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## Contested Cases

**2-4-601. Notice.** (1) In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice.

(2) The notice must include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the statutes and rules involved;

(d) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

(e) a statement that a formal proceeding may be waived pursuant to 2-4-603.

**2-4-602. Discovery.** Each agency shall provide in its rules of practice for discovery prior to a contested case hearing.

**2-4-603. Informal disposition and hearings -- waiver of administrative proceedings -- recording and use of settlement proceeds.** (1)(a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. A stipulation, agreed settlement, consent order, or default that disposes of a contested case must be in writing.

(b) Unless otherwise provided by law, if a stipulation, agreed settlement, consent order, or default results in a monetary settlement involving an agency or the state, settlement proceeds must be deposited in the account or fund in which the penalty, fine, or other payment would be deposited if the contested case had proceeded to final decision. If there is no account or fund designated for the fine, penalty, or payment in the type of action, then the settlement must be deposited in the general fund.

(c) If a stipulation, agreed settlement, consent order, or default results in a nonmonetary settlement involving an agency or the state, settlement proceeds, whether received by the state or a third party, must be recorded in a nonstate, nonfederal state special revenue account established pursuant to 17-2-102(1)(b)(i) for the purpose of recording nonmonetary settlements.

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then use informal proceedings under 2-4-604. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition must contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision.

**2-4-604. Informal proceedings.** (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under 2-4-201:

- (a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:
  - (i) written or oral evidence in opposition to the agency's action or refusal to act;
  - (ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or
  - (iii) other written or oral evidence relating to the contested case;
- (b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.
- (2) The record must consist of:
  - (a) the notice and summary of grounds of the opposition;
  - (b) evidence offered or considered;
  - (c) any objections and rulings on the objections;
  - (d) all matters placed on the record after ex parte communication pursuant to 2-4-613;
  - (e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at that party's cost a transcription of the recording, or both. Objections become a part of the record.
- (3) Agencies shall give effect to the rules of privilege recognized by law.
- (4) In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not the evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.
- (5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter.

**2-4-611. Hearing examiners -- legal services unit -- conduct of hearings -- disqualification of hearing examiners and agency members.** (1) An agency may appoint hearing examiners for the conduct of hearings in contested cases. A hearing examiner must be assigned with due regard to the expertise required for the particular matter.

(2) An agency may elect to request a hearing examiner from an agency legal assistance program, if any, within the attorney general's office or from another agency. If the request is honored, the time, date, and place of the hearing must be set by the agency, with the concurrence of the legal assistance program or the other agency.

(3) Agency members or hearing examiners presiding over hearings may administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(4) On the filing by a party, hearing examiner, or agency member in good faith of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case. The agency may disqualify the hearing examiner or agency member and request another hearing examiner pursuant to subsection (2) or

assign another hearing examiner from within the agency. The affidavit must state the facts and the reasons for the belief that the hearing examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.

**2-4-612. Hearing -- rules of evidence, cross-examination, judicial notice.** (1) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(2) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(3) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(4) All testimony shall be given under oath or affirmation.

(5) A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

(6) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data. They shall be afforded an opportunity to contest the material so noticed.

(7) The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

**2-4-613. Ex parte consultations.** Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, may not communicate with any party or a party's representative in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

**2-4-614. Record -- transcription.** (1) The record in a contested case must include:

- (a) all pleadings, motions, and intermediate rulings;
- (b) all evidence received or considered, including a stenographic record of oral proceedings when demanded by a party;
- (c) a statement of matters officially noticed;
- (d) questions and offers of proof, objections, and rulings on those objections;
- (e) proposed findings and exceptions;
- (f) any decision, opinion, or report by the hearings examiner or agency member presiding at the hearing, which must be in writing;

(g) all staff memoranda or data submitted to the hearings examiner or members of the agency as evidence in connection with their consideration of the case.

(2) The stenographic record of oral proceedings or any part of the stenographic record must be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription must be paid by the requesting party.

**2-4-621. When absent members render decision -- proposal for decision and opportunity to submit findings and conclusions -- modification by agency.** (1) When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision.

(2) The proposal for decision must contain a statement of the reasons for the decision and of each issue of fact or law necessary to the proposed decision and must be prepared by the person who conducted the hearing unless that person becomes unavailable to the agency.

(3) The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

(4) A hearings officer who is a member of an agency adjudicative body may participate in the formulation of the agency's final order, provided that the hearings officer has completed all duties as the hearings officer.

**2-4-622. When hearings officer unavailable for decision.** (1) If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties.

(2) The parties may waive compliance with 2-4-621 and this section by written stipulation.

**2-4-623. Final orders -- notification -- availability.** (1)(a) A final decision or order adverse to a party in a contested case must be in writing. A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Except as provided in 75-2-213 and 75-20-223, a final decision must be issued within 90 days after a contested case is considered to be submitted for a final decision unless, for good cause shown, the period is extended for an additional time not to exceed 30 days.

(b) If an agency intends to issue a final written decision in a contested case that grants or denies relief and the relief that is granted or denied differs materially from a final agency decision that was orally announced on the record, the agency may not issue the final written decision without first providing notice to the parties and an opportunity to be heard before the agency.

(2) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law must be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision must include a ruling upon each proposed finding.

(5) Parties must be notified by mail of any decision or order. Upon request, a copy of the decision or order must be delivered or mailed in a timely manner to each party and to each party's attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. An agency decision or order is not valid or effective against any person or party, and it may not be invoked by the agency for any purpose until it has been made available for public inspection as required in this section. This provision is not applicable in favor of any person or party who has actual knowledge of the decision or order or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.

**2-4-631. Licenses.** (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) Whenever notice is required, no revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

**2-4-701. Immediate review of agency action.** A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

**2-4-702. (Temporary) Initiating judicial review of contested cases.** (1)(a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2)(a) Except as provided in 75-2-211, 75-2-213, and subsections (2)(c) and (2)(e) of this section, proceedings for review must be instituted by filing a petition in district court within 30

days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute, subsection (2)(d), or subsection (2)(e), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e)(i) A party who is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, may petition the district court or the water court for judicial review of the decision. If a petition for judicial review is filed in the water court, the water court rather than the district court has jurisdiction and the provisions of this part apply to the water court in the same manner as they apply to the district court. The time for filing a petition is the same as provided in subsection (2)(a).

(ii) If more than one party is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, the district court where the appropriation right is located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has jurisdiction.

(iii) If a petition for judicial review is filed in the district court, the petition for review must be filed in the district court in the county where the appropriation right is located.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record. (*Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.*)

**2-4-702. (Effective October 1, 2025) Initiating judicial review of contested cases.** (1)(a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative

remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2)(a) Except as provided in 75-2-211, 75-2-213, and subsection (2)(c) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record.

**2-4-703. Receipt of additional evidence.** If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings



and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

**2-4-704. Standards of review.** (1) The review must be conducted by the court without a jury and must be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof of the irregularities may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

(a) the administrative findings, inferences, conclusions, or decisions are:

(i) in violation of constitutional or statutory provisions;

(ii) in excess of the statutory authority of the agency;

(iii) made upon unlawful procedure;

(iv) affected by other error of law;

(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(b) findings of fact, upon issues essential to the decision, were not made although requested.

(3) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82 on the grounds of unconstitutionality, as provided in subsection (2)(a)(i), the petitioner shall first establish the unconstitutionality of the underlying statute.

**2-4-711. Appeals -- staying agency decision.** An aggrieved party may obtain review of a final judgment of a district court under this part by appeal to the supreme court within 60 days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process:

(1) if appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for 20 days from the date of filing of the notice;

(2) if appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise.

## **POST Creation and Allocation**

**2-15-124. Quasi-judicial boards.** If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member must be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members must be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members must be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of the governor's term and the remaining members in the middle of the governor's term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate then meeting in regular session or next meeting in regular session following the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy must be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which the member is appointed.

(5) The governor shall designate the presiding officer. The presiding officer may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless otherwise provided by law, each member is entitled to be paid \$50 for each day in which the member is actually and necessarily engaged in the performance of board duties and is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their board duties outside their regular working hours or during time charged against their leave, but those members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. Ex officio board members may not receive compensation but must receive travel expenses.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law.

**2-15-2028. (Temporary) Public safety officer standards and training bureau.** There is a bureau within the department of justice called the public safety officer standards and training bureau. The purpose of the bureau is to provide staff support to the public safety officer standards and training council established in 2-15-2029. *(Terminates June 30, 2023)*

**2-15-2029. (Temporary) Montana public safety officer standards and training council -- rulemaking -- report to law and justice interim committee.** (1)(a) There is a Montana public safety officer standards and training council. The council is a quasi-judicial board, as provided for in 2-15-124, and is allocated to the department of justice established in 2-15-2001, except as provided in subsections (1)(b) and (1)(c) of this section.

(b) The council shall coordinate with the department of justice to hire the bureau chief of the public safety officer standards and training bureau.

(c) The council maintains its independent and quasi-judicial authority and duties provided for in 44-4-403.

(2) The council may adopt rules to implement the provisions of Title 44, chapter 4, part 4. Rules must be adopted pursuant to the Montana Administrative Procedure Act.

(3) The department of justice and the public safety officer standards and training council shall report to the law and justice interim committee. *(Terminates June 30, 2023)*

**2-15-2029. (Effective July 1, 2023) Montana public safety officer standards and training council -- administrative attachment -- rulemaking.** (1)(a) There is a Montana public safety officer standards and training council. The council is a quasi-judicial board, as provided for in 2-15-124, and is allocated to the department of justice, established in 2-15-2001, for administrative purposes only as provided in 2-15-121, except as provided in subsection (1)(b) of this section.

(b) The council may hire its own personnel and independently administer the conduct of its business, and 2-15-121(2)(a), (2)(d), and (3)(a) do not apply.

(2) The council may adopt rules to implement the provisions of Title 44, chapter 4, part 4. Rules must be adopted pursuant to the Montana Administrative Procedure Act.

## Travel Reimbursement

**2-18-501. Meals, lodging, and transportation of persons in state service.** All elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging and taxes on the allowable cost of lodging, except as provided in subsection (3), plus \$7.50 for the morning meal, \$8.50 for the midday meal, and \$14.50 for the evening meal except as provided in subsection (10). All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:

(a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day for the location involved plus taxes on the allowable cost.

(b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.

(3) Except as provided in subsection (10), the department of administration shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of the following:

(a) meals, not including alcoholic beverages, when the actual cost exceeds the maximum established in subsection (4)(a); and

(b) lodging when the actual cost exceeds the maximum established in subsection (2)(a) or (4)(a).

(4) Except as provided in subsection (3), for travel to a foreign country, the following provisions apply:

(a) All elected state officials, all appointed members of boards, commissions, and councils, all department directors, and all other state employees must be reimbursed as follows:

(i) \$7 for the morning meal, \$11 for the midday meal, and \$18 for the evening meal; and

(ii) \$155 per night for lodging.

(b) All claims for meal and lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.

(5) When other than commercial, nonreceiptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, the amount of \$12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1) or (2)(a). However, when overnight accommodations are provided at the expense of a government entity, reimbursement may not be claimed for lodging.

(6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.

(7) The provisions of this section may not be construed as affecting the validity of 5-2-301.

(8) The department of administration shall establish policies necessary to effectively administer this section for state government.

(9) All commercial air travel must be by the least expensive class service available.

(10) When the actual cost of meals exceeds the maximum standard allowed pursuant to subsection (1), the department of administration may authorize the actual cost of meals for firefighters.

(11) For the purposes of implementing subsection (10), the following definitions apply:

(a) "Firefighter" means a firefighter who is employed by the department of natural resources and conservation and who is directly involved in the suppression of a wildfire in Montana.

(b) "Wildfire" means an unplanned, unwanted fire burning uncontrolled and consuming vegetative fuels.

**2-18-502. Computation of meal allowance.** (1) Except as provided in subsections (2) and (4), an employee is eligible for the meal allowance provided in 2-18-501, only if the employee is in a travel status for more than 3 continuous hours during the following hours:

(a) for the morning meal allowance, between the hours of 12:01 a.m. and 10 a.m.;

(b) for the midday meal allowance, between the hours of 10:01 a.m. and 3 p.m.; and

(c) for the evening meal allowance, between the hours of 3:01 p.m. and 12 midnight.

(2) An eligible employee may receive:

(a) only one of the three meal allowances provided, if the travel was performed within the employee's assigned travel shift; or

(b) a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.

(3) "Travel shift" is that period of time beginning 1 hour before and terminating 1 hour after the employee's normally assigned work shift.

(4) An appointed member of a state board, commission, or council or a member of a legislative subcommittee or select or interim committee is entitled to a midday meal allowance on a day the individual is attending a meeting of the board, commission, council, or committee, regardless of proximity of the meeting place to the individual's residence or headquarters. This subsection does not apply to a member of a legislative committee during a legislative session.

(5) The department of administration shall prescribe policies necessary to effectively administer this section for state government.

**2-18-503. Mileage -- allowance.** (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage for the distance actually traveled by motor vehicle and no more unless otherwise specifically provided by law.

(2)(a) When a state officer or employee is authorized to travel by motor vehicle and chooses to use a privately owned motor vehicle even though a government-owned or government-leased motor vehicle is available, the officer or employee may be reimbursed only at the rate of 48.15% of the mileage rate allowed by the United States internal revenue service for the current year.

(b) When a privately owned motor vehicle is used because a government-owned or government-leased motor vehicle is not available or because the use is in the best interest of the

governmental entity and a notice of unavailability of a government-owned or government-leased motor vehicle or a specific exemption is attached to the travel claim, then a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(3) Members of the legislature, jurors, witnesses, county agents, and all other persons, except a state officer or employee, who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage at a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own airplanes in the performance of official duties are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for motor vehicle travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part.

## Coroners

**7-4-2901. Appointment of deputy coroners.** (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist the coroner or act in the coroner's absence.

(2) At the time of appointment, a deputy coroner or acting coroner must meet the qualifications required of a coroner as provided in 7-4-2904(1) and (2)(a). Within a reasonable time after appointment, the deputy shall successfully complete the basic coroner course, as provided for in 7-4-2905(2)(a). After successfully completing the basic coroner course, the deputy must also meet the requirements for continuing education as provided in 7-4-2905(2)(b).

(3) A deputy coroner may be the coroner or qualified deputy coroner from another county.

**7-4-2902. Vacancy in office of county coroner or disqualification of coroner.** (1) The coroner, or the board of county commissioners if the coroner is unable or refuses to act, shall request the coroner or a qualified deputy coroner of another county to be acting county coroner if the coroner:

(a) is absent or unable to attend to duties or if the office of coroner is vacant and there are no qualified deputies available;

(b) is related to the deceased;

(c) is a potential party in an action concerning the death or the coroner's inquiry into the death may pose a conflict of interest;

(d) has not successfully completed the basic coroner course required in 7-4-2905 and there are no qualified deputies available; or

(e) is disqualified under the provisions of 46-4-201.

(2) The salary of and expenses incurred by an acting coroner on behalf of a requesting county are an allowable charge against the requesting county.

**7-4-2903. Stenographer for coroner in certain counties.** In each county having a population of 45,000 or more by the latest federal census enumeration, the coroner may, with the consent of the county commissioners, appoint a stenographer. The stenographer shall hold such position during the pleasure of the coroner making the appointment and shall receive as salary a sum to be fixed by the board of county commissioners, to be paid monthly out of the contingent fund of the county upon the order of the board.

**7-4-2904. Qualifications for office of county coroner.** (1) In addition to the qualifications set forth in 7-4-2201, to be eligible for the office of coroner, at the time of election or appointment to office a person must be a high school graduate or holder of an equivalency of completion of secondary education as provided by the superintendent of public instruction under 20-7-131 or of an equivalency issued by another state.

(2) Each coroner, before entering the duties of office, shall:

(a) take and file with the county clerk the constitutional oath of office; and

(b) certify to the county clerk that:

(i) the individual has successfully completed the basic coroner course of study as provided for in 7-4-2905 or that the individual has completed the equivalent educational

requirements as approved by the public safety officer standards and training council established in 2-15-2029; or

(ii) the individual intends to take the basic coroner course at the next offering of the course if the coroner has been appointed or was elected by other than a local government general election and, from the date of appointment or election and assumption of the duties as coroner, a basic coroner course was not offered. A coroner forfeits office for failure to take and successfully complete the next offering of the basic coroner course.

**7-4-2905. Coroner education and continuing education.** (1) Coroner education must be approved by the Montana public safety officer standards and training council established in 2-15-2029. The council may adopt rules establishing standards and procedures for basic and advanced education. The cost of conducting the education must be borne by the department of justice from money appropriated for the education. The county shall pay the salary, mileage, and per diem of each coroner-elect, coroner, and deputy coroner attending from that county.

(2)(a) The council shall approve a 40-hour basic coroner course of study after each general election. The course, or an equivalent course approved by the council, must be completed before the first Monday in January following the election. The council may approve other basic coroner courses at times it considers appropriate.

(b) The council shall approve a 16-hour continuing coroner education course. Unless there are exigent circumstances, failure of any coroner or deputy coroner to satisfactorily complete the 16-hour continuing coroner education course, or an equivalent course approved by the council, at least once every 2 years results in forfeiture of office. The council may adopt rules providing a procedure to extend the 2-year period because of exigent circumstances.

**7-4-2911. Duties of county coroner.** The county coroner shall:

- (1) hold inquests as provided in Title 46, chapter 4, parts 1 and 2;
- (2) inquire into the cause, manner, and circumstances of all human deaths, as required in 46-4-122, and establish the identity of the deceased person;
- (3) provide decent disposal of an unclaimed dead human body and unclaimed parts of bodies believed to be human;
- (4) maintain records of inquiries as required by good practice and by law;
- (5) as soon as practicable upon identifying a dead human body, provide for notifying the next of kin of the deceased of the fact of death in any death into which the coroner is making an inquiry;
- (6) if a law enforcement agency does not have jurisdiction of the case, preserve evidence involving any human death, pursuant to the coroner's authority, including placing under the coroner's control, to the extent necessary, any personal and real property that may be related to or involved in the death;
- (7) witness and certify deaths that are the result of a judicial order;
- (8) inquire into any human death when no physician or surgeon licensed in the state will sign a death certificate;
- (9) notify the county attorney and the law enforcement agency having jurisdiction of all deaths requiring inquiry pursuant to 46-4-122; and
- (10) in the cases specified in 25-3-205, discharge the duties of sheriff. If acting as sheriff, the coroner is allowed the same salary as sheriff or the same fees as constable for similar services.



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

**7-4-2914. Statement required before allowing accounts of coroner.** Before allowing the accounts of the coroner, the board of county commissioners shall require the coroner to file with the clerk of the board a statement, in writing and verified by affidavit, showing:

- (1) the amount of money or other property belonging to the estate of the deceased person that has come into the coroner's possession since the last statement; and
- (2) the disposition made of the property.

**7-4-2915. Custody and disposition of bodies held pending investigation.** (1) In the course of an inquiry authorized under the provisions of 46-4-122, the coroner may take custody of a dead human body and cause it to be removed from the site of death to a facility designated by the coroner.

(2) A dead human body in the custody of a county coroner must be held until the coroner, after consultation with appropriate law enforcement officials and the county attorney, establishes that it is not necessary to hold the body to determine the reasonable and true cause of death or that the body is no longer necessary to assist any local investigations.

(3) If the identity of a dead human body is unknown or if those entitled to custody of a body do not claim it, the coroner shall take custody of the body even if the circumstances of the death do not otherwise require an inquiry by the coroner.

(4) A dead human body in the custody of the coroner may be released by the coroner to the custody of a person who is entitled to custody or to a funeral home.

(5) The coroner shall release to a funeral home a dead human body that is not designated to be released to a specific funeral home by the deceased prior to death, by the deceased's next of kin, or by a friend of the deceased who will take financial responsibility for the disposition of the body. The coroner shall rotate the release of bodies to funeral homes in a manner that is fair and equitable. The coroner may not release a body to a funeral home if the funeral home has requested in writing by December 1 of the preceding year that it does not wish to participate in the release of bodies under this section.

**7-4-2917. Disposition of property of deceased -- suicide note.** (1) Any property of a decedent or any suicide note composed or purportedly composed by a decedent in the custody of the county coroner shall be held until such time as the county attorney establishes that it is not necessary to hold such property or note to determine the true cause of death, to assist any investigating agency, or to be used as evidence in any related criminal court action.

(2) For the purposes of this section, "investigating agency" means any county attorney, the state medical examiner, and any law enforcement agency of this state and any political subdivision of this state having jurisdiction of the death.

(3) When such property or note is no longer needed for evidentiary purposes, it shall be given upon written request to the personal representative of the decedent appointed under Title

72 or, if no personal representative is appointed, to the decedent's family or whoever in the discretion of the county attorney should receive the property or the note.

**7-4-2923. Computation of mileage for reimbursement.** When a coroner serves more than one process in the same cause, not requiring more than one journey from the office, the coroner may receive mileage only for the more distant service, and mileage is not allowed for less than 1 mile actually traveled.

**7-4-2924. Indigent funeral assistance.** (1)(a) There is a special revenue account within the state special revenue fund established in 17-2-102 to aid counties in providing adequate burial, entombment, or cremation of an indigent person.

(b) There must be deposited in the account money received from donations to provide adequate burial, entombment, or cremation of an indigent person as defined in 53-3-116(5).

(c) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department of administration and may only be used for those purposes provided in this section.

(2)(a) A county may request to receive funding from the special revenue account created in this section to provide assistance for the burial, entombment, or cremation of an indigent person regardless of whether the county currently provides an indigent assistance program as provided in 53-3-116.

(b) A county may not use the funding provided in this section to cover amounts prohibited in 53-3-116(6).

(3) The department of administration may adopt rules to implement this section.

## **Public Safety Communications Officers**

**7-31-201. Definitions.** As used in this part, the following definitions apply:

(1) “Council” means the Montana public safety officer standards and training council provided for in 2-15-2029.

(2) “Public safety communications officer” means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

**7-31-202. Qualifications for public safety communications officers.** To be appointed a public safety communications officer, a person:

- (1) must be a citizen of the United States;
- (2) must be at least 18 years of age;
- (3) must be fingerprinted and a search must be made of local, state, and national fingerprint files to disclose any criminal record;
- (4) may not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;
- (5) must be of good moral character, as determined by a thorough background investigation;
- (6) must be a high school graduate or have been issued a high school equivalency diploma by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government; and
- (7) must meet any additional qualifications established by the council.

**7-31-203. Certification of public safety communications officers -- suspension or revocation -- penalty -- notification requirements.** (1) A local government shall require that a person, unless exempt under subsection (3), appointed to receive requests for emergency services, as defined in 10-4-101, and to dispatch the appropriate emergency service units be certified by the council as a public safety communications officer.

(2)(a) The council shall determine the certification standards for public safety communications officers as provided in 7-31-202.

(b) The certification standards must contain a requirement that an applicant for certification attend and successfully complete a basic course for public safety communications officers conducted by the Montana law enforcement academy within 1 year of date of hire.

(3)(a) A person certified by the council prior to July 1, 2001, and employed as a public safety communications officer as of July 1, 2001, is not subject to the requirement of subsection (2)(b).

(b) A person under permanent appointment as a public safety communications officer as of July 1, 2001, is not subject to the requirements of subsection (2).

(4) A public safety communications officer who has successfully met the certification standards set by the council, or who is exempt from certain certification standards pursuant to subsection (3), who has met the qualification requirements in 7-31-202, and who has completed a 6-month probationary term and 1 year of employment must, upon application to the council, be issued a basic public safety communications officer certificate.

(5) Failure by any person appointed as a public safety communications officer after July 1, 2001, unless exempt under the provisions of subsection (3), to meet the minimum

requirements in 7-31-202 or to satisfy the certification requirements provided for in subsection (2) of this section is cause to terminate that person's employment as a public safety communications officer.

(6) It is unlawful for a person whose certification as a public safety communications officer has been suspended or revoked by the council to act as a public safety communications officer. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine in an amount not to exceed \$500, or both.

(7) Within 10 days of the appointment, termination, resignation, or death of any public safety communications officer, written notice must be given to the council by the employing authority.

## **Reserve and Auxiliary Officers**

**7-32-201. Definitions.** As used in this part, the following definitions apply:

(1) “Auxiliary officer” means an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities.

(2) “Council” means the Montana public safety officer standards and training council established in 2-15-2029.

(3) “General law enforcement duties” means patrol operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

(4) “Law enforcement agency” means a law enforcement service provided directly by a local government.

(5) “Law enforcement officer” means a sworn, full-time, employed member of a law enforcement agency who is a peace officer, as defined in 46-1-202, and has arrest authority, as described in 46-6-210.

(6) “Reserve officer” means a sworn, part-time, volunteer member of a law enforcement agency or a part-time, paid member of a law enforcement agency serving as a court officer as provided in 3-6-303. The volunteer member or the part-time paid member is a peace officer, as defined in 46-1-202, and has arrest authority, as described in 46-6-210, only when authorized to perform these functions as a representative of the law enforcement agency.

(7) “Special services officer” means an unsworn, part-time, volunteer member of a law enforcement agency who may perform functions, other than general law enforcement duties, that require specialized skills, training, and qualifications, who may be required to train with a firearm, and who may carry a firearm while on assigned duty as provided in 7-32-239.

**7-32-202. Prohibition on participation in certain pension and retirement systems.** (1) A reserve officer may not participate in any pension or retirement system established for full-time law enforcement officers.

(2) An auxiliary officer may not participate in any pension or retirement system established for full-time law enforcement officers.

**7-32-203. Provision of workers’ compensation coverage.** (1) Each law enforcement agency that utilizes reserve officers or special services officers shall provide full workers’ compensation coverage for the officers while they are providing actual service for a law enforcement agency. The law enforcement agencies shall pay to the insurer an appropriate premium, as established by the insurer, to cover the insurance risk of providing coverage to the officers.

(2) Each law enforcement agency that utilizes auxiliary officers shall provide full workers’ compensation coverage for the officers while they are providing actual service for a law enforcement agency.

**7-32-211. Reserve officers authorized.** A local government may authorize reserve officers. A person who meets minimum standards for appointment as a peace officer may be appointed as a reserve officer.

**7-32-212. Prohibition on reduction of full-time officers.** A local government may not reduce the authorized number of full-time law enforcement officers through the appointment or utilization of reserve officers.

**7-32-213. Qualifications for appointment as reserve officer.** To be appointed a reserve officer, a person:

- (1) must have resided in the state continuously for at least 1 year prior to the appointment and in the county where the appointment is made for a period of at least 6 months prior to the date of the appointment;
- (2) must be a citizen of the United States;
- (3) must be at least 18 years of age;
- (4) must be fingerprinted, and a search must be made of local, state, and national fingerprint files to disclose any criminal record;
- (5) may not have been convicted of a crime for which the person could have been imprisoned in a federal penitentiary or state prison;
- (6) must be of good moral character as determined by a thorough background investigation;
- (7) must be a graduate of an accredited high school or the equivalent;
- (8) must be examined by a licensed physician within 30 days immediately preceding the date of appointment and pronounced in good physical condition; and
- (9) must possess a valid Montana driver's license.

**7-32-214. Basic training program required.** (1) A reserve officer may not be authorized to function as a representative of a law enforcement agency performing general law enforcement duties after 2 years from the original appointment unless the reserve officer has satisfactorily completed a minimum 88-hour basic training program that must include but need not be limited to the following course content:

- (a) introduction and orientation--1 hour;
- (b) police ethics and professionalism--1 hour;
- (c) criminal law--4 hours;
- (d) laws of arrest--4 hours;
- (e) criminal evidence--4 hours;
- (f) administration of criminal law--2 hours;
- (g) communications, reports, and records--2 hours;
- (h) crime investigations--3 hours;
- (i) interviews and interrogations--2 hours;
- (j) patrol procedures--6 hours;
- (k) crisis intervention--4 hours;
- (l) police human and community relations--3 hours;
- (m) juvenile procedures--2 hours;
- (n) defensive tactics--4 hours;
- (o) crowd control tactics--4 hours;
- (p) firearms training--30 hours;
- (q) first aid--10 hours; and
- (r) examination--2 hours.

(2) The law enforcement agency is responsible for training its reserve officers in accordance with minimum training standards established by the council.

**7-32-215. Reserve manual required.** The authorizing law enforcement agency establishing a law enforcement reserve force shall adopt and publish a manual setting forth the minimum qualifications, minimum training standards, and standard operating procedures for reserve officers.

**7-32-216. Limitations on activities of reserve officers.** (1) A reserve officer may serve as a peace officer only on the orders and at the direction of the chief law enforcement administrator of the local government.

(2) Except for a reserve officer serving as a court officer as provided in 3-6-303, reserve officer may act only in a supplementary capacity to the law enforcement agency.

(3) Reserve officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer whose span of control would be considered within reasonable limits.

**7-32-217. Restrictions on carrying weapons.** No reserve officer may carry a weapon:

(1) while on assigned duty until the reserve officer has qualified on the firing range with a weapon in compliance with the firearms qualifying course conducted by the Montana law enforcement academy; and

(2) until authorized by the chief law enforcement administrator to carry a weapon.

**7-32-218. Status of reserve officer upon activation.** A reserve officer is vested with the same powers, rights, privileges, obligations, and duties as any other peace officer of this state upon being activated by the chief law enforcement administrator of the local government and while on assigned duty only.

**7-32-219. Reserve force coordinator.** The chief law enforcement administrator of a law enforcement agency with reserve officers shall appoint a full-time law enforcement officer of the agency as a reserve force coordinator. The reserve force coordinator shall coordinate the activities of the reserve force with those of the law enforcement agency.

**7-32-220. Appointment of reserve officer to full-time position.** A reserve officer may be appointed as a full-time law enforcement officer through the procedures provided in Montana law for such appointments.

**7-32-221. Termination of reserve officers.** Reserve officers serve at the pleasure of the chief law enforcement administrator and may be terminated at any time by the chief law enforcement administrator by written notification without any cause.

**7-32-222. Reserve officer change in residency.** A reserve officer may change permanent residency to another county and remain a member of the reserve officer unit to which the reserve officer was appointed provided that:

(1) the statutory basic training requirements have been met;

(2) the probationary period established by the law enforcement agency is completed; and  
(3) approval for continuing membership is granted by the chief law enforcement administrator controlling the reserve unit.

**7-32-231. Auxiliary officers authorized.** A local government may authorize auxiliary officers only on the orders and at the direction of the chief law enforcement administrator of the local government.

**7-32-232. Role of auxiliary officers.** (1) Auxiliary officers:  
(a) are subordinate to full-time law enforcement officers; and  
(b) may not serve unless supervised by a full-time law enforcement officer.  
(2) An auxiliary officer may carry a weapon while on an official search and rescue mission with prior approval from the sheriff.

**7-32-233. Limitation on arrest authority of auxiliary officer.** An auxiliary officer has only the arrest authority granted a private person in 46-6-502.

**7-32-234. Exceptions.** Provisions of 7-32-211, 7-32-213, and 7-32-214 do not apply to auxiliary officers, to special services officers, to sworn volunteer peace officers who are not assigned to general law enforcement duties, or to members of a posse organized to quell public disturbance or domestic violence in accordance with 7-32-2121(6).

**7-32-235. Search and rescue units authorized -- under control of county sheriff -- optional funding.** (1) A county may establish or recognize one or more search and rescue units within the county.

(2)(a) Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff, or the sheriff's designee, having jurisdiction and whose span of control would be considered within reasonable limits.

(b) A county sheriff or the sheriff's designee may authorize the participation of members of the civil air patrol, including cadets under 18 years of age, in search and rescue operations.

(3) Subject to 15-10-420, a county may, after approval by a majority of the people voting on the question at an election held throughout the county, levy an annual tax on the taxable value of all taxable property within the county to support one or more search and rescue units established or recognized under subsection (1). The election must be held as provided in 15-10-425.

(4) A search and rescue unit established or recognized by a county may possess human remains as defined in 37-19-101 for the purpose of training canines used for search and rescue work.

(a) The county sheriff or the sheriff's designee shall keep an inventory of all human remains that are kept for the purpose of training search and rescue canines. The inventory must be updated when the search and rescue unit receives human remains or disposes of human remains that are no longer useful to the search and rescue unit.

(b) Each search and rescue unit that possesses human remains for the purpose of training search and rescue canines shall establish policies and standard operating procedures for access



to, the inventory of, and the possession and disposal of human remains kept for the purpose of training search and rescue canines.

**7-32-239. Special services officers -- authorization -- role.** (1) Special services officers:

- (a) are subordinate to full-time law enforcement officers;
- (b) must be supervised by a law enforcement officer;
- (c) shall complete specialized training and must possess specialized skills required by the chief law enforcement administrator; and
- (d) may be authorized by the chief law enforcement administrator to carry a weapon while on assigned duty only upon successful completion of training in the laws and procedures governing use of force and upon demonstration of proficiency with that weapon.

(2) A local government may authorize special services officers only on the orders and at the direction of the chief law enforcement administrator of the local government.

**7-32-240. Certification of Montana peace officer who leaves full-time or part-time employment to enter active reserve status in Montana -- definition.** (1) Except as provided in subsection (2), an officer who has been issued a peace officer basic certification by the Montana public safety officer standards and training council or who is eligible for the certification and who becomes an active reserve officer in Montana may retain the officer's peace officer certification and return to full-time or part-time employment as a peace officer under the following circumstances:

(a) If the reserve officer has not had a break in service of more than 3 years at any time since the peace officer's last date of employment as a full-time or part-time peace officer in Montana, the peace officer retains the peace officer certification and may return to full-time or part-time employment as a peace officer from reserve status without attending an equivalency course or returning to the basic academy.

(b) If the reserve officer has had a break in service of more than 3 years at any time since the officer's last date of employment as a full-time or part-time peace officer in Montana, the officer must successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the officer's most recent appointment as a full-time or part-time peace officer in Montana in order to maintain the officer's peace officer certification. If the officer fails the basic equivalency course, the officer must attend the peace officer basic course at the Montana law enforcement academy at the next available opportunity. The officer's agency may request an extension of time for the officer to meet the basic requirement pursuant to 7-32-303(9).

(c) If the reserve officer has had a break in service of more than 5 years at any time since the officer's last date of employment as a full-time or a part-time peace officer in Montana, the officer must successfully complete the peace officer basic course at the Montana law enforcement academy, as approved by the council, within 1 year of the officer's most recent appointment as a full-time or part-time peace officer in Montana in order to retain the officer's peace officer certification. The officer's agency may request an extension of time for the officer to meet the basic requirement pursuant to 7-32-303(9).

(2)(a) The provisions of subsection (1) do not apply to a peace officer who was last employed as a full-time or part-time peace officer outside of Montana, a peace officer who was last employed by a federal or United States military law enforcement agency, or to a reserve officer outside of Montana.

(b) Officers listed in subsection (2)(a) are subject to the provisions of 7-32-303(6) through (8).

(3) For the purposes of part 3 and this part, the phrase “break in service” means a continuous period in which the officer is not performing the duties of a peace officer in Montana, either as a full-time or part-time peace officer or as an active reserve officer.

## Law Enforcement Officers

**7-32-301. Residency requirements.** A sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or police officers in this state to preserve the public peace and prevent or quell public disturbance may not appoint as a special deputy, marshal, or police officer any person who has not resided continuously in this state for a period of at least 1 year and in the county where the appointment is made for a period of at least 6 months prior to the date of appointment.

**7-32-302. Waiver of residency requirements.** The person or body authorized by law to appoint special deputies, marshals, or police officers may in its discretion waive residency requirements.

**7-32-303. Peace officer employment, education, and certification standards -- suspension or revocation -- penalty.** (1) For purposes of this section, unless the context clearly indicates otherwise, “peace officer” means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) A sheriff of a county, the mayor of a city, a board, a commission, or any other person authorized by law to appoint peace officers in this state may not appoint a person as a peace officer who does not meet the qualifications provided in this subsection (2) plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029. A peace officer must:

- (a) be a citizen of the United States;
- (b) be at least 18 years of age;
- (c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;
- (d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;
- (e) be of good moral character, as determined by a thorough background investigation;
- (f) be a high school graduate or have been issued a high school equivalency diploma by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;
- (g) be free of any mental condition that might adversely affect performance of the duties of a peace officer, as determined after:
  - (i) a mental health evaluation performed by a licensed physician or a mental health professional who is licensed by the state under Title 37, who is acting within the scope of the person’s licensure when performing a mental health evaluation, who is not the applicant’s personal physician or licensed mental health professional, and who is selected by the employing authority; or
  - (ii) satisfactory completion of a standardized mental health evaluation instrument determined by the employing authority to be sufficient to examine for any mental conditions within the meaning of this subsection (2)(g), if the instrument is scored by a licensed physician or a mental health professional acting within the scope of the person’s licensure by a state;
- (h) be free of any physical condition that might adversely affect performance of the duties of a peace officer, as determined after satisfactory completion of a physical examination performed by a health care provider who is licensed by the state under Title 37 and acting within

the scope of the person's licensure when performing the physical examination, who is not the applicant's personal health care provider, and who is selected by the employing authority;

(i) have successfully completed an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer;

(j) possess or be eligible for a valid Montana driver's license; and

(k) be certified or be eligible for certification as a peace officer by the council or become eligible for certification upon completion of the requirements contained in subsections (6) through (10).

(3) At the time of appointment, a peace officer shall take the formal oath of office prescribed in Article III, section 3, of the Montana constitution. No other oath may be required.

(4) Within 10 days of the appointment, termination, resignation, or death of a peace officer, written notice of the event must be given to the Montana public safety officer standards and training council by the employing authority.

(5) It is the duty of an appointing authority in Montana to ensure that each peace officer appointed under its authority has the basic training, including any training required in subsections (6) through (8), in addition to meeting all other requirements of peace officer certification promulgated by the Montana public safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic training required by subsections (6) through (8) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(6) Except as provided in subsections (7) and (8), a peace officer shall successfully complete the peace officer basic course at the Montana law enforcement academy, as approved by the council, within 1 year of:

(a) the peace officer's initial appointment as a peace officer; or

(b) the peace officer's most recent appointment as a peace officer if the peace officer has had a break in service as a peace officer of more than 5 years.

(7)(a) If a peace officer previously satisfied the requirement in subsection (6), is certified or is eligible for certification as a peace officer in Montana or may become eligible for certification upon completion of the probationary period in subsection (10), and has had a break in service as a peace officer of less than 3 years, the peace officer is not required to satisfy the requirement in subsection (6) or to attend an equivalency course prior to returning to work in Montana as a peace officer.

(b) If a peace officer previously satisfied the requirement in subsection (6), is certified or is eligible for certification as a peace officer in Montana or may become eligible for certification upon completion of the probationary period in subsection (10), and has been continuously employed as a peace officer outside of Montana for no more than 3 years, the peace officer is not required to satisfy the requirement in subsection (6) or to attend an equivalency course prior to returning to work in Montana as a peace officer.

(c) If a peace officer previously completed the peace officer basic course successfully, is certified or is eligible for certification as a peace officer in Montana or may become eligible for certification upon completion of the probationary period in subsection (10), and has been continuously employed as a peace officer outside of Montana for more than 3 years or who has had a break in service as a peace officer for more than 3 years but less than 5 years, the peace

officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the peace officer's most recent appointment as a peace officer in Montana. If the peace officer fails the basic equivalency course, the officer shall satisfy the requirement in subsection (6) at the next available opportunity.

(d) If a person satisfied the requirement in subsection (6) prior to the person's appointment or employment and is hired or appointed as a peace officer more than 3 years but less than 5 years after the date that the person satisfied the requirement in subsection (6), the person shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the person's most recent appointment or employment as a peace officer. If the person is not appointed or employed as a peace officer within 5 years after the date of the person's successful completion of the requirement in subsection (6), the person shall satisfy the requirement in subsection (6) within 1 year of the person's most recent appointment or employment as a peace officer in Montana.

(8)(a) Except as provided in subsection (8)(c), if a peace officer has successfully completed a peace officer basic course that is taught or approved by a federal, state, local, or United States military law enforcement agency, that satisfies the peace officer basic training requirement for that agency, and that the council has reviewed and approved as commensurate with the current peace officer basic course offered at the Montana law enforcement academy, the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the officer's initial appointment in Montana. If the officer fails the basic equivalency course, the officer must satisfy the requirement in subsection (6) at the next available opportunity.

(b) Except as provided in subsection (8)(c), if a peace officer has successfully completed a peace officer basic course that is taught or approved by a federal, state, local, or United States military law enforcement agency and that satisfies the peace officer basic training requirement for that agency and if that peace officer's combined training and experience have been reviewed and approved by the council as commensurate with the current peace officer basic course offered at the Montana law enforcement academy, the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the officer's initial appointment in Montana. If the officer fails the basic equivalency course, the officer must satisfy the requirement in subsection (6) at the next available opportunity.

(c) If the peace officer has had a break in service as a peace officer for more than 5 years, the officer shall complete the requirement of subsection (6) within 1 year of the officer's initial appointment as a peace officer in Montana.

(9) The Montana public safety officer standards and training council may extend the 1-year time requirements of subsections (6) through (8) upon the written application of the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the council may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic equivalency course, and an unreasonable shortage of personnel within the department. The council may not grant an extension to exceed 180 days.

(10) A peace officer who has successfully met the training, employment, and educational standards of this section, has successfully met the training and employment standards set by the council, and has completed a 1-year probationary term of employment must be issued a peace

officer basic certificate by the council certifying that the peace officer has met all of the basic qualifying peace officer standards of this state.

(11) It is unlawful for a person whose basic certification as a peace officer has been revoked or denied by the Montana public safety officer standards and training council for misconduct to act as a peace officer. It is unlawful for a person whose peace officer basic certification has been suspended by the council to act or be appointed or employed as a peace officer in Montana during the period in which the certification is suspended. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed \$500, or both.

## **Detention Centers**

**7-32-2241. Definitions.** As used in this part, the following definitions apply:

(1) “Detention center” means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.

(2) “Detention center administrator” means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center.

(3) “Detention center staff” means custodial personnel whose duties include ongoing supervision of the inmates in a detention center.

(4) “Inmate” means a person who is confined in a detention center.

(5) “Local government” means a city, town, county, or consolidated city-county government.

(6) “Multijurisdictional detention center” means a detention center established and maintained by two or more local governments for the confinement of persons arrested or sentenced to confinement or a local government detention center contracting to confine persons arrested or sentenced in other local governments.

(7) “Private detention center” means a detention center owned by private industry and leased to or operated under a contract with a local government.

## Attendance Officers

**20-5-104. Attendance officer.** In order to enforce the compulsory attendance provisions of this title, each district shall have at least one person serving as an attendance officer according to the following requirements:

(1) districts of the first class and districts of the second class with a dropout rate higher than the statewide average dropout rate as calculated by the office of public instruction shall appoint one or more of the district's staff as attendance officers;

(2) districts of the second class with a dropout rate at or below the statewide average dropout rate as calculated by the office of public instruction and districts of the third class may appoint one or more of the district's staff as attendance officers; or

(3) the county superintendent must be the attendance officer in second-class or third-class districts that do not appoint an attendance officer.

**20-5-105. Attendance officer -- powers and duties.** The attendance officer of a district:

(1) must, subject to district policy, be vested with police powers, the authority to serve warrants, and the authority to enter places of employment of children in order to enforce the compulsory attendance provisions of this title;

(2) may, subject to district policy, take into custody any child subject to compulsory attendance who is not excused under the provisions of this title and conduct the child to the school in which the child is or should be enrolled;

(3) may, subject to district policy, do whatever else is required to investigate and enforce the compulsory attendance provisions of this title and the pupil attendance policies of the trustees;

(4) may, subject to district policy, institute proceedings against any parent, guardian, or other person violating the compulsory attendance provisions of this title;

(5) may, subject to district policy, keep a record of transactions for the inspection and information of the trustees and shall make reports in the manner and to whomever the trustees designate; and

(6) may, subject to district policy, perform any other duties prescribed by the trustees to preserve the morals and secure good conduct of the pupils of the district.



## Youth Court Definitions

**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) Department records do 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 41-5-1525.

(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 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 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.

## **DCI Agents**

**44-2-113. Qualifications of agents.** Each agent must be a person qualified by experience, training, and high professional competence in criminal investigation. Each agent shall meet all the requirements of 7-32-303.

## POST Statutes

**44-4-401. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Council" means the Montana public safety officer standards and training council established in 2-15-2029.

(2) "Public safety officer" means:

(a) a corrections officer who is employed by the department of corrections, established in 2-15-2301, and who has full-time or part-time authority or responsibility for maintaining custody of inmates in a state correctional facility for adults or juveniles;

(b) a detention officer who is employed by a county and who has full-time or part-time authority or responsibility for maintaining custody of inmates in a detention center, as defined in 7-32-2241, or a youth detention facility, as defined in 41-5-103;

(c) a peace officer, as defined in 46-1-202;

(d) a department of transportation employee appointed as a peace officer pursuant to 61-12-201;

(e) a law enforcement officer or reserve officer, as the terms are defined in 7-32-201;

(f) a public safety communications officer, as defined in 7-31-201;

(g) a probation or parole officer who is employed by the department of corrections pursuant to 46-23-1002;

(h) a person subject to training requirements pursuant to 44-2-113 or 44-4-902; and

(i) any other person required by law to meet the qualification or training standards established by the council.

**44-4-402. Membership -- composition.** (1) The council consists of no more than 13 voting members appointed by the governor in accordance with 2-15-124 and as provided in this section.

(2) Membership must include but is not limited to:

(a) one state government law enforcement representative;

(b) one chief of police, who may be appointed based on recommendations from the Montana association of chiefs of police;

(c) one sheriff, who may be appointed based on recommendations from the Montana sheriffs and peace officers association;

(d) one representative from the department of corrections established in 2-15-2301;

(e) one local law enforcement officer in a nonadministrative position, who may be appointed based on recommendations from the Montana police protective association;

(f) one detention center administrator or detention officer;

(g) one Montana-certified tribal law enforcement representative;

(h) one county attorney, who may be appointed based on recommendations from the Montana county attorneys association;

(i) two members of the board of crime control established in 2-15-2006; and

(j) three Montana citizens at large who are informed and experienced in the subject of law enforcement.

**44-4-403. Council duties -- determinations -- appeals.** (1) The council shall:

(a) establish basic and advanced qualification and training standards for employment;

(b) conduct and approve training; and

(c) provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers.

(2) The council may waive or modify a qualification or training standard for good cause.

(3) A person who has been denied certification or recertification or whose certification or recertification has been suspended or revoked is entitled to a contested case hearing before the council pursuant to Title 2, chapter 4, part 6. A decision of the council is a final agency decision subject to judicial review.

(4) The council is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining and retaining confidential criminal justice information, as defined in 44-5-103, regarding public safety officers in order to provide for the certification or recertification of a public safety officer and for the suspension or revocation of certification of a public safety officer. The council may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979 provided for in Title 44, chapter 5.

**44-4-404. Appointing authority responsible for applying standards.** It is the responsibility of a public safety officer's appointing authority to apply the employment standards and training criteria established by the council pursuant to this part, including but not limited to requiring the successful completion of minimum training standards within 1 year of the public safety officer's hire date and terminating the employment of a public safety officer for failure to meet the minimum standards established by the council pursuant to this part.



## **Railroad Special Peace Officers**

**44-4-902. Application for appointment.** A class I railroad corporation, as defined by the interstate commerce commission in part 1201 of 49 CFR, desiring the appointment of an officer or employee as a special peace officer shall apply to the attorney general. The application must state the name, age, and place of residence of the person applying for appointment. The applicant must have at least 3 years of experience as a class I railroad peace officer or have completed a training course at an approved law enforcement academy, or meet the qualifications described in 7-32-303 and adopted pursuant to Title 44, chapter 4, part 4. The application must be signed by the applicant and a managing officer of the railroad corporation. The managing officer signing the application shall at the same time submit an affidavit to the effect that the officer is acquainted with the person seeking appointment, that the officer believes the applicant to be of good moral character, and that the applicant is of good moral character and has experience such that the applicant can be safely entrusted with the powers and duties of a special peace officer.

## Definitions – “Peace Officer”

**46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following definitions apply:

(1) “Advanced practice registered nurse” means an individual certified as an advanced practice registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(2) “Arraignment” means the formal act of calling the defendant into open court to enter a plea answering a charge.

(3) “Arrest” means taking a person into custody in the manner authorized by law.

(4) “Arrest warrant” means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(5) “Bail” means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

(6) “Charge” means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(7) “Conviction” means a judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(8) “Court” means a place where justice is judicially administered and includes the judge of the court.

(9) “Included offense” means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(10) “Judge” means a person who is vested by law with the power to perform judicial functions.

(11) “Judgment” means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(12) “Make available for examination and reproduction” means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

(13) “New trial” means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

(14) “Notice to appear” means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

(15) “Offense” means a violation of any penal statute of this state or any ordinance of its political subdivisions.

(16) “Parole” means the release to the community of a prisoner by a decision of the board of pardons and parole prior to the expiration of the prisoner’s term subject to conditions imposed by the board of pardons and parole and the supervision of the department of corrections.

(17) “Peace officer” means any person who by virtue of the person’s office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person’s authority.

(18) “Persistent felony offender” means an offender who has previously been convicted of two separate felonies and who is presently being sentenced for a third felony committed on a different occasion than either of the first two felonies. At least one of the three felonies must be a sexual offense or a violent offense as those terms are defined in 46-23-502. An offender is considered to have previously been convicted of two separate felonies if:

(a) the two previous felonies were for offenses that were committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the most recent of the two felony convictions; or

(ii) the offender’s release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at a postconviction hearing.

(19) “Place of trial” means the geographical location and political subdivision in which the court that will hear the cause is situated.

(20) “Preliminary examination” means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

(21) “Probation” means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections upon direction of the court.

(22) “Prosecutor” means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

(23) “Same transaction” means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

(24) “Search warrant” means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

(25) “Sentence” means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty.

(26) “Statement” means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person’s communications or a transcript of the communications; and

(c) a writing containing a summary of a person’s oral communications or admissions.

(27) “Summons” means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

(28) “Superseded notes” means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

(29) “Temporary road block” means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

(30) “Witness” means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(31) “Work product” means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators.

## **Misdemeanor Probation, Probation and Parole & Pretrial Services**

**46-9-505. Issuance of arrest warrant -- redetermining bail -- definition.** (1) Upon failure to comply with any condition of a bail or recognizance, the court having jurisdiction at the time of the failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person.

(2) On verified application by the prosecutor setting forth facts or circumstances constituting a breach or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the pending proceeding, the court may issue a warrant for the arrest of the defendant.

(3) If the defendant has been released under the supervision of a pretrial services agency, referred to in 46-9-108(1)(f), an officer of that agency may arrest the defendant without a warrant or may deputize any other officer with power of arrest to arrest the defendant by giving the officer oral authorization and within 12 hours delivering to the place of detention a verified written statement setting forth that the defendant has, in the judgment of the officer, violated the conditions of the defendant's release. An oral authorization delivered with the defendant by the arresting officer to the official in charge of a county detention center or other place of detention is a sufficient warrant for detention of the defendant if the pretrial officer delivers a verified written statement within 12 hours of the defendant's arrest.

(4) Upon the arrest, the defendant must be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with 46-9-311.

(5) As used in this section, "pretrial services agency" means a government agency or a private entity under contract with a local government whose employees have the minimum training required in 46-23-1003 and that is designated by a district court, justice's court, municipal court, or city court to provide services pending a trial.

**46-23-1002. Powers of the department.** The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

(2) authorize probation and parole officers to carry firearms, including concealed firearms, when necessary. The department shall adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms.

(3) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court.

(4) adopt rules to administer the rental voucher program the department may implement pursuant to 46-23-1041.

**46-23-1003. Qualifications of probation and parole officers.** (1)(a) Probation and parole officers must have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in subsection (1)(b) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees are exempt from this requirement but are encouraged to further their education at the earliest opportunity.

(b) Work experience that may be substituted for the educational requirements in subsection (1)(a) includes experience in the areas of criminology, education, medicine, psychiatry, psychology, law, law enforcement, social work, sociology, psychiatric nursing, or guidance and counseling.

(2) Each probation and parole officer shall, through a source approved by the officer's employer, obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers, at least 1 hour of which must include training on serious mental illness and recovery from serious mental illness. In addition, each probation and parole officer must receive training in accordance with standards adopted by the Montana public safety officer standards and training council established in 2-15-2029. The training must be at the Montana law enforcement academy unless the council finds that training at some other place is more appropriate.

**46-23-1005. Misdemeanor probation offices -- misdemeanor probation officers -- costs.**

(1) A local government may establish a misdemeanor probation office associated with a justice's court, municipal court, or city court. The misdemeanor probation office shall monitor offenders for misdemeanor sentence compliance and restitution payments. An offender is considered a fugitive under the conditions provided in 46-23-1014.

(2) A local government may appoint or contract with a private Montana entity for the provision of misdemeanor probation officers and other employees necessary to administer this section. Misdemeanor probation officers:

(a) must have the minimum training required in 46-23-1003; and

(b) shall follow the supervision guidelines required in 46-23-1011.

(3) A publicly employed misdemeanor probation officer may order the arrest of an offender as provided in 46-23-1012.

(4) An offender who is convicted of the offense of partner or family member assault under 45-5-206 or of a violation of an order of protection under 45-5-626 and who is ordered to be supervised by misdemeanor probation must be ordered to pay for the cost of the misdemeanor probation. The actual cost of probation supervision over the offender's sentence must be paid by the offender unless the offender can show that the offender is unable to pay those costs. The costs of misdemeanor probation are in addition to any other fines, restitution, or counseling ordered.

## **MCS Officers**

### **61-12-201. Appointment of employees and out-of-state personnel as peace officers --**

**definition.** (1) The director of transportation may appoint employees of the department as peace officers to carry out this part. The employees appointed may include only those employees of the department who are employed in the administration of the motor carrier services functions of the department and employees of other states. Out-of-state personnel may be appointed only for the purpose of enforcing gross vehicle weight laws at joint weigh station facilities. Each employee appointed must be issued a certificate of appointment and execute an oath of office, which must be entered into the records of the department.

(2) The department may enter into joint weigh station agreements with other states. If the department enters into a joint weigh station agreement with another state, the department may not reduce staff levels in the motor carrier services division of the department as a result of the agreement but may reassign staff. However, this subsection does not apply to a reduction in force for the department as a whole.

(3) As used in this part, “department” means the department of transportation.