

HOUSE BILL NO. 186

INTRODUCED BY C. PEASE-LOPEZ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PROTECTING VICTIMS OF
5 SEXUAL OFFENSES; REQUIRING A SENTENCING JUDGE AND THE STATE BOARD OF PARDONS AND
6 PAROLE TO ORDER AN OFFENDER TO REFRAIN FROM CONTACTING A VICTIM OF A SEXUAL OFFENSE
7 OR AN IMMEDIATE FAMILY MEMBER OF THE VICTIM IF REQUESTED BY THE VICTIM OR IMMEDIATE
8 FAMILY MEMBER; REQUIRING THE DEPARTMENT OF CORRECTIONS TO REQUEST A SENTENCING
9 JUDGE TO ADD A CONDITION OF PROBATION THAT ORDERS THE OFFENDER TO REFRAIN FROM
10 CONTACTING A VICTIM OF A SEXUAL OFFENSE OR AN IMMEDIATE FAMILY MEMBER OF THE VICTIM
11 IF REQUESTED BY THE VICTIM OR IMMEDIATE FAMILY MEMBER; REVISING VICTIM NOTIFICATION
12 REQUIREMENTS TO INFORM A VICTIM OF A SEXUAL OFFENSE OF THE VICTIM'S RIGHT TO REQUEST
13 THAT AN OFFENDER BE ORDERED TO REFRAIN FROM CONTACTING THE VICTIM; AND AMENDING
14 SECTIONS 46-18-255, 46-23-215, 46-23-1011, 46-24-203, AND 46-24-212, MCA."

15

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

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18 **Section 1.** Section 46-18-255, MCA, is amended to read:

19 **"46-18-255. Sentence ~~upon~~ on conviction -- restriction on employment and residency.** (1) A judge
20 sentencing a person ~~upon conviction~~ convicted of a sexual or violent offense shall, as a condition to probation,
21 parole, or deferment or suspension of sentence, impose ~~upon~~ on the defendant reasonable employment or
22 occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely
23 victims of further offenses by the defendant.

24 (2) In addition to any restriction on employment imposed under subsection (1), a judge sentencing a
25 person convicted of a sexual offense involving a minor and designated as a level 3 offender under 46-23-509
26 shall, as a condition to probation, parole, or deferment or suspension of sentence, impose ~~upon~~ on the defendant
27 restrictions on the defendant's residency in the proximity of a private or public elementary or high school,
28 preschool as defined in 20-5-402, licensed day-care center, church, or park maintained by a city, town, or county.

29 (3) If requested by a victim of a sexual offense committed by the defendant, or if requested by an
30 immediate family member of the victim, the judge sentencing a person convicted of a sexual offense shall, as a

1 condition to probation, parole, or deferment or suspension of sentence, impose on the defendant a restriction
2 prohibiting the defendant from directly or indirectly contacting the victim or the immediate family member of the
3 victim. If the victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf."

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5 **Section 2.** Section 46-23-215, MCA, is amended to read:

6 **"46-23-215. Conditions of parole.** (1) A prisoner while on parole remains in the legal custody of the
7 department but is subject to the orders of the board.

8 (2) (a) When a hearing panel issues an order for parole, the order must recite the conditions of parole.
9 If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition
10 to pay restitution to the victim. The prisoner may not be paroled until the prisoner provides a biological sample
11 for purposes of Title 44, chapter 6, part 1, if the prisoner has not already done so under 44-6-103 and if the
12 prisoner was convicted of, or was found under 41-5-1502 to have committed, a sexual offense or violent offense
13 ~~as defined in 46-23-502.~~

14 (b) The board may require the prisoner convicted of a sexual offense to refrain from direct or indirect
15 contact with a victim of the crime or with an immediate family member of the victim. If a victim or an immediate
16 family member requests that the prisoner not contact the victim or immediate family member, the board shall
17 require the prisoner to refrain from contact with the victim or immediate family member. If the victim is a minor,
18 a parent or guardian of the victim may make the request on the victim's behalf.

19 (c) An order for parole or any parole agreement signed by a prisoner may contain a clause waiving
20 extradition.

21 (3) Whenever a hearing panel grants a parole to a prisoner on the condition that the prisoner obtain
22 employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while
23 incarcerated, the hearing panel or the presiding officer of the board or a designee may grant the prisoner a
24 furlough, not to exceed two consecutive 10-day periods, for purposes of fulfilling the condition. While on furlough,
25 the prisoner is not on parole and is subject to official detention as defined in 45-7-306. The prisoner remains in
26 the legal custody of the department and is subject to all other conditions ordered by the hearing panel or the
27 presiding officer of the board or a designee.

28 (4) For the purposes of this section, "sexual offense" and "violent offense" have the meanings provided
29 in 46-23-502."

30

1 **Section 3.** Section 46-23-1011, MCA, is amended to read:

2 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their
3 probation period, including supervision after release from imprisonment 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), in accord with the conditions
5 set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing,
6 the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer
7 must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

8 (2) If the probationer is being supervised for a sexual offense as defined in 46-23-502, the conditions
9 of probation may require the probationer to refrain from direct or indirect contact with the victim of the offense or
10 an immediate family member of the victim. If the victim or an immediate family member of the victim requests to
11 the department that the probationer not contact the victim or immediate family member, the department shall
12 request a hearing with a sentencing judge and recommend that the judge add the condition of probation. If the
13 victim is a minor, a parent or guardian of the victim may make the request on the victim's behalf.

14 ~~(2)~~(3) A copy of the conditions of probation must be signed by the probationer. The department may
15 require a probationer to waive extradition for the probationer's return to Montana.

16 ~~(3)~~(4) The probation and parole officer shall regularly advise and consult with the probationer to
17 encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer
18 of the restoration of rights on successful completion of the sentence.

19 ~~(4)~~(5) (a) The probation and parole officer may recommend and a judge may modify or add any condition
20 of probation or suspension of sentence at any time.

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

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

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

28 (e) Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-310,
29 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
30 46-18-203(7)(a)(ii) do not apply to this section.

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

3 ~~(5)(6)~~ (a) ~~Upon~~ On recommendation of the probation and parole officer, a judge may conditionally
4 discharge a probationer from supervision before expiration of the probationer's sentence if:

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

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

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

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

9 (b) Subsection ~~(5)(a)~~ (6)(a) does not prohibit a judge from revoking the order suspending execution or
10 deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally
11 discharged from supervision.

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

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19 **Section 4.** Section 46-24-203, MCA, is amended to read:

20 **"46-24-203. Prompt notification to victims and witnesses of certain offenses.** (1) A person
21 described in subsection (2) who provides the appropriate official with a current address and telephone number
22 must receive prompt advance notification, if possible, of proceedings relating to the person's case, including:

23 (a) the arrest of an accused;

24 (b) the release of the accused pending judicial proceedings;

25 (c) the crime with which the accused has been charged, including an explanation of the elements of the
26 offense when necessary to an understanding of the nature of the crime;

27 (d) proceedings in the prosecution of the accused, including entry of a plea of guilty or nolo contendere
28 and the setting of a trial date;

29 (e) if the accused is convicted or pleads guilty or nolo contendere;

30 (i) the function of a presentence report;

- 1 (ii) the name, office address, and telephone number of the person preparing the report; and
- 2 (iii) the convicted person's right of access to the report, as well as the victim's right under 46-18-115 to
- 3 present a statement in writing or orally at the sentencing proceeding and the convicted person's right to be
- 4 present at the sentencing proceeding and to have access to the victim's statement;
- 5 (f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of
- 6 imprisonment, if imposed; ~~and~~
- 7 (g) the right under 46-24-212 of a victim of a felony offense to receive information from the department
- 8 of corrections concerning the convicted person's incarceration; and
- 9 (h) the right under 46-23-215, 46-23-509, or 46-23-1011 of a victim of a sexual offense, as defined in
- 10 46-23-502, to request a sentencing order, condition of parole, or condition of probation to require the convicted
- 11 person to refrain from direct or indirect contact with the victim.

12 (2) A person entitled to notification under subsection (1) must be a victim or witness of a felony offense

13 or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim, a relative of a victim

14 or witness who is a minor, or a relative of a homicide victim."

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16 **Section 5.** Section 46-24-212, MCA, is amended to read:

17 "**46-24-212. Information concerning confinement.** ~~Upon~~ On request of a victim of a felony offense,

18 the department of corrections or the board of pardons and parole, as applicable, shall:

- 19 (1) promptly inform the victim of the following information concerning a prisoner committing the offense:
- 20 (a) the custody level;
- 21 (b) the projected discharge or parole eligibility date;
- 22 (c) the actual date of the prisoner's discharge from confinement or parole, if reasonably ascertainable;
- 23 (d) the time and place of a parole hearing concerning the prisoner, ~~and~~ of the victim's right to submit a
- 24 statement to the board of pardons and parole or the hearing panel conducting a parole hearing under 46-23-202,
- 25 and the victim's right under 46-23-215, 46-23-509, or 46-23-1011 to request a condition of parole or probation
- 26 to require the prisoner to refrain from direct or indirect contact with the victim; and
- 27 (e) the community in which the prisoner will reside after parole;
- 28 (2) provide reasonable advance notice to the victim before release of the defendant on furlough or to a
- 29 work-release program, halfway house, or other community-based program or correctional facility; and
- 30 (3) promptly inform the victim of the occurrence of any of the following events concerning the prisoner:

- 1 (a) an escape from a correctional or mental health facility or community program;
- 2 (b) a recapture;
- 3 (c) a decision of the board of pardons and parole;
- 4 (d) a decision of the governor to commute the sentence or to grant executive clemency;
- 5 (e) a release from confinement and any conditions attached to the release; and
- 6 (f) the prisoner's death."

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