

SENATE BILL NO. 223

INTRODUCED BY C. JUNEAU

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE OFFENSE OF MALICIOUS INTIMIDATION OR  
5 HARASSMENT TO INCLUDE SEXUAL ORIENTATION, GENDER EXPRESSION, AND DISABILITY; REVISING  
6 THE PENALTY FOR MALICIOUS INTIMIDATION OR HARASSMENT; INCLUDING SEXUAL ORIENTATION,  
7 GENDER EXPRESSION, AND DISABILITY IN THE PROVISION THAT ALLOWS A PENALTY ENHANCEMENT  
8 FOR OTHER BIAS-BASED CRIMES; ELIMINATING THE INCARCERATION ENHANCEMENT FOR OTHER  
9 BIAS-BASED CRIMES AND ALLOWING A SENTENCING JUDGE TO ORDER PARTICIPATION IN A  
10 RESTORATIVE JUSTICE PROGRAM AS AN ENHANCEMENT FOR ANY BIAS-BASED CRIME; AND  
11 AMENDING SECTIONS 2-15-2013, 45-5-221, AND 45-5-222, MCA."

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

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15 **Section 1.** Section 2-15-2013, MCA, is amended to read:  
16 **"2-15-2013. Office of restorative justice -- bias-based crimes program.** (1) There is an office of  
17 restorative justice in the department of justice.  
18 (2) The purposes of the office of restorative justice are to:  
19 (a) promote the use of restorative justice throughout the state by balancing the needs of victims,  
20 communities, and juvenile and adult offenders;  
21 (b) provide technical assistance to jurisdictions and organizations interested in implementing the  
22 principles of restorative justice; and  
23 (c) bring additional resources to Montana communities for restorative justice programs.  
24 (3) (a) The office of restorative justice may contract with community-based programs to provide  
25 restorative justice programs, including programs for persons whose sentences are enhanced under the provisions  
26 of 45-5-222.  
27 (b) Programs for persons whose sentences are enhanced under 45-5-222 must include but need not  
28 be limited to victim-offender mediation or family group conferencing. Victim-offender mediation programs must  
29 involve a face-to-face meeting, in the presence of a trained mediator, between the victim of the crime or the  
30 victim's representative and the offender. Family group conferencing programs may, in addition to the primary

1 victim, include persons connected to the victim, including the victim's family members. The offender, the  
2 offender's family members, and others connected to the offender may be allowed to participate in family group  
3 conferencing by the mediator. If a victim is unable or unwilling to participate in a victim-offender mediation or  
4 family group conferencing program, the office of restorative justice shall appoint one or more representatives of  
5 the class or group of persons against which the violation of 45-5-222 was directed to participate in lieu of the  
6 victim's participation.

7 ~~(3)~~(4) (a) For the purposes of 2-15-2012, 2-15-2014, and this section, the term "restorative justice"  
8 means the philosophy of promoting and supporting practices, policies, and programs that focus on repairing the  
9 harm of crime, strengthening communities around the state, emphasizing accountability, and providing  
10 alternatives to incarceration for offenders who are at low risk for violence.

11 (b) Restorative justice is intended to improve the ability of the justice system to meet the needs of  
12 victims, to encourage community and victim participation in the criminal justice process, to reduce crime and  
13 increase the public sense of safety, to hold offenders accountable, and to provide rehabilitation and reintegration  
14 of offenders back into the community.

15 (c) Restorative justice programs include but are not limited to victim-offender ~~meetings~~ mediation, family  
16 group conferencing, sentencing circles, use of victim and community impact statements, restitution programs,  
17 constructive community service, victim awareness education, victim empathy programs, school expulsion  
18 alternatives, peer mediation, diversion programs, and community panels.

19 ~~(4)~~(5) Efforts of the office of restorative justice may include but are not limited to:

20 (a) providing educational programs on the philosophical framework of restorative justice;

21 (b) providing technical assistance to schools, law enforcement, youth courts, probation and parole  
22 officers, juvenile corrections programs, and prisons in designing and implementing applications of restorative  
23 justice;

24 (c) housing a repository for resources and information to coordinate expertise in restorative justice;

25 (d) serving as a liaison between victims, the judiciary, and state agencies, such as the department of  
26 justice and the department of corrections, that are involved in criminal and juvenile justice efforts, including victim  
27 compensation programs;

28 (e) providing information to schools, local governments, law enforcement, state agencies, the judiciary,  
29 and the legislature regarding systemic changes that may be necessary to enhance further development of  
30 restorative justice in the state; and

1 (f) securing additional resources for restorative justice programs through a grant program administered  
 2 by the board of crime control, which may be coordinated with other appropriate grant programs of agencies, and  
 3 providing sustained funding for successful community programs."  
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5 **Section 2.** Section 45-5-221, MCA, is amended to read:

6 **"45-5-221. Malicious intimidation or harassment relating to civil or human rights -- penalty.** (1)  
 7 A person commits the offense of malicious intimidation or harassment when, because of another person's race,  
 8 creed, religion, color, national origin, sexual orientation, gender expression, disability, or involvement in civil rights  
 9 or human rights activities, ~~he~~ the offending person purposely or knowingly, with the intent to terrify, intimidate,  
 10 threaten, harass, annoy, or offend:

11 (a) causes bodily injury to another;

12 (b) causes reasonable apprehension of bodily injury in another; or

13 (c) damages, destroys, or defaces any property of another or any public property.

14 (2) For purposes of this section, "deface" includes but is not limited to cross burning or the placing of any  
 15 word or symbol commonly associated with racial, religious, or ethnic identity or activities on the property of  
 16 another person without ~~his or her~~ the person's permission.

17 (3) A person convicted of the offense of malicious intimidation or harassment shall be imprisoned in the  
 18 state prison for a term not to exceed ~~5~~ 3 years or be fined an amount not to exceed \$5,000, or both."  
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20 **Section 3.** Section 45-5-222, MCA, is amended to read:

21 **"45-5-222. ~~Sentence~~ Bias-based crimes -- sentence enhancement -- offenses committed because**  
 22 **of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights**  
 23 **activities.** (1) ~~A person who has pleaded guilty or nolo contendere to or who has been found guilty of any offense,~~  
 24 ~~except malicious intimidation or harassment, that~~ If the provisions of 46-1-401 have been complied with and  
 25 except as provided in 46-18-222, a sentencing judge may, as provided in subsection (2) of this section, enhance  
 26 the sentence of a person convicted of any offense, including a violation of 45-5-221, if the offense for which the  
 27 person is being sentenced was committed because of the victim's race, creed, religion, color, national origin,  
 28 sexual orientation, gender expression, disability, or involvement in civil rights or human rights activities or ~~that~~  
 29 involved damage, destruction, or attempted destruction of a building regularly used for religious worship, ~~in~~  
 30 ~~addition to the punishment provided for commission of the offense, may, if the provisions of 46-1-401 have been~~

1 ~~complied with, be sentenced to a term of imprisonment of not less than 2 years or more than 10 years, except~~  
2 ~~as provided in 46-18-222.~~

3 ~~(2) An additional sentence prescribed by subsection (1) must run consecutively to the sentence, except~~  
4 ~~as provided in 46-18-222.~~

5 (2) In addition to any other penalty provided by law, a person convicted of a bias-based crime may be  
6 sentenced to a restorative justice program provided for under 2-15-2013(3)."

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