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**MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY**

SUSAN EDWARDS; MONTANA
TWO SPIRIT SOCIETY; Kael
FRY; ANNA TELLEZ; EDEN
ATWOOD; SHANNON ALOIA,

Plaintiffs,

vs.

THE STATE OF MONTANA;
GREG GIANFORTE, in his
official capacity as GOVERNOR
OF MONTANA; AUSTIN
KNUDSEN, in his official
capacity as ATTORNEY
GENERAL OF MONTANA,

Defendants.

Cause No. DV 23-1026
Hon. Leslie Halligan

**Brief in Support of Motion
for Leave to File
Supplemental Complaint**

INTRODUCTION

Plaintiffs brought this action to challenge unconstitutional and discriminatory definitions of sex as applied to the entire Montana Code Annotated. Plaintiffs respectfully request leave to file a supplemental complaint to address facts that have arisen since their initial filing. Plaintiffs' proposed Supplemental Complaint is attached as Exhibit 1.

In 2023, the legislature enacted Senate Bill 458 ("SB 458"), adopting binary definitions of the terms "sex," "male," and "female" based on reference to reproductive anatomy. On February 18, 2025, this Court declared that SB 458's definitions violated Plaintiffs' privacy rights and denied them equal protection under the law. Dkt. 54, Ord. on Mots. for Summ. J. (Feb. 18, 2025) ("SJ Ord.").

Specifically, the Court found that binary definitions of sex based on reproductive anatomy infringe on Plaintiffs' fundamental right to privacy because they "take[] away Plaintiffs' ability to define or identify themselves and require[] them to identify by the State's definitions." *Id.* at 20. The Court further concluded that SB 458's definitions unlawfully discriminate between cisgender individuals and transgender, intersex, and Two Spirit individuals, in violation of equal protection. *Id.* at 28.

Thus, the definitions “create a legal gap in protection . . . for individuals whose gender identities do not align with their biological sex, . . . permitting sex discrimination towards a minority population, in violation of the policy of the State of Montana.” *Id.* at 30.

After the Court’s order, Senator Carl Glimm, who sponsored SB 458, introduced the nearly identical Senate Bill 437 (“SB 437”). Like SB 458, SB 437 adopts binary definitions of sex based on reproductive anatomy and applies those definitions across the Montana Code. During the legislative proceedings, Glimm acknowledged this Court’s summary judgment order and explained that SB 437 set out to accomplish the same goal as SB 458. He asserted additional legal challenges were “worth it.”

Like SB 458, SB 437 forces Plaintiffs and similarly situated Montanans to comply with the State’s definitions of their sex, removing their ability to define or identify themselves. SB 437 also reenacts and expands on SB 458’s attempt to expressly exclude Plaintiffs from the definition of human under Montana law and to deny Plaintiffs and other gender nonconforming persons the legal protections afforded to cisgender individuals. Like SB 458, SB 437 violates the Montana Constitution.

While proceedings were ongoing in this Court, SB 437 passed both chambers of the legislature. *See* Dkt. 66, Pls. Br. in Supp. of Mot. to Stay or Ext. to File Aff. of Atty’s Fees, 2 (May 21, 2025). Senate President Matt Regier signed the bill and transmitted it to Speaker of the House Brandon Ler for his signature. *Id.* Before Ler signed the bill, Plaintiffs informed Defendants the State of Montana, Governor Greg Gianforte, and Attorney General Austin Knudsen (“the State”) of their intent to seek leave to supplement their complaint and to seek preliminary relief enjoining SB 437. *Id.* The State opposed those motions and declined to confer with Plaintiffs. *Id.* at 3. Plaintiffs then moved this Court to extend their deadline to file for attorney’s fees in anticipation that SB 437 would soon become law, necessitating supplemental proceedings. *Id.* But Ler withheld his signature to prevent Plaintiffs from challenging SB 437 before this Court. *See* Dkt. 74, Notice of Subsequent Events (Aug. 26, 2025). On March 24, 2026—eleven months after receiving the bill—Ler signed SB 437 and transmitted it to the Governor.¹ *See* Dkt. 74, Notice of

¹ The State’s appeal of *Reagor v. State*, No. DV-23-1245 (Mont. 4th Jud. Dist. Ct., June 25, 2024), which found that SB 458’s title violated the single subject rule, is currently pending before the Montana Supreme Court. The State’s reply brief is due on April 27, 2026.

Intent to Seek Leave to File Suppl. Compl. (Mar. 25, 2026). The Governor then signed the bill into law. *Id.*

Under the liberal standard set forth in Montana Rule of Civil Procedure 15(d), and in the interest of efficiency, equity, and economy, the Court should grant Plaintiffs leave to supplement their complaint to challenge SB 437 on the same grounds as SB 458.

BACKGROUND

The Montana State Legislature passed SB 458 in 2023, codifying the definitions of “female,” “male,” and “sex” in § 1-1-201, MCA, based on reproductive capacity. The unscientific definitions deprived transgender, intersex, and Two Spirit Montanans legal recognition and the benefits and protections of Montana law. Specifically, SB 458 defined “female” as,

a member of the human species who, under normal development, has XX chromosomes and produces or would produce relatively large, relatively immobile gametes, or eggs, during her life cycle and has a reproductive and endocrine system oriented around the production of those gametes. An individual who would otherwise fall within this definition, but for a biological or genetic condition, is female.

Section 1-1-201(1)(a), MCA. SB 458 defined “male” as,

a member of the human species who, under normal development, has XY chromosomes and produces or would produce small, mobile gametes, or sperm, during his life cycle and has a reproductive and endocrine system oriented around

the production of those gametes. An individual who would otherwise fall within this definition, but for a biological or genetic condition, is male.

Section 1-1-201(1)(b), MCA. SB 458 defined “sex” as “the organization of the body parts and gametes for reproduction in human beings and other organisms.” Section 1-1-201(1)(f), MCA. The definition of “sex” also stated that “there are exactly two sexes” in human beings and that “sex” does not include the “psychological, behavioral, social, chosen, or subjective experience of gender.” *Id.*

Plaintiffs challenged SB 458 on October 11, 2023, Dkt. 1, and moved for summary judgment on February 22, 2024, Dkt. 10. On February 18, 2025, the Court granted Plaintiffs’ motion for summary judgment on the grounds that SB 458 facially violates the rights to privacy and equal protection under the Montana Constitution. SJ Ord., 2.

Shortly thereafter, the legislature passed SB 437, a bill entitled, “An Act for the Codification and General Revision of the Laws Relating to the Definition for the Words Sex, Female, Male, Man, Woman, Father, and Mother when Referring to a Human.” Ex. A, ¶ 1. SB 437 codifies the following definitions:

(a) “Father” means a male parent.

(b) “Female” means, when used to refer to a natural person, an individual who naturally has, had, will have, or would have, but for a congenital anomaly or intentional or unintentional disruption, the reproductive system that at some point produces, transports, and utilizes the large gamete, or ova, for fertilization.

(c) “Male” means . . . an individual who naturally has, had, will have, or would have, but for a congenital anomaly or intentional or unintentional disruption, the reproductive system that at some point produces, transports, and utilizes the small gamete, or sperm, for fertilization.

(d) “Man” means an adult human male

(e) “Mother” means a female parent.

(i) “Sex” means whether someone is male or female, which is distinguished based on the type of gamete, sperm or eggs, they are capable of or expected to produce, as dictated by their primary sexual anatomy. Because there are only two types of gametes, there are only two sexes: male and female. An individual’s sex is rooted in reproductive anatomy and is in no way influenced or defined by one’s psychological state, behavior, expression, or personal identity.

(l) “Woman” means an adult human female.

SB 437, § 1(1)(a)–(e), (i), (l). SB 437 also excludes “gender identity” from the concepts of sex and gender:

(4)(a) The term “gender” . . .

(i) must be considered a synonym for sex; and

(ii) may not be considered a synonym or short-hand expression for gender identity, experienced gender, gender expression, or gender role.

(c) The term “gender identity,” if used in state law, administrative rules, or guidelines, may not be considered a synonym or substitute for sex or gender.

SB 437, § 1(4)(a), (c).

Like SB 458, SB 437’s definitions apply to the entire MCA, affecting more than 60 code sections. *See generally* SB 437. The bill deprives Plaintiffs of the protections and benefits of Montana law and definitively removes all gender-based anti-discrimination protections from the Montana Human Rights Act (“MHRA”), §§ 49-1-101 *et seq.*, MCA—Montana’s “exclusive remedy” for acts of unlawful discrimination; the Students with Special Needs Equal Opportunity Act, § 20-7-1703, MCA; all phases of private and public healthcare services, § 50-5-105, MCA; the Montana Insurance Code, §§ 33-1-101 *et seq.*, MCA; urban renewal projects, § 7-15-4207, MCA; district hospital admissions, § 7-34-2123, MCA; university work-study programs, § 20-25-707, MCA; state job classifications, § 2-18-208, MCA; cultural and aesthetic projects grants, § 22-2-306, MCA; criminal sentencing, § 46-18-101, MCA; and business informational and tourist-oriented signs, §§ 60-5-514 & -522, MCA. *See* SB 437, §§ 2, 4–5, 15, 19–20, 22, 41, 44–46, 48, 60.

SB 437 reimposes the same type of flawed definitions as SB 458. The language is different and more expansive, but the intent and effect are the same. The legislature passed SB 437 despite clear guidance from this Court, SJ Ord., 2, that defining sex in this way is unconstitutional. *See also Kalarchik v. State*, No. ADV-2024-261, at 14 (Mont. First Jud. Dist. Ct., Dec. 16, 2024). Indeed, Senator Glimm, the sponsor of both bills, acknowledged this Court’s February 18 Order when he introduced SB 437. He stated, “We got right to work on new definitions . . . but the mechanics of this bill will remain the same.” Mont. Leg., S. Jud. Hrg., at 7:05:19–40 (Mar. 4, 2025).² When asked whether reenacting a law that had already been declared unconstitutional was worth it, Glimm said, “Having accurate and factual definitions is important to the state and good government, and if that’s what we have to do, then yes, it’s worth it.” *Id.* at 8:07:40–8:08:51. The legislative intent motivating SB 437 is the same as it was for SB 458. *Compare* Ex. A, ¶¶ 48–62, *with* Dkt. 14, First Am. Compl., ¶¶ 66–75.

On March 24, 2026, Defendant Governor Gianforte signed SB 437.

² Available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250304/-1/52085#info_.

LEGAL STANDARD

Rule 15's purpose "is to encourage the resolution of cases on the merits by freely allowing amendment of complaints when justice so requires." *Ziegler v. Kramer*, 175 Mont. 236, 240, 573 P.2d 644, 646 (1978). As such, courts should "freely give leave" to supplement when "justice so requires." *Cf. Rolan v. New W. Health Servs.*, 2017 MT 270, ¶ 15, 389 Mont. 228, 405 P.3d 65. "[T]he decision to grant or deny a [Rule 15] motion . . . is within the district court's discretion." *Kershaw v. Mont. Dep't of Transp.*, 2011 MT 170, ¶ 25, 361 Mont. 215, 257 P.3d 358. "The goal of Rule 15(d) is to promote judicial efficiency" by encouraging "as complete an adjudication of the dispute between the parties as possible." *Raduga USA Corp. v. U.S. Dep't of State*, 440 F. Supp. 2d 1140, 1150 (S.D. Cal. 2005), *as amended* (Mar. 3, 2006);³ Wright, Miller & Kane, *Fed. Prac. & Proc.: Civil*, 6A § 1504. "Rule 15(d) enables a court to award complete relief, or more nearly complete relief, in one action, and to avoid the cost, delay, and waste of separate actions which must be

³ Federal cases interpreting Federal Rule of Civil Procedure 15(d) are instructive because "M.R. Civ. P. 15(d) was based upon and is phrased identically with Fed. R. Civ. P. 15(d)." *Buck v. Buck*, 2014 MT 344, ¶ 18, 377 Mont. 393, 340 P.3d 546 (consulting federal caselaw).

separately tried and prosecuted.” *Raduga*, 440 F. Supp. 2d at 1150. Rule 15(d) provides a mechanism for introducing a cause of action based on facts not in existence when the plaintiff filed the original complaint. *Cabrera v. City of Huntington Park*, 159 F.3d 374, 382 (9th Cir.1998) (per curiam). Additionally, the Montana Rules of Civil Procedure must “be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.” Mont. R. Civ. P. 1.

ARGUMENT

The Court should grant Plaintiffs’ leave to supplement. First, supplementation serves interests of justice and economy and does not prejudice the State. On the contrary, all parties benefit by not having to incur “the cost, delay and waste of separate actions” presenting the same claims. *Raduga*, 440 F. Supp. 2d at 1150. Additionally, the motion to supplement is neither futile nor the product of Plaintiffs’ undue delay or bad faith. Second, supplementation is appropriate because SB 437 is simply a continuation of the State’s efforts to deprive Plaintiffs of privacy and equal protection under the law, in circumvention of this Court’s previous order. The Court should therefore exercise its discretion and grant Plaintiffs leave to file a supplemental complaint.

I. Supplementation here is in the interest of justice.

Courts should freely grant leave to supplement pleadings “when justice so requires.” *Rolan*, ¶ 15. A motion to supplement “is ‘a tool of judicial economy and convenience,’ and its ‘use is therefore favored.’” *Ctr. for Biological Diversity v. Salazar*, No. CV 07-0038-PHX-MHM, 2010 WL 3924069, at *4 (D. Ariz. Sept. 30, 2010) (citing *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir.1988)). The same test that governs motions to amend applies to motions to supplement. *Hughes v. Pullman*, 2001 MT 216, ¶¶ 42–45, 306 Mont. 420, 36 P.3d 339. Montana courts generally grant Rule 15 motions unless doing so would be futile or the motion is the result of undue delay or bad faith on the movant’s part. *Cummings v. Kelly*, 2025 MT 68, ¶ 24, __ Mont. __, __ P.3d __. Here, supplementation does not prejudice the State, and Plaintiffs’ motion is neither futile nor the product of bad faith or undue delay.

A. Supplementation promotes judicial efficiency and will not prejudice the State.

“A supplemental claim is not new and distinct if it has ‘some relationship’ to the claims originally alleged.” *Cota v. Maxwell-Jolly*, No. C 09-3798 SBA, 2011 WL 2182724, at *4 (N.D. Cal. June 2, 2011)

(citing *Keith*, 858 F.2d at 474). “Courts have generally granted motions to supplement under [Rule] 15(d) where the matter is still pending, and final judgment has not yet been entered.” *Ctr. for Biol. Diversity*, 2010 WL 3924069, at *4 (collecting cases).

Here, Plaintiffs’ proposed Supplemental Complaint contains the same allegations regarding the definitions of sex in SB 437 that their First Amended Complaint lodged with respect to SB 458. The parties, causes of action, and legal theories are the same, with only minor differences to address the additional definitions and statutory amendments in SB 437. In light of its previous ruling, this Court has substantial experience and knowledge of the issues the supplemental complaint presents and can efficiently resolve the new claims without the delay likely to accrue if Plaintiffs were forced to file a new action. Because of “the relationship between the supplemental and original claims, permitting Plaintiffs to supplement their Complaint, as opposed to commencing an entirely new action, would promote judicial efficiency,” *see Cota*, at 2011 WL 2182724, at *4, by ensuring the speedy disposition of the entire controversy, *see Keith*, 858 F.2d at 475.

Likewise, supplementation benefits the State by saving it from being forced to defend two separate actions presenting the same claims at two separate stages of litigation. Efficiency is achieved if “the entire controversy between the parties could be settled in one action.” *Pauline v. Haw. Dep’t of Pub. Safety*, 773 F. Supp. 2d 914, 920 (D. Haw. 2011). Supplementation avoids extra consumption of administrative and judicial resources because it stops the court from opening “a new case, randomly assigning it, going through the related-case low number analysis, and initiating Rule 16 scheduling as if this were a new case.” *San Luis & Delta-Mendota Water Auth. v. U.S. Dep’t of Interior*, 236 F.R.D. 491, 501 (E.D. Cal. 2006).

Moreover, allowing Plaintiffs to supplement does not prejudice the State. In *Raduga*, the Court found no prejudice where plaintiffs challenged persistent denials of their visa applications because most “Defendants named in the amended complaint were named in the original complaint . . . [and] Plaintiffs acted swiftly to assert their rights.” *Raduga*, 440 F. Supp. 2d at 1151. Here too Plaintiffs “acted swiftly to assert their rights” after SB 437 was signed into law and they raise the

same claims against the same parties as they did with respect to SB 458.

The State can show no prejudice.

B. Plaintiffs' supplemental complaint is not "futile," nor is it the result of "undue delay" or "bad faith" on Plaintiffs' part.

First, futility is not at issue here. Nothing prevents this Court from considering and ruling on Plaintiffs' claims with respect to SB 437. Plaintiffs have challenged SB 437 on the same grounds on which the Court enjoined SB 458. And Plaintiffs' supplemental complaint seeks to safeguard their rights under the Montana Constitution—an endeavor that is never futile.

Second, Plaintiffs did not unduly delay filing their supplemental complaint. The Governor signed SB 437 into law on March 26, 2026, and Plaintiffs sought leave to file a supplemental complaint on April 6, 2026. Indeed, any delay in these proceedings is wholly attributable to the Speaker's decision to withhold his signature in order to deprive Plaintiffs' the opportunity to present their supplemental claims in this action.

Third, Plaintiffs seek to supplement their complaint in good faith. Plaintiffs challenged SB 458 in good faith and hoped that the Court's ruling would end the State's attempts to erase their existence in Montana

law. Despite hearing testimony that SB 458 was unconstitutional—including from Plaintiff Anna Tellez, *see* Ex. A, ¶ 15—the State passed a nearly identical law with the express intent of achieving the same results as SB 458, despite knowing that doing so would trigger additional litigation. Plaintiffs’ motion is consistent with Rule 15, and the Court should grant Plaintiffs’ motion. *See Hughes*, ¶¶ 42–45; *Cummings*, ¶ 24.

II. Supplementation is appropriate also because SB 437 is a continuation of the State’s efforts to deprive Plaintiffs of their rights to privacy and equal protection.

The State enacted SB 437 to perpetuate the same harms against Plaintiffs and other transgender, intersex, and Two Spirit Montanans that this Court had already ruled unconstitutional. Allowing Plaintiffs to supplement their complaint to challenge these continued harms is therefore appropriate.

In *Cota*, plaintiffs challenged a 2009 California law that sought to reduce “ADHC” services—a statewide program offering therapeutic activities and services for adults. *Cota*, 2011 WL 2182724, at *1. After the court issued two preliminary injunctions against the law, a 2011 bill was passed eliminating the ADHC program. *Id.* The court granted plaintiffs leave to supplement their complaint to add challenges to the

2011 law, *id.* at *7, observing that the new law was “simply a continuation of” the “State’s attempt . . . to cut ADHC services,” *id.* at *4. Because “there [was] no legitimate dispute that both pieces of legislation ar[o]se from the State’s ongoing efforts to reduce its budget deficit by curtailing—and now, eliminating—ADHC services . . . [and] it remains possible to resolve all of Plaintiffs’ claims . . . in a single action,” Rule 15(d) supplementation was appropriate. *Id.* at *5.

Like the legislation in *Cota*, SB 437 continues the State’s efforts to invade the privacy of its citizens and to permit discrimination against transgender, intersex, and Two Spirit Montanans. *See id.* at *4 (new law was “simply a continuation” of the previously challenged law). The definitions of female, male, and sex in SB 437 are nearly identical to those in SB 458; the bills amend all the same statutes; and they have the same discriminatory intent and effect. There is simply “no legitimate dispute that both pieces of legislation” arise out of the State’s determination to write Plaintiffs and similarly situated Montanans out of the law. *See id.* at * 5; *see also* S. Jud. Hrg., at 07:05:19–40 (Mar. 4, 2025) (Glimm noting that “the mechanics of this bill will remain the same” as SB 458). Plaintiffs are entitled to supplement their complaint.

Even after final judgment is entered, courts allow supplemental complaints if “[t]here is clearly a relationship among the claims in this action and the claims in the original action.” *Keith*, 858 F.2d at 474. And courts allow supplementation where new allegations reflect defendant’s efforts “to circumvent a prior ruling.” *Raduga*, 440 Supp. 2d at 1151 (citing *Griffin v. Cty. Sch. Bd. of Prince Edward Cty.*, 377 U.S. 218, 227 (1964)). Notably, final judgment has not yet been entered here because Plaintiffs’ request for attorney’s fees remains pending. *See Ctr. for Biological Diversity*, 2010 WL 3924069, at *4. Regardless, the conditions for allowing supplementation after final judgment are also present.

In *Keith*, plaintiffs sued the City of Hawthorne to halt construction of a freeway until the city assured the availability of housing for displaced residents. 858 F.2d at 470. The parties entered a consent decree, which required the city provide units of replacement housing. *Id.* Years later, when the city refused to approve certain housing developments, some plaintiffs filed a supplemental complaint in the same action. *Id.* Because “[t]he concern in the original action, the consent decree, and the supplemental complaint is the same—the availability of replacement housing for persons displaced by the Century Freeway”—the court held

that supplementation under Rule 15(d) was proper. *Id.* at 474. The Ninth Circuit affirmed, observing that “there is clearly a relationship among the claims in this action and the claims in the original action.” *Id.*

Here, there is clearly a relationship between Plaintiffs’ claims with respect to SB 437 and SB 458. Indeed, Plaintiffs’ proposed supplemental complaint presents exactly the same claims, against exactly the same parties, for exactly the same harms. Supplementation is proper.

Similarly, in *Griffin*, the U.S. Supreme Court held that plaintiffs’ supplemental complaint was proper nearly ten years after final judgment in *Brown v. Board of Education*, 349 U.S. 294 (1955), because the supplemental allegations reflected defendants’ “continued, persistent efforts to circumvent” the Court’s previous holding. *Griffin*, 377 U.S. at 226. In *Brown*, Virginia was ordered to begin desegregating its schools. *Id.* at 222. Because Prince Edward County “was still using its funds, along with state funds . . . to avoid the desegregation ordered in the *Brown* cases,” plaintiffs filed a supplemental complaint. *Id.* at 226. Even with new claims and new defendants, the Court affirmed supplementation because Prince Edward County was attempting to “circumvent” the *Brown* order. *Id.*; see also *Poindexter v. La. Fin.*

Assistance Comm’n, 296 F. Supp. 686, 688–89 (E.D. La.), *aff’d sub nom. La. Educ. Comm’n for Needy Child. v. Poindexter*, 393 U.S. 17, 89 (1968) (supplementation appropriate after legislature made “successive” attempts to pass a law “born of the same effort to discriminate” using language that was simply “more subtle [and] sophisticated”); *Aaron v. McKinley*, 173 F. Supp. 944 (E.D. Ark. 1959) (supplementation appropriate when legislature passed new legislation designed to supplant the law the district court previously invalidated).

Here, legislators openly acknowledged this Court’s ruling that defining sex as a biological binary based on reproductive anatomy is unconstitutional. S. Jud. Hrg., at 7:05:19–40 (Mar. 4, 2025). They nonetheless “got right to work on new definitions” to achieve the same results. *Id.* Indeed, Glimm openly stated that additional litigation over the definitions would be “worth it.” *Id.* at 8:07:40–8:51. Because SB 437 constitutes a persistent attempt to “circumvent” the Court’s injunction against SB 458, the Court should grant Plaintiffs’ motion to supplement.

CONCLUSION

Plaintiffs respectfully request that the Court grant them leave to supplement their Complaint.

Respectfully submitted this 6th day of April 2026.

/s/ Molly E. Danahy
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Plaintiffs' Motion for Leave
to File Supplemental
Complaint

Exhibit A

Proposed Supplemental Complaint

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**MONTANA FOURTH JUDICIAL DISTRICT COURT,
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SUSAN EDWARDS; MONTANA
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DUSATKO, f/k/a ANNA
TELLEZ; EDEN ATWOOD;
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Plaintiffs,

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THE STATE OF MONTANA;
GREG GIANFORTE, in his
official capacity as GOVERNOR
OF MONTANA; AUSTIN
KNUDSEN, in his official
capacity as ATTORNEY
GENERAL OF MONTANA,

Defendants.

Cause No. DV 23-1026
Hon. Leslie Halligan

**Plaintiffs' Supplemental
Complaint**

Pursuant to Montana Rule of Civil Procedure 15(d), Plaintiffs file this Supplemental Complaint setting forth events that occurred after the date of Plaintiffs' First Amended Complaint on March 1, 2024. This Supplemental Complaint is filed in addition to, not in replacement of, Plaintiffs' operative complaint. Plaintiffs allege as follows:

INTRODUCTION

1. After this Court determined that Senate Bill 458 ("SB 458")—the State's previous discriminatory attempt to define "sex"—violated the Montana Constitution, the 2025 Montana State Legislature passed Senate Bill 437 ("SB 437") using the same "mechanics" as SB 458 and the same discriminatory and unconstitutional intent and effects. Ex. 1, S. 437, Mont. 69th Leg., Reg. Sess. (2025) ("SB 437"). SB 437 replicates SB 458 and then goes further. Like SB 458, it erases non-cisgender and intersex people from existence throughout the Montana Code, and it expressly removes "gender identity" from protection under Montana law—an even clearer demonstration of the legislature's discriminatory intent. SB 437, § 1(4)(c) (defining "gender"). Like its 2023 counterpart, SB 437 deprives Plaintiffs of their rights to personal autonomy and privacy, equal protection, dignity, and free speech.

2. SB 437 defines the terms “father,” “female,” “male,” “man,” “mother,” “sex,” and “gender” by reference to reproductive anatomy—and incorporates these new definitions throughout the entire MCA. SB 437’s definitions are unscientific and unworkable. As a result, SB 437 improperly categorizes many Montanans, excludes others from legal recognition entirely, and deprives them of the benefits and protections of every state law that acknowledges the existence of sex or gender.

3. Prior to SB 458, Montana laws prohibited sex-based discrimination based on both perceived biological differences between sexes and the ways that people behaved, presented, and identified in relation to their sex. But, like SB 458, SB 437 limits anti-discrimination protections to people’s “primary sexual anatomy.” SB 437, § 1(1)(i). SB 437 therefore targets and excludes Plaintiffs—a group of Two Spirit, intersex, and transgender individuals and organizations—from legal protection and from recognized social and political communities. This violates the Montana Constitution.

4. SB 437 has the same discriminatory legislative intent as SB 458. When bill sponsor Senator Carl Glimm introduced the bill to the Senate Judiciary Committee on March 4, 2025, he explained that he

drafted SB 437 in defiance of this Court’s determination that defining sex as a biological binary in Montana law violates the Montana Constitution:

The role of a judge is not to define terms. . . . Judges resolve disputes, but the legislature defines terms. And that’s what the bill is about. It’s about defining terms. At the core of SB 437, we define the terms male, female, and biological sex. . . . These definitions are the same as SB 458 from last session. . . . [A] judge from Missoula said that the definitions were enjoined under the right to privacy. That order was issued just this February, while this bill was being drafted and edited. We got right to work on new definitions, and we prepared an amendment, but unfortunately that didn’t make the deadline for being amended in committee, and so that will happen on the Floor. But the mechanics of this bill will remain the same. . . . Now you may be asking yourself, “why is this bill even necessary.” And the answer is pretty straightforward. Today there are some who conflate the terms “sex” and “gender.” And this bill ensures that we don’t conflate those terms in Montana. . . . You may claim to be able to change your gender and to express your gender in a different way, but you can never change your biological sex. And that’s why Senate Bill 437 is necessary. We need to have clear definitions in our laws about biological reality.

Mont. Leg., S. Jud. Hrg., at 7:04:00–7:06:26 (Mar. 4, 2025).¹

5. Legislators’ professed reasons for passing SB 437—to disambiguate “sex” and “gender” and to remove legal protections for non-cisgender persons—are flimsy and discriminatory. Even if clarifying legal

¹ Available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250304/-1/52085#info_.

distinctions between sex and gender were important, SB 437 fails to eliminate confusion between gender and sex. Gender discrimination is sex discrimination. *Harrison v. Chance*, 244 Mont. 215, 221, 797 P.2d 200, 204 (1990) (“When sexual harassment is directed at an employee solely because of gender, the employee is faced with a working environment fundamentally different from that faced by an employee of the opposite gender. . . . We hold that sexual harassment is sexual discrimination under the Montana Human Rights Act.”); *Kalarchik v. State*, No. ADV-24-261, at 9 (Mont. First Judicial Dist. Ct., Dec. 16, 2024) (“[i]f the challenged state actions discriminate against transgender individuals on the basis of their transgender status, they also discriminate on the basis of sex.”); Ord. Denying Resp.’s Mot. Summ. J., *Maloney v. Yellowstone Cty. & Bd. of Cty. Comm’rs.*, No. 1570-2019, at 10–11 (Mont. Dep’t of Labor & Indus. Off. of Admin. Hrgs., Aug. 14, 2020) (concluding Montana Human Rights Act’s sex-based protections extend to transgender employees); *see also Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1741 (2020) (holding that sexual orientation and gender identity are protected by Title VII of the 1964 Civil Rights Act); *Cross ex rel. Cross v. State*, 2024 MT 303, ¶ 63, 419 Mont. 290, 560 P.3d 637

(McKinnon, J., concurring) (suggesting that the logic of *Bostock* applies equally to Article II, Section 4, of the Montana Constitution).

6. SB 437 violates Montanans' constitutional rights and fails any level of scrutiny. Under the Montana Constitution, SB 437 violates the rights to individual dignity, Mont. Const. art. II, § 4; equal protection of the laws, *id.*; individual privacy, *id.* § 10; and freedom of speech, *id.* § 7.

JURISDICTION AND VENUE

7. Plaintiffs bring this action under the Montana Constitution. Article VII, § 4 of the Montana Constitution and § 3-5-302, MCA, provide this Court with original jurisdiction.

8. This Court has jurisdiction to grant declaratory relief pursuant to §§ 27-8-201 *et seq.*, MCA, and injunctive relief pursuant to §§ 27-19-101 *et seq.*, MCA.

9. Venue is proper under § 25-2-126(1), MCA.

ADDITIONAL PARTY ALLEGATIONS

I. Plaintiffs

10. Because of SB 437's inaccurate binary definitions of sex, Plaintiffs Edwards, Dusatko, Atwood, and Aloia, as well as members of Plaintiff Two Spirit Society, face substantial risk of discrimination on the

basis of gender identity and/or sex and are deprived of a state law process to remedy such harm.² SB 437 purposefully excludes Plaintiffs from the social and political community, deliberately devalues them, forces them to disclose private medical and biological information, and requires them to misgender themselves. Finally, SB 437 degrades, demeans, and humiliates Plaintiffs because of their sex and gender.

A. The Montana Two Spirit Society (“Two Spirit Society”)

11. Like SB 458, SB 437 perpetuates the colonization of Two Spirit culture: it means to violate the integrity of Two Spirit culture by rejecting Two Spirit people’s legitimacy and the sovereignty of Indian Tribes. SB 437 directly harms the Two Spirit Society’s mission, members, and the communities and native values for which it advocates. A binary definition of sex directly contradicts Two Spirit existence because, by definition, Two Spirit people embody more than one gender. Many Two Spirit people have already experienced discrimination and harassment on the basis of their sex, gender, race, and culture, and they fear that SB 437 will increase this animus. SB 437 would force Two Spirit people

² Plaintiff Anna Tellez married and adopted her spouse’s last name since the filing of the initial complaint. Anna now goes by Anna Dusatko.

to misidentify themselves in conflict with personal dignity, privacy, and culture and remove state law protections against discrimination.

12. The Two Spirit Society has diverted resources to educate the community about SB 458 and SB 437 and the repercussions of being forced to assimilate as either male or female. The Two Spirit Society has allocated more resources to its youth group to create more safe spaces for Two Spirit youth because of threat that these laws pose. Since SB 458's introduction in 2023 and SB 437's more recent passage, the youth group meets more regularly. The Two Spirit Society is also fielding more inquiries about recent anti-trans legislation in Montana and has spent more time educating the community about SB 458 and SB 437, rather than teaching the Two Spirit traditions it aims to preserve.

B. Transgender Plaintiffs Edwards and Dusatko

13. Under SB 437, Edwards and Dusatko can be denied access to public accommodations, employment, state benefits, insurance, housing, and healthcare based on their gender identities, without any state law remedies, because SB 437 authorizes discrimination against them.

14. SB 437 also defines Edwards and Dusatko incorrectly because it considers gender a synonym for sex and prevents them from self-

identifying their gender, thereby stripping them of their right to self-determination and autonomy. Edwards and Dusatko also fear being forced to disclose their sex assigned at birth—revealing intensely private information about their medical histories, denying them the right of self-definition, and subjecting them to harassment and violence.

15. Dusatko testified against SB 437 before the House Judiciary Committee. During the hearing, Dusatko’s State Representative Greg Kmetz told Dusatko that he respected her work as a mechanic and an electrician and that he “always had a huge degree of respect for [her.]” H. Jud. Hrg., at 8:48:06–49:39, 8:51:20–32 (Mar. 26, 2025). But Kmetz supported SB 437—despite hearing testimony that the bill endorses discrimination against Dusatko and potentially threatens her physical safety. *SB 437 Vote History*, Leg.mt.gov (Apr. 9, 2025);³ H. Jud. Hrg., at 8:57:41–59:52, 9:21:43–23:35, 9:30:20–31:00.

C. Intersex Plaintiffs Atwood and Aloia

16. The medical community considers Atwood female. But because she was born with internal testes and XY chromosomes, SB 437,

³ *Available at* https://bills.legmt.gov/#/laws/bill/2/LC4192?open_tab=status.

like SB 458 before it, considers Atwood “male.” *See* SB 437, § 1(1)(c) (“an individual who has, had, will have, or would have, but for a congenital anomaly . . . the reproductive system that at some point produces . . . the small gamete” is “male”).

17. Plaintiff Aloia was assigned female at birth and presents as androgynous. When a form requires a binary choice, they identify as “female.” But SB 437, like SB 458 before it, requires Aloia to identify as “male” for government purposes, defying both their own and the medical community’s view, because they were born with testes and XY chromosomes. *See* SB 437, § 1(1)(c). Aloia also fears that SB 437 will impact their potential interactions with law enforcement and the possibility that they could be detained in a male facility.

18. Neither Atwood nor Aloia fits into SB 437’s definitions. SB 437 states that “there are only two sexes: male and female.” SB 437, § 1(1)(i). Although SB 437’s definitions refer to “congenital anomal[ies]” and “disruptions,” it fails to distinguish between external and internal genitalia; it fails to define congenital anomalies or disruptions; and it fails to account for intersex people like Atwood and Aloia.

19. SB 437 changes Atwood’s and Aloia’s legal recognition under the law in a wide swath of contexts. ¶¶ 22–45, *infra*. And by declaring as a matter of law that human beings have “only two sexes: male and female,” the bill explicitly excludes them from the definition of human beings, causing them immediate harm. SB 437 also prevents Atwood and Aloia from self-identifying their gender and authorizes discrimination against them in all areas of public life. Atwood and Aloia have already endured harassment and trauma on the basis of sex, and they fear this mistreatment will continue.

II. Defendants

20. Defendant Greg Gianforte oversees state agencies charged with implementing SB 437.

21. Defendant Austin Knudsen will oversee the implementation and enforcement of multiple provisions of SB 437.

ADDITIONAL FACTUAL ALLEGATIONS

I. Senate Bill 437’s Legislative History

A. SB 458

22. The legislative history of SB 437 begins with SB 458 because they are, in essence, the same law and they have the same purpose.

23. After SB 458 was enacted, Plaintiffs filed the above-captioned lawsuit. On February 18, 2025, this Court ruled that SB 458’s definitions of female, male, and sex violated Plaintiffs’ rights to equal protection and privacy. Dkt. 54, Ord. on Cross Mots. for Summ. J., at 2 (Feb. 18, 2025) (hereinafter “SJ Ord.”).

B. SB 437

24. Despite this Court’s ruling, the legislature sought to pass an identical law in 2025. As introduced, SB 437 contained the same language as SB 458 but had an amended title. Ex. 2, SB 437 Junque File, Bill Draft Request (Feb. 13, 2025) (“Rewrite SB 458 (defines Sex) from 2023 Session – address court issue”).⁴

25. When Glimm introduced SB 437 with the same definitions as 458 in the Senate Judiciary Committee, he acknowledged this Court’s February 18, 2025 Order. S. Jud. Hrg., at 7:04:00–6:26 (Mar. 4, 2025). He guaranteed, however, that the bill’s “mechanics” would “remain the same.” *Id.* at 7:05:19–40. Glimm’s justifications did not change from 2023: “the legislature defines terms, and that’s what this bill is about.”

⁴ The title change attempted to reimpose the SB 458’s discriminatory definitions while correcting the title defect identified in *Reagor v. State*, No. DV-23-1245, at 12 (Mont. Fourth Jud. Dist. Ct., June 25, 2024).

Id. at 7:04:00–29. As he did in support of SB 458, Glimm claimed SB 437 is necessary because “[t]here are some who conflate the terms gender and sex, and this bill ensures that we don’t conflate those terms in Montana.” *Id.* at 7:05:40–6:19; *see* H. Jud. Hrg., at 8:21:40–51 (Apr. 13, 2023).⁵

26. Again, legislators struggled to articulate any harm flowing from the purported conflation of sex and gender. Proponent testimony primarily addressed clear definitions in medicine. S. Jud. Hrg., at 7:16:29–30:00 (Mar. 4, 2025). Several out-of-state proponents who represented themselves as former or current medical providers testified that without a clear definition of sex, physicians may misdiagnose or mistreat their patients.⁶ *See, e.g., id.* at 7:16:29–18:00, 7:50:52–54:59.

⁵ *Available at* <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/47804?agendaId=272359>.

⁶ Proponents included Heritage Foundation researcher and theologian Jay Richards, who represented himself as a Medical Doctor but later admitted that he had not studied medicine, except for research done in his personal time. S. Jud. Hrg., at 8:09:47–11:34 (Senator Ricci referring to Richards as a “doctor”; Richards not correcting him and then providing medical testimony), 8:12:03–14:18 (Senator Emrich referring to Richards as a “doctor,” and Richards providing medical testimony), 8:26:00–22 (opponent testifying that Richards is not a Medical Doctor), 8:26:48–27:15 (Senators Manzella and Usher stating they believed Richards was a doctor, and Richards correcting them); *see also Jay W. Richards, PhD*, The Heritage Foundation, <https://www.heritage.org/staff/jay-w-richards-phd> (last visited Apr. 17, 2025).

27. Speaking to the bill’s intent, Senator Barry Usher stated:

Sex is binary—male, female—and we want to make sure that we are able to define it for a lot of reasons, but most importantly, to make sure that medical procedures are done properly. . . . Gender has nothing to do with this bill. Most of the opponents are talking about gender because gender—from what I’ve asked for—is, there’s 100-some different genders, and that is all socially manufactured. Not denying that, but we want to make sure we medically treat people properly.

In any kind of emergent care, would it not be proper to see a driver’s license to be able to say, “we need to treat this person as a male or a female because they might be mangled up from an accident?”

Id. at 8:16:30–17:16, 8:31:45–58.

28. Senator Theresa Manzella stated that she read a story about an alleged medical experiment involving nonconsensual gender reassignment on two minor twins who later died by suicide, and Richards corroborated parts of that story. *Id.* at 8:27:16–30:34. Manzella opined that this story “speaks to the compelling state interest,” commenting, “Our compelling state interest is in protecting our people.” *Id.* at 8:27:54–28:10.

29. No testimony in the Senate Judiciary Committee supported the view that the definition of “sex” in the MCA has any effect on Montana physicians’ ability to treat patients according to their correct

anatomy and physiology. *See generally id.* at 7:04:29–8:34:59. Nor was there any indication that SB 437 was narrowly tailored to protect Montana patients, as professed. *Id.*

30. When Senator Cora Neumann asked Glimm if he had any concerns about the financial impact of continued legal challenges to laws like SB 458 and SB 437, Glimm responded, “Having accurate and factual definitions is important to the state and good government, and if that’s what we have to do, then yes, it’s worth it.” *Id.* at 8:07:40–8:51.

31. Glimm subsequently amended SB 437 on the Senate Floor to incorporate new but equally inaccurate definitions of female, male, and sex, as well as definitions for man, woman, mother, father, and gender. *See Ex. 3, SB0437.001.002;*⁷ H. Jud. Hrg., at 8:04:02–8 (Mar. 26, 2025).⁸ According to Glimm, “these new definitions align with the guidance from the federal level.” H. Jud. Hrg., at 8:04:08–24 (Mar. 26, 2025).

32. The new definitions did not change Glimm’s justification:

Today there are some that conflate the terms sex and gender. This bill ensures that we won’t conflate those terms in Montana.

⁷ Available at <https://docs.legmt.gov/download-ticket?ticketId=42c034cd-73f1-4c25-99b2-b680bcdf2a4c>.

⁸ Available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250326/-1/52845#agenda_.

It's important that definitions mean something. Just like I can't suddenly decide that I'm, you know, 68 and I'm going to start collecting social security. There are reasons in government that we need to have definitions that mean something, and so that's what drives this bill.

Id. at 8:04:41–50, 9:38:46–39:18.

33. Representative Braxton Mitchell echoed this justification, suggesting that the state interest SB 437 furthers is the legislature's "constitutional authority to define legal terms." *Id.* at 9:12:40–13:16. On the House Floor, he stated:

At the end of the day, it's our job in this body to define legal terms. This bill is not about transgenderism whatsoever. . . . The reality is, cows are cows, bulls are bulls, . . . just like any other species in the animal kingdom, you're born a male, or you're born a female, and that can never be changed. We're law makers and not activists, and again, it's our job to define legal terms.

H. Fl. Sess., at 10:50:57–51:23 (Apr. 11, 2025).

34. Proponents in the House also testified that the definitions are necessary to ensure accuracy in healthcare. H. Jud. Hrg., at 08:19:30–20:24 (Mar. 26, 2025). But again, no testimony suggested that physicians are not already treating patients accurately. There was no indication that physicians consult the MCA's definitions when assessing patients' anatomy and physiology. Nor did anyone explain why removing anti-

discrimination protections would achieve the purported state interest of protecting patients. *See generally id.* at 8:04:02–9:39:21.

35. Opponents pointed out that SB 437 is unconstitutional, citing the injunctions of SB 458. *See id.* at 8:26:00–48:00, 9:29:21–30:10. Dr. Kelsey Young of the Montana Chapter of the American Academy of Pediatrics, testified that the bill’s definitions are medically and scientifically inaccurate as applied to people with intersex variations, which make up roughly 1 percent of the population. *Id.* at 8:39:16–41:20. Both Dr. Young and Dr. Trent Taylor of the Montana Academy of Family Physicians explained that although people with Androgen Insensitivity Syndrome would present as female and be assigned female at birth, SB 437 would define them as male. *Id.* at 8:39:16–41:20, 8:45:30–46:46.

36. Representative Ed Stafman offered three amendments that might have mitigated some of the bill’s discriminatory effects. The first added “sexual orientation,” “sexual identity,” and “sexual expression” to the protected class of “sex” under the Montana Human Rights Act, but it did not pass. SB0437.002.002.⁹ The second added protections for “sexual

⁹ Available at <https://docs.legmt.gov/download-ticket?ticketId=bf056fae-b56a-4a49-a433-f32c53fbba2a>.

orientation,” “sexual identity,” and “sexual expression” to the discrimination provision of Title 50, which prohibits discrimination in “all phases of the operation of a health care facility.” SB0437.002.004.¹⁰ Despite purported concerns about the provision of healthcare, that amendment also failed. Stafman’s third amendment proposed protections against discrimination on the basis of “sexual orientation,” “sexual identity,” and “sexual expression” in voter information pamphlets; it also failed. SB0437.002.005.¹¹

37. Representative Tom France offered an amendment to permit detention centers to house inmates according to their gender identity “based on the administrator’s discretion.” SB0437.002.003.¹² This amendment failed, too.

38. The legislature passed Glimm’s version of SB 437 on April 11, 2025. Senate President Matt Regier signed the bill on April 21, 2025. Speaker of the House Brandon Ler withheld his signature from the bill

¹⁰ Available at <https://docs.legmt.gov/download-ticket?ticketId=0c704b1c-be5d-4ff6-b67a-a5119f106fb1>.

¹¹ Available at <https://docs.legmt.gov/download-ticket?ticketId=fefe461f-d2dd-4707-95b2-582e25dfafa5>.

¹² Available at <https://docs.legmt.gov/download-ticket?ticketId=7fc24353-7083-4c2d-8a83-86787febf8e4>.

after State Defendants learned that Plaintiffs planned to supplement their claims to challenge SB 437. In August 2025, Ler issued a press release confirming that he was holding the bill to prevent Plaintiffs from challenging it before this Court.

39. Ler finally signed the bill on March 24, 2026, and the Governor signed it into law that same day. SB 437 is effective immediately. SB 437, at § 69.

II. Senate Bill 437’s Amendments to the Montana Code

40. Like SB 458, SB 437 changes Plaintiffs’ “legal recognition under the law in a wide swath of contexts.” SJ Ord., 10. And like SB 438, SB 437 “takes away Plaintiffs’ ability to define or identify themselves and requires them to identify by the State’s definitions.” *Id.* at 20.

A. Amendments to terms of wide applicability

41. Under “Terms of wide applicability,” § 1-1-201, MCA, SB 437 codifies new definitions for father, female, male, man, mother, sex, and gender.

42. SB 437 defines “female” as “an individual who naturally has, had, will have, or would have, but for a congenital anomaly or intentional or unintentional disruption, the reproductive system that at some point

produces, transports, and utilizes the large gamete, or ova, for fertilization.” SB 437, § 1(1)(b).

43. SB 437 defines “male” as “an individual who naturally has, had, will have, or would have, but for a congenital anomaly or intentional or unintentional disruption, the reproductive system that at some point produces, transports, and utilizes the small gamete, or sperm, for fertilization.” *Id.* § 1(1)(c).

44. Under SB 437, “‘Sex’ means whether someone is male or female, which is distinguished based on the type of gamete, sperm or eggs, they are capable of or expected to produce, as dictated by their primary sexual anatomy.” *Id.* § 1(1)(i). The definition goes on:

Because there are only two types of gametes, sperm and ova, with two corresponding reproductive systems, there are only two sexes: male and female. An individual’s sex is rooted in reproductive anatomy and is in no way influenced or defined by one’s psychological state, behavior, expression, or personal identity.”

Id. (emphasis added). This is scientifically—and socially—inaccurate.

45. Indeed, this definition of sex undoes any attempt that the qualifier “but for a congenital anomaly or . . . disruption” makes to include people with intersex conditions in the definitions of female and male. Even if sections 1(1)(b) and 1(1)(c) could be read to sufficiently account

for all intersex people—and they cannot—the broad-sweeping language of section 1(1)(i), defining sex, swallows the exceptions.

46. But unlike SB 458, SB 437 doesn't stop there. The bill erases the concept of “gender” from the MCA, ensuring that anti-discrimination protections on the basis of sex exclude all concepts of the term gender:

(a) The term “gender,” when used alone to refer to a male, female, or the natural differences between a male and female:

- (i) must be considered a synonym for sex; and
- (ii) may not be considered a synonym or short-hand expression for gender identity, experienced gender, gender expression, or gender role.

(b) The term “gender” does not apply when it is used in conjunction with other words or as an adjective to modify other words, or when context or explicit definition in preexisting state law, administrative rules, or guidelines indicates otherwise.

(c) The term “gender identity,” if used in state law, administrative rules, or guidelines, may not be considered a synonym or substitute for sex or gender.

SB 437, § 1(4).

47. SB 437 also defines man as “an adult human male”; woman as “an adult human female”; father as “a male parent”; and mother as “a female parent.” *Id.* § 1(1)(a), (d)–(e), (l).

48. Like SB 458, SB 437's terms of wide applicability apply to the entire Code. Section 1-1-201(1), MCA. Accordingly, SB 437's definitions supplant every reference to female, male, sex, gender, father, mother, man, and woman throughout the code. The consequences are vast.

49. Specifically, SB 437 incorporates the new definitions into the following code sections of the Montana Code Annotated: § 2-18-208 ("comparable worth" anti-discrimination in state jobs); § 2-18-606 ("parental leave for state employees"); § 7-15-4207 (discrimination in urban renewal processes); § 7-34-2123 (discrimination in hospital admissions); § 10-2-403 (eligibility for residence in Montana veterans' homes); § 13-27-408 (voter information pamphlets); § 13-35-301 (fair campaign practices); § 13-38-201 (appointment of committee representatives at primaries); § 13-38-203 (election to county and city central committees); § 13-38-205 (gender of presiding officers for county and city central committees); § 19-2-802 (designation of survivors for public employee retirement funds); § 20-6-808 (enrollment in public charter schools); § 20-7-1306 (designation of athletic teams); § 20-7-1703 (Students with Special Needs Equal Opportunity Act); § 20-9-327 (female youth correctional facility admissions); § 20-11-116 (community choice

schools); § 20-25-501 (university students' domiciliary intent); § 20-25-707 (discrimination in university work-study programs); § 22-2-306 (discrimination in cultural and aesthetic projects grants); § 23-2-505 (civil liability for recreational boats); § 33-1-201 (insurance code definitions); § 35-20-209 (cemetery internment records); § 39-2-912 (wrongful discharge); § 40-1-107 (marriage license applications); § 40-1-311 ("declaration of marriage without solemnization"); § 40-1-401 (same sex marriages); § 40-5-804 (Medical Support Reform Act); § 40-5-907 (child support case registries); § 40-5-1031 (parentage and child support pleadings); § 40-6-701 ("Interference with fundamental parental rights"); § 40-6-703 ("Parental involvement in education"); § 41-3-210 (reports from county attorneys to the Attorney General); § 41-5-103 (Montana Youth Court Act definitions); § 42-2-204 (presumption of "knowledge" in pregnancy); §§ 44-2-411, -412 (identification of missing and murdered indigenous persons by Missing Indigenous Persons Task Force); § 45-5-625 (sexual abuse of children); § 46-18-101 (correctional and sentencing policies); §§ 46-19-301, -401 (Western Interstate Corrections Compact inmate classifications); §§ 49-1-102, 49-2-101, 49-3-101 (Montana Human Rights Act); § 50-4-720 (nonprofit health entities); §§ 50-5-105, -602

(healthcare discrimination); § 50-11-101 (reproductive human cloning); § 50-15-101 (vital statistics); § 50-19-103 (prenatal care); § 50-19-501 (“Nursing mother and infant protection”); § 50-60-214 (restroom accessibility in public buildings); § 53-20-142 (residential facilities for developmental disabilities); §§ 53-21-121, -142 (mental health commitment); § 53-24-310 (“Treatment of Alcoholics and Intoxicated Persons”); § 53-30-312 (participation in community corrections boards); §§ 60-5-514, -522 (business eligibility for tourist-oriented directional signs); § 61-5-107 (driver’s licenses); § 72-1-103 (trusts and estates); § 72-17-106 (organ and tissue donation registry); and § 90-14-104 (membership on Governor’s community service commission).

B. Amendments to specific code provisions

50. Like SB 458, SB 437 ignores the identity, inherent worth, and dignity of Two Spirit, intersex, transgender, and nonbinary Montanans. The law writes gender nonconforming people out of the code and compels them to misidentify themselves. It should be invalidated on this basis alone. But were that not enough, the changes to each specific provision of Montana law will have impractical, costly, and harmful consequences, even beyond those contemplated by its drafters.

51. Incorporating SB 437’s definition of “sex” into § 49-2-303, MCA, results in the following rule: “It is unlawful discriminatory practice for . . . an employer to refuse employment to a person . . . because of [the type of gamete, sperm or eggs, they are capable of or expected to produce].” *See* SB 437, §§ 1(1)(i), 45(21); § 49-2-303(1)(a), MCA. In other words, employers are free to “refuse employment to a person” on the basis of “gender identity” because under SB 437, “gender identity” “may not be considered a synonym or substitute for sex.” SB 437, § 1(4)(c). SB 437 thus explicitly authorizes discrimination on the basis of gender identity.

1. Amendments authorizing discrimination against Plaintiffs

52. Like SB 458, SB 437 intentionally makes dramatic changes to state antidiscrimination laws to distinguish between sex discrimination and gender identity discrimination. The former remains unlawful only insofar as individuals fall within SB 437’s unscientific definitions, whereas the latter is rendered legal discrimination, except where coextensive with sex-based discrimination as SB 437 defines it. Glimm was clear about the bill’s purpose: he wanted to ensure that antidiscrimination provisions do not protect people like Plaintiffs, whose gender does not match the legislature’s opinion of their “sex.”

53. In particular, SB 437 definitively removes all gender-based protections from the Montana Human Rights Act (“MHRA”), §§ 49-1-101 *et seq.*, MCA. SB 437, §§ 44–46. The MHRA is the “exclusive remedy” for acts of unlawful discrimination in Montana. Section 49-2-512, MCA. SB 437 therefore deprives Plaintiffs of any state law remedy for instances of gender discrimination in employment, public accommodations, housing, financial assistance and credit transactions, education, retaliation, state benefits, and insurance and retirement plans.

54. Like SB 458, SB 437 allows gender identity discrimination in institutions covered by the Students with Special Needs Equal Opportunity Act, § 20-7-1703, MCA; private and public healthcare services, § 50-5-105, MCA; the Montana Insurance Code, §§ 33-1-101 *et seq.*, MCA; urban renewal projects, § 7-15-4207, MCA; district hospital admissions, § 7-34-2123, MCA; university work-study programs, § 20-25-707, MCA; state job classifications, § 2-18-208, MCA; cultural and aesthetic projects grants, § 22-2-306, MCA; criminal sentencing, § 46-18-101, MCA; and business informational and tourist-oriented signs, §§ 60-5-514, -522, MCA. *See* SB 437, §§ 2, 4–5, 15, 19–20, 22, 41, 48, 60.

2. Amendments requiring Plaintiffs to misidentify themselves

55. Like SB 458, SB 437 applies throughout the Montana Code and requires individuals to identify according to its unscientific binary. This forced identification is culturally repugnant to Two Spirit Montanans; degrading to Two Spirit, transgender, intersex, and nonbinary Montanans; and medically inaccurate for intersex Montanans.

56. Specific amendments that misgender or compel Montanans to misidentify their sex or gender include the following: § 13-38-201, -203, -205, MCA (city and county election committees); § 19-2-802, MCA (parent survivor beneficiaries under the Public Employees' Retirement Act); § 40-1-107, MCA (marriage licenses); § 40-5-804, MCA (enforcement of child medical support orders); § 40-6-703, MCA (use of pronouns in public schools); §§ 50-15-101–412, MCA (birth certificates); § 53-21-121, MCA (civil commitment petitions); § 53-30-312, MCA (membership on community corrections boards); § 61-5-107, MCA (driver's licenses and motorcycle endorsements); and § 90-14-104, MCA (membership on Governor's commission on community service). SB 437, §§ 9–12, 27, 30, 34, 51, 56, 59, 62, 65.

3. Amendments that deny benefits and legal protection to Plaintiffs

57. Like SB 458, SB 437 excludes Plaintiffs and other gender nonconforming individuals from certain statutory privileges. Whether these changes only cause Plaintiffs to be misidentified only instead fully deny them legal benefits as well, the harm is significant.

58. To begin, SB 437 creates potentially unsafe situations for transgender, intersex, and Two Spirit people in state custody.

59. SB 437 requires transgender girls—whose sex and gender is defined as “male” under SB 437—to be housed together with cisgender boys in Pine Hills correctional facility. SB 437, § 16 (amending § 20-9-327, MCA).

60. SB 437 prevents transgender children from sharing rooms with students of the same gender during school-sponsored trips. SB 437, § 33 (amending § 40-6-701, MCA).¹³

61. SB 437 similarly amends the Western Interstate Corrections

¹³ Although this amendment requires parental consent before a transgender boy shares a room with a cisgender boy or a transgender girl shares a room with a cisgender girl, it does not require parental consent (for either student) before a transgender boy shares a room with a cisgender girl or a transgender girl shares a room with a cisgender boy. *See* SB 458, § 33.

Compact, § 46-19-301, MCA, requiring transgender adult inmates to be housed according to their sex as defined in SB 437, § 42.

62. SB 437 also prevents transgender, Two Spirit, and intersex veterans from residing in “appropriate living spaces” (*i.e.*, spaces that correspond with “a person’s gender”) in veterans’ homes, SB 437, § 6 (amending § 10-2-403, MCA); and it restricts the ability of transgender patients admitted to a mental health facility to interact with patients of the same gender, SB 437, § 57 (amending § 53-21-142, MCA).

63. Next, SB 437 amends § 40-1-401(1)(d), MCA, to prohibit “a marriage between persons of the same sex, as defined in 1-1-201.” SB 437, § 29. But that code section was invalidated as unconstitutional in *Rolando v. Fox*, 23 F. Supp. 3d 1227 (D. Mont. 2014). By attempting to change the meaning of the permanently enjoined “Prohibited Marriages” statute, the legislature appears to create a new category of unlawful marriages based on SB 437’s unscientific definition of sex.

64. SB 437 also amends § 2-18-606, MCA (excluding nonbinary fathers from the State’s parental leave policy); § 13-27-408, MCA (allowing language in voter information pamphlets that “incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility

toward, or that tends to cast shame upon” gender nonconforming people); § 13-35-301, MCA (allowing “appeal[s] to prejudice” during political campaigns); §§ 20-6-808, 20-11-116, MCA (precluding nonbinary students from attending same-gender “charter” and “choice” schools that match their gender); § 20-7-1306, MCA (incorporating SB 437’s definitions into rules governing intercollegiate sports); § 20-25-501, MCA (applying SB 437’s definitions to university students); § 45-5-625, MCA (amending child sex abuse crimes); §§ 50-5-602 *et seq.*, MCA (removing gender nonconforming people from physician’s “continuing responsibility for healthcare”); § 50-60-214, MCA (requiring “accessible restrooms for each sex”); § 53-21-121, MCA (civil commitment petition must indicate a binary gender); and § 72-1-103(54), MCA (limiting testators to SB 437’s binary definitions). SB 437, §§ 3, 7–8, 13–14, 17–18, 40, 49, 54, 56, 63.

ADDITIONAL ALLEGATIONS AS TO COUNTS 1, 2, 3 and 4.

COUNT I:

Violation of the Right to Equal Protection of the Laws: Sex & Culture
(Mont. Const. art. II, § 4)

65. Plaintiffs reallege the facts set forth in paragraphs 1–64. In addition to those allegations and all allegations made in their First Amended Complaint, Plaintiffs allege the following.

66. The Legislature engages in sex discrimination when it “seeks to permit discrimination against a person whose sex does not align with their gender identity.” SJ Ord., 28–29.

67. On its face, SB 437 creates impermissible classifications on the basis of sex, including between (i) cisgender people and non-cisgender people; and (ii) intersex people and non-intersex people.

68. SB 437’s classifications are plainly premised on sex, a suspect class, and thus subject the bill to strict scrutiny under the Montana Constitution. *See Farrier v. Teacher’s Ret. Bd.*, 2005 MT 229, ¶ 16, 328 Mont. 375, 120 P.3d 390.

69. SB 437 also impermissibly classifies on the basis of culture, which was “incorporated specifically [into the Equal Protection Clause] to cover groups whose cultural base is distinct from mainstream Montana, especially the American Indians.” Mont. Const. Convention, Comm. Proposals: Bill of Rights, No. VIII, at 17 (Feb. 23, 1972).

70. SB 437 infringes on Plaintiff Two Spirit Society’s right to equal protection because it fails to recognize tribal culture and deprives the Society’s members of benefits and protections under Montana law on the basis of their culture. Although SB 437 recognizes cisgender people

as “human beings,” it does not recognize Two Spirit people—a distinction made on the basis of culture.

71. SB 437 fails strict scrutiny because the State lacks any legitimate reason—much less a compelling one—for discriminating against intersex, non-cisgender, and Two Spirit people. SB 437 is motivated by animus and a bare desire to harm.

72. Indeed, “[t]here is no compelling state interest in eviscerating protection against sex discrimination for individuals whose gender identities do not align with their biological sex, as such interest would be permitting sex discrimination towards a minority population, in violation of the policy of the State of Montana.” SJ Ord., 30. Nor is there a compelling state interest in permitting discrimination against Montanans based on their culture. *See id.*

73. Moreover, SB 437 is not calculated—and is far from narrowly tailored—to achieve the legislature’s purported intent to clarify confusion between sex and gender and protect Montana medical patients. On the contrary, SB 437 states that gender is a synonym for sex—literally conflating the terms—and it allows discrimination in healthcare settings, thereby endangering, not protecting, medical patients.

74. SB 437 violates Plaintiffs' fundamental right to equal protection.

COUNT II:
Violation of the Right to Privacy
(Mont. Const. art. II, § 10)

75. Plaintiffs reallege the facts set forth in paragraphs 1–74. In addition to those allegations and all allegations made in their First Amended Complaint, Plaintiffs allege the following.

76. “Substituting the opinions of licensed medical professionals and individuals, with that of the legislators’ own beliefs and values impermissibly requires Montanans to identify themselves ‘based on [the] political ideology’ of legislators, violates the right to privacy.” SJ Ord., 25–26.

77. SB 437 infringes on Plaintiffs’ personal autonomy because it coerces them to publicly identify their “reproductive systems” and “gametes,” regardless of their “psychological state, behavior, expression, or personal identity.” SB 437, § 1(1)(i).

78. By depriving Plaintiffs of the ability to self-identify, SB 437 interferes with their ability to make “intimate and personal choices that

concern the right to define one’s own concept of existence.” *See Armstrong v. State*, 1999 MT 261, ¶ 37, 989 P.2d 364, 374.

79. SB 437 also infringes on Plaintiffs’ freedom from government intrusion by compelling disclosure of sensitive healthcare and biological information. SB 437 compels disclosure of biological and genetic information—namely, “gametes” and “reproductive systems.” For Plaintiffs specifically, SB 437 requires disclosure of healthcare information, including, in many instances, (i) that they are transgender, intersex, or Two Spirit; (ii) whether they’ve had gender-affirming surgeries and other treatment; (iii) that their internal genitalia may be anatomically inconsistent with their external genitalia; or (iv) that they may have been assigned a sex at birth that differs from the way they currently present.

80. SB 437, like SB 458, “regulates Montanans’ ability to make personal and intimate decisions concerning their bodies and psyche.” SJ Ord., 21. Therefore, it “infringes upon the right to privacy, triggering strict scrutiny.” *Id.*

81. But SB 437 fails strict scrutiny because the State lacks a compelling interest to impose on Plaintiffs a binary definition of sex and/or gender.

82. SB 437 is not at all calculated—and far from narrowly tailored—to achieve the legislature’s purported intent to clarify confusion between sex and gender and to protect medical patients. On the contrary, SB 437 states that gender is a synonym for sex, thus in fact conflating the terms, and it allows discrimination in healthcare settings, thereby endangering—not protecting—medical patients.

83. SB 437 violates Plaintiffs’ fundamental right to privacy.

COUNT III:
Violation of the Right to Individual Dignity
(Mont. Const. art. II, § 4)

84. Plaintiffs reallege the facts set forth in paragraphs 1–83. In addition to those allegations and all allegations made in their First Amended Complaint, Plaintiffs allege the following.

85. SB 437 infringes on Plaintiffs’ right to dignity because it degrades and demeans them, fails to acknowledge their worth, and denies them recognition within Montana’s social and political community.

86. SB 437 is subject to strict scrutiny under the Dignity Clause.

87. SB 437 fails strict scrutiny because the State lacks any legitimate reason—much less a compelling one—to erase all gender nonconforming and intersex people from Montana law. SB 437 is motivated by animus and a bare desire to harm Plaintiffs.

88. SB 437 is not calculated—and certainly is not narrowly tailored—to achieve the legislature’s purported intent to clarify confusion between sex and gender and to protect medical patients. On the contrary, SB 437 states that gender is a synonym for sex, thus in fact conflating the terms, and it allows discrimination in healthcare settings, thereby endangering—not protecting—medical patients.

89. SB 437 violates Plaintiffs’ right to individual dignity.

COUNT IV:
Violation of the Freedom of Speech
(Mont. Const. art. II, § 7)

90. Plaintiffs reallege the facts set forth in paragraphs 1–89. In addition to those allegations and all allegations made in their First Amended Complaint, Plaintiffs allege the following.

91. SB 437 compels speech and restricts Plaintiffs’ ability to express their gender because it requires Plaintiffs to identify with a sex

that does not represent them. It forces them to speak this message in any setting where they must interact with the government, including on their driver's licenses and marriage license applications. It compels Plaintiffs to identify inaccurately in order to receive any protection on the basis of sex in housing, employment, insurance, financial and credit transactions, and public accommodations.

92. SB 437 regulates the content of Plaintiffs' speech by regulating the gender identity a person may use when engaging in all aspects of public life.

93. Because SB 437 restricts speech based on its content and viewpoint, it is presumptively unconstitutional and subject to strict scrutiny.

94. SB 437 does not satisfy strict scrutiny. The State lacks a legitimate reason—much less a compelling one—for coercing people to identify with a sex or gender that purportedly aligns with their reproductive system.

95. SB 437 is not at all calculated—and is far from narrowly tailored—to achieve the legislature's purported intent to clarify confusion between sex and gender and to protect medical patients. On the contrary,

SB 437 states that gender is a synonym for sex, thus literally conflating the terms, and it allows discrimination in healthcare settings, thereby endangering—not protecting—medical patients.

96. SB 437 violates Plaintiffs’ freedom of speech.

ADDITIONAL PRAYER FOR RELIEF

In addition to Plaintiffs’ prayers for relief in their First Amended Complaint, Plaintiffs respectfully request that this Court:

- a. Enter judgment for Plaintiffs and against Defendants;
- b. Declare SB 437 facially unconstitutional;
- c. Preliminarily and permanently enjoin Defendants from enforcing SB 437;
- d. Award Plaintiffs their costs, disbursements, and reasonable attorney’s fees incurred in bringing this action; and
- e. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 6th day of April, 2025.

/s/ Molly E. Danahy
Molly E. Danahy
Rylee Sommers-Flanagan
Upper Seven Law

Attorneys for Plaintiffs

Plaintiffs' Supplemental Complaint

Exhibit 1

S. 437, Mont. 69th Leg., Reg. Sess. 2025

(“SB 437”)



AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE DEFINITION FOR THE WORDS SEX, FEMALE, MALE, MAN, WOMAN, FATHER, AND MOTHER WHEN REFERRING TO A HUMAN; PROVIDING THAT THE DEFINITION OF SEX REFERS TO BIOLOGICAL SEX AND NOT GENDER IDENTITY OR SEXUAL INTERCOURSE; PROVIDING THAT THE DEFINITION OF SEX IS LIMITED TO TWO TYPES OF SEXES WHICH ARE REFERRED TO AS MALE AND FEMALE; PROVIDING THAT THE DEFINITIONS OF MALE, FEMALE, MAN, WOMAN, FATHER, AND MOTHER REFER TO BIOLOGICAL SEX AND NOT SUBJECTIVE GENDER IDENTITY; CLARIFYING THE MEANING OF THE TERM "GENDER"; AMENDING SECTIONS 2-18-208, 2-18-606, 7-15-4207, 7-34-2123, 10-2-403, 13-27-408, 13-35-301, 13-38-201, 13-38-203, 13-38-205, 19-2-802, 20-6-808, 20-7-1306, 20-7-1703, 20-9-327, 20-11-116, 20-25-501, 20-25-707, 22-2-306, 23-2-505, 33-1-201, 35-20-209, 39-2-912, 39-29-101, 39-71-401, 40-1-107, 40-1-311, 40-1-401, 40-5-804, 40-5-907, 40-5-1031, 40-6-701, 40-6-703, 41-3-210, 41-5-103, 42-2-204, 44-2-411, 44-2-412, 45-5-625, 46-18-101, 46-19-301, 46-19-401, 49-1-102, 49-2-101, 49-3-101, 50-4-720, 50-5-105, 50-5-602, 50-11-101, 50-15-101, 50-19-103, 50-19-501, 50-60-214, 53-20-142, 53-21-121, 53-21-142, 53-24-310, 53-30-312, 60-5-514, 60-5-522, 61-5-107, 72-1-103, 72-17-106, AND 90-14-104, MCA; REPEALING SECTION 1-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in human beings, there are two -- and only two -- sexes: male and female, which refer to the two body structures (phenotypes) that, in normal development, correspond to one or the other gamete -- sperm for males and ova for females; and

WHEREAS, every individual is either male or female; and

WHEREAS, an individual's sex can be observed or clinically verified at or before birth; and

WHEREAS, rare disorders of sexual development are not exceptions to the binary nature of sex; and

WHEREAS, in no case is an individual's sex determined by stipulation or self-identification; and

WHEREAS, there is increasing confusion about the definition and implications of sex as a biological

truth and its relationship to concepts and terms including but not limited to sex assigned at birth, gender, gender identity, gender role, gender expression, and experienced gender; and

WHEREAS, confusion and ambiguities surrounding the definitions of sex, male, female, and related terms can hinder individual efforts to enjoy equal treatment under the law; and

WHEREAS, legal equality of the two sexes -- male and female -- does not imply that the sexes are identical to each other or are the same in every respect; and

WHEREAS, with respect to the two sexes -- male and female -- separate facilities or sports leagues established because of or organized according to physical differences between the sexes do not constitute unequal treatment under the law; and

WHEREAS, physical differences between males and females are enduring, and the two sexes are not fungible.

THEREFORE, it is the intent of the Legislature of this state to clarify and reconcile the meaning of sex, male, female, and related terms in state laws, administrative rules, and guidelines.

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

Section 1. Terms of wide applicability. (1) Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(a) "Father" means a male parent.

(b) "Female" means, when used to refer to a natural person, an individual who naturally has, had, will have, or would have, but for a congenital anomaly or intentional or unintentional disruption, the reproductive system that at some point produces, transports, and utilizes the large gamete, or ova, for fertilization.

(c) "Male" means, when used to refer to a natural person, an individual who naturally has, had, will have, or would have, but for a congenital anomaly or intentional or unintentional disruption, the reproductive system that at some point produces, transports, and utilizes the small gamete, or sperm, for fertilization.

(d) "Man" means an adult human male, except when used as a generic reference to human beings.

(e) "Mother" means a female parent.

(f) "Oath" includes an affirmation or declaration.

(g) "Person" includes a corporation or other entity as well as a natural person.

(h) "Several" means two or more.

(i) "Sex" means whether someone is male or female, which is distinguished based on the type of gamete, sperm or eggs, they are capable of or expected to produce, as dictated by their primary sexual anatomy. Because there are only two types of gametes, sperm and ova, with two corresponding reproductive systems, there are only two sexes: male and female. An individual's sex is rooted in reproductive anatomy and is in no way influenced or defined by one's psychological state, behavior, expression, or personal identity.

(j) "State", when applied to the different parts of the United States, includes the District of Columbia and the territories.

(k) "United States" includes the District of Columbia and the territories.

(l) "Woman" means an adult human female.

(2) Wherever the word "man" or "men" or a word that includes the syllable "man" or "men" in combination with other syllables, such as "workman", appears in this code, the word or syllable includes "woman" or "women" unless the context clearly indicates a contrary intent and unless the subject matter of the statute relates clearly and necessarily to a specific sex only.

(3) Whenever the term "heretofore" occurs in any statute, it must be construed to mean any time previous to the day the statute takes effect. Whenever the word "hereafter" occurs, it must be construed to mean the time after the statute containing the term takes effect.

(4) (a) The term "gender", when used alone to refer to a male, female, or the natural differences between a male and female:

(i) must be considered a synonym for sex; and

(ii) may not be considered a synonym or short-hand expression for gender identity, experienced gender, gender expression, or gender role.

(b) The term "gender" does not apply when it is used in conjunction with other words or as an adjective to modify other words, or when context or explicit definition in preexisting state law, administrative rules, or guidelines indicates otherwise.

(c) The term "gender identity", if used in state law, administrative rules, or guidelines, may not be

considered a synonym or substitute for sex or gender.

Section 2. Section 2-18-208, MCA, is amended to read:

"2-18-208. Comparable worth. The department of administration shall, in its continuous efforts to enhance the current classification plan and pay schedules, work toward the goal of establishing a standard of equal pay for comparable worth. This standard for the classification plan shall be reached by:

- (1) eliminating, in the classification of positions, the use of judgments and factors that contain inherent biases based on sex, as defined in 4-1-204 [section 1]; and
- (2) comparing, in the classification of positions, the factors for determining job worth across occupational groups whenever those groups are dominated by males or females."

Section 3. Section 2-18-606, MCA, is amended to read:

"2-18-606. Parental leave for state employees. (1) The department of administration shall develop a parental leave policy for permanent state employees. The policy must permit an employee to take a reasonable leave of absence and permit the employee to use sick leave immediately following the birth or placement of a child for a period not to exceed 15 working days if:

- (a) the employee is adopting a child; or
 - (b) the employee is a birth father, as defined in [section 1].
- (2) As used in this section, "placement" means placement for adoption as defined in 33-22-130.
- (3) A state agency that is not subject to the provisions of the Family and Medical Leave Act of 1993, 29 U.S.C. 2601 through 2654, may extend the provisions of that act to the employees of the agency."

Section 4. Section 7-15-4207, MCA, is amended to read:

"7-15-4207. Prohibition against discrimination. For all of the purposes of this part and part 43, a person may not be subjected to discrimination because of sex, as defined in 4-1-204 [section 1], race, creed, religion, age, physical or mental disability, color, or national origin."

Section 5. Section 7-34-2123, MCA, is amended to read:

"7-34-2123. Admission to district hospital facilities. Such a hospital district must admit persons to its facilities without regard to race, color, or sex, as defined in 4-4-204 [section 1]. Such obligation shall not prevent the board of trustees of such hospital district from establishing reasonable minimum rates for hospital quarters, services, and supplies. Indigents needing such services, for the rendition of which provision is made by the laws of Montana, must be admitted to such public hospitals on terms and rates prescribed or authorized by law."

Section 6. Section 10-2-403, MCA, is amended to read:

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

- (1) the person's age;
- (2) the person's physical and mental status;
- (3) the person's ability or inability to locate suitable alternative accommodations;
- (4) the person's term of residence in Montana;
- (5) the person's gender, as provided in [section 1], as it relates to availability of appropriate living space;
- (6) the ability of the Montana veterans' home to meet the person's needs; and
- (7) other admission requirements established by the department."

Section 7. Section 13-27-408, MCA, is amended to read:

"13-27-408. Rejection of improper arguments. The secretary of state shall reject, with the approval of the attorney general, an argument or other matter held to contain obscene, vulgar, profane, scandalous, libelous, or defamatory matter; any language that in any way incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility toward, or that tends to cast ridicule or shame upon, a group of persons by reason of race, color, religion, or sex, as defined in 4-4-204 [section 1]; or any matter not allowed to be sent through the mail. Such arguments may not be filed or printed in the voter information pamphlet."

Section 8. Section 13-35-301, MCA, is amended to read:

"13-35-301. Adoption of code of fair campaign practices. The following code of fair campaign practices is adopted by Montana:

"There are basic principles of decency, honesty, and fair play that every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammelled choice and the will of the people may be fully and clearly expressed on the issues before the country.

Therefore:

I will conduct my campaign in the best American tradition, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponent and my opponent's party that merit such criticism.

I will defend and uphold the right of every qualified American voter to full and equal participation in the electoral process.

I will conduct my campaign without the use of personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on my opposition or my opposition's personal or family life.

I will not use campaign material of any sort that misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations that aim at creating or exploiting doubts, without justification, as to the loyalty and patriotism of my opposition.

I will not make any appeal to prejudice based on race, sex, as defined in 4-1-204 [section 1], creed, or national origin.

I will not undertake or condone any dishonest or unethical practice that tends to corrupt or undermine our American system of free elections or that hampers or prevents the full and free expression of the will of the voters.

Insofar as is possible, I will immediately and publicly repudiate support deriving from any individual or group that resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I have pledged not to use or condone.""

Section 9. Section 13-38-201, MCA, is amended to read:

"13-38-201. Election or appointment of committee representatives at primary -- vacancies -- tie votes. (1) Each political party shall appoint or elect at each primary election one person of each sex, as defined in 4-4-201 [section 1], to serve as committee representatives for each election precinct. The committee representatives must be residents and registered voters of the precinct.

(2) If a political party chooses to appoint precinct committee representatives, the political party shall make the appointments as provided in the party's rules.

(3) If a political party chooses to elect precinct committee representatives, the party may:

(a) administer the election itself as provided in the party's rules; or

(b) elect precinct committee representatives in a primary election, subject to 13-10-209 and subsection (4) of this section.

(4) In a primary election for a precinct committee representative:

(a) if the number of candidates nominated for a party's precinct committee representatives is less than or equal to the number of positions to be elected, the election administrator may give notice that a party's precinct committee election will not be held in that precinct;

(b) if a party precinct committee election is not held pursuant to subsection (4)(a), the election administrator shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate. The election administrator shall issue a certificate of election to the designated party.

(c) write-in votes for a precinct committee representative may be counted as specified in 13-15-206(5) only if the individual whose name is written in has filed a declaration of intent as a write-in candidate by the deadline prescribed in 13-10-211(1);

(d) in the case of a tie vote for a precinct committee representative position, the county central committee shall determine a winner.

(5) Pursuant to 13-38-101, a vacancy in a precinct committee representative position must be filled by the party governing body as provided in its rules."

Section 10. Section 13-38-203, MCA, is amended to read:

"13-38-203. Powers and duties of county and city central committees -- role of state central

committee where no county central committee exists. (1) The county and city central committee may:

(a) make rules for the government of its political party in each county not inconsistent with any of the provisions of the election laws of this state or the rules of its state political party;

(b) elect two county members of the state central committee, one of each gender, as provided in [section 1], elect the members of the congressional committee, and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee.

(3) Meetings of a central committee that is filling an election vacancy pursuant to 13-10-326 or 13-10-327 must be open to the public. Records of a central committee regarding filling a vacancy pursuant to 13-10-326 or 13-10-327 must be made available for public inspection on request.

(4) County and city central committees are not public agencies of the state. The documents of the county and city central committees are not public records."

Section 11. Section 13-38-205, MCA, is amended to read:

"13-38-205. Organization and operation of county and city central committees. (1) The county central committee shall meet prior to the state convention of its political party and organize by electing a presiding officer and one or more vice presiding officers. The gender, as provided in [section 1], of the presiding officer and the vice presiding officer may not be the same. The county central committee shall elect a secretary and other officers as necessary. It is not necessary for the officers to be precinct committee representatives.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise all powers conferred upon the county, city, state, and congressional central committees by the election laws of this state.

(3) The presiding officer of the county central committee shall call the county convention and not less than 4 days before the date of the county convention shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct committee representative. If party rules permit the use of a proxy, a proxy may not be recognized unless it is held by an elector of the precinct of the committee representative executing it.

(4) The county presiding officer of the party shall preside at the county convention. No person other than a duly elected or appointed committee representative or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committee representative is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The presiding officer and secretary of the county convention shall issue and sign certificates of election of the delegates."

Section 12. Section 19-2-802, MCA, is amended to read:

"19-2-802. Effect of no designation of beneficiary or no surviving statutory or designated beneficiary. (1) If a member or payment recipient fails to name a designated beneficiary or if a statutory or designated beneficiary does not survive the member or payment recipient, the estate of the member or payment recipient is entitled to any accrued lump-sum payment or accrued retirement benefit not received prior to the member's or payment recipient's death. If the estate, as either a designated beneficiary or as a beneficiary by default as provided in this subsection, would not be probated but for the amount due to the estate from the retirement system, all of the amount due to the estate must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

- (a) husband or wife;
- (b) children;
- (c) father and mother, as defined in [section 1];
- (d) grandchildren;
- (e) brothers and sisters; or
- (f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied

by the board, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death."

Section 13. Section 20-6-808, MCA, is amended to read:

"20-6-808. Enrollment. (1) (a) A public charter school must be open to any student residing in the state.

(b) A school district may not require a student enrolled in the school district to attend a public charter school.

(c) A public charter school may limit admission to students within a given age group or grade level.

(d) A public charter school may be organized for a special emphasis, theme, or concept as stated in the school's proposal.

(e) A public charter school shall enroll all students who wish to attend the school unless the number of students exceeds the capacity of a program, class, grade level, or building.

(f) If capacity is insufficient to enroll all students who wish to attend the school, the public charter school shall select students through a lottery.

(2) (a) A public charter school shall give enrollment preference to students who are residents of the located school district.

(b) A public charter school may give enrollment preference to:

(i) students who were enrolled in the public charter school the previous school year and to siblings of students already enrolled in the public charter school. An enrollment preference for returning students excludes those students from entering a lottery.

(ii) children of members of a public charter school's governing board and full-time employees, limited to no more than 10% of the school's total student population.

(3) This section does not preclude the formation of a public charter school for the purpose of serving students with disabilities, students of the same gender, as provided in [section 1], students who pose a sufficiently severe disciplinary problem to warrant a specific educational program, or students who are at risk of

academic failure. If capacity is insufficient to enroll all students who wish to attend such a school, the public charter school shall select students through a lottery.

(4) If a student who was previously enrolled in a public charter school enrolls in any other public school in this state, the student's new school shall accept credits earned by the student in courses or instructional programs at the public charter school.

(5) A school district shall provide or publicize to parents and the general public information about public charter schools as an enrollment option within the district to the same extent and through the same means that the district provides and publicizes information about noncharter public schools in the district.

(6) The board of public education may not restrict the number of students a public charter school may enroll. The capacity of the public charter school must be determined annually by the governing board in consideration of the public charter school's ability to facilitate the academic success of its students, to achieve the objectives specified in the charter contract, and to ensure that its student enrollment does not exceed the capacity of its facility or site."

Section 14. Section 20-7-1306, MCA, is amended to read:

"20-7-1306. (Temporary) Designation of athletic teams. (1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public elementary or high school, a public institution of higher education, or any school or institution whose students or teams compete against a public school or institution of higher education must be expressly designated as one of the following based on biological sex:

(a) males, men, or boys;

(b) females, women, or girls; or

(c) coed or mixed.

(2) Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex.

(3) For the purposes of this section, "female", "male", and "sex" are defined in ~~4-4-204~~ [section 1].

(Void on occurrence of contingency--sec. 6, Ch. 405, L. 2021.)"

Section 15. Section 20-7-1703, MCA, is amended to read:

"20-7-1703. Definitions. As used in this part, the following definitions apply:

- (1) "Eligible postsecondary institution" means an accredited postsecondary institution located in Montana.
- (2) "ESA student amount" means the sum of:
 - (a) the data-for-achievement payment rate under 20-9-306;
 - (b) the Indian education for all payment rate under 20-9-306;
 - (c) the per-ANB amounts of the instructional block grant and related services block grant under 20-9-321; and
 - (d) the applicable per-ANB maximum rate established in 20-9-306 for the student multiplied by the ratio of adopted general fund budget to maximum general fund budget in the prior year, rounded to the nearest one hundredth and not to exceed 1.00, in the district in which the student is included for ANB purposes under the program.
- (3) "Montana special needs equal opportunity education savings account" or "account" means an account within the trust established in 20-7-1710 in which a payment under 20-7-1709 is deposited on behalf of a qualified student for the purpose of reimbursement for the purchase of allowable educational resources pursuant to 20-7-1704 for qualified students.
- (4) "Parent" means a biological parent, adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of a qualified student, and whose parental rights have not been terminated.
- (5) "Program" means the Montana special needs equal opportunity education savings account program established in 20-7-1702.
- (6) "Qualified school" means a nonpublic school serving any combination of grades kindergarten through 12 that:
 - (a) is in compliance with applicable local health and safety regulations;
 - (b) holds a valid occupancy permit, if required by the municipality;
 - (c) does not discriminate on the basis of race, creed, religion, sex, as defined in [section 1], marital status, color, age, physical disability, or national origin or because of mental disability, unless based on reasonable grounds, pursuant to 49-2-307;

(d) requires that any employee who may have unsupervised access to children be subject to a criminal history background check prior to employment pursuant to and in support of 42 U.S.C. 5119(a) and (c); and

(e) meets the requirements for Montana nonpublic schools under 20-5-109.

(7) "Qualified student" means a resident of the state who:

(a) in the current school year:

(i) is identified as a "child with a disability" under the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.; and

(ii) is between the ages of 5 and 19 on September 10;

(b) is not currently enrolled in a school operating for the purpose of providing educational services to youth in department of corrections commitment programs or in the Montana school for the deaf and blind; and

(c) (i) was counted during the previous school year for purposes of school district ANB funding;

(ii) was enrolled during the previous school year in a program listed in subsection (7)(b);

(iii) did not reside in the state in the previous school year; or

(iv) is eligible to enter a kindergarten program pursuant to 20-7-117.

(8) "Resident school district" means the school district in which a student resides."

Section 16. Section 20-9-327, MCA, is amended to read:

"20-9-327. Quality educator payment. (1) (a) The state shall provide a quality educator payment to:

(i) public school districts, as defined in 20-6-101 and 20-6-701;

(ii) special education cooperatives, as described in 20-7-451;

(iii) the Montana school for the deaf and blind, as described in 20-8-101;

(iv) correctional facilities, as defined in 41-5-103; and

(v) the Montana youth challenge program.

(b) A special education cooperative that has not met the requirements of 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed

directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills correctional facility and the facility under contract with the department of corrections for female, as defined in ~~4-1-201~~ section 1, youth must be distributed to those facilities by the department of corrections.

(d) The quality educator payment for the Montana youth challenge program must be distributed to that program by the department of military affairs.

(3) The quality educator payment is calculated as provided in 20-9-306, using the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) of this section in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education;

(b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-24-301, 37-25-302, 37-39-308, 37-39-309, or 37-39-311; and

(ii) is employed by an entity listed in subsection (1) to provide services to students; or

(c) (i) holds an American Indian language and culture specialist license; and

(ii) is employed by an entity listed in subsection (1) to provide services to students in an Indian language immersion program pursuant to Title 20, chapter 7, part 14."

Section 17. Section 20-11-116, MCA, is amended to read:

"20-11-116. Enrollment. (1) (a) A community choice school must be open to any student residing in the state.

(b) A school district may not require a student enrolled in the school district to attend a choice school.

(c) A choice school may limit admission to students within a given age group or grade level.

(d) A choice school may be organized for a special emphasis, theme, or concept as stated in the

school's proposal.

(e) A choice school shall enroll all students who wish to attend the school unless the number of students exceeds the capacity of a program, class, grade level, or building.

(f) If capacity is insufficient to enroll all students who wish to attend the school, the choice school shall select students through a lottery.

(2) A traditional public school converting to a choice school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

(3) (a) A choice school shall give enrollment preference to students who were enrolled in the choice school the previous school year and to siblings of students already enrolled in the choice school. An enrollment preference for returning students and siblings excludes those students from entering a lottery.

(b) A choice school may give enrollment preference to children of a choice school's employees and governing board, limited to no more than 10% of the school's total student population.

(4) This section does not preclude the formation of a community choice school for the purpose of serving students with disabilities, students of the same gender, as provided in [section 1], students who pose a sufficiently severe disciplinary problem to warrant a specific educational program, or students who are at risk of academic failure. If capacity is insufficient to enroll all students who wish to attend a school, the choice school shall select students through a lottery.

(5) If a student who was previously enrolled in a choice school enrolls in any other public school in this state, the student's new school shall accept credits earned by the student in courses or instructional programs at the choice school.

(6) A traditional school district shall provide or publicize to parents and the general public information about choice schools as an enrollment option within the district's physical, geographical boundaries to the same extent and through the same means that the district provides and publicizes information about traditional public schools in the district.

(7) An authorizer may not restrict the number of students a choice school may enroll. The capacity of the choice school must be determined annually by its governing board in conjunction with the authorizer and in consideration of the choice school's ability to facilitate the academic success of its students, to achieve the objectives specified in the charter contract, and to ensure that its student enrollment does not exceed the

capacity of its facility or site.

(8) If the choice school is the only public school in a town, the choice school must give preference to enrolling pupils residing in the town or within 5 miles of the school if the next closest public school is more than 10 miles away from the student's residence."

Section 18. Section 20-25-501, MCA, is amended to read:

"20-25-501. Definitions. (1) Terms used in this part are defined as follows:

(a) "Domicile" means a person's true, fixed, and permanent home and place of habitation.

(b) "Minor" means a male or female, as defined in ~~4-4-201~~ [section 1], person who has not obtained the age of 18 years.

(c) "Qualified person" means a person legally qualified to determine the person's own domicile.

(d) "Resident student" means:

(i) a student who has been domiciled in Montana for 1 year immediately preceding registration at any unit for any term or session for which resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education is not alone sufficient to qualify for residence in Montana.

(ii) any graduate of a Montana high school who is a citizen or resident alien of the United States and whose parents, parent, or guardian has resided in Montana at least 1 full year of the 2 years immediately preceding the student's graduation from high school. The classification continues for not more than 4 academic years if the student remains in continuous attendance at a unit; or

(iii) a member of the armed forces of the United States assigned to and residing in Montana, the member's spouse, or the member's dependent children.

(2) In the event that the definition of residency or any portion of the definition is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system may make rules on what constitutes adequate evidence of residency status not inconsistent with those court decisions."

Section 19. Section 20-25-707, MCA, is amended to read:

"20-25-707. Antidiscrimination. An employer is not eligible to employ any person under this program if the employer practices discrimination in employment against any individual because of race, creed, religion, color, political ideas, sex, as defined in 4-4-204 [section 1], age, marital status, physical or mental disability, ancestry, or national origin."

Section 20. Section 22-2-306, MCA, is amended to read:

"22-2-306. Grant conditions -- additional funds -- accounts and reports. (1) A grant may not be awarded unless the grantee accepts the Montana arts council's conditions of the grant and signs a contract stipulating those conditions.

(2) A grantee must agree in writing that:

(a) the grantee is the official and sole agency for the administration of the project described in the grant agreement; and

(b) no person will, on the grounds of race, color, national origin, sex, as defined in 4-4-204 [section 1], or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that results from the expenditure of grant funds.

(3) The grantee must agree that the funds granted will be expended solely for the purpose and activities described in the approved proposal. All funds granted to the grantee must be spent or encumbered during the grant period.

(4) Disbursements to grantees must be as follows, based upon the cash flow needs of the projects and the revenues available:

(a) Projects that are to receive more than \$10,000 may receive an amount not exceeding 25% of the grant award in the first 6 months of the biennium, 50% in the first year of the biennium, 75% in the first 18 months of the biennium, and the balance in the remainder of the biennium. Within the limitations contained in this subsection, the amount of each payment must be determined by the Montana arts council in its discretion. Each payment may be made only after an examination of the costs incurred in the project and the amount, if any, of the unencumbered or unexpended balance of prior grant payments for the project.

(b) Projects that are to receive \$10,000 or less may receive the total grant in any fiscal quarter if the Montana arts council determines that the cultural and aesthetic project account has funds available and

that, after an examination of the costs incurred by the project, total payment is appropriate.

(c) A grant award budget may be modified in accordance with this subsection. A grantee may modify line items in an approved budget in an amount not to exceed 10% of the total grant award. A grantee may, with permission of the Montana arts council, modify line items in an approved budget in an amount not to exceed 20% of the total grant award. A modification may not increase the grant award or change the scope or purpose of the award.

(5) The grantee must maintain accounts, records, and other pertinent material pertaining to the costs incurred and expenditures made under the grant. The system of accounting employed by the grantee must be in accordance with generally accepted accounting principles and be applied in a consistent manner so that project costs and expenditures can be clearly identified. Accounts, records, and other pertinent material must be maintained for 3 years from the official termination date of the grant period or until an audit, approved by the council, has been completed and any questions arising from the audit have been resolved to the satisfaction of the council.

(6) Grantees must submit to the council semiannual reports of expenditures during the course of the project and other financial and descriptive reports that the council may require. The grantee must submit, within 30 days after completion of the project, a final financial report and a narrative report stating what was accomplished with the grant. Five percent of the total grant award must be held pending receipt of final reports by the council. With regard to grantees who in the past have submitted late reports, 30% of the grant award may be held pending receipt of final reports by the council.

(7) The council may, at the principal place of business of the grantee and during regular business hours, examine any directly pertinent records, accounts, and documents of the grantee involving transactions related to the grant."

Section 21. Section 23-2-505, MCA, is amended to read:

"23-2-505. Owner's civil liability. The owner of a vessel is liable for any injury or damage occasioned by the negligent operation of the vessel, whether the negligence consists of a violation of the provisions of the statutes of this state or neglecting to observe ordinary care and operation that the rules of the common law require. However, the owner is not liable unless the vessel is being used with the owner's express

or implied consent. It must be presumed that the vessel is being operated with the knowledge and consent of the owner if, at the time of the injury or damage, it is under the control of the owner's spouse, father as defined in [section 1], mother as defined in [section 1], brother, sister, son, daughter, or other immediate member of the owner's family. This section may not be construed to relieve any other person from any liability that the person would otherwise have. However, this section may not be construed to authorize or permit any recovery in excess of injury or damage actually incurred."

Section 22. Section 33-1-201, MCA, is amended to read:

"33-1-201. Definitions -- insurance in general -- general terms. For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) "Alien insurer" is an insurer formed under the laws of any country other than the United States or its states, districts, territories, and commonwealths.

(2) "Authorized insurer" is an insurer duly authorized by a certificate of authority issued by the commissioner to transact insurance in this state.

(3) "Domestic insurer" is an insurer incorporated under the laws of this state.

(4) "Female" has the meaning provided in ~~4-1-201~~ [section 1].

(5) "Foreign insurer" is an insurer formed under the laws of any jurisdiction other than this state.

Except when distinguished by context, the term includes an alien insurer.

(6) "Gender" has the meaning provided in [section 1].

~~(6)(7)~~ (a) "Insurance" is a contract through which one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

(b) The term does not include:

(i) contracts for the installation, maintenance, and provision of inside telecommunications wiring to residential or business premises;

(ii) direct patient care agreements established pursuant to 50-4-107; or

(iii) an arrangement with a health care sharing ministry that meets the requirements of 50-4-111.

~~(7)(8)~~ (a) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance. The term also includes a health service corporation in the provisions

listed in 33-30-102.

(b) The term does not include a health care sharing ministry that meets the requirements of 50-4-111.

~~(8)~~(9) "Male" has the meaning provided in 4-1-204 [section 1].

~~(9)~~(10) "Resident domestic insurer" is an insurer incorporated under the laws of this state and:

(a) if a mutual company, not less than one-half of the policyholders are individuals who are residents of this state; or

(b) if a stock insurer, not less than one-half of the shares are owned by individuals who are residents of this state and all of the directors and officers of the insurer are residents of this state.

~~(10)~~(11) "Sex" has the meaning provided in 4-1-204 [section 1].

~~(11)~~(12) "State", when used in relation to jurisdiction, means a state, the District of Columbia, or a territory, commonwealth, or possession of the United States.

~~(12)~~(13) "Transact", with respect to insurance, means to:

(a) solicit;

(b) negotiate;

(c) sell or effectuate a contract of insurance; or

(d) transact matters subsequent to effectuation of the contract of insurance and arising out of it.

~~(13)~~(14) "Unauthorized insurer" is an insurer not authorized by a certificate of authority issued by the commissioner to transact insurance in this state."

Section 23. Section 35-20-209, MCA, is amended to read:

"35-20-209. Duties of secretary -- record of interments. The secretary shall perform all the duties of a secretary of a corporation and shall, in addition, keep a record of interments in which the secretary shall enter as correctly and carefully as may be the name, age, sex, as defined in 4-1-204 [section 1], place of birth, and cause of death with date of burial of every person interred in the cemetery. The secretary shall procure these facts from friends or relatives of the deceased or the undertaker that gives the order for interment at that time or, if the deceased is a pauper, a stranger, or criminal, from the coroner, physician, or other public officer directing the burial of the deceased."

Section 24. Section 39-2-912, MCA, is amended to read:

"39-2-912. Exemptions. (1) This part does not apply to a discharge:

(a) that is subject to any other state or federal statute that provides a procedure or remedy for contesting the dispute. The statutes include those that prohibit discharge for filing complaints, charges, or claims with administrative bodies or that prohibit unlawful discrimination based on race, national origin, sex, as defined in ~~4-1-204~~ [section 1], age, disability, creed, religion, political belief, color, marital status, and other similar grounds.

(b) of an employee covered by a written collective bargaining agreement or a written contract of employment for a specific term.

(2) For the purposes of this section, a contract for a specific term may contain a probationary period as provided for in 39-2-910 and may contain an automatic renewal clause that automatically renews the contract of employment for one or more successive terms."

Section 25. Section 39-29-101, MCA, is amended to read:

"39-29-101. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Armed forces" means the:

(a) United States army, marine corps, navy, air force, space force, and coast guard;

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs; and

(c) Montana army and air national guard.

(2) "Disabled veteran" means a person:

(a) whether or not the person is a veteran who was separated under honorable conditions from military duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a law administered by the department of veterans affairs, a military department, or the state of Montana; or

(b) who has received a purple heart medal.

(3) "Eligible relative" means:

- (a) the unmarried surviving spouse of a veteran or disabled veteran;
- (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;
- (c) the mother of a veteran who died under honorable conditions while serving in the armed forces

if:

- (i) the mother's spouse is totally and permanently disabled; or
- (ii) the mother is the widow of the father of the veteran and has not remarried;
- (d) the mother of a service-connected permanently and totally disabled veteran if:

- (i) the mother's spouse is totally and permanently disabled; or
- (ii) the mother is the widow of the father of the veteran and has not remarried.

(4) "Father" has the meaning provided in [section 1].

(5) "Military duty" means duty with military pay and allowances in the armed forces.

(6) "Mother" has the meaning provided in [section 1].

~~(5)~~(7) (a) "Position" means a position occupied by a permanent, temporary, or seasonal employee, as defined in 2-18-101, for the state or a similar permanent, temporary, or seasonal employee with a public employer other than the state.

(b) The term does not include:

- (i) a state or local elected office;
- (ii) appointment by an elected official to a body, such as a board, commission, committee, or

council;

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

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

(v) engagement as an independent contractor or employment by an independent contractor; or

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

~~(6)~~(8) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

- (b) a unit of the Montana university system;
- (c) a school district or community college; and
- (d) a county, city, or town.

~~(7)~~(9) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

~~(8)~~(10) (a) "Under honorable conditions" means a discharge or separation from military duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges.

(b) The term does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

~~(9)~~(11) "Veteran" means a person who:

(a) was separated under honorable conditions from active federal military duty in the armed forces after having served more than 180 consecutive days, other than for training;

(b) as a member of a reserve component under an order of federal duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304 served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions; or

(c) is or has been a member of the Montana army or air national guard and who has satisfactorily completed a minimum of 6 years of service in the armed forces, the last 3 years of which have been served in the Montana army or air national guard."

Section 26. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and exemptions -- elections -- notice. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3 unless the provisions of 39-71-442 apply. Each employee whose employer is bound by the Workers' Compensation Act is subject to

and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following:

(a) household or domestic employment;

(b) casual employment;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier":

(A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and

(B) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or, except as provided in subsection (3), a manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or

the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 10% or more of the number of shares of stock in the corporation or owns 10% or more of the limited liability company; or

(B) owns less than 10% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 10% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother as defined in [section 1], father as defined in [section 1], son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker or freight forwarder, as provided in 49 U.S.C. 13102;

(w) employment of a person who is not an employee or worker in this state as defined in 39-71-118(8);

(x) employment of a person who is working under an independent contractor exemption certificate;

(y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in

this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.

(z) a musician performing under a written contract.

(3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

(ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

(c) For the purposes of this subsection (3), "person" means:

(i) a sole proprietor;

(ii) a working member of a partnership;

(iii) a working member of a limited liability partnership;

(iv) a working member of a member-managed limited liability company; or

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

Section 27. Section 40-1-107, MCA, is amended to read:

"40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of public health and human services shall prescribe the form for an application for a marriage license, which must include the following information:

(a) name, sex, as defined in 4-4-204 [section 1], address, [social security number,] and date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, the party's name and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

- (c) name and address of the parents or guardian of each party; and
 - (d) whether the parties are related to each other and, if so, their relationship.
- (2) The director of the department of public health and human services shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

[(3) The license, certificate, or consent may not contain the social security number, and the department shall keep the number from this source confidential, except that the department may use the number in administering Title IV-D of the Social Security Act.]

(4) The information contained in the marriage license application is subject to the disclosure restrictions provided in 50-15-122(5). (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 28. Section 40-1-311, MCA, is amended to read:

"40-1-311. Declaration of marriage without solemnization. (1) Persons may consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301. The declaration must be filed by the clerk of the district court in the county where the contract was executed.

- (2) A declaration of marriage must contain substantially the following:
 - (a) the names, ages, and residences of the parties;
 - (b) the fact of marriage;
 - (c) the name of father and maiden name of mother, as defined in [section 1], of both parties and address of each;
 - (d) a statement that both parties are legally competent to enter into the marriage contract.
- (3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.
- (4) The fee for filing a declaration is \$53 and must be paid to the clerk at time of filing."

Section 29. Section 40-1-401, MCA, is amended to read:

"40-1-401. Prohibited marriages -- contracts. (1) The following marriages are prohibited:

- (a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(b) a marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins;

(c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood;

(d) a marriage between persons of the same sex, as defined in ~~4-1-201~~ section 1.

(2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

(3) Children born of a prohibited marriage are legitimate.

(4) A contractual relationship entered into for the purpose of achieving a civil relationship that is prohibited under subsection (1) is void as against public policy."

Section 30. Section 40-5-804, MCA, is amended to read:

"40-5-804. Definitions. For purposes of this part, the following definitions apply:

(1) "Child" means an individual, whether over or under 18 years of age, to whom or on whose behalf a legal duty of support is owed by a parent. The term includes but is not limited to a child enrolled or eligible for enrollment under a health benefit plan or individual insurance policy.

(2) "Child support guidelines" means guidelines adopted under the provisions of 40-5-209.

(3) "COBRA" means the federal Consolidated Omnibus Budget Reconciliation Act of 1985, under which dependent children of employees may continue to receive, for a limited time under specific circumstances, health plan coverage after termination of employment.

(4) "Department" means the department of public health and human services as provided for in 2-15-2201.

(5) (a) "Health benefit plan" or "plan" means a group health benefit plan or combination of plans that provides medical care or benefits for a child. The term includes but is not limited to a health maintenance organization, self-funded group, state or local government group health plan, church group plan, medical or health service corporation, or similar plan.

(b) The term does not include public health coverage if other medical insurance is available to one or both of the parents at a reasonable cost and is accessible for the child.

(6) "Individual insurance" means health or medical insurance coverage other than a group health benefit plan or public assistance that is or may be provided individually for a child.

(7) "Medical care" means diagnosis, cure, mitigation, treatment, or prevention of disease, illness, or injury, including well baby checkups, periodic examinations, and any other undertaking for the purpose of affecting any structure or function of the body.

(8) "Medical support order" means a judgment, decree, or order, including approval of a settlement agreement issued by a tribunal of competent jurisdiction, that provides for the medical care of a child and that complies with the requirements of this part.

(9) "Obligated parent" means the parent who is required by a medical support order to provide for the medical care of a child. The obligated parent is not necessarily the same as an obligor for child support.

(10) "Parent" means a father or mother, as defined in [section 1], and includes a child's guardian or other adult caretaker having lawful charge of the child.

(11) "Payor" or "payor of income" means a person, firm, corporation, association, union, employer, trustee, political subdivision, state agency, or any agent thereof who pays income to a parent on a periodic basis, who has or provides individual insurance or a health benefit plan, and who is subject to the jurisdiction of this state under Rule 4(b) of the Montana Rules of Civil Procedure or any employer under the Uniform Interstate Family Support Act.

(12) "Plan administrator" means the person or entity, including but not limited to a state or local government or church, that assesses and collects premiums, accepts and processes claims, and pays benefits.

(13) "Primary parent" means the parent with whom the child resides for the most 24-hour periods in a plan year.

(14) "Qualified medical child support order" means an order that meets the requirements of 29 U.S.C. 1169.

(15) "Third-party custodian" means an agency or person other than a parent who:

(a) is authorized by legal process to have physical custody of a child;

(b) has actual physical custody of a child with the written consent of the parent or parents having legal custody of the child; or

(c) has actual physical custody of a child because of the parents' neglect, failure, or inability to

provide for the child's support, medical care, and other needs.

(16) "Tribunal" means a court of competent jurisdiction or the department."

Section 31. Section 40-5-907, MCA, is amended to read:

"40-5-907. Case registry -- abstracts -- information required -- mandatory updating. (1) There must be registered in the case registry an abstract of:

- (a) each case, including interstate cases, receiving IV-D services provided by the department;
 - (b) each support order entered and each modification of an existing support order made in this state after October 1, 1998; and
 - (c) each subsequent order or action establishing, modifying, adjusting, granting relief from, terminating, or otherwise affecting a support order in a registered case.
- (2) Each abstract must include:
- (a) the name, sex, as defined in ~~4-1-204~~ section 1, [social security number, other] identification numbers, if any, date of birth, driver's license number, telephone number, and residential and mailing addresses of the parents;
 - (b) the child's name, date of birth, sex, as defined in ~~4-1-204~~ section 1, [social security number, if any,] and residential address if different from that of the child's custodian;
 - (c) the name and location of the obligee if the obligee is a person or agency other than the child's parent;
 - (d) the name, address, and telephone number of the obligor's employer or of another payor of income to the obligor; and
 - (e) (i) if the child is covered by a health or medical insurance plan and the information is available in an electronic format, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage; or
(ii) if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employers.
- (3) The abstract of a support order must include:
- (a) the amount of the support payment and supplemental support payments, if any, for each child

and the amount of spousal maintenance if ordered in the same case;

- (b) the specific day or dates the payment is due;
- (c) the inclusive dates of the support obligation;
- (d) the terms of any condition that may affect the amount of the payment, the due date, or the

obligation to pay support;

(e) each subsequent judgment for support arrears and the amounts of any interest, late payment penalties, and fees included in the judgment;

(f) any specific child support lien imposed against real or personal property of the obligor;

(g) the terms of any medical and health coverage provision for the child; and

(h) the name and county of the judicial district or the name and address of the agency where the record of the case is located and the cause number or case identification number for the case.

(4) (a) For each IV-D case with a support order registered in the case registry, there must be a record of the date and the amount of support payments made by the obligor, dates and amounts of support collected from other sources, dates of distribution of support payments, names and locations of persons or agencies to whom support payments and collections were distributed, and the balance of support owed by the obligor.

(b) Except as provided in subsection (5), the department need not maintain payment records in a non IV-D case.

(5) A copy of each non IV-D income-withholding order must be included in the case registry. For each registered income-withholding order, there must be a record of payments received by the department from the payor under the income-withholding order, the date and amount of each payment, the date the department distributed the payment, and the person or agency to whom the payment was distributed.

(6) The statistical report required by the department under 50-15-302 may be combined with and made a part of the abstract of support order form.

(7) (a) Each support order entered or modified in this state after October 1, 1998, must include a requirement that the obligor and obligee update, as necessary, the information included in the abstract under subsection (2).

(b) The order must also provide that in a subsequent child support enforcement action, upon

sufficient showing that diligent effort has been made to ascertain the location of the obligor or obligee, the court or agency taking the enforcement action may consider the due process requirements for notice and service of process to be met with respect to the party upon delivery of written notice by regular mail to the most recent address or employer address reported to the case registry.

(c) If the support order does not include the provisions required by subsections (7)(a) and (7)(b) or if the support order was entered or last modified in this state before October 1, 1998, the department may give written notice of the provisions to the obligor and obligee. Upon receipt of the notice, the provisions have the same force and effect on the obligor and obligee as if included in the support order. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 32. Section 40-5-1031, MCA, is amended to read:

"40-5-1031. Pleadings and accompanying documents. (1) In a proceeding under this part, a petitioner seeking to establish a support order, to determine parentage of a child, or to register and modify a support order of a tribunal of another state or a foreign country must file a petition. Unless otherwise ordered under 40-5-1032, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent and the name, sex, as defined in ~~4-4-204~~ [section 1], residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(2) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency."

Section 33. Section 40-6-701, MCA, is amended to read:

"40-6-701. Interference with fundamental parental rights restricted -- cause of action. (1) A government entity may not interfere with the fundamental right of parents to direct the upbringing, education,

health care, and mental health of their children unless the government entity demonstrates that the interference:

- (a) furthers a compelling governmental interest; and
- (b) is narrowly tailored and is the least restrictive means available for the furthering of the compelling governmental interest.

(2) All fundamental parental rights are exclusively reserved to the parent of a child without obstruction or interference by a government entity, including but not limited to the rights and responsibilities to do the following:

- (a) direct the education of the child, including the right to choose public, private, religious, or home schools and the right to make reasonable choices with public schools for the education of the child;
- (b) access and review all written and electronic education records relating to the child that are controlled by or in the possession of a school;
- (c) direct the upbringing of the child;
- (d) direct the moral or religious training of the child;
- (e) make and consent to all physical and mental health care decisions for the child;
- (f) access and review all health and medical records of the child;
- (g) consent before a biometric scan of the child is made, shared, or stored;
- (h) consent before a record of the child's blood or DNA is created, stored, or shared, unless authorized pursuant to a court order;
- (i) consent before a government entity makes an audio or video recording of the child, unless the audio or video recording is made during or as part of:
 - (i) a court proceeding;
 - (ii) a law enforcement investigation;
 - (iii) a forensic interview in a criminal or child abuse and neglect investigation;
 - (iv) the security or surveillance of buildings grounds, or transportation of students; or
 - (v) a photo identification card;
- (j) be notified promptly if an employee of a government entity suspects that abuse, neglect, or a criminal offense has been committed against the child unless the parent is suspected to have caused the

abuse;

(k) opt the child out of any personal analysis, evaluation, survey, or data collection by a school district that would capture data for inclusion in the statewide data system except data that is necessary and essential for establishing a student's education record;

(l) have the child excused from school attendance for religious purposes;

(m) participate in parent-teacher associations and school organizations that are sanctioned by the board of trustees of a school district; and

(n) be notified promptly if, and provide consent before, the child would share a room or sleeping quarters with an individual of the opposite sex on a school-sponsored trip. A child whose parent does not provide consent must be permitted to attend the trip and must be provided with reasonable accommodations that do not require the child to share a room or sleeping quarters with an individual of the opposite sex. The definition of sex as provided in [section 1] must be used to determine the meaning of opposite sex under this subsection (2)(n).

(3) Except for law enforcement, an employee of a government entity may not encourage or coerce a child to withhold information from the child's parent and may not withhold from a child's parent information that is relevant to the physical, emotional, or mental health of a child.

(4) This section may not be construed as invalidating the provisions of Title 41, chapter 3, or modifying the burden of proof at any stage of the proceedings under Title 41, chapter 3.

(5) When a parent's fundamental rights protected by 40-6-702, 40-6-707, 41-1-402, 41-1-403, 41-1-405, and this section are violated, a parent may assert that violation as a claim or defense in an administrative or judicial proceeding and may obtain appropriate relief without regard to whether the proceeding is brought by or in the name of a government entity, a private person, or any other party. The prevailing party in an action filed pursuant to 40-6-702, 40-6-707, 41-1-402, 41-1-403, 41-1-405, and this section is entitled to reasonable attorney fees and costs.

(6) As used in this section, the following definitions apply:

(a) "Child" means an individual under 18 years of age.

(b) "Education record" means attendance records, test scores of school-administered tests and statewide assessments, grades, school-sponsored or extracurricular activity or club participation, email

accounts, online or virtual accounts or data, disciplinary records, counseling records, psychological records, applications for admission, health and immunization information including any medical records maintained by a health clinic or medical facility operated or controlled by the school district or located on the district property, teacher and counselor evaluations, and reports of behavioral patterns.

(c) "Government entity" means the state, its political subdivisions, or any department, agency, commission, board, authority, institution, or office of the state, including a municipality, county, consolidated municipal-county government, school district, or other special district.

(d) "Parent" means a biological parent of a child, an adoptive parent of a child, or an individual who has been granted the exclusive right and authority over the welfare of a child under state law.

(e) "Substantial burden" means an action that directly or indirectly constrains, inhibits, curtails, or denies the right of a parent to direct the upbringing, education, health care, and mental health of the parent's child. The term includes but is not limited to:

- (i) withholding benefits;
- (ii) assessing criminal, civil, or administrative penalties; or
- (iii) exclusion from a government program."

Section 34. Section 40-6-703, MCA, is amended to read:

"40-6-703. Parental involvement in education. (1) The board of trustees of a school district, in consultation with parents, teachers, and administrators, shall develop and adopt a policy to promote the involvement of parents of children enrolled in the school district, including:

- (a) a plan for parent participation in the school district, which must be designed to improve parent and teacher cooperation in homework, attendance, and discipline;
- (b) a plan to provide parents with information about how to participate in the governance of the school district through the locally elected board of trustees;
- (c) procedures by which a parent may learn about the course of study for the parent's child;
- (d) procedures by which a parent may withdraw the parent's child from instruction or presentations, assemblies, guest lectures, or other educational events facilitated by a school's faculty or staff, including those conducted by outside individuals or organizations, that offend the parent's beliefs or practices;

(e) procedures by which a parent may learn about the nature and purpose of clubs and extracurricular activities that have been approved by the school or that the school is required to allow under the provisions of the federal Equal Access Act of 1984 and may withdraw the parent's child from any club or extracurricular activity. A student shall provide a signed parental permission form prior to participating in any school-sponsored club or extracurricular activity.

(f) procedures by which a parent shall provide written consent before the parent's child uses a pronoun that does not align with the child's sex, as defined in [section 1]. If a parent provides written consent under this subsection (1)(f), a person may not be compelled to use pronouns that do not align with the child's sex, as defined in [section 1].

(g) procedures by which a parent may learn about parental rights and responsibilities under the laws of this state.

(2) The board of trustees of a school district may adopt a policy providing that parents may submit and receive the information required by this section in electronic form."

Section 35. Section 41-3-210, MCA, is amended to read:

"41-3-210. County attorney duties -- certification -- retention of records -- reports to attorney general and legislature -- attorney general report. (1) (a) The county attorney shall gather all case notes, correspondence, evaluations, interviews, and other investigative materials pertaining to each report from the department or investigation by law enforcement of sexual abuse or sexual exploitation of a child made within the county when the alleged perpetrator of the sexual abuse or sexual exploitation is 12 years of age or older. After a report is made or an investigation is commenced, the following individuals or entities shall provide to the county attorney all case notes, correspondence, evaluations, interviews, and other investigative materials related to the report or investigation:

- (i) the department;
- (ii) state and local law enforcement; and
- (iii) all members of a county or regional interdisciplinary child information and school safety team established under 52-2-211.

(b) The duty to provide records to the county attorney under subsection (1)(a) remains throughout

the course of an investigation, an abuse and neglect proceeding conducted pursuant to this part, or the prosecution of a case involving the sexual abuse of a child or sexual exploitation of a child.

(c) Upon receipt of a report from the department, as required in 41-3-202, that includes an allegation of sexual abuse of a child or sexual exploitation of a child, the county attorney shall certify in writing to the person who initially reported the information that the county attorney received the report. The certification must include the date the report was received and the age and gender, as provided in [section 1], of the alleged victim. If the report was anonymous, the county attorney shall provide the certification to the department. If the report was made to the county attorney by a law enforcement officer, the county attorney is not required to provide the certification.

(2) The county attorney shall retain records relating to the report or investigation, including the certification, case notes, correspondence, evaluations, videotapes, and interviews, for 25 years.

(3) On or before January 1 and June 1 of each year, each county attorney shall report to the attorney general. The report to the attorney general must include, for each report from the department or investigation by law enforcement:

- (a) a unique case identifier;
- (b) the date that the initial report or allegation was received by the county attorney;
- (c) the date any charges were filed;
- (d) the date of any decision to decline to prosecute;
- (e) if charges are filed against a defendant, whether a conviction was obtained and, if a conviction was obtained, the sentence imposed by the court; and

(f) the number of certifications made as required by subsection (1)(c), including the number of certifications made to the department.

(4) (a) The attorney general shall create a form for county attorneys to use when submitting reports required by subsection (3). The form must allow collection of the information required by subsection (3) on an aggregated, cumulative basis for a 5-year period until charges are filed or a decision is made to decline to prosecute.

(b) The information provided by a county attorney on the forms is confidential criminal justice information as defined in 44-5-103.

(5) The attorney general shall report to the law and justice interim committee each year by August 15 and as provided in 5-11-210. The reports must provide:

(a) aggregated information regarding the status of the cases reported in subsection (3) by the county attorneys, except for those cases pending review of the county attorney or uncharged cases still under investigation, including data on the total number of cases reported;

(b) the number of cases declined for prosecution;

(c) the number of cases charged;

(d) any action in the past fiscal year that the attorney general took under the authority of 2-15-501 based on the reports submitted as required in subsection (3). A report made pursuant to this subsection (5)(d) may not include the name of the county.

(e) after consideration of the information provided by the department pursuant to 41-3-211, any county attorney who failed to provide a complete report required by subsection (3)."

Section 36. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

(5) "Conditional release" means the release of a youth from a correctional facility subject to the terms and conditions of the conditional release agreement provided for in 52-5-126.

(6) (a) "Correctional facility" means a public secure residential facility or a private secure residential facility under contract with the department and operated to provide for the custody, treatment, training, and rehabilitation of:

(i) formally adjudicated delinquent youth;

- (ii) convicted adult offenders or criminally convicted youth; or
 - (iii) a combination of the populations described in subsections (6)(a)(i) and (6)(a)(ii) under conditions set by the department in rule.
- (b) The term does not include a state prison as defined in 53-30-101.
- (7) "Cost containment pool" means an account from which funds are allocated by the office of court administrator under 41-5-132 to a judicial district that exceeds its annual allocation for juvenile out-of-home placements, programs, and services or to the department for costs incurred under 41-5-1504.
- (8) "Cost containment review panel" means the panel established in 41-5-131.
- (9) "Court", when used without further qualification, means the youth court of the district court.
- (10) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.
- (11) (a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given.
- (b) The term does not include a person who has only physical custody.
- (12) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:
- (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense;
 - (b) who has been placed on probation as a delinquent youth and who has violated any condition of probation; or
 - (c) who has violated the terms and conditions of the youth's conditional release agreement.
- (13) "Department" means the department of corrections provided for in 2-15-2301.
- (14) (a) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1513(1)(b).
- (b) The term does not include information provided by the department to the department of public health and human services' management information system or information maintained by the youth court through the office of court administrator.
- (15) "Detention" means the holding or temporary placement of a youth in the youth's home under

home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of the terms and conditions of the youth's conditional release agreement.

(16) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(17) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(18) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(19) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1524.

(20) (a) "Formal youth court records" means information or data, either in written or electronic form, on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(21) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(22) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(23) "Habitual truancy" means recorded unexcused absences of 9 or more days or 54 or more parts

of a day, whichever is less, in 1 school year.

(24) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

(b) The term does not include a jail.

(25) (a) "Informal youth court records" means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(26) (a) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(b) The term does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(27) "Judge", when used without further qualification, means the judge of the youth court.

(28) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(29) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(30) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

- (i) have physical custody of the youth;
- (ii) determine with whom the youth shall live and for what period;
- (iii) protect, train, and discipline the youth; and
- (iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(31) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(32) (a) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention.

(b) The term does not include shelter care or emergency placement of less than 45 days.

(33) (a) "Parent" means the natural or adoptive parent.

(b) The term does not include:

(i) a person whose parental rights have been judicially terminated; or

(ii) the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(34) "Probable cause hearing" means the hearing provided for in 41-5-332.

(35) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(36) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(37) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(38) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of the terms and conditions of the youth's conditional release agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(39) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against

property, or an offense involving dangerous drugs.

(40) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(41) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(42) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(43) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(44) "Victim" means:

(a) a natural person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(45) "Youth" means an individual who is less than 18 years of age without regard to sex, as defined in ~~4-1-201~~ section 1, or emancipation.

(46) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

(47) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(48) "Youth care facility" has the meaning provided in 52-2-602.

(49) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth alleged to have violated the terms and conditions of the youth's conditional release agreement and includes the youth court

judge, juvenile probation officers, and assessment officers.

(50) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

- (a) (i) operated, administered, and staffed separately and independently of a jail; or
- (ii) a collocated secure detention facility that complies with 28 CFR, part 31; and
- (b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of the terms and conditions of the youth's conditional release agreement, or violation of a valid court order.

(51) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

- (a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:
 - (i) violates any Montana municipal or state law regarding alcoholic beverages; or
 - (ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or
- (b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 37. Section 42-2-204, MCA, is amended to read:

"42-2-204. Presumed knowledge of pregnancy -- duty to register to be afforded notice -- putative and presumed fathers. (1) A person who engages in sexual relations with a member of the opposite sex, as defined in ~~4-4-204~~ [section 1], is presumed to know that a pregnancy could result.

(2) In addition to any other notice to which the putative father is entitled, a putative father is entitled to notice of termination of parental rights proceedings for the purposes of adoption if the putative father has complied with the requirements of the putative father registry.

(3) An individual who is not married to the mother but who is presumed to be a father under 40-6-105 and registers in accordance with this part is entitled to receive notice of a termination of parental rights

proceeding."

Section 38. Section 44-2-411, MCA, is amended to read:

"44-2-411. (Temporary) Missing indigenous persons task force -- membership -- duties -- reporting. (1) There is a missing indigenous persons task force. The task force is allocated to the department of justice for staffing services and administrative purposes only.

(2) Task force members, including the presiding officer, must be appointed by the attorney general or a designee of the attorney general. The task force membership must include but is not limited to:

- (a) an employee of the department of justice who has expertise in the subject of missing persons;
- (b) a representative from each federally recognized Indian tribe in Montana;
- (c) a member from the Montana highway patrol;
- (d) a representative from the attorney general's office; and
- (e) a representative from the office of public instruction.

(3) While respecting the government-to-government relationship between the state and each tribe, the primary duties of the task force are to:

- (a) identify jurisdictional barriers between federal, state, local, and tribal law enforcement and community agencies;
 - (b) work to identify causes that contribute to missing and murdered indigenous persons and make recommendations to federally recognized tribes in the state to reduce cases of missing and murdered indigenous persons;
 - (c) work to identify strategies to improve interagency communication, cooperation, and collaboration to remove jurisdictional barriers and increase reporting and investigation of missing indigenous persons; and
 - (d) administer the looping in native communities network grant program provided for in 44-2-412.
- (4) A vacancy on the task force must be filled in the manner of the original appointment.
- (5) By July 1 prior to each regular legislative session, the task force shall, in accordance with 5-11-210, prepare a written report of findings and recommendations for submission to the state-tribal relations committee provided for in 5-5-229. The report must include the following information:

- (a) the number of unique individuals reported to the missing and murdered indigenous persons database;
 - (b) the number of unique individuals recovered as a result of the missing and murdered indigenous persons database;
 - (c) the number of unique individuals recovered as a result of the looping in native communities network grant program;
 - (d) the number of unique individuals searched for and recovered as a result of missing persons response teams;
 - (e) the number of missing persons entries into the missing and murdered indigenous persons database by year;
 - (f) an analysis by year of the characteristics of missing indigenous persons, including but not limited to age, gender, as provided in [section 1], child protective services involvement status, foster case status, duration of time missing, and estimated related cause;
 - (g) the number of actively missing indigenous persons by year;
 - (h) a description and the results of any noncompetitive grant awardee activities;
 - (i) a description of the activities and progress related to improving interagency communication, cooperation, and collaboration and removing interjurisdictional barriers; and
 - (j) any other information the task force members find relevant to the task force's mission.
- (6) In addition to the recommendations to federally recognized tribes in the state required under subsection (3)(b), the task force may make recommendations to federal, state, and local agencies in carrying out the task force's duties. (Terminates June 30, 2033--sec. 2, Ch. 624, L. 2023, sec. 3, Ch. 624, L. 2023, sec. 4, Ch. 624, L. 2023.)"

Section 39. Section 44-2-412, MCA, is amended to read:

"44-2-412. (Temporary) Looping in native communities network grant program. (1) There is a looping in native communities network grant program. The program is established to create a network in support of efforts by Montana tribes to identify, report, and find Native American persons who are missing. The grant program is administered by the missing indigenous persons task force established in 44-2-411.

(2) The grant program includes a competitive grant to be awarded to a tribal entity to create and administer a central administration point for the looping in native communities network. The missing indigenous persons task force shall develop the application and the criteria to award the grant to a tribal entity. The criteria must include:

(a) policies and standards for technology and equipment, including data storage and security of information entered into the network;

(b) standards for data verification;

(c) job qualifications and requirements for a data specialist to administer the network;

(d) development of a system to provide automatic initial alerts to law enforcement agencies and tribal and community organizations when a missing indigenous person report is made, including determining which law enforcement agencies will receive the automatic initial alert;

(e) development of a standard reporting form that includes space to provide the information specified in subsection (4) to be used by the data specialist; and

(f) administrative rights for a designee at each participating tribal agency.

(3) The grant program may include additional smaller, noncompetitive grants to be awarded to a qualifying tribal agency at each reservation that submits a complete application. The purpose of the grants awarded under this subsection is to provide matching funds for some or all of the costs required for the tribal agency to set up and maintain access to the looping in native communities network.

(4) The standard reporting form required under subsection (2)(e) must allow a data specialist to enter information about the missing indigenous person, including but not limited to the missing person's:

(a) name and any aliases or nicknames;

(b) gender, as provided in [section 1], age, height, weight, and other physical descriptive characteristics;

(c) last known location and related information, including the date of last contact with the missing indigenous person and the person with whom the missing indigenous person last made contact; and

(d) photographs, including photographs obtained from an online or social media profile.

(Terminates June 30, 2033--sec. 2, Ch. 624, L. 2023, sec. 3, Ch. 624, L. 2023.)"

Section 40. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication or in person, persuades, entices, counsels, coerces, encourages, directs, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated, or to view sexually explicit material or acts for the purpose of inducing or persuading a child to participate in any sexual activity that is illegal;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections;

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct, actual or simulated; or

(i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or a person the offender believes to be a child under 16 years of age to travel within, from, or to this state with the intention of engaging in sexual conduct, actual or simulated.

(2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of

sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222(1) through (5), and during the first 25 years of imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) As used in this section, the following definitions apply:

(a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or

photo-optical system.

(b) "Sexual conduct" means:

(i) actual or simulated:

(A) sexual intercourse, whether between persons of the same or opposite sex, as defined in 4-4-204 [section 1];

(B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(C) bestiality;

(D) masturbation;

(E) sadomasochistic abuse;

(F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or

(G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

(ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

(c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(d) "Visual medium" means:

(i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method."

Section 41. Section 46-18-101, MCA, is amended to read:

"46-18-101. Correctional and sentencing policy. (1) It is the purpose of this section to establish the correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to

implement the policy established by this section.

(2) The correctional and sentencing policy of the state of Montana is to:

(a) punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable;

(b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders;

(c) provide restitution, reparation, and restoration to the victim of the offense; and

(d) encourage and provide opportunities for the offender's self-improvement to provide rehabilitation and reintegration of offenders back into the community.

(3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following principles:

(a) Sentencing and punishment must be certain, timely, consistent, and understandable.

(b) Sentences should be commensurate with the punishment imposed on other persons committing the same offenses.

(c) Sentencing practices must be neutral with respect to the offender's race, gender, as provided in [section 1], religion, national origin, or social or economic status.

(d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating circumstances.

(e) Sentencing practices must include punishing violent and serious repeat felony offenders with incarceration.

(f) Sentencing practices must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records.

(g) Sentencing and correctional practices must emphasize that the offender is responsible for obeying the law and must hold the offender accountable for the offender's actions.

(h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, costs of assigned counsel, as provided in 46-8-113, and, if the offender is a sex offender, costs of any chemical treatment.

(i) Sentencing practices should promote and support practices, policies, and programs that focus on restorative justice principles."

Section 42. Section 46-19-301, MCA, is amended to read:

"46-19-301. Western Interstate Corrections Compact -- contents. The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

ARTICLE I

PURPOSE AND POLICY

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on the basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

- (1) "state" means a state of the United States or, subject to the limitation contained in Article VII, Guam;
- (2) "sending state" means a state party to this compact in which conviction was had;
- (3) "receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had;
- (4) "inmate" means a male or female, as defined in 4-4-204 [section 1], offender who is under sentence to or confined in a prison or other correctional institution;
- (5) "institution" means any prison, reformatory, or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

ARTICLE III

CONTRACTS

(1) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states.

Any such contract shall provide for:

(a) its duration;

(b) payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;

(c) participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(d) delivery and retaking of inmates;

(e) such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(2) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percent of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity or provision of equipment or structures and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(3) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV

PROCEDURES AND RIGHTS

(1) Whenever the duly constituted judicial or administrative authorities in a state party to this

compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in or transfer of an inmate to an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(2) The appropriate officials of any state party to this compact shall have access at all reasonable times to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(3) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(4) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state in order that each inmate may have the benefit of the inmate's record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(5) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(6) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such

hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subsection shall be borne by the sending state.

(7) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(8) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits, incur or be relieved of any obligations, or have such obligations modified or the inmate's status changed on account of any action or proceeding in which the inmate could have participated if confined in any appropriate institution of the sending state located within such state.

(9) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in the person's exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V

ACTS NOT REVIEWABLE IN RECEIVING STATE -- EXTRADITION

(1) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate who escapes from an institution in which the inmate is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI
FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto, and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that, if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII
ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon, and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon, and Washington.

ARTICLE VIII
WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 2 years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX

OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates or to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 43. Section 46-19-401, MCA, is amended to read:

"46-19-401. Compact adopted -- text. The Interstate Corrections Compact is entered into by this state with any and all other states legally joining therein in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

ARTICLE I

PURPOSE AND POLICY

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context requires otherwise:

- (a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.
- (b) "Sending state" means a state party to this compact in which conviction or court commitment was had.
- (c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.
- (d) "Inmate" means a male or female, as defined in 4-1-204 [section 1], offender who is committed under sentence to or confined in a penal or correctional institution.
- (e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates may lawfully be confined.

ARTICLE III

CONTRACTS

- (a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.
2. Payments to be made to the receiving state by the sending state for inmate maintenance,

extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV

PROCEDURES AND RIGHTS

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state. For transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of the inmate's record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subsection, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or the inmate's status changed on account of any action or proceeding in which the inmate could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in the inmate's exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V

ACTS NOT REVIEWABLE IN RECEIVING STATE -- EXTRADITION

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which the inmate is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI

FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII

ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

ARTICLE VIII

WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX

OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 44. Section 49-1-102, MCA, is amended to read:

"49-1-102. Freedom from discrimination. (1) The right to be free from discrimination because of race, creed, religion, color, sex, as defined in 4-1-204 [section 1], physical or mental disability, age, or national origin is recognized as and declared to be a civil right. This right must include but not be limited to:

- (a) the right to obtain and hold employment without discrimination; and
- (b) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1). Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section."

Section 45. Section 49-2-101, MCA, is amended to read:

"49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter.

(3) "Commission" means the commission for human rights provided for in 2-15-1706.

(4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(5) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment. It includes without limitation the right to incur and defer debt that is secured by residential real property.

(6) "Credit transaction" means any invitation to apply for credit, application for credit, extension of

credit, or credit sale.

(7) "Creditor" means a person who, regularly or as a part of the person's business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(8) "Department" means the department of labor and industry provided for in 2-15-1701.

(9) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(10) (a) "Employee" means an individual employed by an employer.

(b) The term does not include an individual providing services for an employer if the individual has an independent contractor exemption certificate issued under 39-71-417 and is providing services under the terms of that certificate.

(11) "Employer" means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(12) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(13) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

(14) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the sleeping quarters of its occupants.

(15) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(16) "National origin" means ancestry.

(17) (a) "Organization" means a corporation, association, or any other legal or commercial entity that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

(b) The term does not include a labor organization.

(18) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.

(19) (a) "Physical or mental disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(20) (a) "Public accommodation" means a place that caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring salon or shop, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (20), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

(21) "Sex" has the meaning provided in ~~4-1-204~~ section 1."

Section 46. Section 49-3-101, MCA, is amended to read:

"49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) (a) "Physical or mental disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based upon, because of, on the basis of, on the grounds of, or with regard to physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(4) "Sex" has the meaning provided in ~~4-1-204~~ section 1.

(5) "State or local governmental agency" means:

(a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or

(b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

(6) "Qualifications" means qualifications that are genuinely related to competent performance of the particular occupational task."

Section 47. Section 50-4-720, MCA, is amended to read:

"50-4-720. Distribution of proceeds -- annual report. (1) Except as provided in subsection (5), the

proceeds of a conversion transaction that are public assets must be distributed to an existing or new foundation or other nonprofit organization to be held in a trust that meets the following requirements:

- (a) The foundation or nonprofit organization shall operate pursuant to 26 U.S.C. 501(c)(3) or 501(c)(4), and regardless of whether the foundation is classified as a private foundation under 26 U.S.C. 509, the foundation or nonprofit organization shall operate in accordance with the restrictions and limitations that apply to private foundations in 26 U.S.C. 4941 through 4945.
- (b) The foundation or nonprofit organization must have a mission statement that is as close as possible to the mission of the converting nonprofit health entity.
- (c) The foundation or nonprofit organization's assets may not be used to supplant government funds.
- (d) The foundation or nonprofit organization may not be an agent or instrumentality of the government.
- (e) The foundation or nonprofit organization and its directors, officers, and staff must be and shall remain independent of the parties to the conversion transaction and their affiliates. A person who is an officer, director, or staff member of a nonprofit health entity submitting a conversion plan at the time that the plan is submitted or at the time of the conversion transaction or within 5 years after the conversion may not be an officer, director, or staff member of the foundation. A director, officer, agent, or employee of the nonprofit health entity submitting the plan or the foundation receiving the charitable assets may not benefit directly or indirectly from the transaction. Public officials, elected or appointed, may not serve as an officer, director, or staff member of the foundation or nonprofit organization.
- (f) A foundation or nonprofit organization must have or shall establish formal mechanisms to avoid conflicts of interest and to prohibit grants benefiting:
 - (i) any party to the conversion transaction or members of the board of directors and management of a party to the conversion transaction; or
 - (ii) the foundation or nonprofit organization's board of trustees, directors, agents, or employees.
- (g) Boards of trustees or directors of the foundation or nonprofit organization shall reflect the geographic, ethnic, gender, as provided in [section 1], age, socioeconomic, and other factors that the board considers to represent the diversity of the nonprofit health entity applicant's service area. In addition, trustees or

directors must have the following qualifications and qualities:

- (i) interest in and concern for the foundation or nonprofit organization and its mission;
 - (ii) objectivity and impartiality;
 - (iii) willingness and ability to commit time and thought to the foundation or nonprofit organization's affairs; and
 - (iv) commitment to the foundation or nonprofit organization as a whole and not to a special interest.
- (h) Boards of trustees or directors must include persons with special knowledge, expertise, and skills in investments and asset management, finance, and nonprofit administration.
- (2) A foundation or nonprofit organization that receives a distribution of public assets shall submit an annual report to the commissioner and to the attorney general regarding the award of grants and other charitable activities of the entity related to its use of the public assets received.
- (3) The annual report submitted under subsection (2) must be made available to the public at the principal office of the foundation or nonprofit organization.
- (4) The attorney general shall retain oversight and monitoring authority over the foundation or nonprofit organization that receives the proceeds of a proposed conversion transaction.
- (5) Notwithstanding any other provision of this section, the proceeds of a conversion transaction that are public assets of a nonprofit mutual benefit corporation in which all of the members are nonprofit public benefit corporations may be distributed to the member nonprofit public benefit corporations if the articles of incorporation of the nonprofit mutual benefit corporation provide for that distribution."

Section 48. Section 50-5-105, MCA, is amended to read:

"50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, as defined in ~~4-1-204~~ [section 1], age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired

immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6."

Section 49. Section 50-5-602, MCA, is amended to read:

"50-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Family practice" means comprehensive medical care with particular emphasis on the family unit, in which the physician's continuing responsibility for health care is not limited by the patient's age or sex, as defined in 4-4-204 [section 1], or by a particular organ system or disease entity.

(3) "Residency training" means a community-based family practice program to train family practice resident physicians, sponsored by one or more community hospitals and physicians in Montana, for inpatient and outpatient training.

(4) "Resident physician" means any physician in advanced medical specialty training."

Section 50. Section 50-11-101, MCA, is amended to read:

"50-11-101. Definitions. As used in this part, the following definitions apply:

(1) "Embryo" means an organism of the species *Homo sapiens* from the single cell stage to 8 weeks of development.

(2) "Female" has the meaning provided in ~~4-1-201~~ [section 1].

(3) "Fetus" means an organism of the species *Homo sapiens* from 8 weeks of development until complete expulsion or extraction from a woman's body or removal from an artificial womb or other similar environment designed to nurture the development of the organism.

(4) "Oocyte" means the human female germ cell, the egg.

(5) "Reproductive human cloning" means human cloning intended to result in the gestation or birth of a child who is genetically identical to another conceptus, embryo, fetus, or human being, living or dead.

(6) "Somatic cell" means a diploid cell, having a complete set of chromosomes, obtained or derived from a living or deceased human body at any stage of development."

Section 51. Section 50-15-101, MCA, is amended to read:

"50-15-101. Definitions. Unless the context requires otherwise, in parts 1 through 4 the following definitions apply:

(1) "Advanced practice registered nurse" means an individual who has been certified as an advanced practice registered nurse as provided in 37-8-202.

(2) "Authorized representative" means a person:

(a) designated by an individual, in a notarized written document, to have access to the individual's vital records;

(b) who has a general power of attorney for an individual; or

(c) appointed by a court to manage the personal or financial affairs of an individual.

(3) "Dead body" means a human body or parts of a human body from which it reasonably may be concluded that death occurred.

(4) "Department" means the department of public health and human services provided for in 2-15-2201.

(5) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(6) "Father" has the meaning provided in [section 1].

(7) "Fetal death" means death of the fetus prior to the complete expulsion or extraction from its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the

fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

~~(7)~~(8) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

~~(8)~~(9) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

~~(9)~~(10) "Live birth" means the complete expulsion or extraction from the mother as a product of conception, notwithstanding the duration of pregnancy. The birth is indicated by the fact that after expulsion or extraction, the child breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

~~(10)~~(11) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(12) "Mother" has the meaning provided in [section 1].

~~(11)~~(13) "Nonviable birth" means an unintentional, spontaneous fetal demise occurring after a heartbeat is detected but prior to the 20th week of gestation of a pregnancy that has been verified by a health care provider.

~~(12)~~(14) "Person in charge of disposition of a dead body" means a person who places or causes a dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a funeral director, an employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus.

~~(13)~~(15) "Physician" means a person legally authorized to practice medicine in this state.

~~(14)~~(16) "Registration" means the process by which vital records are completed, filed, and incorporated into the official records of the department.

~~(15)~~(17) "Research" means a systematic investigation designed primarily to develop or contribute to generalizable knowledge.

~~(16)~~(18)"Sex" has the meaning provided in ~~4-1-204~~ [section 1].

~~(17)~~(19)(a) "Stillbirth" means a fetal death occurring after a minimum of 20 weeks of gestation.

(b) The term does not include an abortion, as defined in 50-20-104.

~~(18)~~(20)"System of vital statistics" means the registration, collection, preservation, amendment, and certification of vital records. The term includes the collection of reports required by this chapter and related activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

~~(19)~~(21)"Vital records" means certificates or reports of birth, death, fetal death, marriage, and dissolution of marriage and related reports.

~~(20)~~(22)"Vital statistics" means the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports."

Section 52. Section 50-19-103, MCA, is amended to read:

"50-19-103. Prenatal blood sample required for serological test. (1) Every female, as defined in ~~4-1-204~~ [section 1], regardless of age or marital status, seeking prenatal care from a health care provider is required to submit a blood specimen for the purpose of a standard serological test. In submitting the specimen to the laboratory, the health care provider shall designate it as a prenatal test.

(2) A health care provider who attends a pregnant woman shall at the first professional visit take the blood sample and submit it to a laboratory.

(3) A person permitted to attend a pregnant woman, but not permitted to take blood samples, must have the sample taken by a person permitted to take blood samples and submit it to a laboratory.

(4) A health care provider who violates this part is guilty of a misdemeanor. However, a health care provider who requests a sample of blood in accordance with this provision and whose request is refused is not guilty of a violation of this section."

Section 53. Section 50-19-501, MCA, is amended to read:

"50-19-501. Nursing mother and infant protection. (1) The Montana legislature finds that breastfeeding a baby is an important and basic act of nurturing that must be protected in the interests of maternal and child health and family values. A mother, as defined in [section 1], has a right to breastfeed the

mother's child in any location, public or private, where the mother and child are otherwise authorized to be present, irrespective of whether or not the mother's breast is covered during or incidental to the breastfeeding.

- (2) A unit of local government may not prohibit breastfeeding in public by local ordinance.
- (3) The act of breastfeeding may not be considered:
 - (a) a nuisance as provided in Title 27, chapter 30;
 - (b) indecent exposure as provided for in 45-5-504;
 - (c) sexual conduct as defined in 45-5-625; or
 - (d) obscenity as provided for in 45-8-201."

Section 54. Section 50-60-214, MCA, is amended to read:

"50-60-214. Alteration of primary function area. (1) An alteration that affects or could affect the use of or access to a primary function area in a public building must be made to ensure, to the extent possible, that the path of travel to the altered primary function area and the restrooms, telephones, and drinking fountains serving the altered primary function area are readily accessible and usable by persons with disabilities.

(2) (a) A person or entity is not required to make alterations to provide an accessible path of travel to an altered primary function area if in terms of cost and scope the alterations to the path of travel are disproportionate to the cost of the alterations to the primary function area. Alterations to a path of travel to an altered primary function area must be considered disproportionate if the cost exceeds 20% of the cost of the alterations to the primary function area. This subsection does not prohibit an expenditure to alter a path of travel that exceeds 20% of the cost of the alterations to a primary function area.

(b) If the cost of altering a path of travel to an altered primary function area is disproportionate as provided in subsection (2)(a), the path of travel must be made accessible to the extent possible without incurring disproportionate costs. The alterations to the path of travel must be made by providing, in the following order or priority:

- (i) an accessible entrance and accessible exterior route to the accessible entrance from accessible parking and passenger loading zones or from a public sidewalk if the public sidewalk is immediately adjacent to the public building site;
- (ii) an accessible path of travel to the altered primary function area;

- (iii) accessible restrooms for each sex, as defined in ~~4-1-204~~ section 1, or a single unisex restroom when allowed by the applicable building code; and
 - (iv) accessible elements, including but not limited to storage spaces and alarms.
- (3) A person or entity subject to the provisions of this section is also subject to the provisions of 50-60-213(5)(a) and (5)(b)."

Section 55. Section 53-20-142, MCA, is amended to read:

"53-20-142. Rights while in residential facility. Persons admitted to a residential facility for a period of habilitation have the following rights:

- (1) Residents have a right to dignity, privacy, and humane care.
- (2) Residents are entitled to send and receive sealed mail. Moreover, it is the duty of the facility to foster the exercise of this right by furnishing the necessary materials and assistance.
- (3) Residents must have the same rights and access to private telephone communication as patients at any public hospital except to the extent that the individual treatment planning team or the qualified intellectual disability professional responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for the restrictions. The written order must be renewed monthly if any restrictions are to be continued.
- (4) Residents have an unrestricted right to visitation except to the extent that the individual treatment planning team or the qualified intellectual disability professional responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for the restrictions. The written order must be renewed monthly if restrictions are to be continued.
- (5) Residents have a right to receive suitable educational and habilitation services regardless of chronological age, degree of intellectual disability, or accompanying disabilities.
- (6) Each resident must have an adequate allowance of neat, clean, suitably fitting, and seasonable clothing. Except when a particular kind of clothing is required because of a particular condition, residents must have the opportunity to select from various types of neat, clean, and seasonable clothing. The clothing must be considered the resident's throughout the resident's stay in the facility. Clothing, both in amount and type, must make it possible for residents to go out of doors in inclement weather, to go for trips or visits appropriately

dressed, and to make a normal appearance in the community. The facility shall make provision for the adequate and regular laundering of the residents' clothing.

(7) Each resident has the right to keep and use the resident's own personal possessions except insofar as the clothes or personal possessions may be determined by the individual treatment planning team or the qualified intellectual disability professional to be dangerous either to the resident or to others.

(8) Each resident has a right to a humane physical environment within the residential facility. The facility must be designed to make a positive contribution to the efficient attainment of the habilitation goals of the resident. To accomplish this purpose:

(a) regular housekeeping and maintenance procedures that will ensure that the facility is maintained in a safe, clean, and attractive condition must be developed and implemented;

(b) pursuant to an established routine maintenance and repair program, the physical plant must be kept in a continuous state of good repair and operation so as to ensure the health, comfort, safety, and well-being of the residents and so as not to impede in any manner the habilitation programs of the residents;

(c) the physical facilities must meet all fire and safety standards established by the state and locality. In addition, the facility must meet the provisions of the life safety code of the national fire protection association that are applicable to it.

(d) there must be special facilities for nonambulatory residents to ensure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision must be made to permit nonambulatory residents to communicate their needs to staff.

(9) Residents have a right to receive prompt and adequate medical treatment for any physical or mental ailments or injuries or physical disabilities and for the prevention of any illness or disability. The medical treatment must meet standards of medical practice in the community. However, nothing in this subsection may be interpreted to impair other rights of a resident in regard to involuntary commitment for mental illness, use of psychotropic medication, use of hazardous, aversive, or experimental procedures, or the refusal of treatment.

(10) Corporal punishment is not permitted.

(11) The opportunity for religious worship must be accorded to each resident who desires worship. Provisions for religious worship must be made available to all residents on a nondiscriminatory basis. An individual may not be compelled to engage in any religious activities.

(12) Residents have a right to a nourishing, well-balanced diet. The diet for residents must provide at a minimum the recommended daily dietary allowance as developed by the national academy of sciences. Provisions must be made for special therapeutic diets and for substitutes at the request of the resident, the resident's parents, guardian, or next of kin, or the responsible person appointed by the court in accordance with the religious requirements of any resident's faith. Denial of a nutritionally adequate diet may not be used as punishment.

(13) Residents have a right to regular physical exercise several times a week. It is the duty of the facility to provide both indoor and outdoor facilities and equipment for exercise. Residents have a right to be outdoors daily in the absence of contrary medical considerations.

(14) Residents have a right, under appropriate supervision, to suitable opportunities for the interaction with members of the opposite sex, as defined in 4-1-204 [section 1], except when the individual treatment planning team or the qualified intellectual disability professional responsible for the formulation of a particular resident's habilitation plan writes an order to the contrary and explains the reasons for the order. The order must be renewed monthly if the restriction is to be continued."

Section 56. Section 53-21-121, MCA, is amended to read:

"53-21-121. Petition for commitment -- contents of -- notice of. (1) The county attorney, upon the written request of any person having direct knowledge of the facts, may file a petition with the court alleging that there is a person within the county who is suffering from a mental disorder and who requires commitment pursuant to this chapter.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and the person's interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, as defined in 4-1-204 [section 1], marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental disorder, including a report by a mental health professional if any, a statement of the disposition sought pursuant to 53-21-127, and the need for commitment;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the respondent for whom evaluation is sought;

(e) the name and address of the respondent's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the respondent for whom evaluation is sought; if there is no attorney, there must be a statement as to whether to the best knowledge of the person requesting the petition the respondent for whom evaluation is sought is indigent and unable to afford the services of an attorney;

(h) a statement of the rights of the respondent, which must be in conspicuous print and identified by a suitable heading; and

(i) the name and address of the mental health facility to which it is proposed that the respondent may be committed, if known.

(3) Notice of the petition must be hand-delivered to the respondent and to the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace. The respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent must be hand-delivered, mailed, or sent by a facsimile transmission to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent, the director of the department or the director's designee, and the mental health facility to which the respondent may be committed, if known. The notice may provide, other than as to the respondent and the respondent's counsel, that no further notice will be given unless written request is filed with the clerk of court."

Section 57. Section 53-21-142, MCA, is amended to read:

"53-21-142. Rights of persons admitted to facility. Patients admitted to a mental health facility,

whether voluntarily or involuntarily, have the following rights:

(1) Patients have a right to privacy and dignity.

(2) Patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment. Patients must be accorded the right to appropriate treatment and related services in a setting and under conditions that:

(a) are the most supportive of the patient's personal liberty; and

(b) restrict the patient's liberty only to the extent necessary and consistent with the patient's treatment need, applicable requirements of law, and judicial orders.

(3) Patients have rights to visitation and reasonable access to telephone communications, including the right to converse with others privately, except to the extent that the professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued. Patients have an unrestricted right to visitation with attorneys, with spiritual counselors, and with private physicians and other professional persons.

(4) Patients have an unrestricted right to send sealed mail. Patients have an unrestricted right to receive sealed mail from their attorneys, private physicians and other professional persons, the mental disabilities board of visitors, courts, and government officials. Patients have a right to receive sealed mail from others except to the extent that a professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions on receipt of sealed mail. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued.

(5) Patients have an unrestricted right to have access to letter-writing materials, including postage, and have a right to have staff members of the facility assist persons who are unable to write, prepare, and mail correspondence.

(6) Patients have a right to wear their own clothes and to keep and use their own personal possessions, including toilet articles, except to the extent that clothes or personal possessions may be determined by a professional person in charge of the patient's treatment plan to be dangerous or otherwise inappropriate to the treatment regimen. The facility has an obligation to supply an adequate allowance of clothing to any patients who do not have suitable clothing of their own. Patients must have the opportunity to

select from various types of neat, clean, and seasonable clothing. The clothing must be considered the patient's throughout the patient's stay at the facility. The facility shall make provision for the laundering of patient clothing.

(7) Patients have the right to keep and be allowed to spend a reasonable sum of their own money.

(8) Patients have the right to religious worship. Provisions for worship must be made available to all patients on a nondiscriminatory basis. An individual may not be required to engage in any religious activities.

(9) Patients have a right to regular physical exercise several times a week. The facility shall provide facilities and equipment for physical exercise. Patients have a right to be outdoors at regular and frequent intervals in the absence of contrary medical considerations.

(10) Patients have the right to be provided, with adequate supervision, suitable opportunities for interaction with members of the opposite sex, as defined in 4-1-204 [section 1], except to the extent that a professional person in charge of the patient's treatment plan writes an order stating that the interaction is inappropriate to the treatment regimen.

(11) Patients have a right to receive prompt and adequate medical treatment for any physical ailments. In providing medical care, the mental health facility shall take advantage of whatever community-based facilities are appropriate and available and shall coordinate the patient's treatment for mental illness with the patient's medical treatment.

(12) Patients have a right to a diet that will provide at a minimum the recommended daily dietary allowances as developed by the national academy of sciences. Provisions must be made for special therapeutic diets and for substitutes at the request of the patient or the friend of respondent in accordance with the religious requirements of any patient's faith. Denial of a nutritionally adequate diet may not be used as punishment.

(13) Patients have a right to a humane psychological and physical environment within the mental health facilities. These facilities must be designed to afford patients with comfort and safety, promote dignity, and ensure privacy. The facilities must be designed to make a positive contribution to the efficient attainment of the treatment goals set for the patient. In order to ensure the accomplishment of this goal:

(a) regular housekeeping and maintenance procedures that will ensure that the facility is maintained in a safe, clean, and attractive condition must be developed and implemented;

(b) there must be special provision made for geriatric and other nonambulatory patients to ensure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision must be made to permit nonambulatory patients to communicate their needs to the facility staff.

(c) pursuant to an established routine maintenance and repair program, the physical plant of each facility must be kept in a continuous state of good repair and operation in accordance with the needs of the health, comfort, safety, and well-being of the patients;

(d) each facility must meet all fire and safety standards established by the state and locality. In addition, any hospital must meet the provisions of the life safety code of the national fire protection association that are applicable to hospitals. A hospital must meet all standards established by the state for general hospitals to the extent that they are relevant to psychiatric facilities.

(14) A patient at a facility has the right:

(a) to be informed of the rights described in this section at the time of admission and periodically after admission in language and terms appropriate to the patient's condition and ability to understand;

(b) to assert grievances with respect to infringement of the rights described in this section, including the right to have a grievance considered in a fair and timely manner according to an impartial grievance procedure that must be provided for by the facility; and

(c) to exercise the rights described in this section without reprisal and may not be denied admission to the facility as reprisal for the exercise of the rights described in this section.

(15) In order to assist a person admitted to a program or facility in the exercise or protection of the patient's rights, the patient's attorney, advocate, or legal representatives must be given reasonable access to:

(a) the patient;

(b) the program or facility areas where the patient has received treatment or has resided or the areas to which the patient has had access; and

(c) pursuant to the written authorization of the patient, records and information pertaining to the patient's diagnosis, treatment, and related services.

(16) A person admitted to a facility must be given access to any available individual or service that provides advocacy for the protection of the person's rights and that assists the person in understanding, exercising, and protecting the person's rights as described in this section.

- (17) This section may not:
- (a) obligate a professional person to administer treatment contrary to the professional's clinical judgment;
 - (b) prevent a facility from discharging a patient for whom appropriate treatment, consistent with the clinical judgment of a professional person responsible for the patient's treatment, is or has become impossible to administer because of the patient's refusal to consent to the treatment;
 - (c) require a facility to admit a person who has, on prior occasions, repeatedly withheld consent to appropriate treatment; or
 - (d) obligate a facility to treat a person admitted to the facility solely for diagnostic evaluation."

Section 58. Section 53-24-310, MCA, is amended to read:

"53-24-310. Definitions. As used in 53-24-310 through 53-24-314, unless the context clearly indicates otherwise, the following definitions apply:

- (1) "Alcohol and drug prevention or treatment facility" means a recovery residence, hospital, health or counseling center, or other entity providing alcohol and drug services.
- (2) "Alcohol and drug services" includes evaluation, treatment, residential personal care, habilitation, rehabilitation, counseling, or supervision of persons with substance use disorders or services to persons designed to prevent substance use disorders that either receive funds from the department of public health and human services or assess fees for services provided.
- (3) "Certified recovery residence" means a recovery residence, as defined in subsection (9), that has received certification or another form of approval from a certifying organization, as defined in subsection (4).
- (4) "Certifying organization" means a recovery residence standards organization or an affiliate of a recovery residence standards organization that operates in the state of Montana and is recognized by the department of public health and human services.
- (5) "Informed consent" means voluntary consent by an individual to a placement in a certified recovery residence only after full disclosure by a judge, justice of the peace, or magistrate of the following information:

(a) any limitations or prohibitions against narcotic medication associated with the certified recovery residence; and

(b) whether United States food and drug administration-approved medication-assisted treatment of substance use disorders, including the use of buprenorphine and suboxone, is limited or prohibited.

(6) "Levels of care" means the continuum of support ranging from nonclinical recovery residences to licensed clinical treatment.

(7) "Minor" means an individual under 18 years of age without regard to sex, as defined in [section 1].

(8) "Qualified health care provider" means a person licensed as a physician, psychologist, social worker, clinical professional counselor, marriage and family therapist, addiction counselor, or another appropriate licensed health care practitioner.

(9) "Recovery residence" means a sober living home with a safe, family-like environment that promotes recovery from substance use disorders through services including but not limited to peer support, mutual support groups, and recovery services.

(10) "Sober" means free of alcohol and drugs, except for prescription medications taken as directed by a licensed prescriber, including medications approved by the United States food and drug administration for the treatment of opioid use disorder.

(11) (a) "Substance use disorder" means the use of any chemical substance, legal or illegal, that creates behavioral or health problems, or both, resulting in operational impairment.

(b) This term includes alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, safety, or welfare."

Section 59. Section 53-30-312, MCA, is amended to read:

"53-30-312. Creation of community corrections boards -- membership -- appointment -- terms -- compensation. (1) A unit of local government, the governing bodies of two or more units of local government, or a tribal government may establish a community corrections board.

(2) A community corrections board consists of three to seven members, must, when possible, be gender-balanced, as provided in [section 1], and have racial parity, and must include:

- (a) one local law enforcement officer;
 - (b) one probation and parole officer; and
 - (c) one member of the public.
- (3) Members of a community corrections board must be appointed by the chief executive officer of the unit of local government or the tribal government in the judicial district in which community corrections facilities or programs are established.
- (4) Members of a community corrections board shall serve for a term of 4 years.
- (5) Members of a community corrections board shall serve without compensation except as otherwise decided by the units of local government or a tribal government."

Section 60. Section 60-5-514, MCA, is amended to read:

"60-5-514. Business eligibility -- criteria -- restrictions. (1) To be eligible for placement of a business sign on a specific information sign panel, a business establishment shall meet standards for "GAS", "FOOD", "LODGING", and "CAMPING" services in rules adopted by the department pursuant to guidelines in the Manual on Uniform Traffic Control Devices, as amended.

(2) (a) Each business identified on a specific information sign shall provide assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, color, sex, as defined in ~~4-1-204~~ [section 1], culture, social origin or condition, or political or religious ideas.

(b) If such a business violates any of these laws, it loses eligibility for business identification on a specific information sign.

(3) No business that owns any outdoor advertising structure in violation of the provisions of Title 75, chapter 15, part 1, may be eligible for business identification on a specific information sign for 1 year after the illegal outdoor advertising structure is removed unless the owner voluntarily removes it within 45 days of receiving notification under 75-15-131."

Section 61. Section 60-5-522, MCA, is amended to read:

"60-5-522. Business eligibility -- criteria -- restrictions. (1) To be eligible for business identification on a tourist-oriented directional sign, a business establishment shall meet the following standards for a

business, service, or activity:

(a) Gas, food, lodging, and camping services must:

(i) be licensed and approved by the state and local agencies regulating the particular type of

business;

(ii) provide an acceptable level of service to the public;

(iii) be in continuous operation at least 8 hours a day, 5 days a week, including Saturday or

Sunday; and

(iv) have a telephone and restroom facilities available for public use.

(b) Recreation services must:

(i) be licensed and approved by state and local agencies as required by law;

(ii) provide to families and the public activities of interest in which people participate for purposes of physical exercise, collective amusement, or enjoyment of nature. Such activities may include hiking, golfing, skiing, boating, swimming, picnicking, fishing, and horseback riding.

(c) Tourist services must:

(i) be licensed as required by law;

(ii) be open to the public at least 8 hours a day, 5 days a week, including Saturday or Sunday, during the normal tourist season; and

(iii) provide a natural, recreational, historical, cultural, educational, or entertainment activity or a unique or unusual commercial or nonprofit activity, from which the major portion of income or visitors is derived during normal business seasons from motorists not residing in the immediate area of the activity.

(2) Priority under subsection (1)(a) must be given to businesses that are in continuous operation for 12 months a year.

(3) (a) Each business identified on a tourist-oriented directional sign shall provide assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, color, sex, as defined in 4-1-204 [section 1], culture, social origin or condition, or political or religious ideas.

(b) If a business violates any of these laws, it loses eligibility for business identification on a tourist-oriented directional sign.

(4) A business that owns any outdoor advertising structure in violation of the provisions of Title 75,

chapter 15, part 1, may not be eligible for business identification on a tourist-oriented directional sign for 1 year after the illegal outdoor advertising structure is removed unless the owner voluntarily removes it within 45 days of receiving notification under 75-15-131."

Section 62. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license or motorcycle endorsement. (1) Each application for a learner license, driver's license, commercial driver's license, or motorcycle endorsement must be made on a form furnished by the department. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, as defined in ~~4-4-204~~ [section 1], residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must provide the following additional information:

(a) the name of each jurisdiction in which the applicant has previously been licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application;

(b) a certification from the applicant that the applicant is not currently subject to a suspension, revocation, cancellation, disqualification, or withdrawal of a previously issued driver's license or any driving privileges in another jurisdiction and that the applicant does not have a driver's license from another jurisdiction;

(c) a brief description of any physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(d) a brief description of any adaptive equipment or operational restrictions that the applicant relies upon or intends to rely upon to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions; and

(e) if the applicant is a foreign national whose presence in the United States is temporarily authorized under federal law, the expiration date of the official document issued to the applicant by the bureau of citizenship and immigration services of the department of homeland security authorizing the applicant's presence in the United States.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium.

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law.

(5) An individual who is under 26 years of age but at least 15 years of age and who is required to register in compliance with the federal Military Selective Service Act, 50 App. U.S.C. 453, must be provided an opportunity to fulfill those registration requirements in conjunction with an application for a learner license, driver's license, commercial driver's license, or state identification card. If under 18 years of age but at least 15 years of age, an individual must be provided an opportunity to be registered by the selective service system upon attaining 18 years of age. Any registration information supplied on the application must be transmitted by the department to the selective service system. (Bracketed language terminates on occurrence of contingency-- sec. 1, Ch. 27, L. 1999.)"

Section 63. Section 72-1-103, MCA, is amended to read:

"72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 6, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(b) The term does not include estate taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Clerk" or "clerk of court" means the clerk of the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs

of decedents.

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this code.

(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment to distributed assets remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" has the meaning provided in 72-5-101.

(24) "Informal proceedings" means proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(26) "Issue" of a person means a descendant.

(27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(28) "Lease" includes an oil, gas, coal, or other mineral lease.

(29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Minor" means a person who is under 18 years of age.

(31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(44) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

(45) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(46) "Sign" means, with present intent to authenticate or adopt a record other than a will:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(47) "Special administrator" means a personal representative as described by chapter 3, part 7.

(48) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(49) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(50) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

(51) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(52) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

(53) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(54) "Testator" includes an individual of either sex, as defined in ~~4-1-204~~ section 1.

(55) "Trust" includes an express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(56) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(57) "Verification" has the meaning provided in 25-4-203 and may be proved by an unsworn written verification in accordance with 1-6-105.

(58) "Ward" means an individual described in 72-5-101.

(59) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual

or class to succeed to property of the decedent passing by intestate succession."

Section 64. Section 72-17-106, MCA, is amended to read:

"72-17-106. Statewide organ and tissue donation registry. (1) The department of justice shall electronically transfer to the federally designated organ procurement organization all information that appears on the front of a driver's license, including the name, gender, as provided in [section 1], date of birth, and most recent address of any person who obtains a driver's license and who volunteers to donate organs or tissue upon death, as provided in 61-5-301. The department of justice may charge actual costs for the first transfer of information, as provided in subsection (5). However, all subsequent electronic transfers of donor information must be at no charge to the federally designated organ procurement organization.

(2) Information obtained by the federally designated organ procurement organization must be used for the purpose of establishing a statewide organ and tissue donation registry accessible to in-state, recognized cadaveric organ and cadaveric tissue agencies for the recovery or placement of organs and tissue and to procurement agencies in another state when a Montana resident is a donor of an anatomical gift and is not located in the state at the time of death or immediately before the death of the donor.

(3) An organ or tissue donation organization may not obtain information from the organ and tissue donation registry for the purpose of fundraising. Organ and tissue donation registry information may not be further disseminated unless authorized in this section or by federal law. Dissemination of organ and tissue donation registry information may be made by the organ procurement organization to a recognized, in-state procurement agency for other tissue recovery or to an out-of-state, federally designated organ procurement organization.

(4) The federally designated organ procurement organization may acquire donor information from sources other than the department of justice.

(5) All reasonable costs associated with the creation and maintenance of the organ and tissue donation registry, as determined by the department of justice, must be paid by the organ and tissue procurement organizations. Any money collected by the department of justice must be deposited in an account in the state special revenue fund established by the department of justice for the purpose of the payment of reasonable costs associated with the development and maintenance of the organ and tissue donation registry

and necessary for the initial installation and setup for electronic transfer of the donor information.

(6) An individual does not need to participate in the organ and tissue donation registry to be a donor of organs or tissue. The registry is intended to facilitate organ and tissue donation and not inhibit persons from being donors upon death."

Section 65. Section 90-14-104, MCA, is amended to read:

"90-14-104. Commission on community service. (1) The governor shall appoint a commission on community service composed of up to 15 members.

(2) Members must include a representative from a tribal government and from at least four state agencies in the following functional areas:

- (a) natural resources;
- (b) human services;
- (c) labor;
- (d) K-12 education;
- (e) higher education; and
- (f) military affairs.

(3) Members may include representatives from local government, not-for-profit agencies, federal agencies, business, labor unions, volunteer groups, and private citizens.

(4) To the extent possible, membership of the commission must be balanced according to race, ethnicity, age, gender, as provided in [section 1], and disabilities.

(5) The commission shall assist in the development and coordination of state community service programs, integration of services, dissemination of information, recruitment of volunteers, recruitment and training of volunteer crewleaders, development of materials, and evaluation of and accountability for the services provided.

(6) Commission members are entitled to payment and reimbursement as provided in 2-15-122(5)."

Section 66. Repealer. The following section of the Montana Code Annotated is repealed:

1-1-201. Terms of wide applicability.

Section 67. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 2, and the provisions of Title 1, chapter 1, part 2, apply to [section 1].

Section 68. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 69. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 437, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2025.

Speaker of the House

Signed this _____ day
of _____, 2025.

SENATE BILL NO. 437

INTRODUCED BY C. GLIMM

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE DEFINITION FOR THE WORDS SEX, FEMALE, MALE, MAN, WOMAN, FATHER, AND MOTHER WHEN REFERRING TO A HUMAN; PROVIDING THAT THE DEFINITION OF SEX REFERS TO BIOLOGICAL SEX AND NOT GENDER IDENTITY OR SEXUAL INTERCOURSE; PROVIDING THAT THE DEFINITION OF SEX IS LIMITED TO TWO TYPES OF SEXES WHICH ARE REFERRED TO AS MALE AND FEMALE; PROVIDING THAT THE DEFINITIONS OF MALE, FEMALE, MAN, WOMAN, FATHER, AND MOTHER REFER TO BIOLOGICAL SEX AND NOT SUBJECTIVE GENDER IDENTITY; CLARIFYING THE MEANING OF THE TERM "GENDER"; AMENDING SECTIONS 2-18-208, 2-18-606, 7-15-4207, 7-34-2123, 10-2-403, 13-27-408, 13-35-301, 13-38-201, 13-38-203, 13-38-205, 19-2-802, 20-6-808, 20-7-1306, 20-7-1703, 20-9-327, 20-11-116, 20-25-501, 20-25-707, 22-2-306, 23-2-505, 33-1-201, 35-20-209, 39-2-912, 39-29-101, 39-71-401, 40-1-107, 40-1-311, 40-1-401, 40-5-804, 40-5-907, 40-5-1031, 40-6-701, 40-6-703, 41-3-210, 41-5-103, 42-2-204, 44-2-411, 44-2-412, 45-5-625, 46-18-101, 46-19-301, 46-19-401, 49-1-102, 49-2-101, 49-3-101, 50-4-720, 50-5-105, 50-5-602, 50-11-101, 50-15-101, 50-19-103, 50-19-501, 50-60-214, 53-20-142, 53-21-121, 53-21-142, 53-24-310, 53-30-312, 60-5-514, 60-5-522, 61-5-107, 72-1-103, 72-17-106, AND 90-14-104, MCA; REPEALING SECTION 1-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

CERTIFICATE OF SERVICE

I, Molly Elizabeth Danahy, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 04-06-2026:

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