EXHIBIT 15

OFFICE OF THE STATE PUBLIC DEFENDER

Contact: Harry Freebourn, 496-6084
Cathy Doyle, 496-6095

HB162 (LC0361)
Sponsor: Rep. Cynthia Hiner
Revise requirement for appointment of counsel of developmentally disabled

Background/Talking Points:
In most instances, the courts are currently appointing the office of state public defender without the request of the defendant or respondent.

However, the current law provides that, in a proceeding to commit a developmentally disabled person to a residential facility, an attorney will be appointed only after the request of the respondent (the developmentally disabled person), the respondent's parent or guardian, or the responsible person.

This bill would require the court to appoint the Office of the State Public Defender to represent the developmentally disabled person without the need for a request to be made.

Primary Proponent: Randi Hood, 496-6080 (rhood@mt.gov)
Secondary Proponent: Beth Brenneman, 431-2756 (beth@mtadv.org)

HOUSE BILL NO. 162

INTRODUCED BY C. HINER

BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENT FOR APPOINTMENT OF COUNSEL FOR A PERSON WITH A DEVELOPMENTAL DISABILITY IN A PROCEEDING FOR COMMITMENT TO A RESIDENTIAL FACILITY; AND AMENDING SECTION 53-20-125, MCA."

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

Section 1. Section 53-20-125, MCA, is amended to read:

"53-20-125. Outcome of screening -- recommendation for commitment to residential facility -- hearing. (1) A person may be committed to a residential facility only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) If as a result of the screening required by 53-20-133 the residential facility screening team concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent.

(3) ~~At the request of the respondent, the respondent's parents or guardian, or the responsible person, the~~ The court shall order the office of state public defender, provided for in 47-1-201, to assign counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111.

(4) Notice of the determination of the residential facility screening team must be mailed or delivered to:

(a) the respondent;

1 (b) the respondent's parents, guardian, or next of kin, if known;
2 (c) the responsible person;
3 (d) the respondent's advocate, if any;
4 (e) the county attorney;
5 (f) the residential facility;
6 (g) the attorney for the respondent, if any; and
7 (h) the attorney for the parents or guardian, if any.
8 (5) The respondent, the respondent's parents or guardian, the responsible person, the respondent's
9 advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the
10 residential facility screening team.
11 (6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (5).
12 (7) The hearing must be held before the court without jury. The rules of civil procedure apply.
13 (8) If the court finds that the respondent is seriously developmentally disabled and in need of
14 commitment to a residential facility, it shall order the respondent committed to a residential facility for an extended
15 course of treatment and habilitation. If the court finds that the respondent has a developmental disability but is
16 not seriously developmentally disabled, it shall dismiss the petition and refer the respondent to the department
17 of public health and human services to be considered for placement in community-based services according to
18 53-20-209. If the court finds that the respondent does not have a developmental disability or is not in need of
19 developmental disability services, it shall dismiss the petition.
20 (9) If none of the parties notified of the recommendation request a hearing, the court may issue an order
21 for the commitment of the respondent to the residential facility for an extended period of treatment and habilitation
22 or the court may initiate its own inquiry as to whether the order should be granted.
23 (10) The court may refuse to authorize commitment of a respondent to a residential facility for an
24 extended period of treatment and habilitation if commitment is not in the best interests of the respondent.
25 (11) An order for commitment must be accompanied by findings of fact.
26 (12) A court order entered in a proceeding under this part must be provided to the residential facility
27 screening team."
28 - END -

OFFICE OF THE STATE PUBLIC DEFENDER

Contact: Harry Freebourn, 496-6084
Cathy Doyle, 496-6095

HB172 (LC0360)
Sponsor: Rep. Margarett Campbell
Electronic recording of custodial questioning

Background/Talking Points:

POINTS IN FAVOR OF RECORDING INTERROGATIONS

1) In this day and age of scientific evidence, including DNA, fosters public confidence in the criminal justice system

2) Saves time and money

3) Aids law enforcement efforts:
   a) Proves the voluntariness of the statement
   b) Avoids any dispute as to what was said or not said
   c) Protects police officers from being wrongfully accused of using improper tactics
   d) Law enforcement becomes more accurate sure, swift, and economical

4) Aids prosecutors:
   a) Eliminates virtually all pretrial and trial arguments about what occurred during the interview
   b) Leads to more uncontested guilty pleas and convictions
   c) In cases that go to trial, the State's evidence is far more persuasive than testimony based on recollection, notes or typed reports

5) Aids the courts:
   a) Significantly less court-time spent on confession issues
   b) Cases are much more likely to settle without hearing or trial
   c) Facilitates the goal of ascertaining the truth
   d) Promotes accuracy, fairness and justice

6) Protects the rights of the accused and prevents the innocent from being convicted
   a) Preserves truthful exculpatory responses
   b) Protects against improper police conduct
   c) Avoids a credibility contest between the accused and law enforcement

Primary Proponent: Dan Donovan, 727-0500 (dan.donovan@tpdlaw.com)
Secondary Proponent: Randi Hood, 496-6080 (rhood@mt.gov)

HOUSE BILL NO. 172

INTRODUCED BY M. CAMPBELL

BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A STATEMENT BY A PERSON DURING CUSTODIAL QUESTIONING IS PRESUMED TO BE INADMISSIBLE IN EVIDENCE UNLESS IT IS ELECTRONICALLY RECORDED; PROVIDING GROUNDS FOR REBUTTAL OF THE PRESUMPTION; AND REQUIRING PRESERVATION OF THE RECORDING."

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

NEW SECTION. **Section 1. Recording of custodial questioning -- admissibility.** (1) As used in this section, the following definitions apply:

(a) "Custodial questioning" means the questioning in this state by a state or local government law enforcement officer of a person who is in custody and is questioned concerning an act, occurrence, or failure to act that is or may be a criminal offense. Custodial questioning is questioning conducted in a law enforcement office or vehicle, courthouse, correctional facility, community correctional center, detention facility, health care facility, or any other place where adequate electronic recording equipment can be made readily available, whether or not the equipment is in fact available.

(b) "Electronic recording" means a complete and authentic recording created by motion picture, videotape, audiotape, or digital media.

(2) An oral, written, or sign language statement of a person made during custodial questioning is rebuttably presumed to be inadmissible in evidence in a criminal proceeding unless:

(a) the custodial questioning was electronically recorded in its entirety;

(b) at the start of the custodial questioning and electronic recording, the person was given the requisite Miranda warning and knowingly, intelligently, and voluntarily waived the rights referenced in the warning;

(c) the electronic recording equipment was capable of making an accurate recording, the equipment operator was competent, and the electronic recording has not been altered;

(d) each electronically recorded voice that is material to the custodial questioning is identified; and

(e) at least 20 days before the beginning of any trial or hearing in which it is contemplated that the

electronic recording will be introduced in evidence, the defense attorney, or the defendant if the defendant does not have a defense attorney, is provided with a true, complete, and accurate copy of the electronic recording.

(3) The presumption of inadmissibility of the statement may be overcome by clear and convincing evidence that the statement was voluntary and reliable and that the law enforcement officer or officers conducting the custodial questioning had good cause for not electronically recording the custodial questioning. Good cause includes but is not limited to:

(a) custodial questioning conducted in a place where electronic recording equipment could not be made readily available;

(b) refusal of the person questioned to have the custodial questioning electronically recorded, and the refusal itself was electronically recorded; or

(c) equipment failure that resulted in the inability to electronically record the custodial questioning in its entirety.

(4) The electronic recording must be preserved until:

(a) the statute of limitations has run out for any offense for which the person might be charged;

(b) for any offense for which the person could be and was charged, the person was found not guilty; or

(c) for any offense for which the person could be and was charged, the person was convicted and all time for appeal, postconviction relief, and habeas corpus relief has passed and the conviction has become final.

(5) This section does not apply to a statement made in a judicial hearing or trial or before a grand jury or spontaneously made during or after the commission of an offense and not made in response to custodial questioning.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46 apply to [section 1].

- END -

OFFICE OF THE STATE PUBLIC DEFENDER

Contact: Harry Freebourn, 496-6084
Cathy Doyle, 496-6095

SB164 (LC0362)
Sponsor: Sen. Steven Gallus
Clarify role of counsel and guardian ad litem to prevent conflict of interest

Background/Talking Points:
The current law allows the court to appoint the Office of the State Public Defender to represent incapacitated persons in guardianship proceedings. The law, however, provides that the public defender represents the person but also has the powers and duties of a guardian ad litem. The two roles are inconsistent. An attorney represents the stated interests of the client and a guardian ad litem is not intended to have an advocacy role. This bill rectifies the combining of the two roles.

Primary Proponent: Randi Hood, 496-6080 (rhood@mt.gov)
Secondary Proponents: Ed Sheehy, 523-5140 (esheehy@mt.gov)
Beth Brenneman, 431-2756 (beth@mtadv.org)

SENATE BILL NO. 164

INTRODUCED BY S. GALLUS

BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DISTINCTION BETWEEN THE POWERS AND DUTIES OF ASSIGNED COUNSEL AND A GUARDIAN AD LITEM IN PROCEEDINGS TO ADJUDICATE INCAPACITY AND TO PROTECT PROPERTY OF MINORS AND PERSONS UNDER DISABILITY; AMENDING SECTIONS 72-5-315 AND 72-5-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview -- procedural rights. (1) The incapacitated person or any person interested in the incapacitated person's welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of the person's own choice or the court may, in the interest of justice, appoint an appropriate official or order the office of state public defender, provided for in 47-1-201, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the person in the proceeding. ~~The official or assigned counsel has the powers and duties of a guardian ad litem.~~

(3) The person alleged to be incapacitated must be examined by a physician appointed by the court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made and submit the visitor's report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize

1 the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly
2 incapacitated person and make recommendations to the court regarding the most appropriate form of state
3 intervention in the person's affairs.
4 (4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see
5 or hear all evidence bearing upon the person's condition. The person is entitled to be present by counsel, to
6 present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial
7 by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated
8 or the person's counsel requests it."
9
10 **Section 2.** Section 72-5-408, MCA, is amended to read:
11 **"72-5-408. Procedure concerning hearing and order on original petition.** (1) Upon receipt of a
12 petition for appointment of a conservator or other protective order because of minority, the court shall set a date
13 for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the
14 interests of the minor are or may be inadequately represented, the court may order the office of state public
15 defender, provided for in 47-1-201, to assign counsel pursuant to the Montana Public Defender Act, Title 47,
16 chapter 1, to represent the minor. ~~Counsel assigned to represent a minor also has the powers and duties of a~~
17 ~~guardian ad litem.~~
18 (2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other
19 than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's
20 own choice, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel
21 to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. ~~Assigned counsel has~~
22 ~~the powers and duties of a guardian ad litem.~~ If the alleged disability is mental illness or mental deficiency, the
23 court may direct that the person to be protected be examined by a physician or professional person as defined
24 in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age,
25 chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined
26 by a physician designated by the court. It is preferable that a physician designated by the court not be connected
27 with any institution in which the person is a patient or is detained. The court may send a visitor to interview the
28 person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.
29 (3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be
30 protected be examined by a physician as set forth in subsection (2).

1 (4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order
2 has been established, the court shall make an appointment or other appropriate protective order."
3
4 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.
5
6 NEW SECTION. **Section 4. Applicability.** [This act] applies to appointments on or after [the effective
7 date of this act].
8 - END -

OFFICE OF THE STATE PUBLIC DEFENDER

Contact: Harry Freebourn, 496-6084
Cathy Doyle, 496-6095

SB348 (LC2082)
Sponsor: Sen. Steven Gallus
Delete appointment of attorney for guardian ad litem

Background/Talking Points:
The current law requires the court, in dependent and neglect proceedings, to appoint the Office of the State Public Defender as attorney for the indigent parent, guardian, or other person having custody of a child. The court also appoints the Office of the State Public Defender to represent the child and the guardian ad litem.

The district court appoints a guardian ad litem for the child. The guardian ad litem is sometimes a volunteer and sometimes an attorney. In almost all cases, the position taken by the guardian ad litem is the same as the position taken by another party (the state or the parents). The attorney for any of those parties would bring the position of the guardian ad litem to the attention of the court. If the guardian ad litem has a position inconsistent with everyone else in the case, the guardian ad litem is an officer of the court and allowed to ask to be heard.

The Office of the State Public Defender is appointing multiple attorneys in each of these cases. To have the guardian ad litem appointed by the court but the attorney for the guardian ad litem appointed by the Office of the State Public Defender presents a conflict of interest, particularly since the Office of the State Public Defender also represents the parents.

Primary Proponent: Randi Hood, 496-6080 (rhood@mt.gov)
Secondary Proponent: Ed Sheehy, 523-5140 (esheehy@mt.gov)

SENATE BILL NO. 348

INTRODUCED BY S. GALLUS

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE REQUIREMENT FOR THE APPOINTMENT OF AN ATTORNEY FOR A GUARDIAN AD LITEM IN A CHILD ABUSE AND NEGLECT CASE; ALLOWING AN APPOINTMENT FOR A GUARDIAN AD LITEM OR COURT-APPOINTED SPECIAL ADVOCATE WHEN APPROPRIATE; AMENDING SECTION 41-3-425, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 41-3-425, MCA, is amended to read:

"41-3-425. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsection (3), the court shall immediately appoint or have counsel assigned for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422;

(b) any child~~,~~ or youth~~, or guardian ad litem~~ involved in a proceeding under a petition filed pursuant to 41-3-422; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) WHEN APPROPRIATE, THE COURT MAY APPOINT OR HAVE COUNSEL ASSIGNED FOR A GUARDIAN AD LITEM OR A COURT-APPOINTED SPECIAL ADVOCATE INVOLVED IN A PROCEEDING UNDER A PETITION FILED PURSUANT TO 41-3-422.

~~(3)~~(4) ~~Beginning July 1, 2006, the~~ The court's action pursuant to subsection (2) OR (3) must be to order the office of state public defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, pending a determination of eligibility pursuant to 47-1-111."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -

OFFICE OF THE STATE PUBLIC DEFENDER

Contact: Harry Freebourn, 496-6084
Cathy Doyle, 496-6095

SB379 (LC2085)
Sponsor: Sen. Jesse Laslovich
Clarify public defender for postconviction purposes

Background/Talking Points:
This bill brings Section 46-8-104 in line with Section 46-21-201. The statute for which the amendment is sought provides for the Office of the State Public Defender to provide counsel for financially eligible petitioners in a variety of post-trial proceedings including post-conviction proceedings. Section 46-21-201, however, provides that a petitioner in post-conviction proceedings is entitled to an attorney only after the court determines that the petition warrants a hearing.

The amendment is consistent with the post-conviction procedure while also providing for an attorney when extraordinary circumstances exist and to prevent a miscarriage of justice.

The Office of the State Public Defender does not have the resources to represent everyone in post-conviction proceedings. They are many in number. It remains appropriate for attorneys to be appointed only after the court has made some determination that there may be merit to the petition.

Primary Proponent: Randi Hood, 496-6080 (rhood@mt.gov)
Secondary Proponent: Jim Wheelis, 841-2001 (JimWheelis@mt.gov)

SENATE BILL NO. 379

INTRODUCED BY J. LASLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WHEN THE OFFICE OF STATE PUBLIC DEFENDER MAY BE APPOINTED AS COUNSEL IN POSTCONVICTION PROCEEDINGS; AMENDING SECTION 46-8-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 46-8-104, MCA, is amended to read:

"46-8-104. Assignment of counsel after trial -- definition. (1) Any court of record may order the office of state public defender, provided for in 47-1-201, to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to ~~defend~~ represent any ~~defendant,~~ petitioner~~,~~ or appellant in any postconviction ~~criminal~~ action or proceeding brought under Title 46, chapter 21, if the ~~defendant,~~ petitioner~~,~~ or appellant ~~desires~~ is eligible for the appointment of counsel and ~~is unable to employ counsel~~ demonstrates by reference to specific facts and documents in the record and by citation to statutory, jurisprudential, or constitutional authority that:

(a) a statute specifically mandates the appointment of counsel;

(b) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or

(c) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" means those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing English."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -

SENATE BILL NO. 379

INTRODUCED BY J. LASLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WHEN THE OFFICE OF STATE PUBLIC DEFENDER MAY BE APPOINTED AS COUNSEL IN POSTCONVICTION PROCEEDINGS; AMENDING SECTION 46-8-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 46-8-104, MCA, is amended to read:

"46-8-104. Assignment of counsel after trial -- definition. (1) Any court of record may order the office of state public defender, provided for in 47-1-201, to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent any petitioner or appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or appellant is eligible for the appointment of counsel and demonstrates by reference to specific facts and documents in the record and by citation to statutory, jurisprudential, or constitutional authority that:

(a) the district court determines that a hearing on the petition is required as provided under 46-21-101; or

(b) a statute specifically mandates the appointment of counsel;

(c~~b~~) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or

(d) the office of the state public defender requests appointment for good cause shown; or

(e~~e~~) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" means those in which the petitioner or appellant does not have access to legal materials or has a

physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing English."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -