

HOUSE BILL NO. 72

INTRODUCED BY M. MACDONALD

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IN A CRIMINAL PROCEEDING A SENTENCING JUDGE MAY REQUIRE AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE THAT THE OFFENDER PARTICIPATE IN A RESTORATIVE JUSTICE PROGRAM IF THE PROGRAM ACCEPTS THE OFFENDER; REQUIRING THE OFFENDER TO PAY A PARTICIPATION FEE; AMENDING SECTIONS 46-18-104 AND 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Law and Justice Interim Committee examined the efficacy of restorative justice principles and practices within the criminal justice system as requested by Senate Joint Resolution No. 29 from the 2011 legislative session; and

WHEREAS, the Committee found that some Montana judges are referring offenders to restorative justice programs; and

WHEREAS, these programs have been effective in providing an increased sense of justice and safety in communities harmed by crime;

WHEREAS, restorative justice programs depend on victim volunteers who incur training, travel, and per diem expenses; and

WHEREAS, offenders should be held accountable for their offenses by helping cover the cost of restorative justice opportunities.

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

**Section 1.** Section 46-18-104, MCA, is amended to read:

**"46-18-104. Definitions.** As used in 46-18-101, 46-18-105, 46-18-201, 46-18-225, and this section, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections" or "community corrections facility or program" means a community corrections facility or program as defined in 53-30-303.

(2) (a) "Crime of violence" means:



1 (i) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the  
2 commission or attempted commission of a crime;

3 (ii) a crime in which the offender causes serious bodily injury or death to a person other than the offender;

4 or

5 (iii) an offense under:

6 (A) 45-5-502 for which the maximum potential sentence is life imprisonment or imprisonment in a state  
7 prison for a term exceeding 1 year;

8 (B) 45-5-503, except as provided in subsection (2)(b) of this section; or

9 (C) 45-5-507 if the victim is under 16 years of age and the offender is 3 or more years older than the  
10 victim or if the offender inflicts bodily injury upon anyone in the course of committing the offense.

11 (b) In a prosecution under 45-5-503, if the sexual intercourse was without consent based solely on the  
12 victim's age, the victim willingly participated, and the offender is not more than 3 years older than the victim, the  
13 offense is not a crime of violence for purposes of this section.

14 (3) "Nonviolent felony offender" means a person who has entered a plea of guilty or nolo contendere to  
15 a felony offense other than a crime of violence or who has been convicted of a felony offense other than a crime  
16 of violence.

17 (4) "Restorative justice" has the meaning provided in 2-15-2013.

18

19 **Section 2.** Section 46-18-201, MCA, is amended to read:

20 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an  
21 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition  
22 of sentence, except as otherwise specifically provided by statute, for a period:

23 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

24 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a  
25 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless  
26 of whether any other conditions are imposed.

27 (b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the  
28 case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was  
29 imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

30 (2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or

1 nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically  
2 provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is  
3 greater, for each particular offense.

4 (3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty  
5 or nolo contendere, a sentencing judge may impose a sentence that may include:

6 (i) a fine as provided by law for the offense;

7 (ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in  
8 46-8-113;

9 (iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a  
10 state prison to be designated by the department of corrections;

11 (iv) commitment of:

12 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a  
13 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years  
14 of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4),  
15 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4); or

16 (B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense  
17 enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in  
18 an appropriate correctional facility or program;

19 (v) with the approval of the facility or program, placement of the offender in a community corrections  
20 facility or program as provided in 53-30-321;

21 (vi) with the approval of the prerelease center or prerelease program and confirmation by the department  
22 of corrections that space is available, placement of the offender in a prerelease center or prerelease program for  
23 a period not to exceed 1 year;

24 (vii) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and  
25 for a period of time determined by the department of corrections, but not exceeding the period of state supervision  
26 of the person; or

27 (viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

28 (b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

29 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the  
30 sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of

1 the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under  
2 subsection (1)(a) or (2) may include but are not limited to:

- 3 (a) limited release during employment hours as provided in 46-18-701;  
4 (b) incarceration in a detention center not exceeding 180 days;  
5 (c) conditions for probation;  
6 (d) payment of the costs of confinement;  
7 (e) payment of a fine as provided in 46-18-231;  
8 (f) payment of costs as provided in 46-18-232 and 46-18-233;  
9 (g) payment of costs of assigned counsel as provided in 46-8-113;  
10 (h) with the approval of the facility or program, an order that the offender be placed in a community  
11 corrections facility or program as provided in 53-30-321;  
12 (i) with the approval of the prerelease center or prerelease program and confirmation by the department  
13 of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease  
14 program for a period not to exceed 1 year;  
15 (j) community service;  
16 (k) home arrest as provided in Title 46, chapter 18, part 10;  
17 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;  
18 (m) with the approval of the department of corrections and with a signed statement from an offender that  
19 the offender's participation in the boot camp incarceration program is voluntary, an order that the offender  
20 complete the boot camp incarceration program established pursuant to 53-30-403;  
21 (n) participation in a day reporting program provided for in 53-1-203;  
22 (o) participation in the sobriety program provided for in Title 44, chapter 4, part 12, for a second or  
23 subsequent violation of 61-8-401 or 61-8-406;  
24 (p) participation in a restorative justice program approved by court order and payment of a participation  
25 fee of up to \$150 for program expenses if the program agrees to accept the offender;  
26 ~~(p)~~(q) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the  
27 protection of the victim or society; or  
28 ~~(q)~~(r) any combination of the restrictions or conditions listed in subsections (4)(a) through ~~(4)(p)~~ (4)(q).  
29 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a  
30 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in

1 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment  
2 of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the  
3 sentence is deferred or suspended.

4 (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1)  
5 through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to  
6 be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension  
7 of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

8 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in  
9 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part  
10 5.

11 (8) If a felony sentence includes probation, the department of corrections shall supervise the offender  
12 unless the court specifies otherwise."

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14 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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