

HOUSE BILL NO. 553

INTRODUCED BY J. PATELIS, A. BUCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE TIME FOR WHICH A SUSPENDED SENTENCE MAY BE IMPOSED FOR A FELONY OFFENSE; ~~PROVIDING A PROCESS TO TERMINATE THE REMAINING PORTION OF CERTAIN INDIVIDUALS' SUSPENDED SENTENCES;~~ AMENDING SECTIONS SECTION 46-18-201 AND 46-18-208, MCA; AND PROVIDING AN ~~IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.~~"

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

Section 1. Section 46-18-201, MCA, is amended to read:

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

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

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

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

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

(b) (i) A EXCEPT AS PROVIDED IN SUBSECTIONS (2)(B)(II) AND (2)(B)(III), A sentencing judge may not suspend execution of sentence, including when imposing a sentence under subsection (3)(a)(vii), in a manner

1 that would result in an offender being supervised in the community AS A PROBATIONER by the department of
 2 corrections for a period of time longer than:

3 (i)(A) 20 years for a sexual offender, as defined in 46-23-502;

4 (B) 20 YEARS FOR AN OFFENDER CONVICTED OF DELIBERATE HOMICIDE, AS DEFINED IN 45-5-102, OR
 5 MITIGATED HOMICIDE, AS DEFINED IN 45-5-103;

6 (ii)(C) 15 years for a violent offender, as defined in 46-23-502, AND FOR AN OFFENDER CONVICTED OF
 7 NEGLIGENT HOMICIDE, AS DEFINED IN 45-5-104, OR VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE, AS DEFINED IN
 8 45-5-106;

9 (iii)(D) 10 years for an offender convicted of 45-9-101, 45-9-103, 45-9-107, 45-9-109, 45-9-110, 45-9-
 10 125, 45-9-127, or 45-9-132; or

11 (iv)(E) 5 years for all other felony offenses.

12 (II) THE PROVISIONS OF SUBSECTIONS (2)(B)(I)(A) AND (2)(B)(I)(B) DO NOT APPLY IF THE SENTENCING JUDGE
 13 FINDS THAT A LONGER TERM OF SUPERVISION IS NEEDED FOR THE PROTECTION OF SOCIETY OR THE VICTIM. THE
 14 SENTENCING JUDGE SHALL STATE AS PART OF THE SENTENCE AND THE JUDGMENT THE REASONS A LONGER SUSPENDED
 15 SENTENCE IS NEEDED TO PROTECT SOCIETY OR THE VICTIM.

16 (III) THE PROVISIONS OF SUBSECTIONS (2)(B)(I)(A) AND (2)(B)(I)(B) DO NOT APPLY TO VIOLATIONS OF 45-6-
 17 301 IF THE AMOUNT OF RESTITUTION ORDERED EXCEEDS \$50,000.

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

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

21 (ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in
 22 46-8-113;

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

25 (iv) commitment of:

26 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a
 27 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5
 28 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-

1 503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

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

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

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

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

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

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

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

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

20 (c) conditions for probation;

21 (d) payment of the costs of confinement;

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

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

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

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

27 (i) with the approval of the prerelease center or prerelease program and confirmation by the
28 department of corrections that space is available and that the offender is a suitable candidate, an order that the

1 offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for
2 a period not to exceed 1 year;

3 (j) community service;

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

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

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

7 (n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4,
8 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
9 second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse
10 of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any
11 statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs
12 was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for
13 a first, second, or subsequent violation of the statute;

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

16 (p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
17 protection of the victim or society;

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

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

21 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a
22 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in
23 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require
24 payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of
25 the sentence is deferred or suspended.

26 (6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or
27 conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension
28 of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty,

1 restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be
2 accomplished as provided in 61-5-214 through 61-5-217.

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

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

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

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

13 (10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."
14

15 **Section 2.** Section 46-18-208, MCA, is amended to read:

16 ~~"46-18-208. Termination of remaining portion of deferred or suspended sentence -- motion. (1)~~

17 ~~When imposition of a sentence has been deferred or execution of a sentence has been suspended, the~~
18 ~~prosecutor, the defendant, or the defendant's attorney may file a motion to terminate the time remaining on the~~
19 ~~sentence if:~~

20 ~~(a) in the case of a deferred imposition of sentence, the defendant has served 2 years or one-half of~~
21 ~~the sentence, whichever is less, and has demonstrated compliance with supervision requirements; or~~

22 ~~(b) in the case of a suspended sentence:~~

23 ~~(i) the defendant was sentenced prior to [the effective date of this act], has served more time on~~
24 ~~supervision by the department of corrections than the limits of 46-18-201(2)(b) allow for the defendant's~~
25 ~~offense, and has demonstrated compliance with supervision requirements; or~~

26 ~~(i)(ii) the defendant has served 3 years or two-thirds of the time suspended, whichever is less; and~~

27 ~~(ii)(iii) the defendant has been granted a conditional discharge from supervision under 46-23-1011 and~~
28 ~~has demonstrated compliance with the conditional discharge for a minimum of 12 months.~~

- 1 ~~(2) The motion must set forth the following:~~
- 2 ~~(a) why the defendant meets the time limitations provided in subsection (1); and~~
- 3 ~~(b) how the defendant has demonstrated compliance with supervision requirements.~~
- 4 ~~(3) The motion must be served on the county attorney serving in the county of the presiding district~~
- 5 ~~court. The movant does not need to file an accompanying brief as otherwise required by Rule 2 of the Montana~~
- 6 ~~Uniform District Court Rules.~~
- 7 ~~(4) The department of corrections shall make reasonable efforts to notify the victim if required by 46-~~
- 8 ~~24-212, and the county attorney shall make reasonable efforts to notify the victim. The victim must be provided~~
- 9 ~~the following information:~~
- 10 ~~(a) a copy of the motion;~~
- 11 ~~(b) written notice that:~~
- 12 ~~(i) the victim may provide written input regarding the motion or may ask the county attorney to state~~
- 13 ~~the victim's position on the motion;~~
- 14 ~~(ii) if a hearing is set, the date, time, and place of the hearing; and~~
- 15 ~~(iii) the victim may appear and testify at any hearing held on the motion.~~
- 16 ~~(5) The court may hold a hearing on its own motion and may consider a hearing request from the~~
- 17 ~~county attorney or defendant.~~
- 18 ~~(6) If Except as provided in subsection (7), if the court requires a hearing on the motion, the court~~
- 19 ~~may grant the motion if it finds that:~~
- 20 ~~(a) termination of the remainder of the sentence is in the best interests of the defendant and society;~~
- 21 ~~(b) termination of the remainder of the sentence will not present an unreasonable risk of danger to the~~
- 22 ~~victim of the offense; and~~
- 23 ~~(c) the defendant has paid all restitution and court-ordered financial obligations in full.~~
- 24 ~~(7) The court shall grant the motion if the defendant was sentenced prior to [the effective date of this~~
- 25 ~~act] and meets the conditions in subsection (1)(b)(i).~~

27 ~~**NEW SECTION. Section 3. — Effective date.** [This act] is effective on passage and approval .~~

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