

HOUSE BILL NO. 582

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SENTENCING; ALLOWING THE DISTRICT COURT TO DENY ELAPSED TIME CREDIT FOR REVOCATION PROCEEDINGS REGARDING MULTIPLE VIOLATIONS; PROVIDING THAT OFFENDERS ARE ELIGIBLE FOR CREDIT FOR TIME SERVED PRIOR TO SENTENCING AS LONG AS THE CUSTODY TO BE CREDITED IS ATTRIBUTABLE TO PROCEEDINGS RELATED TO THE SAME CONDUCT FOR WHICH THE DEFENDANT HAS BEEN CONVICTED; AMENDING SECTIONS 46-18-201, 46-18-203, AND 46-18-403, MCA; AND PROVIDING AN EFFECTIVE DATE AND 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:

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

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

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

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

(E) 5 years for all other felony offenses.

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

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

(3) (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 impose a sentence that may include:

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

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

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

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-625(4), and 45-5-711; or

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

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

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

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

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

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

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

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

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine and accrued interest as provided in 46-18-231;

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

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

(h) with the approval of the facility or program, an order that the offender be placed in a community

corrections facility or program as provided in 53-30-321;

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

(j) community service;

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

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

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

(n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of aggravated driving under the influence as defined in 61-8-1001, a violation of 61-8-1002, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

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

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

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

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

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

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

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

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

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

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

~~(40)(9)~~ As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

Section 2. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-625(4), or 45-5-711, the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court either before the period of suspension or deferral has begun or during the period of suspension or deferral but not after the period has

1 expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of
2 its jurisdiction to rule on the petition.

3 (3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons
4 arrested pursuant to this section.

5 (4) Without unnecessary delay and no more than 60 days after arrest, the offender must be
6 brought before the judge, and at least 10 days prior to the hearing the offender must be advised of:

7 (a) the allegations of the petition;

8 (b) the opportunity to appear and to present evidence in the offender's own behalf;

9 (c) the opportunity to question adverse witnesses; and

10 (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8,
11 part 1.

12 (5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or
13 conditions of the sentence can be modified unless:

14 (a) the offender admits the allegations and waives the right to a hearing; or

15 (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given
16 notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term
17 of probation is not favorable to the offender for the purposes of this subsection (5)(b).

18 (6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there
19 has been a violation of:

20 (i) the terms and conditions of the suspended or deferred sentence; or

21 (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4),
22 45-5-507(5), 45-5-601(3), 45-5-625(4), or 45-5-711.

23 (b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse
24 the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on
25 the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as
26 ordered.

27 (7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended
28 or deferred sentence by committing either compliance violations or noncompliance violations, or both, the judge

1 may:

2 (i) continue the suspended or deferred sentence without a change in conditions;

3 (ii) continue the suspended sentence with modified or additional terms and conditions, which may
4 include placement in:

5 (A) a secure facility designated by the department for up to 9 months; or

6 (B) a community corrections facility or program designated by the department for up to 9 months,
7 including but not limited to placement in a prerelease center, sanction or hold bed, transitional living program,
8 enhanced supervision program, relapse intervention bed, chemical dependency treatment, or 24/7 sobriety
9 program;

10 (iii) revoke the suspension of sentence and require the offender to serve either the sentence
11 imposed or any sentence that could have been imposed that does not include a longer imprisonment or
12 commitment term than the original sentence; or

13 (iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

14 (b) If a suspended or deferred sentence is revoked, the judge shall:

15 (i) consider any elapsed time, consult the records and recollection of the probation and parole
16 officer, and allow all of the elapsed time served without any record or recollection of violations as a credit
17 against the sentence. A district court, in its discretion, may deny elapsed time credit for a reasonable period of
18 time related to a violation or multiple violations. A defendant is not entitled to elapsed time credit for time spent
19 in a correctional institution as defined in 45-2-101. If the judge determines that elapsed time should may not be
20 credited, the judge shall state the reasons for the determination in the order.

21 (ii) ~~Credit must be pursuant to 46-18-403, allowed allow credit for time served in a detention center~~
22 ~~correctional institution as defined in 45-2-101 or for home arrest time already served~~ allow credit for each day of
23 incarceration or home arrest prior to imposition of a revocation sentence that is directly related to the revocation
24 proceedings pursuant to the limitations in 46-18-403(1)(b).

25 (c) If the judge finds that the offender has not violated a term or condition of a suspended or
26 deferred sentence, the judge is not prevented from setting, modifying, or adding conditions of probation as
27 provided in 46-23-1011.

28 (8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that

there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) All sanction and placement decisions must be documented in the offender's file.

(10) As used in this section:

(a) "absconding" means when an offender deliberately makes the offender's whereabouts unknown to a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable efforts by the probation and parole officer to locate the offender have been unsuccessful; and

(b) "compliance violation" means a violation of the conditions of supervision that is not:

(i) a new criminal offense;

(ii) possession of a firearm in violation of a condition of probation;

(iii) behavior by the offender or any person acting at the offender's direction that could be considered stalking, harassing, or threatening the victim of the offense or a member of the victim's immediate family or support network;

(iv) absconding; or

(v) failure to enroll in or complete a required sex offender treatment program or a treatment program designed to treat violent offenders.

(11) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 3. Section 46-18-403, MCA, is amended to read:

"46-18-403. Credit for incarceration prior to conviction sentencing. (1) (a) ~~A-An incarcerated person incarcerated on a bailable offense against whom a judgment of imprisonment is rendered must be~~ allowed credit for each day of incarceration prior to ~~or after conviction~~ imposition of a sentence that is directly related to the proceedings that caused the incarceration, except that the time allowed as a credit may not exceed the term of the prison sentence rendered.

(b) For the purposes of subsection (1)(a), :

(i) credit must be given only when the custody to be credited is attributable to proceedings related

1 to the same conduct for which the defendant has been convicted;

2 (ii) an offender is not entitled to credit against multiple sentences for a single period of custody
3 unless the sentences are imposed concurrently;

4 (iii) an offender is not entitled to credit in a new criminal matter if the offender is currently serving a
5 custodial sentence on a prior offense;

6 (iv) incarceration directly related to a probation or parole hold only reduces the sentence that the
7 person was serving while on probation or parole; and

8 (v) incarceration includes time spent in a correctional institution as defined in 45-2-101 and a
9 secure residential treatment facility under the order of a court if residence is required by court order.

10 (2) ~~A-An incarcerated person incarcerated on a bailable offense who does not supply bail and~~
11 ~~against whom a fine is levied on conviction of the offense may be allowed a credit for each day of incarceration~~
12 ~~prior to conviction imposition of sentence, except that the amount allowed or credited may not exceed the~~
13 ~~amount of the fine. The daily rate of credit for incarceration must be established annually by the board of county~~
14 ~~commissioners by resolution. The daily rate must be equal to the actual cost incurred by the detention facility~~
15 ~~for which the rate is established."~~

16
17 **NEW SECTION. Section 4. Effective date.** [This act] is effective July 1, 2025.

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19 **NEW SECTION. Section 5. Applicability.** [This act] applies to offenders sentenced on or after [the
20 effective date of this act].

21 - END -