

HOUSE BILL NO. 379

INTRODUCED BY K. DUDIK

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO HUMAN
5 TRAFFICKING; REQUIRING PERSONS SELLING, COMMERCIALY PROMOTING, PLACING, OR
6 MAINTAINING INTERNET ADVERTISEMENTS OFFERING COMPANIONSHIP OR ESCORT SERVICES FOR
7 SALE IN THIS STATE TO VERIFY THE IDENTITIES OF CERTAIN PERSONS AND MAINTAIN AND STORE
8 RECORDS; PROVIDING A PENALTY; PROVIDING DEFINITIONS; REVISING THE PENALTY FOR THE
9 OFFENSE OF TRAFFICKING OF PERSONS; AND AMENDING SECTIONS 45-5-702, 46-18-201, 46-18-203,
10 46-18-205, 46-18-207, 46-18-222, 46-18-231, AND 46-23-1011, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. **Section 1. Internet advertisements offering companionship or escort services**
15 **for sale -- identification requirements -- recordkeeping -- penalty -- definitions.** (1) A person who, by means

16 of a website, an electronic mail message, or otherwise through the internet, sells, commercially promotes, places,
17 or maintains an advertisement offering companionship or escort services for sale in the state of Montana shall:

- 18 (a) prior to selling, commercially promoting, or placing the advertisement, verify:
19 (i) the identity of the person posting the advertisement by obtaining a copy of a government-issued
20 document containing a photograph of and the name and the date of birth of the person;
21 (ii) the identity of any person depicted in the advertisement by taking the actions described in subsection
22 (1)(a)(i); and
23 (iii) that a person whose companionship or escort services are advertised is not less than 18 years of age
24 by obtaining substantiation of the identity of the person as determined by the department;
25 (b) create and maintain for not less than 7 years individually identifiable records pertaining to each
26 person described in subsection (1)(a) that include the information required for verification;
27 (c) maintain the records required under subsection (1)(b) at the business premises of the person or at
28 a location prescribed by the department; and
29 (d) in a form prescribed by the department, affix to each advertisement a statement describing where
30 the records required by this section are located with respect to any person whose companionship or escort

1 services are advertised.

2 (2) A person who violates subsection (1) is subject to a civil penalty not to exceed \$1,500 for each
3 violation. Each day of each violation constitutes a separate violation. The department may institute and maintain
4 in the name of the state any enforcement proceedings under this section, or, at the request of the department,
5 the county attorney of the county in which a violation occurred shall petition the district court to impose, assess,
6 and recover the civil penalty. Money collected under this section must be deposited in the human trafficking
7 education account established in 44-4-1504.

8 (3) For the purposes of this section, the following definitions apply:

9 (a) "Department" means the department of justice provided for in 2-15-2001.

10 (b) "Electronic mail message" has the meaning provided in 30-14-1702.

11 (c) "Internet" has the meaning provided in 2-17-551.

12

13 **Section 2.** Section 45-5-702, MCA, is amended to read:

14 **"45-5-702. Trafficking of persons.** (1) A person commits the offense of trafficking of persons if the
15 person purposely or knowingly:

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

18 or

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

21 (2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of the offense of trafficking
22 of persons shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to
23 exceed \$50,000, or both.

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

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

28 (ii) the victim was a child and the violation did not involve sexual activity.

29 (c) (i) If the victim was a child and the violation involved sexual activity, a person convicted of the offense
30 of trafficking of persons:

1 (A) 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)(c)(i)(A) except as provided in 46-18-222, and during the first 25 years of imprisonment, the
 4 offender is not eligible for parole.

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

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

11

12 **Section 3.** Section 46-18-201, MCA, is amended to read:

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

16 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

17 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a
 18 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless
 19 of whether any other conditions are imposed.

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

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

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

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

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

1 46-8-113;

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

4 (iv) commitment of:

5 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a
6 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years
7 of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4),
8 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), ~~and 45-5-625(4)~~, and 45-5-702(2)(c); or

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

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

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

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

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

21 (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.

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

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

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

28 (c) conditions for probation;

29 (d) payment of the costs of confinement;

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

- 1 (f) payment of costs as provided in 46-18-232 and 46-18-233;
- 2 (g) payment of costs of assigned counsel as provided in 46-8-113;
- 3 (h) with the approval of the facility or program, an order that the offender be placed in a community
4 corrections facility or program as provided in 53-30-321;
- 5 (i) with the approval of the prerelease center or prerelease program and confirmation by the department
6 of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease
7 program for a period not to exceed 1 year;
- 8 (j) community service;
- 9 (k) home arrest as provided in Title 46, chapter 18, part 10;
- 10 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 11 (m) with the approval of the department of corrections and with a signed statement from an offender that
12 the offender's participation in the boot camp incarceration program is voluntary, an order that the offender
13 complete the boot camp incarceration program established pursuant to 53-30-403;
- 14 (n) participation in a day reporting program provided for in 53-1-203;
- 15 (o) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part
16 12, for a violation of 61-8-465, a second or subsequent violation of 61-8-401, 61-8-406, or 61-8-411, or a second
17 or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol
18 or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute
19 involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a
20 contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first,
21 second, or subsequent violation of the statute;
- 22 (p) participation in a restorative justice program approved by court order and payment of a participation
23 fee of up to \$150 for program expenses if the program agrees to accept the offender;
- 24 (q) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
25 protection of the victim or society; or
- 26 (r) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(q).
- 27 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a
28 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in
29 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment
30 of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the

1 sentence is deferred or suspended.

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

6 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in
7 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part
8 5.

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

11 (9) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."
12

13 **Section 4.** Section 46-18-203, MCA, is amended to read:

14 **"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for
15 revocation showing probable cause that the offender has violated any condition of a sentence, any condition of
16 a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed
17 pursuant to 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)~~, or 45-5-702(2)(c),
18 the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a
19 specified time and place for the hearing and be served by delivering a copy of the petition and order to the
20 offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and
21 parole officer to arrest the offender and bring the offender before the court.

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

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

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

30 (a) the allegations of the petition;

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

4 1.

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

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

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

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

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

14 (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4),
15 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), ~~or 45-5-625(4)~~, or 45-5-702(2)(c).

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

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

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

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

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

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

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

1 (c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred
2 sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in
3 46-23-1011.

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

7 (9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject
8 to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the
9 offender's original sentence."
10

11 **Section 5.** Section 46-18-205, MCA, is amended to read:

12 **"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the
13 victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of
14 imprisonment imposed under the following sections may not be deferred or suspended and the provisions of
15 46-18-222 do not apply to the first 30 days of the imprisonment:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-503(4),
6 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), ~~or 45-5-625(4)~~, or 45-5-702(2)(c)."

7

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

9 **"46-18-207. Sexual offender treatment.** (1) Upon sentencing a person convicted of a sexual offense,
10 as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to
11 46-23-509.

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

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

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

19 (iii) if the person is sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3),
20 45-5-603(2)(b), ~~or 45-5-625(4)~~, or 45-5-702(2)(c) and is released on parole, remain in an outpatient sexual
21 offender treatment program for the remainder of the person's life.

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

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

27 (4) (a) Except for an offender sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3),
28 45-5-603(2)(b), ~~or 45-5-625(4)~~, or 45-5-702(2)(c), during an offender's term of commitment to the department of
29 corrections or a state prison, the department may place the person in a residential sexual offender treatment
30 program approved by the department under 53-1-203.

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

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

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

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

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

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

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

15 (f) may not consume alcoholic beverages;

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

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

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

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

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

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

24

25 **Section 7.** Section 46-18-222, MCA, is amended to read:

26 **"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition**
 27 **and suspended execution of sentence, and restrictions on parole eligibility.** Mandatory minimum sentences
 28 prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the restrictions on
 29 deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205,
 30 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4),

1 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), ~~and 45-5-625(4)~~, and 45-5-702(2)(c) do not apply if:

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

3 offender is to be sentenced;

4 (2) the offender's mental capacity, at the time of the commission of the offense for which the offender

5 is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the

6 prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an

7 impairment for the purposes of this subsection.

8 (3) the offender, at the time of the commission of the offense for which the offender is to be sentenced,

9 was acting under unusual and substantial duress, although not such duress as would constitute a defense to the

10 prosecution;

11 (4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of

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

13 (5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element

14 of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of

15 the offense; or

16 (6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3),

17 45-5-603(2)(b), ~~or 45-5-625(4)~~, or 45-5-702(2)(c) and the judge determines, based on the findings contained in

18 a psychosexual evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions

19 of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while

20 in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection

21 of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its

22 determination."

23

24 **Section 8.** Section 46-18-231, MCA, is amended to read:

25 **"46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection (1)(b),

26 whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an

27 offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in

28 addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

29 (b) For those crimes for which penalties are provided in the following sections, a fine may be imposed

30 in accordance with subsection (3) in addition to a sentence of imprisonment:

- 1 (i) 45-5-103(4), mitigated deliberate homicide;
- 2 (ii) 45-5-202, aggravated assault;
- 3 (iii) 45-5-213, assault with a weapon;
- 4 (iv) 45-5-302(2), kidnapping;
- 5 (v) 45-5-303(2), aggravated kidnapping;
- 6 (vi) 45-5-401(2), robbery;
- 7 (vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more
- 8 years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;
- 9 (viii) 45-5-503(2) through (4), sexual intercourse without consent;
- 10 (ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age
- 11 or older at the time of the offense;
- 12 (x) 45-5-601(3), 45-5-602(3), or 45-5-603(2)(b), prostitution, promotion of prostitution, or aggravated
- 13 promotion of prostitution when the person patronized or engaging in prostitution was a child and the patron was
- 14 18 years of age or older at the time of the offense;
- 15 (xi) 45-5-625(4), sexual abuse of children;
- 16 (xii) 45-5-702(2)(c), trafficking of persons when the victim was a child and the offense involved sexual
- 17 activity;
- 18 ~~(xii)~~(xiii) 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal
- 19 possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal
- 20 possession with intent to distribute a dangerous drug;
- 21 ~~(xiii)~~(xiv) 45-9-102(4), criminal possession of an opiate;
- 22 ~~(xiv)~~(xv) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and
- 23 ~~(xv)~~(xvi) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school
- 24 property.
- 25 (2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found
- 26 guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may
- 27 impose a fine only in accordance with subsection (3).
- 28 (3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able
- 29 to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account
- 30 the nature of the crime committed, the financial resources of the offender, and the nature of the burden that

1 payment of the fine will impose.

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

4

5 **Section 9.** Section 46-23-1011, MCA, is amended to read:

6 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their
7 probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4),
8 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), ~~or 45-5-625(4)~~, or 45-5-702(2)(c), in accord with the
9 conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of
10 sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The
11 probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of
12 this title.

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

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

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

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

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

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

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

3 (e) Except as they apply to supervision after release from imprisonment imposed pursuant to
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)~~, or 45-5-702(2)(c), the
5 provisions of 46-18-203(7)(a)(ii) do not apply to this section.

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

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

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

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

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

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

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

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

23
24 **NEW SECTION. Section 10. Codification instruction.** [Section 1] is intended to be codified as an
25 integral part of Title 44, chapter 4, part 15, and the provisions of Title 44, chapter 4, part 15, apply to [section 1].

26 - END -