs or conducts or participates in directing or conducting party
30 affairs at any level of responsibility.

1 (55) "Peace officer" means a person who by virtue of the person's office or public employment is vested
2 by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the
3 person's authority.

4 (56) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else
5 the primary significance of which is economic gain.

6 (57) "Person" includes an individual, business association, partnership, corporation, government, or other
7 legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of
8 government.

9 (58) "Physically helpless" means that a person is unconscious or is otherwise physically unable to
10 communicate unwillingness to act.

11 (59) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

12 (60) "Premises" includes any type of structure or building and real property.

13 (61) "Property" means a tangible or intangible thing of value. Property includes but is not limited to:

14 (a) real estate;

15 (b) money;

16 (c) commercial instruments;

17 (d) admission or transportation tickets;

18 (e) written instruments that represent or embody rights concerning anything of value, including labor or
19 services, or that are otherwise of value to the owner;

20 (f) things growing on, affixed to, or found on land and things that are part of or affixed to a building;

21 (g) electricity, gas, and water;

22 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;

23 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,
24 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

25 (j) other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs,
26 prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical,
27 merchandising, production, or management information or a secret designed process, procedure, formula,
28 invention, or improvement; and

29 (k) electronic impulses, electronically processed or produced data or information, commercial
30 instruments, computer software or computer programs, in either machine- or human-readable form, computer

1 services, any other tangible or intangible item of value relating to a computer, computer system, or computer
2 network, and copies thereof.

3 (62) "Property of another" means real or personal property in which a person other than the offender has
4 an interest that the offender has no authority to defeat or impair, even though the offender may have an interest
5 in the property.

6 (63) "Public place" means a place to which the public or a substantial group has access.

7 (64) (a) "Public servant" means an officer or employee of government, including but not limited to
8 legislators, judges, and firefighters, and a person participating as a juror, adviser, consultant, administrator,
9 executor, guardian, or court-appointed fiduciary. The term "public servant" includes one who has been elected
10 or designated to become a public servant.

11 (b) The term does not include witnesses.

12 (65) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute
13 defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When
14 a particular purpose is an element of an offense, the element is established although the purpose is conditional,
15 unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent
16 terms, such as "purpose" and "with the purpose", have the same meaning.

17 (66) (a) "Serious bodily injury" means bodily injury that:

18 (i) creates a substantial risk of death;

19 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process
20 of a bodily member or organ; or

21 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or
22 protracted loss or impairment of the function or process of a bodily member or organ.

23 (b) The term includes serious mental illness or impairment.

24 (67) "Sexual contact" means touching of the sexual or other intimate parts of the person of another,
25 directly or through clothing, in order to knowingly or purposely:

26 (a) cause bodily injury to or humiliate, harass, or degrade another; or

27 (b) arouse or gratify the sexual response or desire of either party.

28 (68) (a) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis
29 of another person, penetration of the vulva or anus of one person by a body member of another person, or
30 penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person

1 to knowingly or purposely:

2 (i) cause bodily injury or humiliate, harass, or degrade; or

3 (ii) arouse or gratify the sexual response or desire of either party.

4 (b) For purposes of subsection (68)(a), any penetration, however slight, is sufficient.

5 (69) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to
6 commit an offense.

7 (70) "State" or "this state" means the state of Montana, all the land and water in respect to which the state
8 of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

9 (71) "Statute" means an act of the legislature of this state.

10 (72) "Stolen property" means property over which control has been obtained by theft.

11 (73) A "stop" is the temporary detention of a person that results when a peace officer orders the person
12 to remain in the peace officer's presence.

13 (74) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted
14 alterations in its existing condition, or deposit refuse upon it.

15 (75) "Telephone" means any type of telephone, including but not limited to a corded, uncoded, cellular,
16 or satellite telephone.

17 (76) "Threat" means a menace, however communicated, to:

18 (a) inflict physical harm on the person threatened or any other person or on property;

19 (b) subject any person to physical confinement or restraint;

20 (c) commit a criminal offense;

21 (d) accuse a person of a criminal offense;

22 (e) expose a person to hatred, contempt, or ridicule;

23 (f) harm the credit or business repute of a person;

24 (g) reveal information sought to be concealed by the person threatened;

25 (h) take action as an official against anyone or anything, withhold official action, or cause the action or
26 withholding;

27 (i) bring about or continue a strike, boycott, or other similar collective action if the person making the
28 threat demands or receives property that is not for the benefit of groups that the person purports to represent;

29 or

30 (j) testify or provide information or withhold testimony or information with respect to another's legal claim

1 or defense.

2 (77) (a) "Value" means the market value of the property at the time and place of the crime or, if the market
3 value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time
4 after the crime. If the offender appropriates a portion of the value of the property, the value must be determined
5 as follows:

6 (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory
7 note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness
8 less any portion of the indebtedness that has been satisfied.

9 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable
10 legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument
11 might reasonably suffer by virtue of the loss of the instrument.

12 (iii) The value of electronic impulses, electronically produced data or information, computer software or
13 programs, or any other tangible or intangible item relating to a computer, computer system, or computer network
14 is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of
15 the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration
16 of the value of the owner's right to exclusive use or disposition of the item.

17 (b) When it cannot be determined if the value of the property is more or less than \$1,500 by the
18 standards set forth in subsection (77)(a), its value is considered to be an amount less than \$1,500.

19 (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
20 whether from the same person or several persons, may be aggregated in determining the value of the property.

21 (78) "Vehicle" means a device for transportation by land, water, or air or by mobile equipment, with
22 provision for transport of an operator.

23 (79) "Weapon" means an instrument, article, or substance that, regardless of its primary function, is
24 readily capable of being used to produce death or serious bodily injury.

25 (80) "Witness" means a person whose testimony is desired in an official proceeding, in any investigation
26 by a grand jury, or in a criminal action, prosecution, or proceeding."

27

28 **Section 7.** Section 45-2-211, MCA, is amended to read:

29 **"45-2-211. Consent as a defense.** (1) The consent of the victim to conduct charged to constitute an
30 offense or to the result thereof is a defense.

1 (2) Consent is ineffective if:

2 (a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the
3 offense;

4 (b) it is given by a person who by reason of youth, mental disease or ~~defect~~ disorder, or intoxication is
5 unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the
6 offense;

7 (c) it is induced by force, duress, or deception; or

8 (d) it is against public policy to permit the conduct or the resulting harm, even though consented to."
9

10 **Section 8.** Section 45-5-501, MCA, is amended to read:

11 **"45-5-501. Definitions.** (1) (a) As used in 45-5-503, the term "without consent" means:

12 (i) the victim is compelled to submit by force against the victim or another; or

13 (ii) subject to subsections (1)(b) and (1)(c), the victim is incapable of consent because the victim is:

14 (A) mentally ~~defective~~ disordered or incapacitated;

15 (B) physically helpless;

16 (C) overcome by deception, coercion, or surprise;

17 (D) less than 16 years old;

18 (E) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or
19 parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has
20 supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

21 (F) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

22 (I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

23 (II) is an employee, contractor, or volunteer of the youth care facility; or

24 (G) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility
25 or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as
26 defined in 53-20-102, and the perpetrator:

27 (I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

28 (II) is an employee, contractor, or volunteer of the facility or community-based service.

29 (b) Subsection (1)(a)(ii)(E) does not apply if the individuals are married to each other and one of the
30 individuals involved is on probation or parole and the other individual is a probation or parole officer of a

1 supervising authority.

2 (c) Subsections (1)(a)(ii)(F) and (1)(a)(ii)(G) do not apply if the individuals are married to each other and
3 one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services,
4 or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer
5 of the facility or community-based service.

6 (2) As used in subsection (1), the term "force" means:

7 (a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a
8 forcible felony by the offender; or

9 (b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the
10 offender has the ability to execute the threat.

11 (3) As used in 45-5-502 and this section, the following definitions apply:

12 (a) "Parole":

13 (i) in the case of an adult offender, has the meaning provided in 46-1-202; and

14 (ii) in the case of a juvenile offender, means supervision of a youth released from a state youth
15 correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.

16 (b) "Probation" means:

17 (i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime
18 and subject to the supervision of a supervising authority; and

19 (ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41,
20 chapter 5.

21 (c) "Supervising authority" includes a court, including a youth court, a county, or the department of
22 corrections."

23

24 **Section 9.** Section 45-8-321, MCA, is amended to read:

25 **"45-8-321. Permit to carry concealed weapon.** (1) A county sheriff shall, within 60 days after the filing
26 of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from
27 the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds
28 a valid Montana driver's license or other form of identification issued by the state that has a picture of the person
29 identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in
30 subsection (2), this privilege may not be denied an applicant unless the applicant:

- 1 (a) is ineligible under Montana or federal law to own, possess, or receive a firearm;
- 2 (b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable
3 by incarceration for 1 year or more;
- 4 (c) subject to the provisions of subsection (6), has been convicted in any state or federal court of:
- 5 (i) a crime punishable by more than 1 year of incarceration; or
- 6 (ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an
7 act, attempted act, or threat of intentional homicide, serious bodily harm, unlawful restraint, sexual abuse, or
8 sexual intercourse or contact without consent;
- 9 (d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years
10 have elapsed since the date of the conviction;
- 11 (e) has a warrant of any state or the federal government out for the applicant's arrest;
- 12 (f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful
13 user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation,
14 suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is
15 otherwise under state supervision;
- 16 (g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill,
17 mentally ~~defective~~ disordered, or mentally disabled and is still subject to a disposition order of that court; or
- 18 (h) was dishonorably discharged from the United States armed forces.
- 19 (2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable
20 cause to believe that the applicant is mentally ill, mentally ~~defective~~ disordered, or mentally disabled or otherwise
21 may be a threat to the peace and good order of the community to the extent that the applicant should not be
22 allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant
23 is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause
24 upon which the denial is based.
- 25 (3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required
26 by the sheriff to demonstrate familiarity with a firearm by:
- 27 (a) completion of a hunter education or safety course approved or conducted by the department of fish,
28 wildlife, and parks or a similar agency of another state;
- 29 (b) completion of a firearms safety or training course approved or conducted by the department of fish,
30 wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency,

1 an institution of higher education, or an organization that uses instructors certified by a national firearms
2 association;

3 (c) completion of a law enforcement firearms safety or training course offered to or required of public or
4 private law enforcement personnel and conducted or approved by a law enforcement agency;

5 (d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted
6 by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

7 (e) evidence that the applicant, during military service, was found to be qualified to operate firearms,
8 including handguns.

9 (4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from
10 the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other
11 document that attests to completion of the course and can be verified through contact with the entity or instructor
12 that conducted the course creates a presumption that the applicant has completed a course described in
13 subsection (3).

14 (5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with
15 a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity
16 to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the
17 applicant's familiarity with a firearm.

18 (6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony and
19 whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to
20 issuance of a concealed weapons permit if otherwise eligible."

21

22 **Section 10.** Section 46-14-101, MCA, is amended to read:

23 **"46-14-101. Mental disease or ~~defect~~ disorder -- purpose -- definition.** (1) The purpose of this section
24 is to provide a legal standard of mental disease or ~~defect~~ disorder under which the information gained from
25 examination of the defendant, pursuant to part 2 of this chapter, regarding a defendant's mental condition is
26 applied. The court shall apply this standard:

27 (a) in any determination regarding:

28 (i) a defendant's fitness to proceed and stand trial;

29 (ii) whether the defendant had, at the time that the offense was committed, a particular state of mind that
30 is an essential element of the offense; and

1 (b) at sentencing when a defendant has been convicted on a verdict of guilty or a plea of guilty or nolo
2 contendere and claims that at the time of commission of the offense for which the defendant was convicted, the
3 defendant was unable to appreciate the criminality of the defendant's behavior or to conform the defendant's
4 behavior to the requirements of the law.

5 (2) (a) As used in this chapter, "mental disease or ~~defect~~ disorder" means an organic, mental, or
6 emotional disorder that is manifested by a substantial disturbance in behavior, feeling, thinking, or judgment to
7 such an extent that the person requires care, treatment, and rehabilitation.

8 (b) The term "mental disease or ~~defect~~ disorder" does not include but may co-occur with one or more
9 of the following:

- 10 (i) an abnormality manifested only by repeated criminal or other antisocial behavior;
11 (ii) a developmental disability, as defined in 53-20-102;
12 (iii) drug or alcohol intoxication; or
13 (iv) drug or alcohol addiction."
14

15 **Section 11.** Section 46-14-102, MCA, is amended to read:

16 **"46-14-102. Evidence of mental disease or ~~defect~~ disorder or developmental disability admissible**
17 **to prove state of mind.** Evidence that the defendant suffered from a mental disease or ~~defect~~ disorder or
18 developmental disability is admissible to prove that the defendant did or did not have a state of mind that is an
19 element of the offense."
20

21 **Section 12.** Section 46-14-103, MCA, is amended to read:

22 **"46-14-103. Mental disease or ~~defect~~ disorder or developmental disability excluding fitness to**
23 **proceed.** A person who, as a result of mental disease or ~~defect~~ disorder or developmental disability, is unable
24 to understand the proceedings against the person or to assist in the person's own defense may not be tried,
25 convicted, or sentenced for the commission of an offense so long as the incapacity endures."
26

27 **Section 13.** Section 46-14-202, MCA, is amended to read:

28 **"46-14-202. Examination of defendant.** (1) If the defendant or the defendant's counsel files a written
29 motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the court,
30 prosecution, or defense counsel, the court shall appoint at least one qualified psychiatrist, licensed clinical

1 psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana state
2 hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice
3 registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental
4 condition.

5 (2) The court may order the defendant to be committed to a hospital or other suitable facility for the
6 purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to
7 be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or
8 advanced practice registered nurse retained by the defendant be permitted to witness and participate in the
9 examination.

10 (3) In the examination, any method may be employed that is accepted by the medical or psychological
11 profession for the examination of those alleged to be suffering from mental disease or ~~defect~~ disorder.

12 (4) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows:

13 (i) if the issue of the defendant's fitness to proceed was raised by the court or the examination was
14 requested by the prosecution, the cost of the examination and other associated expenses must be paid by the
15 court or, in district court proceedings, by the office of court administrator, except as provided in subsection
16 (4)(a)(iv);

17 (ii) if the examination was requested by the defendant or the defendant's counsel, the cost of the
18 examination and other associated expenses must be paid by the defendant or, if the defendant was represented
19 by an attorney pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public
20 defender, except as provided by subsection (4)(a)(iv);

21 (iii) if the examination was jointly requested by the prosecution and defense counsel or the need for the
22 examination was jointly agreed to by the prosecution and defense, the cost of the examination and other
23 associated expenses must be divided and paid equally by the court or, in district court proceedings, by the office
24 of court administrator, and the defendant or, if the defendant was represented by an attorney assigned pursuant
25 to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public defender, except as provided
26 in subsection (4)(a)(iv);

27 (iv) any costs for an examination performed by an employee of the department of public health and
28 human services, any other associated expenses at a facility of the department of public health and human
29 services, and any other associated expenses for which the legislature has made a general fund appropriation to
30 the department of public health and human services may not be charged to the office of court administrator or

1 the office of state public defender.

2 (b) For purposes of this subsection (4), "other associated expenses" means the following costs incurred
3 in association with the commitment to a hospital or other suitable facility for the purpose of examination,
4 regardless of whether the examination is done at the Montana state hospital or any other facility:

5 (i) the expenses of transporting the defendant from the place of detention to the place where the
6 examination is performed and returning the defendant to detention, including personnel costs of the law
7 enforcement agency by whom the defendant is detained;

8 (ii) housing expenses of the facility where the examination is performed; and

9 (iii) medical costs, including medical and dental care, including costs of medication."
10

11 **Section 14.** Section 46-14-204, MCA, is amended to read:

12 **"46-14-204. Prosecution's right to examination.** (1) When the defense discloses the report of the
13 examination to the prosecution or files a notice of the intention to rely on a defense of mental disease or ~~defect~~
14 disorder, the prosecution is entitled to have the defendant examined by a qualified psychiatrist, licensed clinical
15 psychologist, or advanced practice registered nurse.

16 (2) The report of the examination must be disclosed to the defense within 10 days of its receipt by the
17 prosecution."
18

19 **Section 15.** Section 46-14-206, MCA, is amended to read:

20 **"46-14-206. Report of examination.** (1) A report of the examination must include the following:

21 (a) a description of the nature of the examination;

22 (b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant
23 suffers from a mental disorder, as defined in 53-21-102, and may require commitment or is seriously
24 developmentally disabled, as defined in 53-20-102;

25 (c) if the defendant suffers from a mental disease or ~~defect~~ disorder or developmental disability, an
26 opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the
27 defendant's own defense;

28 (d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state
29 of mind that is an element of the offense charged; and

30 (e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental

1 disease or ~~defect~~ disorder or developmental disability, to appreciate the criminality of the defendant's behavior
2 or to conform the defendant's behavior to the requirement of the law.

3 (2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate
4 in the examination, the report must state that fact and must include, if possible, an opinion as to whether the
5 unwillingness of the defendant was the result of the mental disease or ~~defect~~ disorder or developmental
6 disability."

7

8 **Section 16.** Section 46-14-214, MCA, is amended to read:

9 **"46-14-214. Form of verdict and judgment -- determination of maximum period of confinement**
10 **-- victim findings.** (1) When the defendant is found not guilty of the charged offense or offenses or any lesser
11 included offense for the reason that due to a mental disease or ~~defect~~ disorder the defendant did not have a
12 particular state of mind that is an essential element of the offense charged, the verdict and the judgment must
13 state that reason.

14 (2) The court shall determine on the record the charged offense or offenses or any lesser included
15 offense for which the person otherwise may have been convicted and the maximum sentence that the defendant
16 may have received. If there is more than one offense charged, the maximum sentence is limited to the longest
17 single sentence from all charged offenses.

18 (3) The court shall make specific findings regarding whether there is a victim of the crime for which the
19 defendant is found not guilty and, if so, whether the victim wishes to be notified of any conditional release,
20 discharge, or escape of the defendant."

21

22 **Section 17.** Section 46-14-217, MCA, is amended to read:

23 **"46-14-217. Admissibility of statements made during examination or treatment.** A statement made
24 for the purposes of psychiatric or psychological examination or treatment provided for in this section by a person
25 subjected to examination or treatment is not admissible in evidence against the person at trial on any issue other
26 than that of the person's mental condition. It is admissible on the issue of the person's mental condition, whether
27 or not it would otherwise be considered a privileged communication, only when and after the defendant presents
28 evidence that due to a mental disease or ~~defect~~ disorder the defendant did not have a particular state of mind
29 that is an element of the offense charged."

30

1 **Section 18.** Section 46-14-301, MCA, is amended to read:

2 **"46-14-301. Commitment upon finding of not guilty by reason of lack of mental state -- hearing**
3 **to determine release or discharge -- limitation on confinement.** (1) When a defendant is found not guilty for
4 the reason that due to a mental disease or ~~defect~~ disorder the defendant could not have a particular state of mind
5 that is an essential element of the offense charged, the court shall order a predisposition investigation in
6 accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition
7 of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition
8 of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it
9 considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and
10 evidence presented at the trial must be considered by the court in making its determination.

11 (2) The court shall evaluate the nature of the offense with which the defendant was charged. If the
12 offense:

13 (a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property
14 damage, the court may find that the defendant suffers from a mental disease or ~~defect~~ disorder that renders the
15 defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the
16 defendant or others, the defendant may be committed to the custody of the director of the department of public
17 health and human services to be placed in an appropriate mental health facility for custody, care, and treatment.
18 However, if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the
19 prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

20 (b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or
21 substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the
22 manner provided in Title 53, chapter 20 or 21.

23 (3) A person committed to the custody of the director of the department of public health and human
24 services must have a hearing within 180 days of confinement to determine the person's present mental condition
25 and whether the person must be discharged or released or whether the commitment may be extended because
26 the person continues to suffer from a mental disease or ~~defect~~ disorder that renders the person a danger to the
27 person or others. The hearing must be conducted by the court that ordered the commitment unless that court
28 transfers jurisdiction to the district court in the district in which the person has been placed. The court shall cause
29 notice of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that
30 originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the state to prove

1 by clear and convincing evidence that the person may not be safely released because the person continues to
2 suffer from a mental disease or ~~defect~~ disorder that causes the person to present a substantial risk of:

- 3 (a) serious bodily injury or death to the person or others;
4 (b) an imminent threat of physical injury to the person or others; or
5 (c) substantial property damage.

6 (4) According to the determination of the court upon the hearing, the person must be discharged or
7 released on conditions the court determines to be necessary or must be committed to the custody of the director
8 of the department of public health and human services to be placed in an appropriate mental health facility for
9 custody, care, and treatment. The period of commitment may not exceed the maximum sentence determined
10 under 46-14-214(2). At the time that the period of the maximum sentence expires, involuntary civil commitment
11 proceedings may be instituted in the manner provided in Title 53, chapter 21.

12 (5) A professional person shall review the status of the person each year. At the time of the annual
13 review, the director of the department of public health and human services or the person or the representative
14 of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be
15 held pursuant to the provisions of subsection (3)."

16

17 **Section 19.** Section 46-14-302, MCA, is amended to read:

18 **"46-14-302. Discharge or release upon motion of director.** (1) If the director of the department of
19 public health and human services believes that a person committed to the director's custody under 46-14-301
20 may be discharged or released on condition without danger to the person or others because the person no longer
21 suffers from a mental disease or ~~defect~~ disorder that causes the person to present a substantial risk of serious
22 bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the
23 person or others, or a substantial risk of substantial property damage, the director shall make application for the
24 discharge or release of the person in a report to the district court by which the person was committed unless that
25 court transfers jurisdiction to the court in the district in which the person has been placed and shall send a copy
26 of the application and report to the prosecutor of the county from which the person was committed.

27 (2) Either the director of the department of public health and human services or the person may also
28 make application to the court for discharge or release as part of the person's annual treatment review.

29 (3) The court shall then appoint at least one person who is a qualified psychiatrist, licensed clinical
30 psychologist, or advanced practice registered nurse to examine the person and to report as to the person's

1 mental condition within 60 days or a longer period that the court determines to be necessary for the purpose. To
2 facilitate the examinations and the proceedings on the examinations, the court may have the person confined in
3 any mental health facility located near the place where the court sits that may be designated by the director of
4 the department of public health and human services as suitable for the temporary detention of persons suffering
5 from mental disease or ~~defect~~ disorder.

6 (4) The committed person or the person's attorney may secure a professional person of the committed
7 person's choice to examine the committed person and to testify at the hearing. If the person wishing to secure
8 the testimony of a professional person is unable to do so because of financial reasons, the court shall appoint
9 an additional professional person to perform the examination. Whenever possible, the court shall allow the
10 committed person or the person's attorney a reasonable choice of an available professional person qualified to
11 perform the requested examination. The professional person must be compensated by the department of public
12 health and human services.

13 (5) If the court is satisfied by the report filed under subsection (1) and the testimony of the reporting
14 psychiatrist, licensed clinical psychologist, or advanced practice registered nurse that the committed person may
15 be discharged or released on condition because the person no longer suffers from a mental disease or ~~defect~~
16 disorder that causes the person to present a substantial risk of serious bodily injury or death to the person or
17 others, a substantial risk of an imminent threat of physical injury to the person or others, or a substantial risk of
18 substantial property damage, the court shall order the person's discharge.

19 (6) (a) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may
20 safely be discharged or released on the grounds that the person no longer suffers from a mental disease or ~~defect~~
21 disorder that causes the person to present a substantial risk of:

- 22 (i) serious bodily injury or death to the person or others;
23 (ii) an imminent threat of physical injury to the person or others; or
24 (iii) substantial property damage.

25 (b) A hearing is considered a civil proceeding, and the burden is upon the state to prove by clear and
26 convincing evidence that the person may not be safely discharged or released because the person continues to
27 suffer from a mental disease or ~~defect~~ disorder that causes the person to present a substantial risk of:

- 28 (i) serious bodily injury or death to the person or others;
29 (ii) an imminent threat of physical injury to the person or others; or
30 (iii) substantial property damage.

1 (c) According to the determination of the court upon the hearing, the committed person must then be
2 discharged or released on conditions that the court determines to be necessary or must be recommitted to the
3 custody of the director of the department of public health and human services, subject to discharge or release
4 only in accordance with the procedures provided in 46-14-303 and this section."
5

6 **Section 20.** Section 46-14-304, MCA, is amended to read:

7 **"46-14-304. Revocation of conditional release.** (1) The court may order revocation of a person's
8 conditional release if the court determines after hearing evidence that:

9 (a) the conditions of release have not been fulfilled; and

10 (b) based on the violations of the conditions and the person's past mental health history, there is a
11 substantial likelihood that the person continues to suffer from a mental disease or ~~defect~~ disorder that causes the
12 person to present a substantial risk of:

13 (i) serious bodily injury or death to the person or others;

14 (ii) an imminent threat of physical injury to the person or others; or

15 (iii) substantial property damage.

16 (2) The court may retain jurisdiction to revoke a conditional release for no longer than 5 years.

17 (3) If the court finds that the conditional release should be revoked, the court shall immediately order the
18 person to be recommitted to the custody of the director of the department of public health and human services,
19 subject to discharge or release only in accordance with the procedures provided in 46-14-302 and 46-14-303."
20

21 **Section 21.** Section 46-14-311, MCA, is amended to read:

22 **"46-14-311. Consideration of mental disease or ~~defect~~ disorder or developmental disability in**
23 **sentencing.** (1) Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere
24 and claims at the time of the omnibus hearing held pursuant to 46-13-110 or, if no omnibus hearing is held, at
25 the time of any change of plea by the defendant that at the time of the commission of the offense of which
26 convicted the defendant was suffering from a mental disease or ~~defect~~ disorder or developmental disability that
27 rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the
28 defendant's behavior to the requirements of law, the sentencing court shall consider any relevant evidence
29 presented at the trial and shall also consider the results of the presentence investigation required pursuant to
30 subsection (2).

1 (2) Under the circumstances referred to in subsection (1), the sentencing court shall order a presentence
2 investigation and a report on the investigation pursuant to 46-18-111. The investigation must include a mental
3 evaluation by a person appointed by the director of the department of public health and human services or the
4 director's designee. The evaluation must include an opinion as to whether the defendant suffered from a mental
5 disease or ~~defect disorder~~ or developmental disability with the effect as described in subsection (1). If the opinion
6 concludes that the defendant did suffer from a mental disease or ~~defect disorder~~ or developmental disability with
7 the effect as described in subsection (1), the evaluation must also include a recommendation as to the care,
8 custody, and treatment needs of the defendant."

9

10 **Section 22.** Section 46-14-312, MCA, is amended to read:

11 **"46-14-312. Sentence to be imposed.** (1) If the court finds that the defendant at the time of the
12 commission of the offense of which the defendant was convicted did not suffer from a mental disease or ~~defect~~
13 ~~disorder~~ as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

14 (2) If the court finds that the defendant at the time of the commission of the offense suffered from a
15 mental disease or ~~defect disorder~~ or developmental disability as described in 46-14-311, any mandatory minimum
16 sentence prescribed by law for the offense need not apply. The court shall sentence the defendant to be
17 committed to the custody of the director of the department of public health and human services to be placed, after
18 consideration of the recommendations of the professionals providing treatment to the defendant and
19 recommendations of the professionals who have evaluated the defendant, in an appropriate correctional facility,
20 mental health facility, as defined in 53-21-102, residential facility, as defined in 53-20-102, or developmental
21 disabilities facility, as defined in 53-20-202, for custody, care, and treatment for a definite period of time not to
22 exceed the maximum term of imprisonment that could be imposed under subsection (1). The director may, after
23 considering the recommendations of the professionals providing treatment to the defendant and
24 recommendations of the professionals who have evaluated the defendant, subsequently transfer the defendant
25 to another correctional, mental health, residential, or developmental disabilities facility that will better serve the
26 defendant's custody, care, and treatment needs. The authority of the court with regard to sentencing is the same
27 as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided
28 for.

29 (3) Either the director or a defendant whose sentence has been imposed under subsection (2) may
30 petition the sentencing court for review of the sentence if the professional person certifies that:

- 1 (a) the defendant no longer suffers from a mental disease or ~~defect~~ disorder;
- 2 (b) the defendant's mental disease or ~~defect~~ disorder no longer renders the defendant unable to
3 appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements
4 of law;
- 5 (c) the defendant suffers from a mental disease or ~~defect~~ disorder or developmental disability but is not
6 a danger to the defendant or others; or
- 7 (d) the defendant suffers from a mental disease or ~~defect~~ disorder that makes the defendant a danger
8 to the defendant or others, but:
- 9 (i) there is no treatment available for the mental disease or ~~defect~~ disorder;
- 10 (ii) the defendant refuses to cooperate with treatment; or
- 11 (iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or ~~defect~~
12 disorder.
- 13 (4) The sentencing court may make any order not inconsistent with its original sentencing authority,
14 except that the length of confinement or supervision must be equal to that of the original sentence. The
15 professional person shall review the defendant's status each year."

- 16
- 17 **Section 23.** Section 46-15-323, MCA, is amended to read:
- 18 **"46-15-323. Disclosure by defendant.** (1) At any time after the filing in district court of an indictment
19 or information, the defendant, in connection with the particular crime charged and upon written request of the
20 prosecutor and approval of the court:
- 21 (a) shall appear in a lineup;
- 22 (b) shall speak for identification by witnesses;
- 23 (c) must be fingerprinted, palm printed, footprinted, or voiceprinted;
- 24 (d) shall pose for photographs not involving reenactment of an event;
- 25 (e) shall try on clothing;
- 26 (f) shall permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified
27 materials that do not involve unreasonable bodily intrusions;
- 28 (g) shall provide handwriting samples; or
- 29 (h) shall submit to a reasonable physical or medical inspection; however, the inspection does not include
30 psychiatric or psychological examination.

1 (2) Within 30 days after the arraignment or at a later time as the court may for good cause permit, the
2 defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at
3 trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken
4 identity.

5 (3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist,
6 psychologist, or advanced practice registered nurse or at a later time as the court may for good cause permit,
7 the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence
8 at trial of the defense that because of a mental disease or ~~defect~~ disorder, the defendant did not have a particular
9 state of mind that is an essential element of the offense charged.

10 (4) The notice must specify for each defense the names and addresses of the persons, other than the
11 defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports
12 or statements made by them, including all reports and statements concerning the results of physical
13 examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a
14 privileged report or statement unless the defendant intends to use the privileged report or statement, or the
15 witness who made it, at trial.

16 (5) Prior to trial, the defendant may, upon motion and showing of good cause, add to the list of witnesses
17 the names of any additional witnesses and disclose their reports or statements as required by this section. After
18 the trial commences, no witness may be called by the defendant in support of these defenses unless the name
19 of the witness is included on the list and the witness's report or statement has been disclosed as required by this
20 section, except for good cause shown.

21 (6) Within 30 days after the arraignment or at a later time as the court may for good cause permit, the
22 defendant shall make available to the prosecutor for testing, examination, or reproduction:

23 (a) the names, addresses, and statements of all persons, other than the defendant, whom the defendant
24 may call as witnesses in the defense case in chief, together with their statements;

25 (b) the names and addresses of experts whom the defendant may call at trial, together with the results
26 of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and
27 statements made by these experts in connection with the particular case; and

28 (c) all papers, documents, photographs, and other tangible objects that the defendant may use at trial.

29 (7) The defendant's obligation under this section extends to material and information within the
30 possession or control of the defendant, defense counsel, and defense counsel's staff or investigators.

1 (8) Upon motion of the prosecutor showing that the prosecutor has substantial need in the preparation
2 of the case for additional material or information not otherwise provided for, that the prosecutor is unable, without
3 undue hardship, to obtain the substantial equivalent by other means, and that disclosure of the material or
4 information will not violate the defendant's constitutional rights, the court, in its discretion, may order any person
5 to make the material or information available to the prosecutor. The court may, upon request of any person
6 affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The
7 defense counsel may not be required to prepare or disclose summaries of witnesses' testimony."
8

9 **Section 24.** Section 53-1-104, MCA, is amended to read:

10 **"53-1-104. Release of arsonist -- notification of department of justice.** (1) Each of the following
11 institutions, correctional facilities, or other facilities having the charge or custody of a person convicted of arson
12 or of a person acquitted of arson on the ground of mental disease or ~~defect~~ disorder shall give written notification
13 to the department of justice when the person is admitted or released by it:

- 14 (a) Montana state hospital;
15 (b) a state prison;
16 (c) a Montana youth correctional facility; or
17 (d) a county or city detention facility.
18 (2) The notification must disclose:
19 (a) the name of the person;
20 (b) where the person is or will be located; and
21 (c) the type of fire the person was involved in."
22

23 **Section 25.** Section 80-20-102, MCA, is amended to read:

24 **"80-20-102. Definitions.** As used in this part, the following definitions apply:

- 25 (1) "Consent" means agreement in fact, whether express or apparent.
26 (2) "Crop" means a product grown, developed, or raised for purposes including but not limited to human
27 or animal consumption, research, industrial use, commercial use, or pharmacological use.
28 (3) "Deprive" means to:
29 (a) withhold a crop or other property from the owner permanently or for such a period of time that a major
30 portion of the value or enjoyment of the crop or property is lost to the owner;

1 (b) restore the crop or other property only upon payment of reward or other compensation; or
2 (c) dispose of a crop or other property in a manner that makes recovery of the crop or property by the
3 owner unlikely.

4 (4) "Effective consent" means consent by the owner or by a person legally authorized to act for the
5 owner. Consent is not effective if it is:

6 (a) induced by force or threat;

7 (b) given by a person who the person to whom it is given knows is not legally authorized to act for the
8 owner; or

9 (c) given by a person who by reason of youth, mental disease or ~~defect~~ disorder, or being under the
10 influence of drugs or alcohol is known by the person to whom it is given to be unable to make reasonable
11 decisions.

12 (5) "Notice" means:

13 (a) oral or written communication by the owner or someone with apparent authority to act for the owner;

14 (b) fencing or other enclosure obviously designed to exclude intruders or to contain crops; or

15 (c) a sign or signs posted on the property or at the entrance to a building that are reasonably likely to
16 come to the attention of intruders and that indicate that entry is forbidden.

17 (6) "Owner" means a person who has:

18 (a) title to the property; or

19 (b) lawful possession of the property.

20 (7) "Person" means an individual, state agency, corporation, association, nonprofit corporation,
21 joint-stock company, firm, trust, or partnership; two or more persons having a joint or common interest; or some
22 other legal entity.

23 (8) "Possession" means actual care, custody, control, or management.

24 (9) "Research facility" means a public or private place, laboratory, institution, medical care facility,
25 elementary school, high school, college, or university at which a scientific test, experiment, or investigation
26 involving the use of a crop is lawfully carried out, conducted, or attempted."

27

28 **Section 26.** Section 81-30-102, MCA, is amended to read:

29 **"81-30-102. Definitions.** As used in this chapter, the following definitions apply:

30 (1) "Animal" means any warmblooded or coldblooded animal lawfully confined for food, fur, or fiber

1 production, agriculture and its related activities, research, testing, or education. The term includes but is not
2 limited to dogs, cats, poultry, fish, and invertebrates.

3 (2) "Animal facility" includes a vehicle, building, structure, research facility, or premises where an animal
4 is lawfully kept, handled, housed, exhibited, bred, or offered for sale.

5 (3) "Consent" means agreement in fact, whether express or apparent.

6 (4) "Deprive" means to:

7 (a) withhold an animal or other property from the owner permanently or for such a period of time that a
8 major portion of the value or enjoyment of the animal or property is lost to the owner;

9 (b) restore the animal or other property only upon payment of reward or other compensation; or

10 (c) dispose of an animal or other property in a manner that makes recovery of the animal or property by
11 the owner unlikely.

12 (5) "Effective consent" means consent by the owner or by a person legally authorized to act for the
13 owner. Consent is not effective if it is:

14 (a) induced by force or threat;

15 (b) given by a person that the offender knows is not legally authorized to act for the owner; or

16 (c) given by a person who by reason of youth, mental disease or ~~defect~~ disorder, or being under the
17 influence of drugs or alcohol is known by the offender to be unable to make reasonable decisions.

18 (6) "Notice" means:

19 (a) oral or written communication by the owner or someone with apparent authority to act for the owner;

20 (b) fencing or other enclosure obviously designed to exclude intruders or to contain animals; or

21 (c) a sign or signs posted on the property or at the entrance to a building that are reasonably likely to
22 come to the attention of intruders and that indicate that entry is forbidden.

23 (7) "Owner" means a person who has:

24 (a) title to the property; or

25 (b) lawful possession of the property.

26 (8) "Person" means an individual, state agency, corporation, association, nonprofit corporation,
27 joint-stock company, firm, trust, partnership; two or more persons having a joint or common interest; or some
28 other legal entity.

29 (9) "Possession" means actual care, custody, control, or management.

30 (10) "Research facility" means a place, laboratory, institution, medical care facility, elementary school,

1 high school, college, or university at which a scientific test, experiment, or investigation involving the use of a
2 living animal is lawfully carried out, conducted, or attempted."

3

4 NEW SECTION. **Section 27. Effective date.** [This act] is effective on passage and approval.

5

6 NEW SECTION. **Section 28. Name change -- directions to code commissioner.** The code
7 commissioner is directed to change the phrase "mental disease or defect" to "mental disease or disorder"
8 wherever the phrase appears in legislation enacted by the 2015 legislature if the context in which the phrase is
9 used is as it is used and defined in Title 46.

10

- END -