

## **Statute Review Subcommittee Recommendations to the Commission on Sentencing**

Adopted August 29, 2016

### Background and Procedural Information

The Commission on Sentencing formed a subcommittee at its June 2016 meeting to discuss and make recommendations related to several policy options that centered on crimes, penalties, and sentencing requirements. Commission members appointed to the Statute Review Subcommittee were Senator Wolken, Senator Hansen, Judge Gustafson, Sheriff Whitt, and Commissioners Majel Russell, Peter Ohman, and Dan Guzynski.

The subcommittee met on August 29 and made several recommendations to the full commission, which will consider the recommendations at its September 2016 meeting. Except for the recommendation relating to the persistent felony offender statutory structure, all subcommittee recommendations were adopted by a unanimous vote. The recommendation relating to the persistent felony offender statutory structure was adopted by a 5-2 vote.

### Recommendations

The Statute Review Subcommittee recommends that the Commission on Sentencing should draft legislation to:

1. Revise 46-18-201 to:
  - a. Include fewer “doors” into community corrections facilities;
  - b. Provide opportunity for in-patient treatment in a DOC facility or contracted facility while preserving opportunity for a deferred sentence; and
  - c. Provide credit for jail time served before entry to a facility.
2. Revise the criminal endangerment statute to provide that a high blood alcohol content alone is not sufficient to support a criminal endangerment charge.
3. Revise 45-5-214(3) (Assault with bodily fluid) to remove the reference to district court jurisdiction over a violation of this section by a minor.
4. Repeal the persistent felony offender statutory structure.
5. Enact changes made in Senate Bill 90 (2015), including that the legislation should:
  - a. revise 45-6-301 (Theft) as provided in the introduced version of the bill, except that the revision should also include that for theft offenses where the amount is less than \$100 the court is encouraged to give a deferred sentence;
  - b. revise 45-6-316 (Issuing a bad check) as provided in the Senate version of the bill, except that the revision should also strike language in subsection (3)(C) that refers to “common scheme” and leave the section language to be “if the value of property, labor, or services exceeds \$1500.” The same change should be made to identical language in 45-6-325(4) (Forgery).
6. Revise Theft, Forgery, Issuing a Bad Check, Identity Theft, Deceptive Practices, Failure to Return Rented Property crimes to create a tiered sentencing structure as provided in Commissioner Ohman’s June 7, 2016, memo.

7. Revise Title 45, chapter 9 (Dangerous Drugs) to:
  - a. Eliminate the life sentence option for small sales of marijuana;
  - b. Provide a lesser penalty for sharing drugs as compared to selling drugs;
  - c. Make 2<sup>nd</sup> offense criminal possession of dangerous drugs a misdemeanor not a felony;
  - d. Make consistent the mandatory minimums for the different types of drug offenses, such as those contained in 45-9-102 (Criminal possession of dangerous drugs) and 45-9-103 (Criminal possession with intent to distribute), as well as other relevant statutes.
8. Revise 46-18-204(1)(a) to allow a dismissal after a deferred imposition of sentence in cases where the defendant does not go to trial but pleads nolo contendere or pleads guilty.
9. Repeal statutory references to “drug information courses” or “drug education courses,” including in 45-9-208, 45-10-108, and 61-8-732.

The Statute Review Subcommittee also requested that:

1. Staff research options for splitting out accountability (45-2-302 and 45-2-303) from actual crime including:
  - a. A focus on lesser, nonviolent crimes;
  - b. The possibility of sentencing options for a judge to decide to sentence the accountable person to a lesser penalty or be exposed to a lesser maximum sentence;
  - c. How other states handle the classifications or tiers; and
  - d. The possibility of having draft language ready for the full commission’s review at the September 20 meeting.
2. Staff research options to revise 45-5-213 (Assault with a weapon) to split out actual assault with a weapon compared to reasonable apprehension of assault. Use North Dakota code and the Model Penal Code as examples with the possibility of having draft language ready for the full commission’s review at the September 20 meeting.
3. Staff identify all of the statutes that allow for a suspension or revocation of a driver’s license with the possibility of having the research available for the full commission at the September 20 meeting.
4. Senator Wolken work with Senator Swandal to propose other revisions to the bill based on SB 90 (2015).
5. The full commission consider requesting that the courts collect data on treatment assigned by a judge as part of a sentence, including lower court judges.

Meeting materials, including Commissioner Peter Ohman’s June 7, 2016, memo and suggested Title 45 and Title 46 revisions are available online at:

<http://leg.mt.gov/css/Committees/Interim/2015-2016/Sentencing/Meetings/Aug-29-2016/aug-29-2016.asp>