

1 HOUSE BILL NO. 183

2 INTRODUCED BY D. TENENBAUM

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING PUBLIC DEFENDER FEES FOR ASSIGNED
5 COUNSEL; AMENDING SECTIONS 46-18-101, 46-18-201, AND 61-8-731, MCA; AND REPEALING
6 SECTIONS 46-8-113 AND 46-8-114, MCA."

7

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

9

10 **Section 1.** Section 46-18-101, MCA, is amended to read:

11 **"46-18-101. Correctional and sentencing policy.** (1) It is the purpose of this section to establish the
12 correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to
13 implement the policy established by this section.

14 (2) The correctional and sentencing policy of the state of Montana is to:

15 (a) punish each offender commensurate with the nature and degree of harm caused by the offense
16 and to hold an offender accountable;

17 (b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent
18 offenders and serious repeat offenders;

19 (c) provide restitution, reparation, and restoration to the victim of the offense; and

20 (d) encourage and provide opportunities for the offender's self-improvement to provide rehabilitation
21 and reintegration of offenders back into the community.

22 (3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following
23 principles:

24 (a) Sentencing and punishment must be certain, timely, consistent, and understandable.

25 (b) Sentences should be commensurate with the punishment imposed on other persons committing
26 the same offenses.

27 (c) Sentencing practices must be neutral with respect to the offender's race, gender, religion, national
28 origin, or social or economic status.

1 (d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating
2 circumstances.

3 (e) Sentencing practices must include punishing violent and serious repeat felony offenders with
4 incarceration.

5 (f) Sentencing practices must provide alternatives to imprisonment for the punishment of those
6 nonviolent felony offenders who do not have serious criminal records.

7 (g) Sentencing and correctional practices must emphasize that the offender is responsible for obeying
8 the law and must hold the offender accountable for the offender's actions.

9 (h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must
10 require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, ~~costs of~~
11 ~~assigned counsel, as provided in 46-8-113,~~ and, if the offender is a sex offender, costs of any chemical
12 treatment.

13 (i) Sentencing practices should promote and support practices, policies, and programs that focus on
14 restorative justice principles."
15

16 **Section 2.** Section 46-18-201, MCA, is amended to read:

17 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of
18 an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer
19 imposition of sentence, except as otherwise specifically provided by statute, for a period:

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

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

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

27 (2) 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 suspend execution of sentence, except as otherwise specifically

1 provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is
2 greater, for each particular offense.

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

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

6 (ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in
7 46-8-113;

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

10 (iv) commitment of:

11 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a
12 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5
13 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-
14 503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

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

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

21 (vi) commitment of an offender to the department of corrections with the requirement that immediately
22 subsequent to sentencing or disposition the offender is released to community supervision and that any
23 subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

24 (vii) any combination of subsection (2) and this subsection (3)(a).

25 (b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank
26 program.

27 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the
28 sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the

1 deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection
2 (1)(a) or (2) may include but are not limited to:

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

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

5 (c) conditions for probation;

6 (d) payment of the costs of confinement;

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

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

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

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

12 ~~(i)~~ (h) with the approval of the prerelease center or prerelease program and confirmation by the
13 department of corrections that space is available and that the offender is a suitable candidate, an order that the
14 offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for
15 a period not to exceed 1 year;

16 ~~(j)~~ (i) community service;

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

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

19 ~~(m)~~ (l) participation in a day reporting program provided for in 53-1-203;

20 ~~(n)~~ (m) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter
21 4, part 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
22 second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse
23 of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any
24 statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs
25 was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for
26 a first, second, or subsequent violation of the statute;

27 ~~(o)~~ (n) participation in a restorative justice program approved by court order and payment of a
28 participation fee of up to \$150 for program expenses if the program agrees to accept the offender;

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

3 ~~(q)~~ (p) with approval of the program and confirmation by the department of corrections that space is
4 available, an order that the offender be placed in a residential treatment program; or

5 ~~(r)~~ (q) any combination of the restrictions or conditions listed in this subsection (4).

6 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a
7 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in
8 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require
9 payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of
10 the sentence is deferred or suspended.

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

16 (b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or
17 restitution.

18 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-
19 23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part
20 5.

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

23 (9) When imposing a sentence under this section that includes incarceration in a detention facility or
24 the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before
25 trial or sentencing.

26 (10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."
27

28 **Section 3.** Section 61-8-731, MCA, is amended to read:

1 **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
2 **concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the**
3 **influence -- penalty for fourth or subsequent offense.** (1) Except as provided in subsection (3), if a person is
4 convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the person has either a single conviction
5 under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 45-5-
6 628(1)(e), 61-8-401, 61-8-406, or 61-8-465, and the offense under 45-5-104 occurred while the person was
7 operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination
8 of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

9 (a) (i) being sentenced to the department of corrections for placement in an appropriate correctional
10 facility or program for a term of not less than 13 months or more than 2 years. The court shall order that if the
11 person successfully completes a residential alcohol treatment program approved by the department of
12 corrections, the remainder of the sentence must be served on probation. The imposition or execution of the
13 sentence may not be deferred or suspended, and the person is not eligible for parole.

14 (ii) being sentenced to either the department of corrections or the Montana state prison or Montana
15 women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the
16 term imposed under subsection (1)(a); and

17 (iii) a fine in an amount of not less than \$5,000 or more than \$10,000; or

18 (b) (i) being sentenced to an appropriate treatment court program for a term of not more than 5
19 years, with required completion; and

20 (ii) a fine in an amount of not less than \$5,000 or more than \$10,000.

21 (c) If sentenced under subsection (1)(b), the person may be entitled to a suspended sentence and is
22 not eligible for a deferred imposition of sentence.

23 (2) The department of corrections may place an offender sentenced under subsection (1)(a) in a
24 residential alcohol treatment program approved by the department of corrections.

25 (3) If a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the person has
26 either a single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104,
27 45-5-205, 45-5-628(1)(e), 61-8-401, 61-8-406, or 61-8-465, the offense under 45-5-104 occurred while the
28 person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any

1 combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a
 2 residential alcohol treatment program under subsection (2), whether or not the person successfully completed
 3 the program, the person shall be sentenced to the department of corrections for a term of not less than 13
 4 months or more than 5 years or be fined an amount of not less than \$5,000 or more than \$10,000, or both.

5 (4) The court shall, as a condition of probation, order:

6 (a) that the person abide by the standard conditions of probation promulgated by the department of
 7 corrections;

8 (b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment
 9 under this section;

10 (c) that the person may not frequent an establishment where alcoholic beverages are served;

11 (d) that the person may not consume alcoholic beverages;

12 (e) that the person may not operate a motor vehicle unless authorized by the person's probation
 13 officer;

14 (f) that the person enter in and remain in an aftercare treatment program for the entirety of the
 15 probationary period;

16 (g) that the person submit to random or routine drug and alcohol testing; and

17 (h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition
 18 interlock system.

19 (5) The sentencing judge may impose upon the defendant any other reasonable restrictions or
 20 conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited
 21 to:

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

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

24 ~~(c) payment of costs of assigned counsel as provided in 46-8-113;~~

25 ~~(d)~~ (c) community service;

26 ~~(e)~~ (d) any other reasonable restrictions or conditions considered necessary for rehabilitation or for
 27 the protection of society; or

28 ~~(f)~~ (e) any combination of the restrictions or conditions listed in subsections (5)(a) through ~~(5)(e)~~

1 (5)(d).

2 (6) Following initial placement of a defendant in a treatment facility under subsection (2), the
3 department of corrections may, at its discretion, place the offender in another facility or program.

4 (7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014,
5 and 46-23-1031 apply to persons sentenced under this section."
6

7 NEW SECTION. Section 4. Repealer. The following sections of the Montana Code Annotated are
8 repealed:

9 46-8-113. Payment by defendant for assigned counsel -- costs to be filed with court -- collection of unpaid
10 costs.

11 46-8-114. Time and method of payment.

12 - END -