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HOUSE BILL NO. 541

INTRODUCED BY B. LER, B. MITCHELL, B. PHALEN

A BILL FOR AN ACT ENTITLED: "AN ACT ~~REQUIRING~~ ALLOWING INTEREST TO BE LEVIED ON CRIMINAL RESTITUTION AND FINES; PROVIDING AN INTEREST RATE; AMENDING SECTIONS 46-18-201, 46-18-231, 46-18-241, AND 46-18-251, MCA; AND PROVIDING AN 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) 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 that would result in an offender being supervised in the community as a probationer by the department of corrections for a period of time longer than:

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

2 (B) 20 years for an offender convicted of deliberate homicide, as defined in 45-5-102, or mitigated
3 homicide, as defined in 45-5-103;

4 (C) 15 years for a violent offender, as defined in 46-23-502, an offender convicted of negligent
5 homicide, as defined in 45-5-104, vehicular homicide while under the influence, as defined in 45-5-106, or
6 criminal distribution of dangerous drugs that results in the death of an individual from use of the dangerous
7 drug, as provided in 45-9-101(5);

8 (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-
9 125, 45-9-127, or 45-9-132; or

10 (E) 5 years for all other felony offenses.

11 (ii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply if the sentencing judge
12 finds that a longer term of supervision is needed for the protection of society or the victim. The sentencing judge
13 shall state as part of the sentence and the judgment the reasons a longer suspended sentence is needed to
14 protect society or the victim.

15 (iii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply to violations of 45-6-301
16 if the amount of restitution ordered exceeds \$50,000.

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

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

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

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

24 (iv) commitment of:

25 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a
26 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5
27 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-
28 503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

- 1 (B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an
2 offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for
3 placement in an appropriate correctional facility or program;
- 4 (v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for
5 by and for a period of time determined by the department of corrections, but not exceeding the period of state
6 supervision of the person;
- 7 (vi) commitment of an offender to the department of corrections with the requirement that
8 immediately subsequent to sentencing or disposition the offender is released to community supervision and that
9 any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or
- 10 (vii) any combination of subsection (2) and this subsection (3)(a).
- 11 (b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank
12 program.
- 13 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence,
14 the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of
15 the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under
16 subsection (1)(a) or (2) may include but are not limited to:
- 17 (a) limited release during employment hours as provided in 46-18-701;
- 18 (b) incarceration in a detention center not exceeding 180 days;
- 19 (c) conditions for probation;
- 20 (d) payment of the costs of confinement;
- 21 (e) payment of a fine and accrued interest as provided in 46-18-231;
- 22 (f) payment of costs as provided in 46-18-232 and 46-18-233;
- 23 (g) payment of costs of assigned counsel as provided in 46-8-113;
- 24 (h) with the approval of the facility or program, an order that the offender be placed in a community
25 corrections facility or program as provided in 53-30-321;
- 26 (i) with the approval of the prerelease center or prerelease program and confirmation by the
27 department of corrections that space is available and that the offender is a suitable candidate, an order that the
28 offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for

1 a period not to exceed 1 year;

2 (j) community service;

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

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

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

6 (n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter

7 4, part 12, for a violation of aggravated driving under the influence as defined in 61-8-1001, a violation of 61-8-

8 1002, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if

9 the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a

10 violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or

11 dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or

12 conviction was for a first, second, or subsequent violation of the statute;

13 (o) participation in a restorative justice program approved by court order and payment of a

14 participation fee of up to \$150 for program expenses if the program agrees to accept the offender;

15 (p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the

16 protection of the victim or society;

17 (q) with approval of the program and confirmation by the department of corrections that space is

18 available, an order that the offender be placed in a residential treatment program; or

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

20 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon

21 a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined

22 in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require

23 payment of full restitution and interest to the victim, as provided in 46-18-241 through 46-18-249, whether or not

24 any part of the sentence is deferred or suspended.

25 (6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or

26 conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension

27 of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty,

28 restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be

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

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~~ Any fine levied under this section in a felony case
27 ~~shall~~ must 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~~

1 ~~MONTHS OR MORE, INTEREST must accrue on a fine levied under this section at the interest rate set in subsection~~
2 ~~(5)(b) beginning 6 months after the sentence is entered A RATE OF 3%. The interest may not compound.~~
3 ~~INTEREST ONLY BEGINS TO ACCRUE WHEN THE JUDGMENT IS PLACED FOR COLLECTION WITH A PRIVATE PERSON OR~~
4 ~~ENTITY AS PROVIDED IN 3-10-601, 25-30-102, OR 46-17-303.~~

5 ~~(b) — The interest rate required by subsection (5)(a) is equal to the rate for bank prime loans~~
6 ~~published by the federal reserve system in its statistical release H.15 Selected Interest Rates, or in any~~
7 ~~publication that may supersede it, on the day the sentence is entered. The rate for bank prime loans must be~~
8 ~~set as of January 1 of each year and remain in effect until December 31 of each year."~~

9

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

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

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

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

28 (c) In a misdemeanor case, payment of restitution and of the cost of supervising the payment of

1 restitution must be made to the court until the offender has fully paid the restitution and the cost of supervising
2 the payment of restitution. The court shall disburse the money to the entity employing the person ordered to
3 supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the
4 court ordered restitution to be paid, except that if a victim has been compensated under Title 53, chapter 9, part
5 1, the restitution must be paid to the crime victims compensation and assistance program in the department of
6 justice for deposit in the account provided for in 53-9-113.

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

12 ~~(4) (a) Interest IF AN OFFENDER IS OUT OF COMPLIANCE WITH COURT-MANDATED PAYMENTS FOR 6~~
13 ~~MONTHS OR MORE, INTEREST must accrue on restitution ordered under this section at the interest rate set in~~
14 ~~subsection (4)(b) beginning 6 months after the sentence is entered A RATE OF 3%. The interest may not~~
15 ~~compound. INTEREST ONLY BEGINS TO ACCRUE WHEN THE JUDGMENT IS PLACED FOR COLLECTION WITH A PRIVATE~~
16 ~~PERSON OR ENTITY AS PROVIDED IN 3-10-601, 25-30-102, OR 46-17-303.~~

17 ~~(b) The interest rate required by subsection (4)(a) is equal to the rate for bank prime loans~~
18 ~~published by the federal reserve system in its statistical release H.15 Selected Interest Rates, or in any~~
19 ~~publication that may supersede it, on the day the sentence is entered. The rate for bank prime loans must be~~
20 ~~set as of January 1 of each year and remain in effect until December 31 of each year. (Terminates June 30,~~
21 ~~2027--secs. 1, 2, 3, Ch. 139, L. 2021.)~~

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

28 (2) (a) The offender shall pay the cost of supervising the payment of restitution, as provided in 46-

1 18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not less than \$5.

2 (b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to
3 the department of corrections until the offender has fully paid the restitution and the cost of supervising the
4 payment of restitution. The department shall pay the restitution to the person or entity to whom the court
5 ordered restitution to be paid. The department may contract with a government agency or private entity for the
6 collection of the payments for restitution and the cost of collecting the payments for restitution during the period
7 following state supervision or state custody of the offender. The department shall adopt rules to implement this
8 subsection (2)(b).

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

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

19 ~~(4) (a) Interest IF AN OFFENDER IS OUT OF COMPLIANCE WITH COURT-MANDATED PAYMENTS FOR 6~~
20 ~~MONTHS OR MORE, INTEREST must accrue on restitution ordered under this section at the interest rate set in~~
21 ~~subsection (4)(b) beginning 6 months after the sentence is entered A RATE OF 3%. The interest may not~~
22 ~~compound. INTEREST ONLY BEGINS TO ACCRUE WHEN THE JUDGMENT IS PLACED FOR COLLECTION WITH A PRIVATE~~
23 ~~PERSON OR ENTITY AS PROVIDED IN 3-10-601, 25-30-102, OR 46-17-303.~~

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

28

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

2 **"46-18-251. (Temporary) Allocation of fines, costs, restitution, interest, and other charges.** (1)

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

8 (2) Except as otherwise provided in 46-18-236(7)(b) and this section, if a defendant is subject to
9 payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, interest,
10 or other payments, 50% of all money collected from the defendant must be applied to payment of restitution
11 and the balance must be applied to other payments in the following order:

- 12 (a) payment of charges imposed pursuant to 46-18-236;
- 13 (b) payment of supervisory fees imposed pursuant to 46-23-1031;
- 14 (c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;
- 15 (d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and
- 16 (e) any other payments ordered by the court.

17 (3) The money applied under subsection (2) to the payment of restitution must be paid in the
18 following order:

- 19 (a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;
- 20 (b) to the crime victims compensation and assistance program in the department of justice for
21 deposit in the account provided for in 53-9-113 until the state is fully reimbursed for compensation to the victim
22 provided pursuant to Title 53, chapter 9, part 1;

23 (c) to any other government agency that has compensated the victim for the victim's pecuniary
24 loss; and

25 (d) to any insurance company that has compensated the victim for the victim's pecuniary loss.

26 (4) If any fines, costs, charges, interest, or other payments remain unpaid after all of the restitution
27 has been paid, any additional money collected must be applied to payment of those fines, costs, charges,
28 interest, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, interest, or

1 other payments have been paid, any additional money collected must be applied toward payment of the
2 restitution. (Terminates June 30, 2027--secs. 1, 2, 3, Ch. 139, L. 2021.)

3 **46-18-251. (Effective July 1, 2027) Allocation of fines, costs, restitution, interest, and other**
4 **charges.** (1) Except as provided in 46-18-236(7)(b), if an offender is subjected to any combination of fines,
5 costs, restitution, charges, interest, or other payments arising out of the same criminal proceeding, money
6 collected from the offender must be allocated as provided in this section.

7 (2) Except as otherwise provided in 46-18-236(7)(b) and this section, if a defendant is subject to
8 payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, interest,
9 or other payments, 50% of all money collected from the defendant must be applied to payment of restitution
10 and the balance must be applied to other payments in the following order:

- 11 (a) payment of charges imposed pursuant to 46-18-236;
- 12 (b) payment of supervisory fees imposed pursuant to 46-23-1031;
- 13 (c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;
- 14 (d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and
- 15 (e) any other payments ordered by the court.

16 (3) The money applied under subsection (2) to the payment of restitution must be paid in the
17 following order:

- 18 (a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;
- 19 (b) to the crime victims compensation and assistance program in the department of justice for
20 deposit in the state general fund until the state is fully reimbursed for compensation to the victim provided
21 pursuant to Title 53, chapter 9, part 1;
- 22 (c) to any other government agency that has compensated the victim for the victim's pecuniary
23 loss; and
- 24 (d) to any insurance company that has compensated the victim for the victim's pecuniary loss.

25 (4) If any fines, costs, charges, interest, or other payments remain unpaid after all of the restitution
26 has been paid, any additional money collected must be applied to payment of those fines, costs, charges,
27 interest, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, interest, or
28 other payments have been paid, any additional money collected must be applied toward payment of the

1 restitution."

2

3 NEW SECTION. Section 5. Saving clause. [This act] does not affect rights and duties that matured,
4 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

5

6 NEW SECTION. Section 6. Applicability. [This act] applies to sentences entered for offenses that
7 were committed on or after [the effective date of this act].

8

- END -

AMENDED