

1 HOUSE BILL NO. 578

2 INTRODUCED BY B. MERCER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO RESTITUTION;
5 REMOVING FROM CONSIDERATION AN OFFENDER'S FINANCIAL RESOURCES WHEN SENTENCING
6 RESTITUTION; ALLOWING INFORMATION OF PECUNIARY LOSS OR LOSS OF PROPERTY TO BE
7 PROVIDED TO A PROBATION OFFICER OUTSIDE THE ORDER OF THE COURT; MODIFYING WHEN A
8 COURT MAY GRANT A PETITION TO REVISE RESTITUTION; AND AMENDING SECTIONS 45-5-206, 45-5-
9 503, 45-5-507, 45-5-627, 45-6-101, 46-18-101, 46-18-242, AND 46-18-246, MCA."

10
11 WHEREAS, the majority opinion in State v. Lodahl, 2021 MT 156, deviated from the plain language of
12 House Bill 220, Chapter 272, from the 2003 legislative session. Section 4 of House Bill 220 amended section
13 46-18-242, MCA, by removing from consideration an offender's "financial resources and future ability to pay
14 restitution" from consideration in an investigation and proof of victim's loss; and

15 WHEREAS, if a victim loses property or incurs a pecuniary loss, Montana law requires courts to order
16 restitution in sections 46-18-101, 46-18-201, and 46-18-251, MCA; and

17 WHEREAS, the intent of the Legislature in the 2003 revisions to section 46-18-242, MCA, was to
18 ensure that the restitution amount be determined during the sentencing process without consideration of the
19 offender's ability to pay restitution; and

20 WHEREAS, in keeping with the 2003 revisions to section 46-18-242, MCA, the waiver and modification
21 of the restitution process found in section 46-18-246, MCA, was intended to be a postjudgment inquiry requiring
22 the offender to file a subsequent petition to the sentencing court; and

23 WHEREAS, the amendments to section 46-18-246, MCA, in this bill are intended to further provide
24 evidence of legislative intent.

25
26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

27
28 **Section 1.** Section 45-5-206, MCA, is amended to read:

1 **"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of
2 partner or family member assault if the person:

- 3 (a) purposely or knowingly causes bodily injury to a partner or family member;
4 (b) negligently causes bodily injury to a partner or family member with a weapon; or
5 (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family
6 member.

7 (2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this
8 section, the following definitions apply:

9 (a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present
10 family members of a household. These relationships include relationships created by adoption and remarriage,
11 including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue
12 regardless of the ages of the parties and whether the parties reside in the same household.

13 (b) "Partners" means spouses, former spouses, persons who have a child in common, and
14 persons who have been or are currently in a dating or ongoing intimate relationship.

15 (3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not
16 less than \$100 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not
17 less than 24 hours for a first offense.

18 (ii) An offender convicted of a second offense under this section shall be fined not less than \$300
19 or more than \$1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

20 (iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as
21 provided in 46-23-1005.

22 (iv) On a third or subsequent conviction for partner or family member assault, the offender shall be
23 fined not less than \$500 and not more than \$50,000 and be imprisoned for a term not less than 30 days and not
24 more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the
25 county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

26 (v) If the offense was committed within the vision or hearing of a minor, the judge shall consider
27 the minor's presence as a factor at the time of sentencing.

28 (b) For the purpose of determining the number of convictions under this section, a conviction

1 means:

2 (i) a conviction, as defined in 45-2-101, under this section;

3 (ii) a conviction for domestic abuse under this section;

4 (iii) a conviction for a violation of a statute similar to this section in another state;

5 (iv) if the offender was a partner or family member of the victim, a conviction for aggravated assault
6 under 45-5-202 or assault with a weapon under 45-5-213;

7 (v) a conviction for strangulation of a partner or family member under 45-5-215;

8 (vi) a conviction in another state for an offense related to domestic violence between partners or
9 family members, as those terms are defined in this section, regardless of what the offense is named or whether
10 it is misdemeanor or felony, if the offense involves conduct similar to conduct that is prohibited under 45-5-202,
11 45-5-213, or this section; or

12 (vii) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this
13 state or in another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

14 (4) (a) An offender convicted of partner or family member assault is required to pay for and
15 complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and
16 chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent
17 to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly
18 assessing the offender's need for counseling and treatment. Counseling providers shall take all required
19 precautions to ensure the confidentiality of the report. If the report contains confidential information relating to
20 the victim's location or not related to the charged offense, that information must be deleted from the report prior
21 to being sent to the offender intervention program.

22 (b) The offender shall complete all recommendations for counseling, referrals, attendance at
23 psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the
24 counseling provider. The counseling provider must be approved by the court. The counseling must include a
25 preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40
26 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-
27 231, in addition to the assessment. The preliminary assessment and counseling that holds the offender
28 accountable for the offender's violent or controlling behavior must meet the standards established pursuant to

1 44-7-210 and be:

2 (i) with a person licensed under Title 37, chapter 17, 22, or 23;

3 (ii) with a professional person as defined in 53-21-102; or

4 (iii) in a specialized domestic violence intervention program.

5 (c) The minimum counseling and attendance at psychoeducational groups provided in subsection
6 (4)(b) must be directed to the violent or controlling conduct of the offender. Other issues indicated by the
7 assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does
8 not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no
9 available treatment program directed to the violent or controlling conduct of the offender.

10 (5) In addition to any sentence imposed under subsections (3) and (4), ~~after determining the~~
11 ~~financial resources and future ability of the offender to pay restitution as provided for in 46-18-242,~~ the court
12 shall require the offender, ~~if able,~~ to pay the victim's reasonable actual medical, housing, wage loss, and
13 counseling costs. The amount, method, and time of payment must be determined in the same manner as
14 provided in 46-18-244.

15 (6) In addition to the requirements of subsection (5), if financially able, the offender must be
16 ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

17 (7) The court may prohibit an offender convicted under this section from possession or use of the
18 firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

19 (8) The court shall provide an offender with a written copy of the offender's sentence at the time of
20 sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

21

22 **Section 2.** Section 45-5-503, MCA, is amended to read:

23 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse
24 with another person without consent or with another person who is incapable of consent commits the offense of
25 sexual intercourse without consent. A person may not be convicted under this section based on the age of the
26 person's spouse, as provided in 45-5-501(1)(b)(iv).

27 (2) A person convicted of sexual intercourse without consent shall be punished by life
28 imprisonment or by imprisonment in the state prison for a term of not more than 20 years and may be fined not

1 more than \$50,000, except as provided in 46-18-219, 46-18-222, and subsections (3), (4), and (5) of this
2 section.

3 (3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the
4 victim or if the offender inflicts bodily injury on anyone in the course of committing sexual intercourse without
5 consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of
6 not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in
7 46-18-219 and 46-18-222.

8 (b) If two or more persons are convicted of sexual intercourse without consent with the same victim
9 in an incident in which each offender was present at the location where another offender's offense occurred
10 during a time period in which each offender could have reasonably known of the other's offense, each offender
11 shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years
12 or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-
13 222.

14 (c) If the offender was previously convicted of an offense under this section or of an offense under
15 the laws of another state or of the United States that if committed in this state would be an offense under this
16 section and if the offender inflicted serious bodily injury on a person in the course of committing each offense,
17 the offender shall be:

18 (i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less
19 than 18 years of age at the time of the commission of the offense; or

20 (ii) punished as provided in 46-18-219.

21 (4) (a) If the victim was 12 years of age or younger and the offender in the course of committing a
22 violation of this section was 18 years of age or older at the time of the offense, the offender:

23 (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not
24 suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this
25 subsection (4)(a)(i) except as provided in 46-18-222(1) through (5), and during the first 25 years of
26 imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.

27 (ii) may be fined an amount not to exceed \$50,000; and

28 (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive

1 and behavioral phase of a sexual offender treatment program provided or approved by the department of
2 corrections.

3 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is
4 subject to supervision by the department of corrections for the remainder of the offender's life and shall
5 participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

6 (5) If the victim is at least 14 years of age and the offender is 18 years of age or younger, the
7 offender may be punished by imprisonment in the state prison for a term of not more than 5 years and may be
8 fined not more than \$10,000 if:

9 (a) the offender has not previously been found to have committed or been adjudicated for a sexual
10 offense as defined in 46-23-502;

11 (b) a psychosexual evaluation of the offender has been prepared and the court finds that
12 registration is not necessary for protection of the public and that relief from registration is in the public's best
13 interest; and

14 (c) the court finds that the alleged conduct was consensual as indicated by words or overt actions
15 indicating a freely given agreement to have sexual intercourse or sexual contact.

16 (6) In addition to any sentence imposed under subsection (2) or (3), ~~after determining the financial~~
17 ~~resources and future ability of the offender to pay restitution as required by 46-18-242,~~ the court shall require
18 the offender, ~~if able,~~ to pay the victim's reasonable medical and counseling costs that result from the offense.
19 The amount, method, and time of payment must be determined in the same manner as provided ~~for~~ in 46-18-
20 244.

21 (7) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse
22 without consent" includes an attempt to commit the offense or the act of flight after the attempt or commission.

23 (8) If as a result of sexual intercourse without consent a child is born, the offender who has been
24 convicted of an offense under this section and who is the biological parent of the child resulting from the sexual
25 intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401
26 have been followed."

27
28 **Section 3.** Section 45-5-507, MCA, is amended to read:

1 **"45-5-507. Incest.** (1) A person commits the offense of incest if the person knowingly marries,

2 cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a
3 descendant, a brother or sister of the whole or half blood, a nephew or niece, or any stepson or stepdaughter.

4 The relationships referred to in this subsection include blood relationships without regard to legitimacy,
5 relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

6 (2) (a) Consent is a defense to incest with or upon a stepson or stepdaughter, but consent is
7 ineffective if the stepson or stepdaughter is less than 18 years of age and the stepparent is 4 or more years
8 older than the stepson or stepdaughter.

9 (b) A person who is less than 18 years of age is not legally responsible or legally accountable for
10 the offense of incest and is considered a victim of the offense of incest if the other person in the incestuous
11 relationship is 4 or more years older than the victim.

12 (3) Except as provided in subsections (4) and (5), a person convicted of incest shall be punished
13 by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an
14 amount not to exceed \$50,000.

15 (4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim
16 or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be
17 punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more
18 than 100 years and may be fined not more than \$50,000.

19 (5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older
20 at the time of the offense, the offender:

21 (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not
22 suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this
23 subsection (5)(a)(i) except as provided in 46-18-222(1) through (5), and during the first 25 years of
24 imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.

25 (ii) may be fined an amount not to exceed \$50,000; and

26 (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive
27 and behavioral phase of a sexual offender treatment program provided or approved by the department of
28 corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(6) In addition to any sentence imposed under subsection (3), (4), or (5), ~~after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242,~~ the court shall require the offender, ~~if able,~~ to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided ~~for~~ in 46-18-244."

Section 4. Section 45-5-627, MCA, is amended to read:

"45-5-627. Ritual abuse of minor -- exceptions -- penalty. (1) A person commits the offense of ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training or practice for any ceremony, rite, or ritual:

(a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, assault on a minor, or assault with a weapon against a victim less than 16 years of age; or kills a person less than 16 years of age;

(b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the minor;

(c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

(d) forces upon the minor or upon another person in the presence of a minor the ingestion or the external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical compounds;

(e) places a living minor or another living person in the presence of a minor in a coffin or open grave that is empty or that contains a human corpse or remains; or

(f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

(2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

(3) Except as provided in 46-18-219, a person convicted of ritual abuse of a minor shall:

(a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more

1 than 20 years and may be fined not more than \$50,000, or both; and

2 (b) for a second or subsequent offense, be imprisoned in the state prison for any term of not less
3 than 2 years or more than 40 years and may be fined not more than \$50,000, or both.

4 (4) In addition to any sentence imposed under subsection (3), ~~after determining pursuant to 46-18-~~
5 ~~242 the financial resources and future ability of the offender to pay restitution,~~ the court shall require the
6 offender, ~~if able,~~ to pay the victim's reasonable costs of counseling that result from the offense. The amount,
7 method, and time of payment must be determined in the same manner as provided for in 46-18-244."

8

9 **Section 5.** Section 45-6-101, MCA, is amended to read:

10 **"45-6-101. Criminal mischief.** (1) A person commits the offense of criminal mischief if the person
11 knowingly or purposely:

12 (a) injures, damages, or destroys any property of another or public property without consent;

13 (b) without consent tampers with property of another or public property so as to endanger or
14 interfere with persons or property or its use;

15 (c) damages or destroys property with the purpose to defraud an insurer; or

16 (d) fails to close a gate previously unopened that the person has opened, leading in or out of any
17 enclosed premises. This does not apply to gates located in cities or towns.

18 (2) A person convicted of criminal mischief must be ordered to make restitution in an amount and
19 manner to be set by the court. ~~The court shall determine the manner and amount of restitution after full~~
20 ~~consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted~~
21 ~~person, the court may modify any previous order specifying the amount and manner of restitution. Full payment~~
22 ~~of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person~~
23 ~~convicted.~~

24 (3) A person convicted of the offense of criminal mischief shall be fined not to exceed \$1,500 or be
25 imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of
26 criminal mischief and causes pecuniary loss in excess of \$1,500, injures or kills a commonly domesticated
27 hoofed animal, or causes a substantial interruption or impairment of public communication, transportation,
28 supply of water, gas, or power, or other public services, the offender shall be fined an amount not to exceed

1 \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

2 (4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same
3 transaction, whether against the public or the same person or several persons, may be aggregated in
4 determining pecuniary loss.

5 (5) A person convicted of or who forfeits bond or bail for committing an act of criminal mischief
6 involving property owned or administered by the department of fish, wildlife, and parks shall forfeit any current
7 hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for at
8 least 24 months from the date of conviction or forfeiture."

9

10 **Section 6.** Section 46-18-101, MCA, is amended to read:

11 **"46-18-101. Correctional and sentencing policy.** (1) It is the purpose of this section to establish the
12 correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to
13 implement the policy established by this section.

14 (2) The correctional and sentencing policy of the state of Montana is to:

15 (a) punish each offender commensurate with the nature and degree of harm caused by the offense
16 and to hold an offender accountable;

17 (b) protect the public, reduce crime, and increase the public sense of safety by incarcerating
18 violent offenders and serious repeat offenders;

19 (c) provide restitution, reparation, and restoration to the victim of the offense; and

20 (d) encourage and provide opportunities for the offender's self-improvement to provide
21 rehabilitation and reintegration of offenders back into the community.

22 (3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following
23 principles:

24 (a) Sentencing and punishment must be certain, timely, consistent, and understandable.

25 (b) Sentences should be commensurate with the punishment imposed on other persons
26 committing the same offenses.

27 (c) Sentencing practices must be neutral with respect to the offender's race, gender, religion,
28 national origin, or social or economic status.

(d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating circumstances.

(e) Sentencing practices must include punishing violent and serious repeat felony offenders with incarceration.

(f) Sentencing practices must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records.

(g) Sentencing and correctional practices must emphasize that the offender is responsible for obeying the law and must hold the offender accountable for the offender's actions.

(h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must require an offender ~~who is financially able to do so~~ to pay restitution, costs as provided in 46-18-232, costs of assigned counsel, as provided in 46-8-113, and, if the offender is a sex offender, costs of any chemical treatment.

(i) Sentencing practices should promote and support practices, policies, and programs that focus on restorative justice principles."

Section 7. Section 46-18-242, MCA, is amended to read:

"46-18-242. Investigation and report of victim's loss. (1) (a) Whenever the court believes that a victim may have sustained a pecuniary loss or whenever the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report if requested pursuant to 46-18-111:

~~(a)~~(i) a list of the offender's assets; and

~~(b)~~(ii) an affidavit that specifically describes the victim's pecuniary loss and the replacement value in dollars of the loss, submitted by the victim.

(b) If the court does not order the probation officer, restitution officer, or other designated person to include information about a victim's pecuniary loss or loss of property in a presentence investigation, nothing precludes the victim from providing that information to the probation officer, restitution officer, or other designated person making the presentence investigation and report.

(2) When a presentence report is not requested, the court shall accept evidence of the victim's loss

1 at the time of sentencing."

2

3 **Section 8.** Section 46-18-246, MCA, is amended to read:

4 **"46-18-246. Waiver or modification of payment.** (1) Except as limited by subsection (2), An an
5 offender may ~~at any time~~ petition the sentencing court to adjust or otherwise waive payment of any part of any
6 ordered restitution or amount to be paid pursuant to 46-18-241(2)(a).

7 (2) A court may not waive or adjust a restitution order within 1 year of imposition of the order or
8 during any period while an offender is in the custody of the department of corrections.

9 (3) The court shall schedule a hearing and give a victim to whom restitution was ordered notice of
10 the hearing date, place, and time and inform the victim that the victim will have an opportunity to be heard.

11 (4) If the court finds that the circumstances ~~upon~~ on which it based the imposition of restitution,
12 amount of the victim's pecuniary loss, or method or time of payment no longer exist or that it otherwise would
13 be unjust to require payment as imposed, the court may adjust or waive unpaid restitution or the amount to be
14 paid pursuant to 46-18-241(2)(a) or modify the time or method of making restitution.

15 (5) The court may extend the restitution schedule."

16 - END -