



AN ACT REVISING LAWS REGARDING TRAFFICKING OF PERSONS FOR COMMERCIAL SEXUAL ACTIVITY; REVISING PROSTITUTION LAWS; REVISING CERTAIN PENALTIES; ESTABLISHING THE OFFENSES OF SEXUAL SERVITUDE OF A CHILD AND PATRONIZING A CHILD; AMENDING SECTIONS 45-5-305, 45-5-306, 45-5-601, 45-5-602, 45-5-603, 46-18-111, 46-18-201, 46-18-203, 46-18-205, 46-18-207, 46-18-222, 46-18-231, 46-23-502, AND 46-23-1011, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1.** Section 45-5-305, MCA, is amended to read:

**"45-5-305. Subjecting another to involuntary servitude -- definitions.** (1) A person commits the offense of subjecting another to involuntary servitude if the person purposely or knowingly obtains or maintains the forced labor or services of another person by any of the following actions or by threatening any of the following actions:

- (a) causing physical harm to any person;
- (b) damaging or destroying the property of any person;
- (c) physically restraining another person;
- (d) abusing the law or legal process;
- (e) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document of another person;
- (f) blackmail; or
- (g) causing financial harm to any person or using financial control over any person.

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of subjecting another to involuntary servitude shall be imprisoned in the state prison for a term of not more than 10 years, fined an amount not to exceed \$50,000, or both.

(b) A person convicted of the offense of subjecting another to involuntary servitude, if the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide, shall be punished by life imprisonment or by imprisonment in the state prison for a term of not more than 100 years and may be fined not more than \$50,000.

(3) As used in this ~~section~~ part, unless the context requires otherwise, the following definitions apply:

(a) "Blackmail" means an unlawful demand of money, property, or services under threat to accuse another person of a crime or to expose any secret tending to subject a person to hatred, contempt, or ridicule.

(b) "Commercial sexual activity" means any sex act or simulated sex act, including sexually explicit performances, for which anything of value is given, promised to, or received directly or indirectly by any person.

~~(b)~~(c) "Financial harm" includes employment contracts that violate 28-2-903, taking, receiving, reserving, or charging a rate of interest greater than is allowed by 31-1-107, and defrauding creditors as defined in 45-6-315.

~~(c)~~(d) "Forced labor or services" means labor or services that are performed or provided by another person and are obtained or maintained through violation of subsection (1).

~~(d)~~(e) "Labor" means work of economic or financial value.

~~(e)~~(f) "Maintain" means to secure continued performance of labor or services, regardless of any initial agreement on the part of the victim to perform that type of service.

~~(f)~~(g) "Obtain" means to secure the performance of labor or services.

~~(g)~~(h) "Services" means ~~an ongoing relationship between a person and the offender in which the person performs activities under the supervision of or for the benefit of the offender~~ acts committed at the direction of, request of, supervision of, or for the benefit of another, including commercial sexual activity ~~and sexually explicit performances~~.

(i) "Sexually explicit performances" means live, public, private, photographed, recorded, or videotaped acts or simulated acts intended to sexually arouse, satisfy the sexual desires of, or appeal to the prurient interests of any person."

**Section 2.** Section 45-5-306, MCA, is amended to read:

**"45-5-306. Trafficking of persons for involuntary servitude.** (1) A person commits the offense of trafficking of persons for involuntary servitude if the person purposely or knowingly:

(a) recruits, entices, harbors, transports, provides, or obtains by any means another person, intending

or knowing that the person will be subjected to involuntary servitude as described in 45-5-305; or

(b) benefits, financially or by receiving anything of value, from participation in a venture that has engaged in the offense of subjecting another to involuntary servitude as described in 45-5-305.

(2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of trafficking of persons for involuntary servitude shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed \$100,000, or both.

(b) A person convicted of the offense of trafficking of persons for involuntary servitude, if the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide, shall be punished by life imprisonment or by imprisonment in the state prison for a term of not more than 100 years and may be fined not more than \$100,000."

**Section 3. Sexual servitude of child.** (1) A person commits the offense of sexual servitude of a child if the person purposely or knowingly:

(a) recruits, entices, solicits, isolates, harbors, transports, provides, obtains, or maintains through any means a child for the performance of commercial sexual activity; or

(b) benefits, financially or by receiving anything of value, from participation in a venture that has engaged in the offense of sexual servitude of a child.

(2) (a) A person convicted of the offense of sexual servitude of a child, whether or not the person is aware of the child's age:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the person is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the person is released after the mandatory minimum period of imprisonment, the person is subject to supervision by the department of corrections for the remainder of the person's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

**Section 4. Patronizing a child.** (1) A person commits the offense of patronizing a child if the person purposely or knowingly engages in commercial sexual activity with a child while knowing or negligently disregarding that the child is a victim of the offense of sexual servitude of a child as provided in [section 3].

(2) (a) A person convicted of the offense of patronizing a child, whether or not the person is aware of the child's age:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the person is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the person is released after the mandatory minimum period of imprisonment, the person is subject to supervision by the department of corrections for the remainder of the person's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

**Section 5.** Section 45-5-601, MCA, is amended to read:

**"45-5-601. Prostitution.** (1) A person commits the offense of prostitution if the person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether the compensation is received or to be received or paid or to be paid.

(2) (a) A prostitute convicted of prostitution shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) Except as provided in subsection (3), a ~~prostitute's client~~ patron who is convicted of prostitution shall for the first offense be fined an amount not to exceed \$1,000 or be imprisoned for a term not to exceed 1 year, or both, and for a second or subsequent offense shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) (a) If the ~~prostitute~~ person patronized was ~~12 years of age or younger~~ a child and the ~~prostitute's client~~ patron was 18 years of age or older at the time of the offense, whether or not the patron was aware of the

child's age, the patron offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

**Section 6.** Section 45-5-602, MCA, is amended to read:

**"45-5-602. Promoting prostitution.** (1) A person commits the offense of promoting prostitution if the person purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an individual for a house of prostitution or a place in a house of prostitution for an individual;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits clients for another person who is a prostitute;

(e) procures a prostitute for a patron;

(f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of an individual engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) Except as provided in subsection (3), a person convicted of promoting prostitution shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(3) (a) If the ~~prostitute person engaging in prostitution~~ was ~~12 years of age or younger~~ a child and the ~~prostitute's client~~ patron was 18 years of age or older at the time of the offense, whether or not the patron was aware of the child's age, the patron offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

**Section 7.** Section 45-5-603, MCA, is amended to read:

**"45-5-603. Aggravated promotion of prostitution.** (1) A person commits the offense of aggravated promotion of prostitution if the person purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child ~~under the age of 18 years~~, whether or not the person is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support the person is responsible.

(2) (a) Except as provided in ~~subsections~~ subsection (2)(b) ~~and (2)(c)~~, a person convicted of aggravated promotion of prostitution shall be punished by:

(i) life imprisonment; or

(ii) imprisonment in a state prison for a term not to exceed 20 years or a fine in an amount not to exceed \$50,000, or both.

~~———— (b) Except as provided in 46-18-219 and 46-18-222, a person convicted of aggravated promotion of prostitution of a child, who at the time of the offense is under 18 years of age, shall be punished by:~~

~~———— (i) life imprisonment; or~~

~~———— (ii) imprisonment in a state prison for a term of not less than 4 years or more than 100 years or a fine in an amount not to exceed \$100,000, or both.~~

~~(c)(b) (i) If Except as provided in 46-18-219 and 46-18-222, if the prostitute person engaging in prostitution was 12 years of age or younger a child and the prostitute's client patron was 18 years of age or older at the time of the offense, the patron offender:~~

~~(A) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection ~~(2)(c)(i)(A)~~ (2)(b)(i)(A) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.~~

~~(B) may be fined an amount not to exceed \$50,000; and~~

~~(C) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.~~

~~(ii) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."~~

**Section 8.** Section 46-18-111, MCA, is amended to read:

**"46-18-111. Presentence investigation -- when required.** (1) (a) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing.

(b) If the defendant was convicted of an offense under [section 3], [section 4], 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, 45-5-627, 45-5-601(3), 45-5-602(3), or ~~45-5-603(2)(e)~~ 45-5-603(2)(b) or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment,

considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(c) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation required by 46-14-311 must be attached to the presentence investigation report and becomes part of the report. The report must be made available to persons and entities as provided in 46-18-113.

(2) The court shall order a presentence investigation report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5)."

**Section 9.** Section 46-18-201, MCA, is amended to read:

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

- (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or
- (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a

financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

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

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

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

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

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

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

(iv) commitment of:

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

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

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

(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for

a period not to exceed 1 year;

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

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

(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.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) participation in the sobriety program provided for in Title 44, chapter 4, part 12, for a second or subsequent violation of 61-8-401 or 61-8-406;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(q) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

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

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

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

**Section 10.** Section 46-18-203, MCA, is amended to read:

**"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to [section 3], [section 4], 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(e)~~ 45-5-603(2)(b), or 45-5-625(4), the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court either before the period of suspension or deferral has begun or during the period of suspension or deferral but not after the period has expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

- (a) the allegations of the petition;
- (b) the opportunity to appear and to present evidence in the offender's own behalf;
- (c) the opportunity to question adverse witnesses; and
- (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part

1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified unless:

- (a) the offender admits the allegations and waives the right to a hearing; or
- (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

- (i) the terms and conditions of the suspended or deferred sentence; or
- (ii) a condition of supervision after release from imprisonment imposed pursuant to [section 3], [section 4], 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ 45-5-603(2)(b), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

**Section 11.** Section 46-18-205, MCA, is amended to read:

**"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

- (a) 45-5-503, sexual intercourse without consent;
- (b) 45-5-504, indecent exposure;
- (c) 45-5-505, deviate sexual conduct; or
- (d) 45-5-507, incest.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

- (a) 45-5-103(4), mitigated deliberate homicide;
- (b) 45-5-202, aggravated assault;
- (c) 45-5-302(2), kidnapping;
- (d) 45-5-303(2), aggravated kidnapping;
- (e) 45-5-401(2), robbery;
- (f) 45-5-502(3), sexual assault;
- (g) 45-5-503(2) and (3), sexual intercourse without consent;
- (h) 45-5-603, aggravated promotion of prostitution;
- (i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;
- (j) 45-9-102(4), criminal possession of dangerous drugs; and
- (k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

(4) The provisions of this section do not apply to sentences imposed pursuant to [section 3], [section 4], 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ 45-5-603(2)(b), or 45-5-625(4)."

**Section 12.** Section 46-18-207, MCA, is amended to read:

**"46-18-207. Sexual offender treatment.** (1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.

(2) (a) Except as provided in subsection (2)(b), the court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:

(i) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program;

(ii) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program; and

(iii) if the person is sentenced pursuant to [section 3], [section 4], 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ 45-5-603(2)(b), or 45-5-625(4) and is released on parole, remain in an outpatient sex offender treatment program for the remainder of the person's life.

(b) A person who has been sentenced to life imprisonment without possibility of release may not participate in treatment provided pursuant to this section.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

(4) (a) Except for an offender sentenced pursuant to [section 3], [section 4], 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ 45-5-603(2)(b), or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.

(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.

(5) If, following a conviction for a sexual offense as defined in 46-23-502, any portion of a person's sentence is suspended, during the suspended portion of the sentence the person:

- (a) shall abide by the standard conditions of probation established by the department of corrections;
- (b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;
- (c) may have no contact with the victim or the victim's immediate family unless approved by the victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;
- (d) shall comply with all requirements and conditions of sexual offender treatment as directed by the person's sex offender therapist;
- (e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;
- (f) may not consume alcoholic beverages;
- (g) shall enter and remain in an aftercare program as directed by the person's probation officer;
- (h) shall submit to random or routine drug and alcohol testing;

(i) may not possess pornographic material or access pornography through the internet; and  
 (j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.

(6) The sentencing of a sexual offender is subject to 46-18-202(2) and 46-18-219.

(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended."

**Section 13.** Section 46-18-222, MCA, is amended to read:

**"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility.** Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under [section 3], [section 4], 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ 45-5-603(2)(b), or 45-5-625(4) and the judge determines, based on the

findings contained in a sexual offender evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

**Section 14.** Section 46-18-231, MCA, is amended to read:

**"46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-213, assault with a weapon;

(iv) 45-5-302(2), kidnapping;

(v) 45-5-303(2), aggravated kidnapping;

(vi) [section 3] or [section 4], sexual servitude of a child or patronizing a child;

~~(vi)~~(vii) 45-5-401(2), robbery;

~~(vii)~~(viii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

~~(viii)~~(ix) 45-5-503(2) through (4), sexual intercourse without consent;

~~(ix)~~(x) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

~~(x)~~(xi) 45-5-601(3), 45-5-602(3), or ~~45-5-603(2)(e)~~ 45-5-603(2)(b), prostitution, promotion of prostitution, or aggravated promotion of prostitution when the ~~prostitute was 12 years of age or younger~~ person patronized or engaging in prostitution was a child and the ~~prostitute's client~~ patron was 18 years of age or older at the time of the offense;

~~(xi)~~(xii) 45-5-625(4), sexual abuse of children;

~~(xii)~~(xiii) 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal possession with intent to distribute a dangerous drug;

~~(xiii)~~(xiv) 45-9-102(4), criminal possession of an opiate;

~~(xiv)~~(xv) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and

~~(xv)~~(xvi) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed \$50,000."

**Section 15.** Section 46-23-502, MCA, is amended to read:

**"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), [section 3], [section 4], 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or ~~(2)(c)~~ (2)(b), or 45-5-625; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection (13)(a)."

**Section 16.** Section 46-23-1011, MCA, is amended to read:

**"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to [section 3], [section 4], 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(e)~~ 45-5-603(2)(b), or 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as

requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court shall hold a hearing pursuant to the provisions of 46-18-203.

(e) Except as they apply to supervision after release from imprisonment imposed pursuant to [section 3], [section 4], 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(c)~~ 45-5-603(2)(b), or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(5) (a) Upon recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection (5)(a) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

**Section 17. Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 45, chapter 5, part 3, and the provisions of Title 45, chapter 5, part 3, apply to [sections 3 and 4].

**Section 18. Effective date.** [This act] is effective July 1, 2013.

**Section 19. Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

- END -

I hereby certify that the within bill,  
HB 0478, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

HOUSE BILL NO. 478

INTRODUCED BY LASZLOFFY, ARNTZEN, G. BENNETT, BLYTON, BOULANGER, D. BROWN, CLARK,  
DUDIK, GURSKY, HERTZ, HOWARD, KNUDSEN, MALEK, ROSENDALE, TAYLOR, THOMAS, TUTVEDT,  
ZOLNIKOV

AN ACT REVISING LAWS REGARDING TRAFFICKING OF PERSONS FOR COMMERCIAL SEXUAL  
ACTIVITY; REVISING PROSTITUTION LAWS; REVISING CERTAIN PENALTIES; ESTABLISHING THE  
OFFENSES OF SEXUAL SERVITUDE OF A CHILD AND PATRONIZING A CHILD; AMENDING SECTIONS  
45-5-305, 45-5-306, 45-5-601, 45-5-602, 45-5-603, 46-18-111, 46-18-201, 46-18-203, 46-18-205, 46-18-207,  
46-18-222, 46-18-231, 46-23-502, AND 46-23-1011, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN  
APPLICABILITY DATE.