

1 HOUSE BILL NO. 541
2 INTRODUCED BY B. LER, B. MITCHELL, B. PHALEN
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING INTEREST TO BE LEVIED ON CRIMINAL
5 RESTITUTION AND FINES; PROVIDING AN INTEREST RATE; AMENDING SECTIONS 46-18-201, 46-18-
6 231, 46-18-241, AND 46-18-251, MCA; AND PROVIDING AN APPLICABILITY DATE."
7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9

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

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

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

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

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

25 (b) (i) Except as provided in subsections (2)(b)(ii) and (2)(b)(iii), a sentencing judge may not
26 suspend execution of sentence, including when imposing a sentence under subsection (3)(a)(vii), in a manner
27 that would result in an offender being supervised in the community as a probationer by the department of
28 corrections for a period of time longer than:

1 accomplished as provided in 61-5-214 through 61-5-217.

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

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

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

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

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

14 **Section 2.** Section 46-18-231, MCA, is amended to read:

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

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

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

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

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

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

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

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

27 (vii) 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

Amendment - 1st Reading-white - Requested by: Casey Knudsen - (H) Judiciary

- 2023

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Drafter: Rachel Weiss, 406-444-5367

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1 assault;

2 (viii) 45-5-503(2) through (5), sexual intercourse without consent;

3 (ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years
4 of age or older at the time of the offense;

5 (x) 45-5-508, aggravated sexual intercourse without consent;

6 (xi) 45-5-601(3) or (4), 45-5-602(3) or (4), or 45-5-603(2)(b) or (2)(c), prostitution, promotion of
7 prostitution, or aggravated promotion of prostitution when the person patronized or engaging in prostitution was
8 a child and the offender was 18 years of age or older at the time of the offense or when the person engaging in
9 prostitution was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or
10 coercion, either of which caused the person to be in the situation where the offense occurred, and the offender
11 was 18 years of age or older at the time of the offense and the offender knew or reasonably should have known
12 that the person was a victim of human trafficking or was subjected to force, fraud, or coercion;

13 (xii) 45-5-625(4), sexual abuse of children;

14 (xiii) 45-5-702, 45-5-703, 45-5-704, or 45-5-705, trafficking of persons, involuntary servitude, sexual
15 servitude, or patronizing a victim of sexual servitude;

16 (xiv) 45-9-101(3), criminal possession with intent to distribute a dangerous drug; and

17 (xv) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school
18 property.

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

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

26 (4) Any Except as provided in subsection (5), a fine levied under this section in a felony case shall
27 be in an amount fixed by the sentencing judge not to exceed \$50,000.

28 (5) ~~(a) Interest~~ If an offender is out of compliance with court-mandated payments for 6 months or

1 ~~more, interest~~ must accrue on a fine levied under this section ~~at the interest rate set in subsection (5)(b)~~
 2 ~~beginning 6 months after the sentence is entered a rate of 3%.~~ The interest may not compound.
 3 ~~(b) The interest rate required by subsection (5)(a) is equal to the rate for bank prime loans~~
 4 ~~published by the federal reserve system in its statistical release H.15 Selected Interest Rates, or in any~~
 5 ~~publication that may supersede it, on the day the sentence is entered. The rate for bank prime loans must be~~
 6 ~~set as of January 1 of each year and remain in effect until December 31 of each year."~~

7

8 **Section 3.** Section 46-18-241, MCA, is amended to read:

9 **"46-18-241. (Temporary) Condition of restitution -- interest.** (1) As provided in 46-18-201, a
 10 sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has
 11 sustained pecuniary loss, including a person suffering an economic loss. Full restitution includes the interest
 12 required by subsection (4). The duty to pay full restitution under the sentence remains with the offender or the
 13 offender's estate until full restitution is paid, whether or not the offender is under state supervision. If the
 14 offender is under state supervision, payment of restitution is a condition of any probation or parole.

15 (2) (a) The offender shall pay the cost of supervising the payment of restitution, as provided in 46-
 16 18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not less than \$5.

17 (b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to
 18 the department of corrections until the offender has fully paid the restitution and the cost of supervising the
 19 payment of restitution. The department shall pay the restitution to the person or entity to whom the court
 20 ordered restitution to be paid, except that if a victim has been compensated under Title 53, chapter 9, part 1,
 21 the restitution must be paid to the crime victims compensation and assistance program in the department of
 22 justice for deposit in the account provided for in 53-9-113. The department may contract with a government
 23 agency or private entity for the collection of the payments for restitution and the cost of collecting the payments
 24 for restitution during the period following state supervision or state custody of the offender. The department
 25 shall adopt rules to implement this subsection (2)(b).

26 (c) In a misdemeanor case, payment of restitution and of the cost of supervising the payment of
 27 restitution must be made to the court until the offender has fully paid the restitution and the cost of supervising
 28 the payment of restitution. The court shall disburse the money to the entity employing the person ordered to

1 supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the
2 court ordered restitution to be paid, except that if a victim has been compensated under Title 53, chapter 9, part
3 1, the restitution must be paid to the crime victims compensation and assistance program in the department of
4 justice for deposit in the account provided for in 53-9-113.

5 (3) If at any time the court finds that, because of circumstances beyond the offender's control, the
6 offender is not able to pay any restitution, the court may order the offender to perform community service during
7 the time that the offender is unable to pay. The offender must be given a credit against restitution due at the
8 rate of the hours of community service times the state minimum wage in effect at the time that the community
9 service is performed.

10 (4) ~~(a) Interest If an offender is out of compliance with court-mandated payments for 6 months or~~
11 ~~more, interest must accrue on restitution ordered under this section at the interest rate set in subsection (4)(b)~~
12 ~~beginning 6 months after the sentence is entered a rate of 3%. The interest may not compound.~~

13 ~~(b) The interest rate required by subsection (4)(a) is equal to the rate for bank prime loans~~
14 ~~published by the federal reserve system in its statistical release H.15 Selected Interest Rates, or in any~~
15 ~~publication that may supersede it, on the day the sentence is entered. The rate for bank prime loans must be~~
16 ~~set as of January 1 of each year and remain in effect until December 31 of each year.~~ (Terminates June 30,
17 2027--secs. 1, 2, 3, Ch. 139, L. 2021.)

18 **46-18-241. (Effective July 1, 2027) Condition of restitution -- interest.** (1) As provided in 46-18-
19 201, a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim
20 who has sustained a pecuniary loss, including a person suffering an economic loss. Full restitution includes the
21 interest required by subsection (4). The duty to pay full restitution under the sentence remains with the offender
22 or the offender's estate until full restitution is paid, whether or not the offender is under state supervision. If the
23 offender is under state supervision, payment of restitution is a condition of any probation or parole.

24 (2) (a) The offender shall pay the cost of supervising the payment of restitution, as provided in 46-
25 18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not less than \$5.

26 (b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to
27 the department of corrections until the offender has fully paid the restitution and the cost of supervising the
28 payment of restitution. The department shall pay the restitution to the person or entity to whom the court

1 ordered restitution to be paid. The department may contract with a government agency or private entity for the
2 collection of the payments for restitution and the cost of collecting the payments for restitution during the period
3 following state supervision or state custody of the offender. The department shall adopt rules to implement this
4 subsection (2)(b).

5 (c) In a misdemeanor case, payment of restitution and of the cost of supervising the payment of
6 restitution must be made to the court until the offender has fully paid the restitution and the cost of supervising
7 the payment of restitution. The court shall disburse the money to the entity employing the person ordered to
8 supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the
9 court ordered restitution to be paid.

10 (3) If at any time the court finds that, because of circumstances beyond the offender's control, the
11 offender is not able to pay any restitution, the court may order the offender to perform community service during
12 the time that the offender is unable to pay. The offender must be given a credit against restitution due at the
13 rate of the hours of community service times the state minimum wage in effect at the time that the community
14 service is performed.

15 ~~(4) (a) Interest If an offender is out of compliance with court-mandated payments for 6 months or~~
16 ~~more, interest must accrue on restitution ordered under this section at the interest rate set in subsection (4)(b)~~
17 ~~beginning 6 months after the sentence is entered a rate of 3%. The interest may not compound.~~

18 ~~(b) The interest rate required by subsection (4)(a) is equal to the rate for bank prime loans~~
19 ~~published by the federal reserve system in its statistical release H.15 Selected Interest Rates, or in any~~
20 ~~publication that may supersede it, on the day the sentence is entered. The rate for bank prime loans must be~~
21 ~~set as of January 1 of each year and remain in effect until December 31 of each year."~~

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23 **Section 4.** Section 46-18-251, MCA, is amended to read:

24 **"46-18-251. (Temporary) Allocation of fines, costs, restitution, interest, and other charges.** (1)

25 Except as provided in 46-18-236(7)(b), if a misdemeanor offender is subjected to any combination of fines,
26 costs, restitution, charges, interest, or other payments arising out of the same criminal proceeding, money that
27 the court collects from the offender must be allocated as provided in this section. A felony offender shall pay
28 restitution and interest on restitution to the department of corrections, and other fines, interest on fines, and