

## HOUSE BILL NO. 554

INTRODUCED BY D. HOWARD

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4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO DETAINED ILLEGAL ALIENS; REQUIRING THAT  
5 ENTITIES OPERATING DETENTION CENTERS, INCLUDING YOUTH DETENTION CENTERS, MAKE  
6 REASONABLE EFFORTS TO DETERMINE THE IMMIGRATION STATUS OF CERTAIN ADULT OR YOUTH  
7 ALIEN INMATES AND REGULATING THE GRANTING OF BAIL FOR THOSE ALIEN INMATES; AUTHORIZING  
8 THE DEPARTMENT OF JUSTICE TO ADOPT RULES; AND AMENDING SECTIONS 41-5-323, 46-9-109, AND  
9 46-9-301, MCA."

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

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13 **NEW SECTION. Section 1. Verification of immigration status of inmates required -- bail --**  
14 **definition.** (1) When a person has been charged with a felony or for driving under the influence as defined in  
15 61-8-401 and is confined for any period in a detention center pending bail, initial appearance, hearing, or trial,  
16 the state, local government, or other entity operating the center shall make a reasonable effort to determine  
17 whether the inmate is an alien unlawfully present in the United States. A reasonable effort to determine the  
18 inmate's lawful alienage includes a request made to the U.S. department of homeland security or its successor  
19 agency within 48 hours of the beginning of confinement, or a shorter period of time before the inmate is released  
20 pending initial appearance, hearing, or trial, if the lawful alienage of the inmate cannot be determined from  
21 documents in the possession of the inmate at the time of the arrest or while incarcerated.

22 (2) If the U.S. department of homeland security or its successor agency has determined that the inmate  
23 is not lawfully present in the United States, the entity operating the facility shall notify the U.S. department of  
24 homeland security or its successor agency of the detention status of the inmate and confirm whether a federal  
25 immigration detainer has been requested for the alien.

26 (3) For the purpose of determining whether bail will be granted, the amount or form of bail, and the  
27 conditions of bail, there is a rebuttable presumption that an inmate whose immigration status has been verified  
28 pursuant to subsection (2) to be an alien who is not lawfully present in the United States is at risk of flight. Except  
29 as otherwise provided in this section, this section does not amend or otherwise affect statutes governing the  
30 granting of bail.

1 (4) The department of justice may adopt rules to implement this section.

2 (5) As used in this section, "detention center" includes a detention center established pursuant to  
3 7-32-4201.

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5 **NEW SECTION. Section 2. Verification of youth's immigration status required.** The provisions of  
6 [section 1] apply to a youth retained in custody pursuant to 41-5-334 except that:

7 (1) the youth need not be charged with a felony or DUI;

8 (2) the youth may be detained at a detention center, youth assessment center, or shelter care facility;

9 (3) contact with the U.S. department of homeland security must be made by a youth probation officer;

10 (4) the department of justice may not adopt rules implementing this section; and

11 (5) a request or other contact with the U.S. department of homeland security need not be made pursuant  
12 to [section 1] if that request or contact has been made regarding the youth pursuant to this section.

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14 **Section 3.** Section 41-5-323, MCA, is amended to read:

15 **"41-5-323. Bail.** A youth placed in detention or shelter care may be released on bail. The court shall use  
16 the provisions of Title 46, chapter 9, as guidance. In determining the amount of bail, the court shall consider the  
17 financial ability of the youth and the parents or legal custodian of the youth and whether the youth is considered  
18 at risk of flight pursuant to [sections 1 and 2]."

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20 **Section 4.** Section 46-9-109, MCA, is amended to read:

21 **"46-9-109. Release or detention hearing.** (1) The release or detention of the defendant must be  
22 determined immediately upon the defendant's initial appearance.

23 (2) In determining whether the defendant should be released or detained, the court shall take into  
24 account the application and effect of [section 1] and the available information concerning:

25 (a) the nature and circumstances of the offense charged, including whether the offense involved the use  
26 of force or violence;

27 (b) the weight of the evidence against the defendant;

28 (c) the history and characteristics of the defendant, including:

29 (i) the defendant's character, physical and mental condition, family ties, employment, financial resources,  
30 length of residence in the community, community ties, past conduct, history relating to alcohol or drug abuse,

- 1 criminal history, and record concerning the appearance at court proceedings; and
- 2 (ii) whether at the time of the current arrest or offense, the defendant was on probation, on parole, or on
- 3 other release pending trial, sentencing, appeal, or completion of sentencing for an offense;
- 4 (d) the nature and seriousness of the danger to any person or the community that would be posed by
- 5 the defendant's release; and
- 6 (e) the property available as collateral for the defendant's release to determine if it will reasonably ensure
- 7 the appearance of the defendant as required.
- 8 (3) Upon the motion of any party or the court, a hearing may be held to determine whether bail is
- 9 established in the appropriate amount, the application and effect of [section 1], or whether any other condition
- 10 or restriction upon the defendant's release will reasonably ensure the appearance of the defendant and the safety
- 11 of any person or the community."
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13 **Section 5.** Section 46-9-301, MCA, is amended to read:

14 **"46-9-301. Determining the amount of bail.** In all cases that bail is determined to be necessary, bail

15 must be reasonable in amount and the amount ~~shall~~ must be:

- 16 (1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;
- 17 (2) sufficient to ~~assure~~ ensure compliance with the conditions set forth in the bail;
- 18 (3) sufficient to protect any person from bodily injury;
- 19 (4) not oppressive;
- 20 (5) commensurate with the nature of the offense charged;
- 21 (6) considerate of the financial ability of the accused;
- 22 (7) considerate of the defendant's prior record;
- 23 (8) considerate of the length of time the defendant has resided in the community and of ~~his~~ the
- 24 defendant's ties to the community;
- 25 (9) considerate of the defendant's family relationships and ties;
- 26 (10) sufficient in consideration of the requirements of [section 1];
- 27 ~~(+0)(11)~~ considerate of the defendant's employment status; and
- 28 ~~(+4)(12)~~ sufficient to include the charge imposed in 46-18-236."
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30 NEW SECTION. **Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an

1 integral part of Title 7, chapter 32, part 22, and the provisions of Title 7, chapter 32, part 22, apply to [section 1].

2 (2) [Section 2] is intended to be codified as an integral part of Title 41, chapter 5, part 3, and the  
3 provisions of Title 41, chapter 5, part 3, apply to [section 2].

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