

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****
4

5 **SJ19-7:** A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A CONDITION OF PROBATION OR
6 PAROLE FROM REQUIRING AN OFFENDER TO INFORM A LANDLORD OR AN EMPLOYER OF A
7 CRIMINAL CONVICTION; AMENDING SECTIONS 46-18-201, 46-23-215, AND 46-23-1011, MCA."
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10

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

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

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

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

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

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

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

1 (ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in
2 46-8-113;

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

5 (iv) commitment of:

6 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a
7 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5
8 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-
9 503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

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

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

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

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

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

22 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the
23 sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the
24 deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection
25 (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;

- 1 (d) payment of the costs of confinement;
- 2 (e) payment of a fine as provided in 46-18-231;
- 3 (f) payment of costs as provided in 46-18-232 and 46-18-233;
- 4 (g) payment of costs of assigned counsel as provided in 46-8-113;
- 5 (h) with the approval of the facility or program, an order that the offender be placed in a community
6 corrections facility or program as provided in 53-30-321;
- 7 (i) with the approval of the prerelease center or prerelease program and confirmation by the
8 department of corrections that space is available and that the offender is a suitable candidate, an order that the
9 offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for
10 a period not to exceed 1 year;
- 11 (j) community service;
- 12 (k) home arrest as provided in Title 46, chapter 18, part 10;
- 13 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 14 (m) participation in a day reporting program provided for in 53-1-203;
- 15 (n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4,
16 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
17 second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse
18 of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any
19 statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs
20 was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for
21 a first, second, or subsequent violation of the statute;
- 22 (o) participation in a restorative justice program approved by court order and payment of a
23 participation fee of up to \$150 for program expenses if the program agrees to accept the offender;
- 24 (p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
25 protection of the victim or society;
- 26 (q) with approval of the program and confirmation by the department of corrections that space is
27 available, an order that the offender be placed in a residential treatment program; or
- 28 (r) any combination of the restrictions or conditions listed in this subsection (4).

1 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a
 2 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in
 3 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require
 4 payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of
 5 the sentence is deferred or suspended.

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

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

13 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-
 14 23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part
 15 5.

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

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

21 (10) When imposing a condition of probation, a court may not require that the offender notify an
 22 employer, potential employer, or landlord that the offender has been convicted of a criminal offense unless the
 23 employment is directly related to the offense for which the offender was convicted.

24 ~~(10)~~(11) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."
 25

26 **Section 2.** Section 46-23-215, MCA, is amended to read:
 27 **"46-23-215. Conditions of parole.** (1) A prisoner while on parole remains in the legal custody of the
 28 department but is subject to the orders of the board.

1 (2) (a) When a hearing panel issues an order for parole, the order must recite the conditions of parole.
2 The hearing panel shall consider the parole guidelines governing conditions and the parole plan provided by the
3 department before imposing conditions of parole to address the prisoner's criminogenic factors. When imposing
4 a condition of parole, the board may not require that the offender notify an employer, potential employer, or
5 landlord that the offender has been convicted of a criminal offense unless the offense is directly related to the
6 offense for which the offender was convicted. If restitution was imposed as part of the sentence under 46-18-
7 201, the order of parole must contain a condition to pay restitution to the victim. The prisoner may not be
8 paroled until the prisoner provides a biological sample for purposes of Title 44, chapter 6, part 1, if the prisoner
9 has not already done so under 44-6-103 and if the prisoner was convicted of, or was found under 41-5-1502 to
10 have committed, a sexual offense or violent offense.

11 (b) The board may require the prisoner convicted of a sexual offense to refrain from direct or indirect
12 contact with a victim of the crime or with an immediate family member of the victim. If a victim or an immediate
13 family member requests that the prisoner not contact the victim or immediate family member, the board shall
14 require the prisoner to refrain from contact with the victim or immediate family member. If the victim is a minor,
15 a parent or guardian of the victim may make the request on the victim's behalf.

16 (c) An order for parole or any parole agreement signed by a prisoner may contain a clause waiving
17 extradition.

18 (3) Whenever a hearing panel grants a parole to a prisoner on the condition that the prisoner obtain
19 employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while
20 incarcerated, the hearing panel or the presiding officer of the board may grant the prisoner a furlough, not to
21 exceed two consecutive 10-day periods, for purposes of fulfilling the condition. While on furlough, the prisoner
22 is not on parole and is subject to official detention as defined in 45-7-306. The prisoner remains in the legal
23 custody of the department and is subject to all other conditions ordered by the hearing panel or the presiding
24 officer of the board.

25 (4) For the purposes of this section, "sexual offense" and "violent offense" have the meanings
26 provided in 46-23-502."

27

28 **Section 3.** Section 46-23-1011, MCA, is amended to read:

1 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during
2 their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4),
3 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), in accord with the conditions set by a
4 sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court
5 shall, at the request of the department, hold a hearing and set conditions of probation. The court may not
6 require that the probationer notify an employer, potential employer, or landlord that the offender has been
7 convicted of a criminal offense unless the employment is directly related to the offense for which the offender
8 was convicted. The probationer must be present at the hearing. The probationer has the right to counsel as
9 provided in chapter 8 of this title.

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

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

18 (4) The probation and parole officer shall regularly advise and consult with the probationer using
19 effective communication strategies and other evidence-based practices to encourage the probationer to
20 improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on
21 successful completion of the sentence.

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

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

27 (c) The county attorney may file a petition requesting that the court modify or add conditions as
28 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 45-5-
4 503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), or 45-5-625(4), the provisions of 46-18-
5 203(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) Based on the risk and needs of each individual as determined by the individual's most recent risk
9 and needs assessment, the probation and parole officer shall recommend conditional discharge from
10 supervision when a probationer is in compliance with the conditions of supervision when:

- 11 (a) a low-risk probationer has served 9 months;
- 12 (b) a moderate-risk probationer has served 12 months;
- 13 (c) a medium-risk probationer has served 18 months; and
- 14 (d) a high-risk probationer has served 24 months.

15 (7) The probationer, the probationer's attorney, or the prosecutor may file a motion recommending
16 conditional discharge. The motion must set forth the following:

- 17 (a) why the probationer meets the requirements of subsection (6); and
- 18 (b) whether the department of corrections supports or opposes the motion.

19 (8) The motion must be served on the county attorney serving in the county of the presiding district
20 court. The movant does not need to file an accompanying brief as otherwise required by Rule 2 of the Montana
21 Uniform District Court Rules.

22 (9) The department of corrections shall make reasonable efforts to notify the victim if required by 46-
23 24-212, and the county attorney shall make reasonable efforts to notify the victim. The victim must be provided
24 the following:

- 25 (a) a copy of the motion;
- 26 (b) written notice that:
 - 27 (i) the victim may provide written input regarding the motion or may ask the county attorney to state
 - 28 the victim's position on the motion;

- 1 (ii) if a hearing is set, the date, time, and place of the hearing; and
- 2 (iii) the victim may appear and testify at any hearing held on the motion.
- 3 (10) (a) The court may hold a hearing on the motion. A judge may conditionally discharge a
- 4 probationer from supervision before expiration of the probationer's sentence if:
- 5 (i) the judge determines that a conditional discharge from supervision:
- 6 (A) is in the best interests of the probationer and society; and
- 7 (B) will not present unreasonable risk of danger to the victim of the offense; and
- 8 (ii) the offender has paid all restitution and court-ordered financial obligations in full.
- 9 (b) Subsection (10)(a) does not prohibit a judge from revoking the order suspending execution or
- 10 deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally
- 11 discharged from supervision."

12

13 - END -