

1 HOUSE BILL NO. 478

2 INTRODUCED BY S. LASZLOFFY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING TRAFFICKING OF PERSONS FOR
5 COMMERCIAL SEXUAL ACTIVITY; REVISING PROSTITUTION LAWS; REVISING CERTAIN PENALTIES;
6 ESTABLISHING THE OFFENSES OF SEXUAL SERVITUDE OF A CHILD AND PATRONIZING A CHILD;
7 PROVIDING FOR THE SEIZURE OF ASSETS OWNED BY PERSONS CONVICTED OF TRAFFICKING OF
8 PERSONS FOR COMMERCIAL SEXUAL ACTIVITY; CREATING THE VICTIMS OF COMMERCIAL SEXUAL
9 ACTIVITY TRAFFICKING ACCOUNT; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING
10 SECTIONS 17-7-502, 45-5-305, 45-5-306, 45-5-601, 45-5-602, 45-5-603, 46-18-111, 46-18-201, 46-18-203,
11 46-18-205, 46-18-207, 46-18-222, 46-18-231, 46-23-502, AND 46-23-1011, MCA; AND PROVIDING AN
12 EFFECTIVE DATE AND AN APPLICABILITY DATE."

13

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

15

16 **Section 1.** Section 17-7-502, MCA, is amended to read:

17 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
18 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
19 need for a biennial legislative appropriation or budget amendment.

20 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
21 of the following provisions:

22 (a) The law containing the statutory authority must be listed in subsection (3).

23 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
24 appropriation is made as provided in this section.

25 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
26 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;
27 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;
28 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101;
29 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
30 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306;

1 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105;
 2 44-4-1101; 44-12-206; 44-13-102; [section 11]; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115;
 3 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-416; 77-1-108; 77-2-362; 80-2-222;
 4 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-230; 87-1-603;
 5 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

6 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 7 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 8 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
 9 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
 10 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
 11 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
 12 of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is
 13 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch.
 14 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and
 15 sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L.
 16 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the
 17 supplemental benefit provided by 19-6-709; pursuant to sec. 8, Ch. 330, L. 2009, the inclusion of 87-1-621
 18 terminates June 30, 2013; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30,
 19 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; pursuant to sec.
 20 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 47, Ch. 19, L. 2011,
 21 the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of
 22 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates
 23 June 30, 2019; and pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates
 24 June 30, 2017.)"

25

26 **Section 2.** Section 45-5-305, MCA, is amended to read:

27 **"45-5-305. Subjecting another to involuntary servitude -- definitions.** (1) A person commits the
 28 offense of subjecting another to involuntary servitude if the person purposely or knowingly obtains or maintains
 29 the forced labor or services of another person by any of the following actions or by threatening any of the
 30 following actions:

- 1 (a) causing physical harm to any person;
- 2 (b) damaging or destroying the property of any person;
- 3 (c) physically restraining another person;
- 4 (d) abusing the law or legal process;
- 5 (e) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported
- 6 passport or other immigration document or any other actual or purported government identification document of
- 7 another person;
- 8 (f) blackmail; or
- 9 (g) causing financial harm to any person or using financial control over any person.
- 10 (2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of subjecting another
- 11 to involuntary servitude shall be imprisoned in the state prison for a term of not more than 10 years, fined an
- 12 amount not to exceed \$50,000, or both.
- 13 (b) A person convicted of the offense of subjecting another to involuntary servitude, if the violation
- 14 involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide, shall be punished
- 15 by life imprisonment or by imprisonment in the state prison for a term of not more than 100 years and may be
- 16 fined not more than \$50,000.
- 17 (3) As used in this ~~section~~ part, unless the context requires otherwise, the following definitions apply:
- 18 (a) "Blackmail" means an unlawful demand of money, property, or services under threat to accuse
- 19 another person of a crime or to expose any secret tending to subject a person to hatred, contempt, or ridicule.
- 20 (b) "Commercial sexual activity" means any sex act or simulated sex act, including sexually explicit
- 21 performances, for which anything of value is given, promised to, or received directly or indirectly by any person.
- 22 ~~(b)(c)~~ "Financial harm" includes employment contracts that violate 28-2-903, taking, receiving, reserving,
- 23 or charging a rate of interest greater than is allowed by 31-1-107, and defrauding creditors as defined in 45-6-315.
- 24 ~~(e)(d)~~ "Forced labor or services" means labor or services that are performed or provided by another
- 25 person and are obtained or maintained through violation of subsection (1).
- 26 ~~(d)(e)~~ "Labor" means work of economic or financial value.
- 27 ~~(e)(f)~~ "Maintain" means to secure continued performance of labor or services, regardless of any initial
- 28 agreement on the part of the victim to perform that type of service.
- 29 ~~(f)(g)~~ "Obtain" means to secure the performance of labor or services.
- 30 ~~(g)(h)~~ "Services" means ~~an ongoing relationship between a person and the offender in which the person~~

1 ~~performs activities under the supervision of or for the benefit of the offender~~ acts committed at the direction of,
 2 request of, supervision of, or for the benefit of another, including commercial sexual activity ~~and sexually explicit~~
 3 ~~performances.~~

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

7
 8 **Section 3.** Section 45-5-306, MCA, is amended to read:

9 **"45-5-306. Trafficking of persons for involuntary servitude.** (1) A person commits the offense of
 10 trafficking of persons for involuntary servitude if the person purposely or knowingly:

11 (a) recruits, entices, harbors, transports, provides, or obtains by any means another person, intending
 12 or knowing that the person will be subjected to involuntary servitude as described in 45-5-305; or

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

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

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

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

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

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

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

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

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

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

8 (b) If the person is released after the mandatory minimum period of imprisonment, the person is subject
9 to supervision by the department of corrections for the remainder of the person's life and shall participate in the
10 program for continuous, satellite-based monitoring provided for in 46-23-1010."
11

12 **NEW SECTION. Section 5. Patronizing a child.** (1) A person commits the offense of patronizing a child
13 if the person purposely or knowingly engages in commercial sexual activity with a child while knowing or
14 negligently disregarding that the child is a victim of the offense of sexual servitude of a child as provided in
15 [section 4].

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

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

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

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

25 (b) If the person is released after the mandatory minimum period of imprisonment, the person is subject
26 to supervision by the department of corrections for the remainder of the person's life and shall participate in the
27 program for continuous, satellite-based monitoring provided for in 46-23-1010."
28

29 **Section 6.** Section 45-5-601, MCA, is amended to read:

30 **"45-5-601. Prostitution.** (1) A person commits the offense of prostitution if the person engages in or

1 agrees or offers to engage in sexual intercourse with another person for compensation, whether the
2 compensation is received or to be received or paid or to be paid.

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

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

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

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

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

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

19 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is
20 subject to supervision by the department of corrections for the remainder of the offender's life and shall participate
21 in the program for continuous, satellite-based monitoring provided for in 46-23-1010."
22

23 **Section 7.** Section 45-5-602, MCA, is amended to read:

24 **"45-5-602. Promoting prostitution.** (1) A person commits the offense of promoting prostitution if the
25 person purposely or knowingly commits any of the following acts:

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

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

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

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

1 (e) procures a prostitute for a patron;

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

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

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

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

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

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

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

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

22 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is
23 subject to supervision by the department of corrections for the remainder of the offender's life and shall participate
24 in the program for continuous, satellite-based monitoring provided for in 46-23-1010."
25

26 **Section 8.** Section 45-5-603, MCA, is amended to read:

27 **"45-5-603. Aggravated promotion of prostitution.** (1) A person commits the offense of aggravated
28 promotion of prostitution if the person purposely or knowingly commits any of the following acts:

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

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

1 child's age;

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

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

6 (i) life imprisonment; or

7 (ii) imprisonment in a state prison for a term not to exceed 20 years or a fine in an amount not to exceed
8 \$50,000, or both.

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

11 ~~—— (i) life imprisonment; or~~

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

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

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

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

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

24 (ii) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject
25 to supervision by the department of corrections for the remainder of the offender's life and shall participate in the
26 program for continuous, satellite-based monitoring provided for in 46-23-1010."
27

28 **NEW SECTION. Section 9. Property subject to forfeiture -- trafficking of persons for commercial**
29 **sexual activity.** (1) (a) A person commits the offense of use or possession of property subject to criminal
30 forfeiture for trafficking of persons for commercial sexual activity if the person knowingly possesses, owns, uses,

1 or attempts to use property that is subject to criminal forfeiture under this section. A person convicted of the
2 offense of use or possession of property subject to criminal forfeiture shall be imprisoned in the state prison for
3 a term not to exceed 10 years.

4 (b) Property is subject to criminal forfeiture under this section if it is used or intended for use in violation
5 of [section 4] or 45-5-306 if the violation involves the provision of commercial sexual activity or in violation of
6 45-4-102 when the object of the conspiracy was a violation of [section 4] or 45-5-306 involving the provision of
7 commercial sexual activity.

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

9 (i) money, raw materials, products, equipment, and other property of any kind;

10 (ii) property used or intended for use as a container for property enumerated in subsection (1)(c)(i);

11 (iii) except as provided in subsection (2), a conveyance, including an aircraft, vehicle, or vessel;

12 (iv) books, records, research products and materials, formulas, microfilm, tapes, and data;

13 (v) anything of value furnished or intended to be furnished in exchange for the provision of commercial
14 sexual activity and all proceeds traceable to the exchange;

15 (vi) money, negotiable instruments, securities, and weapons; and

16 (vii) personal property constituting or derived from proceeds obtained directly or indirectly from the
17 provision of commercial sexual activity.

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

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

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

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

30 (b) Property subject to criminal forfeiture under this section may be seized by a peace officer under a

1 search warrant issued by a court having jurisdiction over the property.

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

3 (i) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or
4 an inspection under an administrative inspection warrant;

5 (ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or a
6 criminal forfeiture proceeding under the provisions of Title 44, chapter 12, or this section;

7 (iii) a peace officer has probable cause to believe that the property is directly or indirectly dangerous to
8 health or safety; or

9 (iv) a peace officer has probable cause to believe that the property was used or is intended to be used
10 under the circumstances described in subsection (1)(b).

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

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

15 (7) Upon conviction, the property subject to criminal forfeiture is forfeited to the state and proceeds from
16 the sale of property seized under this section must be distributed in accordance with the provisions of [section
17 10].

18
19 **NEW SECTION. Section 10. Disposition of proceeds of sale of forfeited property.** Whenever
20 property is seized, forfeited, and sold under the provisions of [section 9], the net proceeds of the sale must be
21 distributed as follows:

22 (1) to the holders of security interests who have presented proper proof of their claims, if any, up to the
23 amount of their interests in the property;

24 (2) the remainder, if any, must be deposited in the victims of commercial sexual activity trafficking account
25 as provided for in [section 11].

26
27 **NEW SECTION. Section 11. Victims of commercial sexual activity trafficking account.** There is
28 an account in the state special revenue fund for services for victims of commercial sexual activity trafficking
29 consisting of money derived from the sale of assets forfeited or seized under [section 9] or contributions made
30 to the account. The money in the account is statutorily appropriated, as provided in 17-7-502, to the office of

1 victims services provided for in 2-15-2016 to administer and distribute as follows:

2 (1) 5% to the office of victims services for administration; and

3 (2) 95% to entities providing services to victims of offenses under [section 4] or 45-5-306 whose
4 victimization involved the provision of commercial sexual activity.

5

6 **Section 12.** Section 46-18-111, MCA, is amended to read:

7 **"46-18-111. Presentence investigation -- when required.** (1) (a) Upon the acceptance of a plea or
8 upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer
9 to make a presentence investigation and report. The district court shall consider the presentence investigation
10 report prior to sentencing.

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

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

28 (2) The court shall order a presentence investigation report unless the court makes a finding that a report
29 is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in
30 subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written

1 presentence investigation report by a probation and parole officer is presented to and considered by the district
2 court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only
3 if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense
4 as defined in 46-23-502.

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

9 **Section 13.** Section 46-18-201, MCA, is amended to read:

10 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an
11 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition
12 of sentence, except as otherwise specifically provided by statute, for a period:

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

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

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

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

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

1 (iv) commitment of:

2 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a
3 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years
4 of the commitment to the department of corrections must be suspended, except as provided in [section 4],
5 [section 5], 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), and 45-5-625(4);
6 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 second or
14 subsequent violation of 61-8-401 or 61-8-406;
- 15 (p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
16 protection of the victim or society; or
- 17 (q) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).
- 18 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a
19 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in
20 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment
21 of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the
22 sentence is deferred or suspended.
- 23 (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1)
24 through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to
25 be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension
26 of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.
- 27 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in
28 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part
29 5.
- 30 (8) If a felony sentence includes probation, the department of corrections shall supervise the offender

1 unless the court specifies otherwise."

2

3 **Section 14.** Section 46-18-203, MCA, is amended to read:

4 **"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for
5 revocation showing probable cause that the offender has violated any condition of a sentence, any condition of
6 a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed
7 pursuant to [section 4], [section 5], 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(e)~~
8 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
9 the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the
10 petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace
11 officer or a probation and parole officer to arrest the offender and bring the offender before the court.

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

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

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

20 (a) the allegations of the petition;

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

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

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

24 1.

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

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

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

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

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

4 (ii) a condition of supervision after release from imprisonment imposed pursuant to [section 4], [section
5 5], 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).

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

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

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

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

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

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

17 (b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either
18 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.
19 The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time
20 served in a detention center or home arrest time already served.

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

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

27 (9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject
28 to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the
29 offender's original sentence."
30

1 **Section 15.** Section 46-18-205, MCA, is amended to read:

2 **"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the
3 victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of
4 imprisonment imposed under the following sections may not be deferred or suspended and the provisions of
5 46-18-222 do not apply to the first 30 days of the imprisonment:

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

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

8 (c) 45-5-505, deviate sexual conduct; or

9 (d) 45-5-507, incest.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (4) The provisions of this section do not apply to sentences imposed pursuant to [section 4], [section 5],
26 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)."

27

28 **Section 16.** Section 46-18-207, MCA, is amended to read:

29 **"46-18-207. Sexual offender treatment.** (1) Upon sentencing a person convicted of a sexual offense,
30 as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to

1 46-23-509.

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

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

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

9 (iii) if the person is sentenced pursuant to [section 4], [section 5], 45-5-503(4), 45-5-507(5), 45-5-601(3),
10 45-5-602(3), ~~45-5-603(2)(e)~~ 45-5-603(2)(b), or 45-5-625(4) and is released on parole, remain in an outpatient sex
11 offender treatment program for the remainder of the person's life.

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

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

17 (4) (a) Except for an offender sentenced pursuant to [section 4], [section 5], 45-5-503(4), 45-5-507(5),
18 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(e)~~ 45-5-603(2)(b), or 45-5-625(4), during an offender's term of commitment
19 to the department of corrections or a state prison, the department may place the person in a residential sexual
20 offender treatment program approved by the department under 53-1-203.

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

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

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

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

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

- 1 (d) shall comply with all requirements and conditions of sexual offender treatment as directed by the
2 person's sex offender therapist;
- 3 (e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises
4 or where gambling takes place;
- 5 (f) may not consume alcoholic beverages;
- 6 (g) shall enter and remain in an aftercare program as directed by the person's probation officer;
- 7 (h) shall submit to random or routine drug and alcohol testing;
- 8 (i) may not possess pornographic material or access pornography through the internet; and
- 9 (j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or
10 continuous satellite monitoring.
- 11 (6) The sentencing of a sexual offender is subject to 46-18-202(2) and 46-18-219.
- 12 (7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a
13 sexual offender to impose any part of a sentence that was previously suspended."
14

15 **Section 17.** Section 46-18-222, MCA, is amended to read:

16 **"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition**
17 **and suspended execution of sentence, and restrictions on parole eligibility.** Mandatory minimum sentences
18 prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on
19 deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205,
20 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility do not apply if:

- 21 (1) the offender was less than 18 years of age at the time of the commission of the offense for which the
22 offender is to be sentenced;
- 23 (2) the offender's mental capacity, at the time of the commission of the offense for which the offender
24 is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the
25 prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an
26 impairment for the purposes of this subsection.
- 27 (3) the offender, at the time of the commission of the offense for which the offender is to be sentenced,
28 was acting under unusual and substantial duress, although not such duress as would constitute a defense to the
29 prosecution;
- 30 (4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of

1 another, and the offender's participation was relatively minor;

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

5 (6) the offense was committed under [section 4], [section 5], 45-5-502(3), 45-5-503(4), 45-5-507(5),
6 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
7 findings contained in a sexual offender evaluation report prepared by a qualified sexual offender evaluator
8 pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential
9 treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and
10 for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a
11 statement of the reasons for its determination."
12

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

14 **"46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection (1)(b),
15 whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an
16 offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in
17 addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

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

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

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

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

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

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

25 (vi) [section 4] or [section 5], sexual servitude of a child or patronizing a child;

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

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

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

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

1 age or older at the time of the offense;

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

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

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

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

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

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

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

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

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

23

24 **Section 19.** Section 46-23-502, MCA, is amended to read:

25 **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

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

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

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

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

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

5 (6) "Registration agency" means:

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

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

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

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

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

15 (9) "Sexual offense" means:

16 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim
17 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
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
19 the offender is not a parent of the victim), [section 4], [section 5], 45-5-502(3) (if the victim is less than 16 years
20 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
21 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
22 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
23 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
24 ~~(2)(e)~~ (2)(b), or 45-5-625; or

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

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

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

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

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

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

7 (13) "Violent offense" means:

8 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,
9 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
10 (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

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

13

14 **Section 20.** Section 46-23-1011, MCA, is amended to read:

15 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their
16 probation period, including supervision after release from imprisonment imposed pursuant to [section 4], [section
17 5], 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
18 with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the
19 time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of
20 probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided
21 in chapter 8 of this title.

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

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

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

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

1 modify or add the conditions.

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

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

6 (e) Except as they apply to supervision after release from imprisonment imposed pursuant to [section
7 4], [section 5], 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),
8 the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

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

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

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

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

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

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

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

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

26
27 **NEW SECTION. Section 21. Codification instruction.** [Sections 4, 5, and 9 through 11] are intended
28 to be codified as an integral part of Title 45, chapter 5, part 3, and the provisions of Title 45, chapter 5, part 3,
29 apply to [sections 4, 5, and 9 through 11].
30

1 NEW SECTION. **Section 22. Effective date.** [This act] is effective July 1, 2013.

2

3 NEW SECTION. **Section 23. Applicability.** [This act] applies to offenses committed on or after [the
4 effective date of this act].

5

- END -