

HOUSE BILL NO. 89

INTRODUCED BY K. DUDIK

BY REQUEST OF THE DEPARTMENT OF JUSTICE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HUMAN TRAFFICKING LAWS;
6 PROVIDING FOR TRAFFICKING-RELATED OFFENSES; PROVIDING PENALTIES; PROVIDING
7 EVIDENTIARY STANDARDS FOR TRAFFICKING PROSECUTIONS; PROVIDING IMMUNITY FOR CHILD
8 TRAFFICKING VICTIMS; PROVIDING AN AFFIRMATIVE DEFENSE; PROVIDING FOR TRAFFICKING VICTIM
9 CONFIDENTIALITY; ESTABLISHING A CIVIL CAUSE OF ACTION FOR TRAFFICKING VICTIMS;
10 ESTABLISHING PROTOCOL FOR ASSISTING TRAFFICKING VICTIMS IN ACCESSING CERTAIN SERVICES
11 OR BENEFITS; CREATING A HUMAN TRAFFICKING EDUCATION SPECIAL REVENUE ACCOUNT; MAKING
12 PERMANENT THE CRIME VICTIMS COMPENSATION ACCOUNT; AMENDING SECTIONS 1-1-411, 44-5-311,
13 46-18-111, 46-18-201, 46-18-203, 46-18-205, 46-18-207, 46-18-222, 46-18-231, 46-18-608, 46-23-502, AND
14 46-23-1011, MCA; REPEALING SECTIONS 45-5-305, 45-5-306, 45-5-310, AND 45-5-311, MCA; REPEALING
15 SECTION 14, CHAPTER 374, LAWS OF 2009; AND PROVIDING AN EFFECTIVE DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 10], the following definitions
20 apply:

- 21 (1) "Adult" means a person 18 years of age or older.
- 22 (2) "Coercion" means:
 - 23 (a) the use or threat of force against, abduction of, serious harm to, or physical restraint of a person;
 - 24 (b) the use of a plan, pattern, or statement with intent to cause a person to believe that failure to perform
25 an act will result in the use of force against, abduction of, serious harm to, or physical restraint of a person;
 - 26 (c) the abuse or threatened abuse of law or legal process;
 - 27 (d) controlling or threatening to control a person's access to any substance defined as a dangerous drug
28 pursuant to Title 50, chapter 32, parts 1 and 2;
 - 29 (e) the actual or threatened destruction or taking of a person's identification document or other property;
 - 30 (f) the use of debt bondage;

1 (g) the use of a person's physical or mental impairment when the impairment has a substantial adverse
2 effect on the person's cognitive or volitional function; or

3 (h) the commission of civil or criminal fraud.

4 (3) "Commercial sexual activity" means sexual activity for which anything of value is given to, promised
5 to, or received by a person.

6 (4) "Debt bondage" means inducing a person to provide:

7 (a) commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

8 (b) labor or services in payment toward or satisfaction of a real or purported debt if:

9 (i) the reasonable value of the labor or services is not applied toward the liquidation of the debt; or

10 (ii) the length of the labor or services is not limited and the nature of the labor or services is not defined.

11 (5) "Human trafficking" means the commission of an offense under [section 2, section 3, or section 4].

12 (6) "Identification document" means a passport, driver's license, immigration document, travel document,
13 or other government-issued identification document, including a document issued by a foreign government.

14 (7) "Labor or services" means activity having economic value.

15 (8) "Serious harm" means physical or nonphysical harm, including psychological, economic, or
16 reputational harm to a person that would compel a reasonable person of the same background and in the same
17 circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.

18 (9) "Sexual activity" means any sex act or simulated sex act intended to arouse or gratify the sexual
19 desire of any person. The term includes a sexually explicit performance.

20 (10) "Sexually explicit performance" means a live, public, private, photographed, recorded, or videotaped
21 act or simulated act intended to arouse or gratify the sexual desire of any person.

22

23 **NEW SECTION. Section 2. Trafficking of persons.** (1) A person commits the offense of trafficking of
24 persons if the person purposely or knowingly:

25 (a) recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices
26 another person intending or knowing that the person will be subjected to involuntary servitude or sexual servitude;
27 or

28 (b) benefits, financially or by receiving anything of value, from participation in a venture that has subjected
29 another person to involuntary servitude or sexual servitude.

30 (2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of trafficking of persons

1 shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed
2 \$50,000, or both.

3 (b) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for
4 a term of not more than 50 years and may be fined not more than \$100,000 if:

5 (i) the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate
6 homicide; or

7 (ii) the victim was a child.
8

9 **NEW SECTION. Section 3. Involuntary servitude.** (1) A person commits the offense of involuntary
10 servitude if the person purposely or knowingly uses coercion to compel another person to provide labor or
11 services, unless the conduct is otherwise permissible under federal or state law.

12 (2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of involuntary servitude
13 shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed
14 \$50,000, or both.

15 (b) A person convicted of the offense of involuntary servitude shall be imprisoned in the state prison for
16 a term of not more than 50 years and may be fined not more than \$100,000 if:

17 (i) the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate
18 homicide; or

19 (ii) the victim was a child.
20

21 **NEW SECTION. Section 4. Sexual servitude.** (1) A person commits the offense of sexual servitude
22 if the person purposely or knowingly:

23 (a) uses coercion or deception to compel an adult to engage in commercial sexual activity; or

24 (b) maintains or makes available a child for the purpose of engaging the child in commercial sexual
25 activity.

26 (2) It is not a defense in a prosecution under subsection (1)(b) that the child consented to engage in
27 commercial sexual activity or that the defendant believed the child was an adult.

28 (3) (a) A person convicted of the offense of sexual servitude under subsection (1)(a) shall be imprisoned
29 in the state prison for a term of not more than 15 years, fined an amount not to exceed \$50,000, or both.

30 (b) A person convicted of the offense of sexual servitude under subsection (1)(b) shall be imprisoned in

1 the state prison for a term of not more than 25 years and fined an amount not to exceed \$75,000.

2

3 **NEW SECTION. Section 5. Patronizing victim of sexual servitude.** (1) A person commits the offense
4 of patronizing a victim of sexual servitude if the person purposely or knowingly gives, agrees to give, or offers to
5 give anything of value so that a person may engage in commercial sexual activity with another person who the
6 person knows is a victim of sexual servitude.

7 (2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of patronizing a victim
8 of sexual servitude shall be imprisoned in the state prison for a term of 15 years, fined an amount not to exceed
9 \$50,000, or both.

10 (b) If the individual patronized was a child, a person convicted of the offense of patronizing a victim of
11 sexual servitude, whether or not the person believed the child was an adult, shall be imprisoned in the state
12 prison for a term of not more than 25 years and fined an amount not to exceed \$75,000.

13

14 **NEW SECTION. Section 6. Aggravating circumstance.** (1) An aggravating circumstance during the
15 commission of an offense under [section 2, section 3, or section 4] occurs when the defendant recruited, enticed,
16 or obtained the victim of the offense from a shelter that serves runaway youth, foster children, homeless persons,
17 or persons subjected to human trafficking, domestic violence, or sexual assault.

18 (2) If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense
19 under [section 2, section 3, or section 4], the defendant may be imprisoned for up to 5 years in addition to the
20 period of imprisonment prescribed for the offense. An additional sentence prescribed by this section must run
21 consecutively to the sentence provided for the underlying offense.

22

23 **NEW SECTION. Section 7. Property subject to forfeiture -- human trafficking.** (1) (a) A person
24 commits the offense of use or possession of property subject to criminal forfeiture for human trafficking if the
25 person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture under
26 this section. A person convicted of the offense of use or possession of property subject to criminal forfeiture shall
27 be imprisoned in the state prison for a term not to exceed 10 years.

28 (b) Property is subject to criminal forfeiture under this section if it is used or intended for use in violation
29 of [section 2, section 3, or section 4].

30 (c) The following property is subject to criminal forfeiture under this section:

- 1 (i) money, raw materials, products, equipment, and other property of any kind;
2 (ii) property used or intended for use as a container for property enumerated in subsection (1)(c)(i);
3 (iii) except as provided in subsection (2), a conveyance, including an aircraft, vehicle, or vessel;
4 (iv) books, records, research products and materials, formulas, microfilm, tapes, and data;
5 (v) anything of value furnished or intended to be furnished in exchange for the provision of labor or
6 services or commercial sexual activity and all proceeds traceable to the exchange;
7 (vi) negotiable instruments, securities, and weapons; and
8 (vii) personal property constituting or derived from proceeds obtained directly or indirectly from the
9 provision of labor or services or commercial sexual activity.

10 (2) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person
11 in charge of the conveyance knowingly used the conveyance or knowingly consented to its use for the purposes
12 described in subsection (1)(b).

13 (3) Criminal forfeiture under this section of property that is encumbered by a bona fide security interest
14 is subject to that interest if the secured party did not use or consent to the use of the property for the purposes
15 described in subsection (1)(b).

16 (4) Property subject to criminal forfeiture under this section may be seized under the following
17 circumstances:

18 (a) A peace officer who has probable cause to make an arrest for a violation as described in subsection
19 (1)(b) may seize a conveyance obtained with the proceeds of the violation or used to facilitate the violation and
20 shall immediately deliver the conveyance to the peace officer's law enforcement agency to be held as evidence
21 until a criminal forfeiture is declared or release ordered.

22 (b) Property subject to criminal forfeiture under this section may be seized by a peace officer under a
23 search warrant issued by a court having jurisdiction over the property.

24 (c) Seizure without a warrant may be made if:

- 25 (i) the seizure is incident to an arrest or a search under a search warrant issued for another purpose;
26 (ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or a
27 criminal forfeiture proceeding under the provisions of Title 44, chapter 12, or this section;
28 (iii) a peace officer has probable cause to believe that the property is directly or indirectly dangerous to
29 health or safety; or
30 (iv) a peace officer has probable cause to believe that the property was used or is intended to be used

1 under the circumstances described in subsection (1)(b).

2 (5) A forfeiture proceeding under subsection (1) must be commenced within 45 days of the seizure of the
3 property involved.

4 (6) The procedure for forfeiture proceedings in 44-12-201 through 44-12-205 applies to property seized
5 pursuant to this section.

6 (7) Upon conviction, the property subject to criminal forfeiture is forfeited to the state and proceeds from
7 the sale of property seized under this section must be distributed to the holders of security interests who have
8 presented proper proof of their claims up to the amount of their interests in the property. The remainder, if any,
9 must be deposited in the crime victims compensation account provided for in 53-9-113.

10
11 **NEW SECTION. Section 8. Past sexual behavior of victim.** In a prosecution for an offense under
12 [section 2, section 3, section 4, or section 5] or a civil action under [section 11], evidence concerning a specific
13 instance of the victim's past sexual behavior or reputation or opinion evidence of the victim's past sexual behavior
14 is inadmissible unless the evidence is admitted in accordance with 45-5-511(2) or offered by the prosecution to
15 prove a pattern of human trafficking by the defendant.

16
17 **NEW SECTION. Section 9. Immunity of child.** (1) A person is not criminally liable or subject to
18 proceedings under Title 41, chapter 5, for prostitution, promoting prostitution, or other nonviolent offenses if the
19 person was a child at the time of the offense and committed the offense as a direct result of being a victim of
20 human trafficking.

21 (2) A person who has engaged in commercial sexual activity is not criminally liable or subject to
22 proceedings under Title 41, chapter 5, for prostitution or promoting prostitution if the person was a child at the
23 time of the offense.

24 (3) A child who under subsection (1) or (2) is not subject to criminal liability or proceedings under Title
25 41, chapter 5, is presumed to be a youth in need of care under Title 41, chapter 3.

26 (4) This section does not apply in a prosecution under 45-5-601 or a proceeding under Title 41, chapter
27 5, for patronizing a prostitute.

28
29 **NEW SECTION. Section 10. Affirmative defense.** A person charged with prostitution, promoting
30 prostitution, or another nonviolent offense committed as a direct result of being a victim of human trafficking may

1 assert an affirmative defense that the person is a victim of human trafficking.

2

3 **NEW SECTION. Section 11. Civil action -- human trafficking victim.** (1) A victim of human trafficking
4 may bring a civil action against a person who commits an offense against the victim under [section 2, section 3,
5 or section 4] for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

6 (2) If a victim prevails in an action under this section, the court shall award the victim reasonable attorney
7 fees and costs.

8 (3) An action under this section must be commenced not later than 10 years after the later of:

9 (a) the date on which the victim no longer was subject to human trafficking; or

10 (b) the date on which the victim reached 18 years of age.

11 (4) This section does not preclude any other remedy available to the victim under federal or state law.

12 (5) For the purposes of this section, the term "human trafficking" has the meaning provided in [section
13 1].

14

15 **NEW SECTION. Section 12. Eligibility for benefit or service.** (1) A victim of human trafficking is
16 eligible for a benefit or service available through the state, including compensation under Title 53, chapter 9, part
17 1, regardless of immigration status.

18 (2) A child who has engaged in commercial sexual activity is eligible for a benefit or service available
19 through the state, regardless of immigration status.

20 (3) As soon as practicable after a first encounter with a person who reasonably appears to be a victim
21 of human trafficking or a child who has engaged in commercial sexual activity, law enforcement shall notify the
22 appropriate state agency that the person may be eligible for a benefit or service under the laws of this state.

23 (4) For the purposes of [sections 12 through 14], the terms "commercial sexual activity" and "human
24 trafficking" have the meanings provided in [section 1].

25

26 **NEW SECTION. Section 13. Law enforcement protocol.** (1) On request from a person who a law
27 enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking
28 or criminal offense required for the person to qualify for a nonimmigrant T or U visa under 8 U.S.C. 1101(a)(15)(T)
29 or 8 U.S.C. 1101(a)(15)(U) or for continued presence under 22 U.S.C. 7105(c)(3), the law enforcement officer,
30 as soon as practicable after receiving the request, shall complete, sign, and give to the person the Form I-914B

1 or Form I-918B provided by the United States citizenship and immigration services on its website and ask a
2 federal law enforcement officer to request continued presence.

3 (2) If the law enforcement agency determines that a person does not meet the requirements for the
4 agency to comply with subsection (1), the agency shall inform the person of the reason and that the person may
5 make another request and submit additional evidence satisfying the requirements.

6
7 **NEW SECTION. Section 14. Human trafficking education account.** There is a human trafficking
8 education account in the state special revenue fund for the purposes of preventing and detecting human
9 trafficking. Money in this account may be expended by the department of justice to raise awareness about human
10 trafficking and educate the public and law enforcement on how to prevent and detect human trafficking in this
11 state.

12
13 **Section 15.** Section 1-1-411, MCA, is amended to read:

14 **"1-1-411. Certain state services denied to illegal aliens.** (1) To the extent allowed by federal law and
15 the Montana constitution and ~~notwithstanding any other state law~~ except as provided in [section 12], a state
16 agency may not provide a state service to an illegal alien and shall comply with the requirements of this section.

17 (2) To determine whether an applicant for a state service is an illegal alien, the agency may use the
18 systematic alien verification for entitlements program provided by the United States department of homeland
19 security or any other lawful method of making the determination.

20 (3) A state agency shall notify appropriate personnel in immigration and customs enforcement under the
21 United States department of homeland security or its successor of any illegal alien applying for a state service.

22 (4) An agency shall require a person seeking a state service to provide proof of United States citizenship
23 or legal alien status.

24 (5) A state agency shall execute any written agreement required by federal law to implement this section.

25 (6) As used in this section, the following definitions apply:

26 (a) "Agency" means a department, board, commission, committee, authority, or office of the legislative
27 or executive branches of state government, including a unit of the Montana university system.

28 (b) "Illegal alien" means an individual who is not a citizen of the United States and who has unlawfully
29 entered or remains unlawfully in the United States.

30 (c) "State service" means a payment of money, the grant of a state license or permit, or the provision

- 1 of another valuable item or service under any of the following programs and provisions of law:
- 2 (i) employment with a state agency;
- 3 (ii) qualification as a student in the university system for the purposes of a public education, as provided
- 4 in 20-25-502;
- 5 (iii) student financial assistance, as provided in Title 20, chapter 26;
- 6 (iv) issuance of a state license or permit to practice a trade or profession, as provided in Title 37;
- 7 (v) unemployment insurance benefits, as provided in Title 39, chapter 51;
- 8 (vi) vocational rehabilitation, as provided in Title 53, chapter 7;
- 9 (vii) services for victims of crime, as provided in Title 53, chapter 9;
- 10 (viii) services for the physically disabled, as provided in Title 53, chapter 19, parts 3 and 4;
- 11 (ix) a grant, as provided in Title 90."
- 12

13 **Section 16.** Section 44-5-311, MCA, is amended to read:

14 **"44-5-311. Nondisclosure of information about victim.** (1) If a victim of an offense requests

15 confidentiality, a criminal justice agency may not disseminate, except to another criminal justice agency, the

16 address, telephone number, or place of employment of the victim or a member of the victim's family unless

17 disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes,

18 or is authorized by a district court upon a showing of good cause.

19 (2) The court may not compel a victim or a member of the victim's family who testifies in a criminal justice

20 proceeding to disclose on the record in open court a residence address or place of employment unless the court

21 determines that disclosure of the information is necessary.

22 (3) A criminal justice agency may not disseminate to the public any information directly or indirectly

23 identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, ~~or~~ 45-5-507, [section 2],

24 [section 3], [section 4], or [section 5] unless disclosure is of the location of the crime scene, is required by law,

25 is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause."

26

27 **Section 17.** Section 46-18-111, MCA, is amended to read:

28 **"46-18-111. Presentence investigation -- when required.** (1) (a) Upon the acceptance of a plea or

29 upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer

30 to make a presentence investigation and report. The district court shall consider the presentence investigation

1 report prior to sentencing.

2 (b) If the defendant was convicted of an offense under ~~45-5-310, 45-5-311~~, 45-5-502, 45-5-503,
3 45-5-504, 45-5-507, 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), 45-5-625, 45-5-627, [section 4], [section 5], or
4 45-8-218 or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register
5 as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual
6 evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive
7 environment, considering the risk the defendant presents to the community and the defendant's needs, unless
8 the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist
9 who is a member of the Montana sex offender treatment association or has comparable credentials acceptable
10 to the department of labor and industry. The psychosexual evaluation must be made available to the county
11 attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related
12 to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent,
13 all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the
14 state, or both, under Title 3, chapter 5, part 9.

15 (c) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation may
16 include a mental health evaluation of the defendant and a recommendation as to treatment of the defendant in
17 the least restrictive environment, considering the risk the defendant presents to the community and the
18 defendant's needs. The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist,
19 advanced practice registered nurse, or other professional with comparable credentials acceptable to the
20 department of labor and industry. The mental health evaluation must be made available to the county attorney's
21 office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the
22 evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all
23 costs related to the evaluation are the responsibility of the district court and must be paid by the county or the
24 state, or both, under Title 3, chapter 5, part 9.

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

29 (2) The court shall order a presentence investigation report unless the court makes a finding that a report
30 is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in

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

6 (3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is
7 completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time.
8 The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5)."
9

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

11 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an
12 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition
13 of sentence, except as otherwise specifically provided by statute, for a period:

14 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or
15 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a
16 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless
17 of whether any other conditions are imposed.

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

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

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

27 (i) a fine as provided by law for the offense;
28 (ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in
29 46-8-113;
30 (iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a

1 state prison to be designated by the department of corrections;

2 (iv) commitment of:

3 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a
4 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years
5 of the commitment to the department of corrections must be suspended, except as provided in ~~45-5-310;~~
6 ~~45-5-311;~~ 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

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

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

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

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

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

19 (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.

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

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

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

26 (c) conditions for probation;

27 (d) payment of the costs of confinement;

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

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

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

- 1 (h) with the approval of the facility or program, an order that the offender be placed in a community
2 corrections facility or program as provided in 53-30-321;
- 3 (i) with the approval of the prerelease center or prerelease program and confirmation by the department
4 of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease
5 program for a period not to exceed 1 year;
- 6 (j) community service;
- 7 (k) home arrest as provided in Title 46, chapter 18, part 10;
- 8 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 9 (m) with the approval of the department of corrections and with a signed statement from an offender that
10 the offender's participation in the boot camp incarceration program is voluntary, an order that the offender
11 complete the boot camp incarceration program established pursuant to 53-30-403;
- 12 (n) participation in a day reporting program provided for in 53-1-203;
- 13 (o) participation in the sobriety program provided for in Title 44, chapter 4, part 12, for a violation of
14 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second or subsequent
15 violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous
16 drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic
17 abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in
18 the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent
19 violation of the statute;
- 20 (p) participation in a restorative justice program approved by court order and payment of a participation
21 fee of up to \$150 for program expenses if the program agrees to accept the offender;
- 22 (q) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
23 protection of the victim or society; or
- 24 (r) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(q).
- 25 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a
26 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in
27 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment
28 of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the
29 sentence is deferred or suspended.
- 30 (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1)

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

4 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in
5 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part
6 5.

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

9 (9) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."
10

11 **Section 19.** Section 46-18-203, MCA, is amended to read:

12 **"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for
13 revocation showing probable cause that the offender has violated any condition of a sentence, any condition of
14 a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed
15 pursuant to ~~45-5-310, 45-5-311,~~ 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or
16 45-5-625(4), the judge may issue an order for a hearing on revocation. The order must require the offender to
17 appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order
18 to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation
19 and parole officer to arrest the offender and bring the offender before the court.

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

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

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

28 (a) the allegations of the petition;

29 (b) the opportunity to appear and to present evidence in the offender's own behalf;

30 (c) the opportunity to question adverse witnesses; and

1 (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part
2 1.

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

5 (a) the offender admits the allegations and waives the right to a hearing; or

6 (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice
7 of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of
8 probation is not favorable to the offender for the purposes of this subsection (5)(b).

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

11 (i) the terms and conditions of the suspended or deferred sentence; or

12 (ii) a condition of supervision after release from imprisonment imposed pursuant to ~~45-5-310, 45-5-311,~~
13 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4).

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

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

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

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

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

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

25 (b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either
26 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.
27 The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time
28 served in a detention center or home arrest time already served.

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

1 46-23-1011.

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

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

8

9 **Section 20.** Section 46-18-205, MCA, is amended to read:

10 **"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the
11 victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of
12 imprisonment imposed under the following sections may not be deferred or suspended and the provisions of
13 46-18-222 do not apply to the first 30 days of the imprisonment:

14 (a) 45-5-503, sexual intercourse without consent;

15 (b) 45-5-504, indecent exposure;

16 (c) 45-5-507, incest; or

17 (d) 45-8-218, deviate sexual conduct.

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

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

21 (b) 45-5-202, aggravated assault;

22 (c) 45-5-302(2), kidnapping;

23 (d) 45-5-303(2), aggravated kidnapping;

24 (e) 45-5-401(2), robbery;

25 (f) 45-5-502(3), sexual assault;

26 (g) 45-5-503(2) and (3), sexual intercourse without consent;

27 (h) 45-5-603, aggravated promotion of prostitution;

28 (i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;

29 (j) 45-9-102(4), criminal possession of dangerous drugs; and

30 (k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

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

3 (4) The provisions of this section do not apply to sentences imposed pursuant to ~~45-5-310, 45-5-311,~~
4 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4)."

5

6 **Section 21.** Section 46-18-207, MCA, is amended to read:

7 **"46-18-207. Sexual offender treatment.** (1) Upon sentencing a person convicted of a sexual offense,
8 as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to
9 46-23-509.

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

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

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

17 (iii) if the person is sentenced pursuant to ~~45-5-310, 45-5-311,~~ 45-5-503(4), 45-5-507(5), 45-5-601(3),
18 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4) and is released on parole, remain in an outpatient sex offender
19 treatment program for the remainder of the person's life.

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

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

25 (4) (a) Except for an offender sentenced pursuant to ~~45-5-310, 45-5-311,~~ 45-5-503(4), 45-5-507(5),
26 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), during an offender's term of commitment to the
27 department of corrections or a state prison, the department may place the person in a residential sexual offender
28 treatment program approved by the department under 53-1-203.

29 (b) If the person successfully completes a residential sexual offender treatment program approved by
30 the department of corrections, the remainder of the term must be served on probation unless the department

1 petitions the sentencing court to amend the original sentencing judgment.

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

4 (a) shall abide by the standard conditions of probation established by the department of corrections;

5 (b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is
6 financially able to pay those costs;

7 (c) may have no contact with the victim or the victim's immediate family unless approved by the victim
8 or the victim's parent or guardian, the person's therapists, and the person's probation officer;

9 (d) shall comply with all requirements and conditions of sexual offender treatment as directed by the
10 person's sex offender therapist;

11 (e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises
12 or where gambling takes place;

13 (f) may not consume alcoholic beverages;

14 (g) shall enter and remain in an aftercare program as directed by the person's probation officer;

15 (h) shall submit to random or routine drug and alcohol testing;

16 (i) may not possess pornographic material or access pornography through the internet; and

17 (j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or
18 continuous satellite monitoring.

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

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

22

23 **Section 22.** Section 46-18-222, MCA, is amended to read:

24 **"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition**
25 **and suspended execution of sentence, and restrictions on parole eligibility.** Mandatory minimum sentences
26 prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on
27 deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205,
28 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4),
29 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4) do not apply if:

30 (1) the offender was less than 18 years of age at the time of the commission of the offense for which the

1 offender is to be sentenced;

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

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

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

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

14 (6) the offense was committed under ~~45-5-310, 45-5-311~~, 45-5-502(3), 45-5-503(4), 45-5-507(5),
15 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4) and the judge determines, based on the findings
16 contained in a sexual offender evaluation report prepared by a qualified sexual offender evaluator pursuant to
17 the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment
18 facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the
19 ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of
20 the reasons for its determination."

21

22 **Section 23.** Section 46-18-231, MCA, is amended to read:

23 **"46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection (1)(b),
24 whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an
25 offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in
26 addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

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

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

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

- 1 (iii) 45-5-213, assault with a weapon;
- 2 (iv) 45-5-302(2), kidnapping;
- 3 (v) 45-5-303(2), aggravated kidnapping;
- 4 ~~(vi) 45-5-310 or 45-5-311, sexual servitude of a child or patronizing a child;~~
- 5 ~~(vii)(vi)~~ 45-5-401(2), robbery;
- 6 ~~(viii)(vii)~~ 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or
- 7 more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;
- 8 ~~(ix)(viii)~~ 45-5-503(2) through (4), sexual intercourse without consent;
- 9 ~~(x)(ix)~~ 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of
- 10 age or older at the time of the offense;
- 11 ~~(xi)(x)~~ 45-5-601(3), 45-5-602(3), or 45-5-603(2)(b), prostitution, promotion of prostitution, or aggravated
- 12 promotion of prostitution when the person patronized or engaging in prostitution was a child and the patron was
- 13 18 years of age or older at the time of the offense;
- 14 ~~(xii)(xi)~~ 45-5-625(4), sexual abuse of children;
- 15 ~~(xiii)(xii)~~ 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal
- 16 possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal
- 17 possession with intent to distribute a dangerous drug;
- 18 ~~(xiv)(xiii)~~ 45-9-102(4), criminal possession of an opiate;
- 19 ~~(xv)(xiv)~~ 45-9-103(2), criminal possession of an opiate with an intent to distribute; and
- 20 ~~(xvi)(xv)~~ 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school
- 21 property.
- 22 (2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found
- 23 guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may
- 24 impose a fine only in accordance with subsection (3).
- 25 (3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able
- 26 to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account
- 27 the nature of the crime committed, the financial resources of the offender, and the nature of the burden that
- 28 payment of the fine will impose.
- 29 (4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge
- 30 not to exceed \$50,000."

1
2 **Section 24.** Section 46-18-608, MCA, is amended to read:
3 **"46-18-608. Motion to vacate ~~prostitution conviction~~ -- human trafficking victims.** (1) On the motion
4 of a person, a court may vacate a person's conviction of ~~the offense of prostitution under 45-5-604 prostitution,~~
5 promoting prostitution, or another nonviolent offense if the court finds that the person's participation in the offense
6 was a direct result of having been a victim of ~~trafficking for commercial sexual activity under 45-5-306~~ human
7 trafficking or of sex trafficking under the federal Trafficking Victims Protection Act, 22 U.S.C. 7103 through 7112.

8 (2) The motion must:

9 (a) be made within a reasonable time after the person ceased to be involved in human trafficking ~~for~~
10 ~~commercial sexual activity~~ or sought services for human trafficking victims, subject to reasonable concerns for
11 the safety of the person, family members of the person, or other victims of human trafficking who could be
12 jeopardized by filing a motion under this section; and

13 (b) state why the facts giving rise to the motion were not presented to the court during the prosecution
14 of the person.

15 (3) ~~Official~~ No official determination or documentation is required to grant a motion by a person under
16 this section, but official documentation from a local government or a state or federal agency of the person's status
17 as a victim of human trafficking ~~for commercial sexual activity~~ creates a rebuttable presumption that the person's
18 participation in the offense of ~~prostitution~~ was a direct result of having been a victim of human trafficking ~~for~~
19 ~~commercial sexual activity~~.

20 (4) If a court vacates a conviction of ~~prostitution~~ under this section, the court shall:

21 (a) send a copy of the order vacating the conviction to the prosecutor and the department of justice
22 accompanied by a form prepared by the department of justice and containing identifying information about the
23 person; and

24 (b) inform the person whose conviction has been vacated under this section that the person may be
25 eligible for certain state and federal programs and services and provide the person with information for contacting
26 appropriate state and federal victim services organizations. After the conviction is vacated, all records and data
27 relating to the conviction are confidential criminal justice information, as defined in 44-5-103, and public access
28 to the information may be obtained only by district court order upon good cause shown.

29 (5) For the purposes of this section, the term "human trafficking" has the meaning provided in [section
30 11."

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Section 25. 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), ~~45-5-310, 45-5-311~~, 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

1 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 (2)(b), or 45-5-625, [section 4], or [section 5]; or

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

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

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

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

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

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

15 (13) "Violent offense" means:

16 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,
17 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
18 (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

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

21

22 **Section 26.** Section 46-23-1011, MCA, is amended to read:

23 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their
24 probation period, including supervision after release from imprisonment imposed pursuant to ~~45-5-310, 45-5-311,~~
25 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), in accord with the conditions
26 set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing,
27 the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer
28 must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

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

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

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

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

9 (c) The county attorney may file a petition requesting that the court modify or add conditions as
10 requested by the probation and parole officer.

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

13 (e) Except as they apply to supervision after release from imprisonment imposed pursuant to ~~45-5-310~~,
14 ~~45-5-311~~, 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), the provisions of
15 46-18-203(7)(a)(ii) do not apply to this section.

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

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

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

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

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

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

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

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

1 judge for conditional discharge. The judge may accept or reject the recommendations of the department. The
2 department shall determine the optimum workload for each district probation and parole office."

3
4 **NEW SECTION. Section 27. Repealer.** The following sections of the Montana Code Annotated are
5 repealed:

6 45-5-305. Subjecting another to involuntary servitude -- definitions.

7 45-5-306. Trafficking of persons for involuntary servitude.

8 45-5-310. Sexual servitude of child.

9 45-5-311. Patronizing of child.

10

11 **NEW SECTION. Section 28. Repealer.** Section 14, Chapter 374, Laws of 2009, is repealed.

12

13 **NEW SECTION. Section 29. Codification instruction.** (1) [Sections 1 through 10] are intended to be
14 codified as an integral part of Title 45, chapter 5, and the provisions of Title 45, chapter 5, apply to [sections 1
15 through 10].

16 (2) [Section 11] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the
17 provisions of Title 27, chapter 1, part 7, apply to [section 11].

18 (3) [Sections 12 through 14] are intended to be codified as an integral part of Title 44, chapter 4, part 15,
19 and the provisions of Title 44, chapter 4, part 15, apply to [sections 12 through 14].

20

21 **NEW SECTION. Section 30. Effective date.** [This act] is effective July 1, 2015.

22

- END -