

HOUSE BILL NO. 112

INTRODUCED BY J. ETCHART

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HUMAN TRAFFICKING AND PROSTITUTION LAWS; PROVIDING FOR THE CRIMES OF SEX TRAFFICKING, LABOR TRAFFICKING, AGGRAVATED SEX TRAFFICKING, AND CHILD SEX TRAFFICKING; AMENDING SECTIONS 20-7-1321, 27-1-755, 27-2-216, 40-4-219, 41-3-102, 44-5-311, 45-1-205, 45-2-211, 45-5-601, 45-5-701, 45-5-702, 45-5-703, 45-5-705, 45-5-706, 45-5-707, 45-5-708, 45-5-709, 45-5-710, 45-8-405, 46-16-226, 46-18-104, 46-18-111, 46-18-201, 46-18-203, 46-18-205, 46-18-207, 46-18-219, 46-18-222, 46-18-231, 46-18-608, 46-23-502, 46-23-1011, AND 61-8-818, MCA; AND REPEALING SECTIONS 45-5-602, 45-5-603, 45-5-604, AND 45-5-704, MCA."

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

Section 1. Section 20-7-1321, MCA, is amended to read:

"20-7-1321. Employment assistance for current or former school employees, contractors, and volunteers engaged in sexual misconduct prohibited. (1) Except as provided in subsection (2), a person who is an officer, trustee, employee, agent, or contractor of a school, school district, county superintendent of schools, or the state superintendent of public instruction and who knows or has probable cause to believe that a current or former school employee, contractor, or agent has committed or has attempted, solicited, or conspired to commit an act with a child or enrolled student that constitutes a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-601, ~~45-5-602, 45-5-603, 45-5-625, 45-5-702, 45-5-704, or 45-5-705,~~ 45-5-706, or [section 19] may not assist that school employee, contractor, or agent in obtaining new employment apart from the routine transmission of administrative and personnel files.

(2) Subsection (1) does not apply if:

(a) the information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged violation;

(b) the information has been properly reported to any other authorities as required by the laws of the United States, the state, or any political subdivision of the state, including but not limited to reporting required by Title 41, chapter 3, part 2, and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., and the regulations implementing that title under Title 34, part 106, Code of Federal Regulations, or any succeeding regulations; and

(c) (i) a peace officer, city attorney, or county attorney with jurisdiction over the alleged misconduct has notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent committed or attempted, solicited, or conspired to commit an act with a child or pupil constituting a violation of the offenses listed in subsection (1);

(ii) the school employee, contractor, or agent has been charged with and acquitted or otherwise exonerated of the alleged violation; or

(iii) there have been no charges filed against the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

(3) This section applies to current or former school employees, contractors, and agents of both public and nonpublic schools."

Section 2. Section 27-1-755, MCA, is amended to read:

"27-1-755. Civil action -- human trafficking victim. (1) A victim of human trafficking may bring a civil action against a person who commits an offense against the victim under 45-5-702, 45-5-703, ~~45-5-704~~, or 45-5-705, 45-5-706, or [section 19] for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

(2) If a victim prevails in an action under this section, the court shall award the victim reasonable attorney fees and costs.

(3) An action under this section must be commenced not later than 10 years after the later of:

(a) the date on which the victim no longer was subject to human trafficking; or

(b) the date on which the victim reached 18 years of age.

(4) This section does not preclude any other remedy available to the victim under federal or state law.

(5) For the purposes of this section, the term "human trafficking" has the meaning provided in 45-5-701."

Section 3. Section 27-2-216, MCA, is amended to read:

"27-2-216. Tort actions -- childhood sexual abuse. (1) Except as provided in subsection (4), an action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse against the individual who committed the acts must be commenced:

(a) before the victim of the act of childhood sexual abuse that is alleged to have caused the injury reaches 27 years of age; or

(b) not later than 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

(2) As used in this section, "childhood sexual abuse" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-602, 45-5-603, 45-5-625, 45-5-627, 45-5-704, 45-5-702, 45-5-705, 45-5-706, [section 19], or prior similar laws in effect at the time the act occurred.

(3) Except as provided in subsection (5), in an action for recovery of damages for liability against any entity that owed a duty of care to the plaintiff, where a wrongful or negligent act by an employee, officer, director, official, volunteer, representative, or agent of the entity was a legal cause of the childhood sexual abuse that resulted in the injury to the plaintiff, the action must be commenced:

(a) before the victim of the act of childhood sexual abuse that is alleged to have caused the injury reaches 27 years of age; or

(b) not later than 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

(4) A claim for damages described in subsection (1) that would otherwise be barred because the applicable statute of limitations has expired may be commenced within 1 year of May 7, 2019, if the individual who committed the act of childhood sexual abuse against the plaintiff is alive at the time the action proceeds or is commenced and:

(a) has admitted to the commission of the act of childhood sexual abuse against the plaintiff in

1 either a written and signed statement or a statement recorded by audio or video; or

2 (b) (i) has made one or more statements admitting to the commission of the act of childhood
3 sexual abuse against the plaintiff under oath or in a plea agreement; or

4 (ii) has been convicted of an offense listed in subsection (2) in which the plaintiff was the victim.

5 (5) (a) A claim for damages described in subsection (3) that would otherwise be barred because
6 the applicable statute of limitations has expired must be revived if the court concludes that the entity against
7 whom the action is commenced, based upon documents or admissions by employees, officers, directors,
8 officials, volunteers, representatives, or agents of the entity, knew, had reason to know, or was otherwise on
9 notice of any unlawful sexual conduct by an employee, officer, director, official, volunteer, representative, or
10 agent and failed to take reasonable steps to prevent future acts of unlawful sexual conduct.

11 (b) A cause of action in which allegations described in subsection (5)(a) are made but that would
12 otherwise be barred by the statute of limitations in subsection (3) may be commenced within 1 year of May 7,
13 2019.

14 (6) As used in subsection (5), "admissions" include:

15 (a) a criminal conviction of an employee, officer, director, official, volunteer, representative, or
16 agent of the entity for an offense of childhood sexual abuse;

17 (b) a written statement;

18 (c) a documented or recorded oral statement; or

19 (d) statements made in:

20 (i) a plea agreement or change of plea hearing;

21 (ii) a trial; or

22 (iii) a settlement agreement.

23 (7) The provisions of 27-2-401 apply to this section."
24

25 **Section 4.** Section 40-4-219, MCA, is amended to read:

26 **"40-4-219. Amendment of parenting plan -- mediation.** (1) The court may in its discretion amend a
27 prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown
28 to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child

1 and that the amendment is necessary to serve the best interest of the child.

2 (a) In determining how a proposed change will affect the child, the court shall consider the
3 potential impact of the change on the criteria in 40-4-212 and whether:

4 (i) the parents agree to the amendment;

5 (ii) the child has been integrated into the family of the petitioner with consent of the parents;

6 (iii) the child is 14 years of age or older and desires the amendment; or

7 (iv) one parent has willfully and consistently:

8 (A) refused to allow the child to have any contact with the other parent; or

9 (B) attempted to frustrate or deny contact with the child by the other parent.

10 (b) If one parent has changed or intends to change the child's residence in a manner that
11 significantly affects the child's contact with the other parent, the court shall consider, in addition to all the criteria
12 in 40-4-212 and subsection (1)(a):

13 (i) the feasibility of preserving the relationship between the nonrelocating parent and the child
14 through suitable visitation arrangements, considering the logistics and financial circumstances of the parties;

15 (ii) the reasons of each parent for seeking or opposing the change of residence;

16 (iii) whether the parent seeking to change the child's residence has demonstrated a willingness to
17 promote the relationship between the child and the nonrelocating parent; and

18 (iv) whether reasonable alternatives to the proposed change of residence are available to the
19 parent seeking to relocate.

20 (2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in
21 40-4-212.

22 (3) The court shall presume a parent is not acting in the child's best interest if the parent does any
23 of the acts specified in subsection (1)(a)(iv) or (8).

24 (4) The court may amend the prior parenting plan based on subsection (1)(b) to provide a new
25 residential schedule for parental contact with the child and to apportion transportation costs between the
26 parents.

27 (5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated
28 amendment if the court finds that the amendment action is vexatious and constitutes harassment.

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

(6) A parenting plan may be amended pursuant to 40-4-221 upon the death of one parent.

(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 21 days from the notice to respond. If the parent who receives notice of objection fails to respond within 21 days, the parenting rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the response.

(b) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-8-218;

(vi) incest, as described in 45-5-507;

(vii) ~~aggravated promotion of prostitution of a child~~ sex trafficking, as described in 45-5-603(1)(b) [section 19];

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625; and

(xi) strangulation of a partner or family member, as described in 45-5-215.

(9) Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or

1 emotional abuse by one parent against the other parent or the child or when a parent has been convicted of a
2 crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a
3 dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the
4 parenting plan. The dispute resolution process may include counseling or mediation by a specified person or
5 agency, and court action.

6 (10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a
7 parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the
8 previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is
9 filed after a parent returns from military service, the court may not consider a parent's absence due to that
10 military service in its determination of the best interest of the child.

11 (b) A parent who has performed or is performing military service, as defined in 10-1-1003, may
12 consent to a temporary or permanent modification of a parenting plan:

13 (i) for the duration of the military service; or

14 (ii) that continues past the end of the military service."
15

16 **Section 5.** Section 41-3-102, MCA, is amended to read:

17 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

18 (1) (a) "Abandon", "abandoned", and "abandonment" mean:

19 (i) leaving a child under circumstances that make reasonable the belief that the parent does not
20 intend to resume care of the child in the future;

21 (ii) willfully surrendering physical custody for a period of 6 months and during that period not
22 manifesting to the child and the person having physical custody of the child a firm intention to resume physical
23 custody or to make permanent legal arrangements for the care of the child;

24 (iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable
25 efforts to identify and locate the parent have failed; or

26 (iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than
27 30 days old to an emergency services provider, as defined in 40-6-402.

28 (b) The terms do not include the voluntary surrender of a child to the department solely because of

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

1 parental inability to access publicly funded services.

2 (2) "A person responsible for a child's welfare" means:

3 (a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which
4 the child resides;

5 (b) a person providing care in a day-care facility;

6 (c) an employee of a public or private residential institution, facility, home, or agency; or

7 (d) any other person responsible for the child's welfare in a residential setting.

8 (3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or
9 neglect.

10 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care
11 recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the
12 withholding of medically indicated treatment or medically indicated psychological care permitted or authorized
13 under state law.

14 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the
15 sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care
16 for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the
17 state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm
18 to the child.

19 (5) "Best interests of the child" means the physical, mental, and psychological conditions and
20 needs of the child and any other factor considered by the court to be relevant to the child.

21 (6) "Child" or "youth" means any person under 18 years of age.

22 (7) (a) "Child abuse or neglect" means:

23 (i) actual physical or psychological harm to a child;

24 (ii) substantial risk of physical or psychological harm to a child; or

25 (iii) abandonment.

26 (b) (i) The term includes:

27 (A) actual physical or psychological harm to a child or substantial risk of physical or psychological
28 harm to a child by the acts or omissions of a person responsible for the child's welfare;

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(C) any form of child sex trafficking or human trafficking.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Child protection specialist" means an employee of the department who investigates allegations of child abuse, neglect, and endangerment and has been certified pursuant to 41-3-127.

(9) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(10) "Department" means the department of public health and human services provided for in 2-15-2201.

(11) "Family engagement meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(12) "Indian child" means any unmarried person who is under 18 years of age and who is either:

(a) a member of an Indian tribe; or

(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(13) "Indian child's tribe" means:

(a) the Indian tribe in which an Indian child is a member or eligible for membership; or

(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

(14) "Indian custodian" means any Indian person who has legal custody of an Indian child under

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

1 tribal law or custom or under state law or to whom temporary physical care, custody, and control have been
2 transferred by the child's parent.

3 (15) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of
4 Indians recognized by:

5 (a) the state of Montana; or

6 (b) the United States secretary of the interior as being eligible for the services provided to Indians
7 or because of the group's status as Indians, including any Alaskan native village as defined in federal law.

8 (16) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-
9 1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person
10 who is 18 years of age or older.

11 (17) "Parent" means a biological or adoptive parent or stepparent.

12 (18) "Parent-child legal relationship" means the legal relationship that exists between a child and the
13 child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been
14 terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

15 (19) "Permanent placement" means reunification of the child with the child's parent, adoption,
16 placement with a legal guardian, placement with a fit and willing relative, or placement in another planned
17 permanent living arrangement until the child reaches 18 years of age.

18 (20) "Physical abuse" means an intentional act, an intentional omission, or gross negligence
19 resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns,
20 bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or
21 function, or death.

22 (21) "Physical neglect" means either failure to provide basic necessities, including but not limited to
23 appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to
24 weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing
25 the child to be exposed to an unreasonable physical or psychological risk to the child.

26 (22) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the
27 parent or other person responsible for the child's welfare:

28 (i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological

1 abuse or neglect;

2 (ii) commits or allows sexual abuse or exploitation of the child;

3 (iii) induces or attempts to induce a child to give untrue testimony that the child or another child

4 was abused or neglected by a parent or other person responsible for the child's welfare;

5 (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate

6 food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or

7 offered financial or other reasonable means to do so;

8 (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or

9 welfare by failing to intervene or eliminate the risk; or

10 (vi) abandons the child.

11 (b) The term does not include a youth not receiving supervision solely because of parental inability

12 to control the youth's behavior.

13 (23) (a) "Protective services" means services provided by the department:

14 (i) to enable a child alleged to have been abused or neglected to remain safely in the home;

15 (ii) to enable a child alleged to have been abused or neglected who has been removed from the

16 home to safely return to the home; or

17 (iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances

18 and the best interests of the child prevent reunification with parents or a return to the home.

19 (b) The term includes emergency protective services provided pursuant to 41-3-301, written

20 prevention plans provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to

21 parts 4 and 6 of this chapter.

22 (24) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions

23 that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the

24 commission of acts of violence against another person residing in the child's home.

25 (b) The term may not be construed to hold a victim responsible for failing to prevent the crime

26 against the victim.

27 (25) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to

28 the federal Indian Child Welfare Act means:

(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or

(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.

(26) "Qualified individual" means a trained professional or licensed clinician who:

(a) has expertise in the therapeutic needs assessment used for placement of youth in a therapeutic group home;

(b) is not an employee of the department; and

(c) is not connected to or affiliated with any placement setting in which children are placed.

(27) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(28) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(29) "Safety and risk assessment" means an evaluation by a child protection specialist following an initial report of child abuse or neglect to assess the following:

(a) the existing threat or threats to the child's safety;

(b) the protective capabilities of the parent or guardian;

(c) any particular vulnerabilities of the child;

(d) any interventions required to protect the child; and

(e) the likelihood of future physical or psychological harm to the child.

(30) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, aggravated sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(31) "Sexual exploitation" means:

(a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603;

(b) allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625; or

(c) allowing, permitting, or encouraging ~~sexual servitude~~ sex trafficking as described in 45-5-704 or 45-5-702, 45-5-705, 45-5-706, or [section 19].

(32) "Therapeutic needs assessment" means an assessment performed by a qualified individual within 30 days of placement of a child in a therapeutic group home that:

(a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool;

(b) determines whether the needs of the child can be met with family members or through placement in a youth foster home or, if not, which appropriate setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals for the child as specified in the child's permanency plan; and

(c) develops a list of child-specific short-term and long-term mental and behavioral health goals.

(33) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(34) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical

1 judgment:

2 (i) the infant is chronically and irreversibly comatose;

3 (ii) the provision of treatment would:

4 (A) merely prolong dying;

5 (B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

6 (C) otherwise be futile in terms of the survival of the infant; or

7 (iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the

8 treatment itself under the circumstances would be inhumane. For purposes of this subsection (34), "infant"

9 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously

10 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference

11 to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued

12 when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws

13 regarding medical neglect of children 1 year of age or older.

14 (35) "Youth in need of care" means a youth who has been adjudicated or determined, after a
15 hearing, to be or to have been abused, neglected, or abandoned."
16

17 **Section 6.** Section 44-5-311, MCA, is amended to read:

18 **"44-5-311. Nondisclosure of information about victim.** (1) If a victim of an offense requests
19 confidentiality, a criminal justice agency may not disseminate, except to another criminal justice agency, the
20 address, telephone number, or place of employment of the victim or a member of the victim's family unless
21 disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes,
22 or is authorized by a district court upon a showing of good cause.

23 (2) The court may not compel a victim or a member of the victim's family who testifies in a criminal
24 justice proceeding to disclose on the record in open court a residence address or place of employment unless
25 the court determines that disclosure of the information is necessary.

26 (3) A criminal justice agency may not disseminate to the public any information directly or indirectly
27 identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-702, 45-5-
28 703, ~~45-5-704~~, or 45-5-705, 45-5-706, or [section 19] unless disclosure is of the location of the crime scene, is

required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause."

Section 7. Section 45-1-205, MCA, is amended to read:

"45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) Except as provided in subsection (1)(c) or (9), a prosecution for a felony offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507(4) or (5), 45-5-625, or 45-5-627 may be commenced within 10 years after it is committed.

(c) A prosecution for an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, ~~45-5-602, 45-5-603, 45-5-625, 45-5-627, 45-5-704, or 45-5-702,~~ 45-5-705, 45-5-706, or [section 19] may be commenced at any time if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the

1 prosecuting officer becomes aware of the offense.

2 (5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and
3 wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

4 (6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor
5 violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and
6 prosecution must be brought within 3 years after an offense is committed.

7 (7) (a) An offense is committed either when every element occurs or, when the offense is based
8 upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run
9 on the day after the offense is committed.

10 (b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years
11 following the date of the theft, whether or not the offender is in possession of or otherwise exerting
12 unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends,
13 a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting
14 unauthorized control over the property, except that the prosecution must be commenced within 1 year after the
15 investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control
16 over the property.

17 (8) A prosecution is commenced either when an indictment is found or an information or complaint
18 is filed.

19 (9) If a suspect is conclusively identified by DNA testing after a time period prescribed in
20 subsection (1)(b) has expired, a prosecution may be commenced within 1 year after the suspect is conclusively
21 identified by DNA testing.

22 (10) A prosecution for reckless driving resulting in death may be commenced within 3 years after
23 the offense is committed.

24 (11) A prosecution of careless driving resulting in death may be commenced within 3 years after the
25 offense is committed."

26

27 **Section 8.** Section 45-2-211, MCA, is amended to read:

28 **"45-2-211. Consent as defense.** (1) The consent of the victim to conduct charged to constitute an

1 offense or to the result thereof is a defense.

2 (2) Consent is ineffective if:

3 (a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute
4 the offense;

5 (b) it is given by a person who by reason of youth, mental disease or disorder, or intoxication is
6 unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the
7 offense;

8 (c) it is induced by force, duress, or deception;

9 (d) it is against public policy to permit the conduct or the resulting harm, even though consented to;

10 or

11 (e) for offenses under 45-5-502, 45-5-503, 45-5-508, 45-5-601, ~~45-5-602, 45-5-603~~, or Title 45,
12 chapter 5, part 7, it is given by a person who the offender knew or reasonably should have known was a victim
13 of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which
14 caused the person to be in the situation where the offense occurred."
15

16 **Section 9.** Section 45-5-601, MCA, is amended to read:

17 **"45-5-601. Prostitution -- patronizing prostitute -- exception.** (1) Except as provided in subsection
18 (2)(a), the offense of prostitution is committed if a person engages in or agrees or offers to engage in sexual
19 intercourse or sexual contact that is direct and not through clothing with another person for compensation,
20 whether the compensation is received or to be received or paid or to be paid.

21 (2) (a) A prostitute may be convicted of prostitution only if the prostitute engages in or agrees or
22 offers to engage in sexual intercourse with another person for compensation, whether the compensation is
23 received or to be received or paid or to be paid. A prostitute who is convicted of prostitution may be fined an
24 amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

25 (b) A patron may be convicted of patronizing a prostitute if the patron engages in or agrees or
26 offers to engage in sexual intercourse or sexual contact that is direct and not through clothing with another
27 person for compensation, whether the compensation is received or to be received or paid or to be paid. Except
28 as provided in ~~subsections (3) and (4)~~ subsection (3), a patron who is convicted of prostitution shall for the first

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

offense be fined an amount not to exceed ~~\$1,000~~ \$5,000 or be imprisoned for a term not to exceed ~~1-year~~ 5 years, or both, and for a second or subsequent offense shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not to exceed ~~5~~ 10 years, or both.

(3) (a) If the person patronized was a child and the patron was 18 years of age or older at the time of the offense, whether or not the patron was aware of the child's age, the patron offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

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

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

~~(4) If the person patronized was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred, and the patron offender was 18 years of age or older at the time of the offense and knew or reasonably should have known that the person patronized was a victim of human trafficking or was subjected to force, fraud, or coercion, the patron offender:~~

~~(a) shall be punished by imprisonment in a state prison for a term of up to 10 years; and~~

~~(b) may be fined an amount not to exceed \$25,000.~~

~~(5)(4)~~ It is not a violation of ~~45-5-602, 45-5-603,~~ or this section for a person with an impaired physical ability, physical dysfunction, recent injury, or other disability to engage in sex therapy with a partner surrogate who is working under the supervision of a social worker, professional counselor, or licensed clinical professional counselor licensed under Title 37, chapter 22 or 23.

(5) It is not a defense in a prosecution under this section that a child consented to engage in

1 sexual activity.

2 (6) It is not a defense in a prosecution under this section that a defendant believed the child was
3 an adult. Absolute liability, as provided in 45-2-104, is imposed."

4

5 **Section 10.** Section 45-5-701, MCA, is amended to read:

6 **"45-5-701. Definitions.** As used in this part, the following definitions apply:

7 (1) "Adult" means a person 18 years of age or older.

8 (2) "Coercion" means:

9 (a) the use or threat of force against, abduction of, serious harm to, or physical restraint of a
10 person;

11 (b) the use of a plan, pattern, or statement with intent to cause a person to believe that failure to
12 perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of a
13 person;

14 (c) the abuse or threatened abuse of law or legal process;

15 (d) controlling or threatening to control a person's access to any substance defined as a
16 dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2;

17 (e) the actual or threatened destruction or taking of a person's identification document or other
18 property;

19 (f) the use of debt bondage;

20 (g) the use of a person's physical or mental impairment when the impairment has a substantial
21 adverse effect on the person's cognitive or volitional function; or

22 (h) the commission of civil or criminal fraud.

23 (3) "Commercial sexual activity" means sexual activity for which anything of value is given to,
24 promised to, or received by a person.

25 (4) "Debt bondage" means inducing a person to provide:

26 (a) commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

27 (b) labor or services in payment toward or satisfaction of a real or purported debt if:

28 (i) the reasonable value of the labor or services is not applied toward the liquidation of the debt; or

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

(ii) the length of the labor or services is not limited and the nature of the labor or services is not defined.

(5) "Human trafficking" means the commission of an offense under 45-5-702, 45-5-703, ~~45-5-704,~~ or 45-5-705, 45-5-706, or [section 19].

(6) "Identification document" means a passport, driver's license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.

(7) "Labor or services" means activity having economic value.

(8) "Prostitution" has the meaning provided in 45-5-601.

~~(8)(9)~~ "Serious harm" means physical or nonphysical harm, including psychological, economic, or reputational harm to a person that would compel a reasonable person of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.

~~(9)(10)~~ "Sexual activity" means any sex act or simulated sex act intended to arouse or gratify the sexual desire of any person. The term includes a sexually explicit performance.

(11) "Sexual contact" has the meaning provided in 45-2-101.

~~(40)(12)~~ "Sexually explicit performance" means a live, public, private, photographed, recorded, or videotaped act or simulated act intended to arouse or gratify the sexual desire of any person."

Section 11. Section 45-5-702, MCA, is amended to read:

"45-5-702. ~~Trafficking of persons~~ Sex trafficking. (1) A person commits the offense of sex trafficking ~~of persons~~ if the person purposely or knowingly:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution, or prostitution business, ~~or business promoting commercial sexual activity;~~

(b) procures an individual for a house of prostitution ~~or prostitution business~~ or procures a place in a house of prostitution ~~or prostitution business~~ for an individual;

(c) encourages, induces, or otherwise purposely causes another person to become or remain a prostitute;

(d) solicits clients for another person who is a prostitute;

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

(e) procures a prostitute for a patron;

(f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means;

(a)(h) recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that the person will be subjected to involuntary servitude or sexual servitude ~~commercial sexual activity prostitution~~; or

(b)(i) benefits, financially or by receiving anything of value, from facilitating any conduct described in subsection subsections (1)(a) through (1)(h) or from participation in a venture that has subjected another person to involuntary servitude or sexual servitude.

(2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ A ~~person convicted of the offense of sex trafficking of persons shall be imprisoned in the state prison for a term of not more than 15 years less than 2 years or more than 20 years, fined an amount not to exceed \$50,000, or both.~~

~~(b) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 50 years, fined an amount not to exceed \$100,000, or both, if the victim was a child.~~

~~(c) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 25 years, fined an amount not to exceed \$75,000, or both, if the violation involves aggravated kidnapping, aggravated sexual intercourse without consent, or deliberate homicide."~~

Section 12. Section 45-5-703, MCA, is amended to read:

"45-5-703. Involuntary servitude Labor trafficking. (1) A person commits the offense of involuntary servitude labor trafficking if the person purposely or knowingly uses coercion to compel another person to provide labor or services, unless the conduct is otherwise permissible under federal or state law.

(2) (a) Except as provided in subsection (2)(b) (3), a person convicted of the offense of involuntary servitude labor trafficking shall be imprisoned in the state prison for a term of not more than 15 years, fined an

1 amount not to exceed \$50,000, or both.

2 ~~(b) A person convicted of the offense of involuntary servitude shall be imprisoned in the state prison~~
3 ~~for a term of not more than 50 years and may be fined not more than \$100,000 if:~~

4 ~~(i) the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate~~
5 ~~homicide; or~~

6 ~~(ii) the victim was a child.~~

7 (3) If the victim is less than 18 years of age, the offender shall be imprisoned in the state prison for
8 a term of not less than 4 years or more than 50 years, fined an amount not to exceed \$100,000, or both."

9

10 **Section 13.** Section 45-5-705, MCA, is amended to read:

11 **"45-5-705. Patronizing victim of sexual servitude sex trafficking.** (1) A person commits the
12 offense of patronizing a victim of ~~sexual servitude~~ sex trafficking if the person purposely or knowingly gives,
13 agrees to give, or offers to give anything of value so that a person may engage in commercial sexual activity;

14 ~~(a) —~~ that involves sexual contact that is direct and not through clothing with another person who the
15 person knows or reasonably should have known is a victim of ~~sexual servitude~~ sex trafficking; ~~or~~

16 ~~(b) — with a child.~~

17 (2) ~~(a)~~ Except as provided in subsection ~~(2)(b)~~ (3), a person convicted of the offense of patronizing
18 a victim of ~~sexual servitude~~ sex trafficking shall:

19 ~~(i)(a)~~ for the first offense, be imprisoned in the state prison for a term of not more than 15 years,
20 fined an amount not to exceed \$50,000, or both; ~~or~~

21 ~~(ii)(b)~~ for a second or subsequent offense, be imprisoned in the state prison for a term of not less
22 than 2 years or more than 15 years, fined an amount not to exceed \$50,000, or both.

23 ~~(b)(3)~~ (a) If the individual patronized was a child and the patron was 18 years of age or older, a
24 person convicted of the offense of patronizing a victim of ~~sexual servitude~~ sex trafficking, whether or not the
25 person believed the child was an adult, ~~shall~~:

26 (i) for the first offense, shall be imprisoned in the state prison for a term of ~~not more than 25~~ 100
27 years, and fined an amount not to exceed \$75,000; or The court may not suspend execution or defer
28 imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as

provided in 48-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) ~~for a second or subsequent offense, be imprisoned in the state prison for a term of not less than 5 years or more than 25 years, fined an amount not to exceed \$75,000, or both.~~

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

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

~~(3)(4)~~ It is not a defense in a prosecution under this section:

(a) that a child consented to engage in commercial sexual activity; or

(b) that the defendant believed that the child was an adult. Absolute liability, as provided in 45-2-104, is imposed."

Section 14. Section 45-5-706, MCA, is amended to read:

"45-5-706. Aggravating circumstance Aggravated sex trafficking. (1) A person commits the offense of aggravated sex trafficking if, during the commission of the offense of sex trafficking, the person purposely or knowingly:

(a) uses fraud, coercion, or deception to control an adult to engage in ~~commercial sexual activity~~ prostitution; or

(b) An aggravating circumstance during the commission of an offense under 45-5-702, 45-5-703, 45-5-704, or 45-5-705 occurs when the defendant recruited, enticed, or obtained recruits, entices, or obtains the victim of the offense from a shelter that serves runaway youth, foster children, homeless persons, or persons subjected to human trafficking victims, or victims of domestic violence, or sexual assault violence.

(2) If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under 45-5-702, 45-5-703, 45-5-704, or 45-5-705, the defendant may be imprisoned for up to 5 years in addition to the period of imprisonment prescribed for the offense. An additional sentence prescribed by this

section must run consecutively to the sentence provided for the underlying offense. A person convicted of the offense of aggravated sex trafficking shall be imprisoned in the state prison for a term of not less than 5 years or more than 40 years, fined an amount not to exceed \$50,000, or both. The exceptions provided in 46-18-222(5) and (6) do not apply."

Section 15. Section 45-5-707, MCA, is amended to read:

"45-5-707. Property subject to forfeiture -- human trafficking. (1) (a) A person commits the offense of use or possession of property subject to criminal forfeiture for human trafficking if the person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture under this section. A person convicted of the offense of use or possession of property subject to criminal forfeiture shall be imprisoned in the state prison for a term not to exceed 10 years.

(b) Property is subject to criminal forfeiture under this section if it is used or intended for use in violation of 45-5-702, 45-5-703, ~~45-5-704, or 45-5-705~~, 45-5-706, or [section 19].

(c) The following property is subject to criminal forfeiture under this section:

- (i) money, raw materials, products, equipment, and other property of any kind;
- (ii) property used or intended for use as a container for property enumerated in subsection (1)(c)(i);
- (iii) except as provided in subsection (2), a conveyance, including an aircraft, vehicle, or vessel;
- (iv) books, records, research products and materials, formulas, microfilm, tapes, and data;
- (v) anything of value furnished or intended to be furnished in exchange for the provision of labor or services or commercial sexual activity and all proceeds traceable to the exchange;
- (vi) negotiable instruments, securities, and weapons; and
- (vii) personal property constituting or derived from proceeds obtained directly or indirectly from the provision of labor or services or commercial sexual activity.

(2) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person in charge of the conveyance knowingly used the conveyance or knowingly consented to its use for the purposes described in subsection (1)(b).

(3) Criminal forfeiture under this section of property that is encumbered by a bona fide security

1 interest is subject to that interest if the secured party did not use or consent to the use of the property for the
2 purposes described in subsection (1)(b).

3 (4) Property subject to criminal forfeiture under this section may be seized under the following
4 circumstances:

5 (a) A peace officer who has probable cause to make an arrest for a violation as described in
6 subsection (1)(b) may seize a conveyance obtained with the proceeds of the violation or used to facilitate the
7 violation and shall immediately deliver the conveyance to the peace officer's law enforcement agency to be held
8 as evidence until a criminal forfeiture is declared or release ordered.

9 (b) Property subject to criminal forfeiture under this section may be seized by a peace officer under
10 a search warrant issued by a court having jurisdiction over the property.

11 (c) Seizure without a warrant may be made if:

12 (i) the seizure is incident to an arrest or a search under a search warrant issued for another
13 purpose;

14 (ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or
15 a criminal forfeiture proceeding under the provisions of Title 44, chapter 12, or this section;

16 (iii) a peace officer has probable cause to believe that the property is directly or indirectly
17 dangerous to health or safety; or

18 (iv) a peace officer has probable cause to believe that the property was used or is intended to be
19 used under the circumstances described in subsection (1)(b).

20 (5) A forfeiture proceeding under subsection (1) must be commenced within 45 days of the seizure
21 of the property involved.

22 (6) The procedure for forfeiture proceedings in Title 44, chapter 12, part 2, applies to property
23 seized pursuant to this section.

24 (7) Upon conviction, the property subject to criminal forfeiture is forfeited to the state and proceeds
25 from the sale of property seized under this section must be distributed to the holders of security interests who
26 have presented proper proof of their claims up to the amount of their interests in the property. The remainder, if
27 any, must be deposited in the crime victims compensation account provided for in 53-9-113."

28

Section 16. Section 45-5-708, MCA, is amended to read:

"45-5-708. Past sexual behavior of victim. In a prosecution for an offense under 45-5-702, 45-5-703, ~~45-5-704, or 45-5-705, 45-5-706, or [section 19]~~ or a civil action under 27-1-755, evidence concerning a specific instance of the victim's past sexual behavior or reputation or opinion evidence of the victim's past sexual behavior is inadmissible unless the evidence is admitted in accordance with 45-5-511(2) or offered by the prosecution to prove a pattern of human trafficking by the defendant."

Section 17. Section 45-5-709, MCA, is amended to read:

"45-5-709. Immunity of child -- sex therapy participants. (1) A person is not criminally liable or subject to proceedings under Title 41, chapter 5, for prostitution, ~~promoting prostitution, sex trafficking or prior similar laws in effect at the time the act occurred,~~ or other nonviolent offenses if the person was a child at the time of the offense and committed the offense as a direct result of being a victim of human trafficking.

(2) A person who has engaged in commercial sexual activity is not criminally liable or subject to proceedings under Title 41, chapter 5, for prostitution if the person was a child at the time of the offense.

(3) A child who under subsection (1) or (2) is not subject to criminal liability or proceedings under Title 41, chapter 5, is presumed to be a youth in need of care under Title 41, chapter 3, and is entitled to specialized services and care, which may include access to protective shelter, food, clothing, medical care, counseling, and crisis intervention services, if appropriate.

(4) Subsections (1) through (3) do not apply in a prosecution under 45-5-601 or a proceeding under Title 41, chapter 5, for patronizing a prostitute.

(5) It is not a violation of this part for a person with an impaired physical ability, physical dysfunction, recent injury, or other disability to engage in sex therapy with a partner surrogate who is working under the supervision of a social worker, professional counselor, or licensed clinical professional counselor licensed under Title 37, chapter 22 or 23."

Section 18. Section 45-5-710, MCA, is amended to read:

"45-5-710. Affirmative defense. A person charged with prostitution, ~~promoting prostitution, sex trafficking or prior similar laws in effect at the time the act occurred,~~ or another nonviolent offense committed as

1 a direct result of being a victim of human trafficking may assert an affirmative defense that the person is a
2 victim of human trafficking."

3
4 **NEW SECTION. Section 19. Child sex trafficking.** (1) A person commits the offense of child sex
5 trafficking by purposely or knowingly ~~committing the offense of sex trafficking:~~

- 6 (a) committing the offense of sex trafficking with a child; or
7 (b) recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating,
8 maintaining, enticing, or using a child for the purposes of commercial sexual activity.

9 (2) (a) A person convicted of the offense of child sex trafficking shall be imprisoned in the state
10 prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of
11 a sentence of imprisonment imposed under this subsection (2)(a) except as provided in 46-18-222(1) through
12 (4). During the first 25 years of imprisonment, the offender is not eligible for parole. The exceptions provided in
13 46-18-222(5) and (6) do not apply.

14 (b) In addition to the sentence of imprisonment imposed under subsection (2)(a), the offender:
15 (i) may be fined an amount not to exceed \$50,000; and
16 (ii) if released after the mandatory minimum period of imprisonment, is subject to supervision by
17 the department of corrections for the remainder of the offender's life and shall participate in the program for
18 continuous, satellite-based monitoring provided for in 46-23-1010.

19 (3) It is not a defense in a prosecution under this section:
20 (a) that a child consented to engage in commercial sexual activity; or
21 (b) that the defendant believed the child was an adult. Absolute liability, as provided in 45-2-104, is
22 imposed.

23
24 **NEW SECTION. Section 20. Evidence in cases of sex trafficking, aggravated sex trafficking, or**
25 **child sex trafficking.** (1) In a case that involves a question of whether a place is a house of prostitution,
26 evidence of the following, in addition to all other admissible evidence, is admissible:

- 27 (a) the general reputation of the place;
28 (b) the reputations of the place's residents and the nonresidents who frequent the place; and

(c) the frequency, timing, and duration of visits by nonresidents.

(2) Testimony of a person against the person's spouse is admissible under 45-5-702, 45-5-706, or [section 19].

Section 21. Section 45-8-405, MCA, is amended to read:

"45-8-405. Pattern of criminal street gang activity. (1) For purposes of this part, "pattern of criminal street gang activity" means the commission, solicitation, conspiracy, or attempt, the adjudication as a delinquent youth for the commission, attempt, or solicitation, or the conviction of two or more of the offenses listed in subsection (2) within a 3-year period, which offenses were committed on separate occasions.

(2) The offenses that form a pattern of criminal street gang activity include:

(a) deliberate homicide, as defined in 45-5-102;

(b) assault with a weapon, as defined in 45-5-213;

(c) intimidation, as defined in 45-5-203;

(d) kidnapping, as defined in 45-5-302;

(e) aggravated kidnapping, as defined in 45-5-303;

(f) robbery, as defined in 45-5-401;

(g) sexual intercourse without consent, as defined in 45-5-503;

(h) ~~aggravated promotion of prostitution~~ sex trafficking, as defined in ~~45-5-603~~ 45-5-706;

(i) child sex trafficking, as defined [section 19];

~~(j)~~(j) criminal mischief, as defined in 45-6-101;

~~(j)~~(k) arson, as defined in 45-6-103;

~~(k)~~(l) burglary, as defined in 45-6-204;

~~(l)~~(m) theft, as defined in 45-6-301;

~~(m)~~(n) forgery, as defined in 45-6-325;

~~(n)~~(o) tampering with witnesses and informants, as defined in 45-7-206;

~~(o)~~(p) bringing armed individuals into the state, as defined in 45-8-106;

~~(p)~~(q) unlawful possession of a firearm by a convicted person, as defined in 45-8-313;

~~(q)~~(r) carrying a concealed weapon, as defined in 45-8-316;

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

- 1 ~~(f)~~(s) possession of a deadly weapon by a prisoner, as defined in 45-8-318;
- 2 ~~(s)~~(t) possession of a destructive device, as defined in 45-8-334;
- 3 ~~(t)~~(u) possession of explosives, as defined in 45-8-335;
- 4 ~~(u)~~(v) possession of a sawed-off firearm, as defined in 45-8-340;
- 5 ~~(v)~~(w) the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture,
- 6 or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;
- 7 ~~(w)~~(x) use of threat to coerce criminal street gang membership or use of violence to coerce criminal
- 8 street gang membership provided in 45-8-403."

9

10 **Section 22.** Section 46-16-226, MCA, is amended to read:

11 **"46-16-226. Definitions.** As used in 46-16-226 through 46-16-229, the following definitions apply:

12 (1) "Child witness" means an individual who is:

13 (a) 13 years of age or younger at the time the individual is called as a witness in a criminal

14 proceeding involving a sexual or violent offense; or

15 (b) under 16 years of age at the time that the individual is called as a witness in a criminal

16 proceeding involving a sexual or violent offense and who is an individual with a developmental disability, as

17 defined in 53-20-102.

18 (2) "Sexual offense" means any violation of or attempt, solicitation, or conspiracy to commit a

19 violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-603, ~~or 45-5-625, 45-5-705(1)(b), 45-5-706, or~~

20 [section 19].

21 (3) "Violent offense" means any violation of or attempt, solicitation, or conspiracy to commit a

22 violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206, 45-5-210, 45-5-212, 45-5-213, 45-5-215, 45-5-302, 45-5-

23 303, 45-5-401, 45-6-103, or 45-9-132."

24

25 **Section 23.** Section 46-18-104, MCA, is amended to read:

26 **"46-18-104. Definitions.** As used in 46-18-101, 46-18-105, 46-18-201, 46-18-225, and this section,

27 unless the context requires otherwise, the following definitions apply:

28 (1) "Community corrections" or "community corrections facility or program" means a community

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

1 corrections facility or program as defined in 53-30-303.

2 (2) (a) "Crime of violence" means:

3 (i) a crime in which an offender uses or possesses and threatens to use a deadly weapon during
4 the commission or attempted commission of a crime;

5 (ii) a crime in which the offender causes serious bodily injury or death to a person other than the
6 offender; or

7 (iii) an offense under:

8 (A) 45-5-215;

9 (B) 45-5-502 for which the maximum potential sentence is life imprisonment or imprisonment in a
10 state prison for a term exceeding 1 year;

11 (C) 45-5-503, except as provided in subsection (2)(b) of this section;

12 (D) 45-5-507 if the victim is under 16 years of age and the offender is 3 or more years older than
13 the victim or if the offender inflicts bodily injury upon anyone in the course of committing the offense;

14 (E) 45-5-508;

15 ~~(F) 45-5-603;~~

16 ~~(G)(F)~~ 45-5-702;

17 ~~(H)(G)~~ 45-5-703;

18 ~~(I) 45-5-704; or~~

19 ~~(J)(H)~~ 45-5-705;

20 ~~(I)~~ 45-5-706; or

21 ~~(J)~~ [section 19].

22 (b) In a prosecution under 45-5-503, if the sexual intercourse was without consent based solely on
23 the victim's age, the victim willingly participated, and the offender is not more than 3 years older than the victim,
24 the offense is not a crime of violence for purposes of this section.

25 (3) "Nonviolent felony offender" means a person who has entered a plea of guilty or nolo
26 contendere to a felony offense other than a crime of violence or who has been convicted of a felony offense
27 other than a crime of violence.

28 (4) "Restorative justice" has the meaning provided in 44-7-302."

Section 24. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required -- definition. (1) (a) (i) Upon the

acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, except as provided in subsection (1)(d), the district court may request and direct the probation and parole officer to make a presentence investigation and report unless an investigation and report has been provided to the court prior to the plea or the verdict or finding of guilty.

(ii) Unless additional information is required under subsection (1)(b), (1)(c), (1)(d), or (1)(e) or unless more time is required to allow for victim input, a preliminary or final presentence investigation and report, if requested, must be available to the court within 30 business days of the plea or the verdict or finding of guilty.

(iii) If a presentence investigation report has been requested, the district court shall consider the presentence investigation report prior to sentencing.

(b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(b) or (2)(c)~~, 45-5-625, 45-5-627, 45-5-704, 45-5-705, 45-5-706, [section 19], or 45-8-218 or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the court shall order a psychosexual evaluation of the defendant unless the defendant is sentenced under 46-18-219. The evaluation must include:

(A) a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs;

(B) an identification of the level of risk the defendant presents to the community using the standards established in 37-1-139; and

(C) the defendant's needs.

(ii) Unless a psychosexual evaluation has been provided to the court prior to the plea or the verdict or finding of guilty, the evaluation must be completed by a sexual offender evaluator selected by the court and who has a license endorsement as provided for in 37-1-139. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge.

(iii) All costs related to the evaluation, including an evaluation ordered by the court as allowed in subsection (1)(b)(ii), must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation, including an evaluation ordered by the court as allowed in subsection (1)(b)(ii), are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9. The district court may order subsequent psychosexual evaluations at the request of the county attorney. The requestor of any subsequent psychosexual evaluations is responsible for the cost of the evaluation.

(c) (i) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation may include a mental health evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs.

(ii) The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist, advanced practice registered nurse, licensed clinical social worker, licensed clinical professional counselor, licensed marriage and family therapist, or other professional with comparable credentials acceptable to the department of labor and industry. The mental health evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge.

(iii) All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(d) If the defendant is convicted of a violent offense, as defined in 46-23-502, or if the defendant is convicted of a crime for which a victim or entity may be entitled to restitution, and the amount of restitution is not contained in a plea agreement, the court shall order a presentence investigation.

(e) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report pursuant to this section, the mental evaluation must be attached to the presentence investigation report and becomes part of the report. The report must be made available to persons and entities as provided in 46-18-113.

(2) The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a

1 sexual or violent offense as defined in 46-23-502.

2 (3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is
3 completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time.
4 The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5).

5 (4) For the purposes of 46-18-112 and this section, "probation and parole officer" means:

6 (a) a probation and parole officer who is employed by the department of corrections pursuant to
7 46-23-1002; or

8 (b) an employee of the department of corrections who has received specific training or who
9 possesses specific expertise to make a presentence investigation and report but who is not required to be
10 licensed as a probation and parole officer by the public safety officer standards and training council created in
11 2-15-2029."

12

13 **Section 25.** Section 46-18-201, MCA, is amended to read:

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

17 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

18 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a
19 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless
20 of whether any other conditions are imposed.

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

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

28 (b) (i) Except as provided in subsections (2)(b)(ii) and (2)(b)(iii), a sentencing judge may not

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

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

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

1 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5
2 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-
3 503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(b)~~, section 19, and 45-5-625(4); or

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

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

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

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

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

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

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

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

22 (c) conditions for probation;

23 (d) payment of the costs of confinement;

24 (e) payment of a fine as provided in 46-18-231;

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

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

27 (h) with the approval of the facility or program, an order that the offender be placed in a community
28 corrections facility or program as provided in 53-30-321;

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

- (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 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.

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

Section 26. 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), ~~45-5-602(3), 45-5-603(2)(b), or 45-5-625(4),~~ or [section 19], and describing the exhaustion and documentation in the offender's file of appropriate violation responses according to the incentives and interventions grid adopted under 46-23-1028, 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 expired. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

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

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

- (a) the allegations of the petition;
- (b) the opportunity to appear and to present evidence in the offender's own behalf;
- (c) the opportunity to question adverse witnesses; and
- (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

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

- (a) the offender admits the allegations and waives the right to a hearing; or
- (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

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

- (i) the terms and conditions of the suspended or deferred sentence; or
- (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), ~~45-5-602(3), 45-5-603(2)(b), or 45-5-625(4)~~, or section 19.

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

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended

or deferred sentence and the violation is not a compliance violation, the judge may:

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

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

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

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

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

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

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time, consult the records and recollection of the probation and parole officer, and allow all of the elapsed time served without any record or recollection of violations as a credit against the sentence. If the judge determines that elapsed time should not be credited, the judge shall state the reasons for the determination in the order. Credit must be allowed for time served in a detention center or for home arrest time already served.

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

(8) (a) Except as provided in subsection (8)(c), if the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and that the appropriate violation responses under the incentives and interventions grid have not been exhausted and documented in the offender's file, the judge shall notify the department and refer the matter back to the hearings officer.

(b) Except as provided in subsection (8)(c), if the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, that the violation is a compliance violation, and

1 that the appropriate violation responses under the incentives and interventions grid have been exhausted and
2 documented in the offender's file, the judge may:

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

4 (ii) continue the suspended or deferred sentence with modified or additional terms and conditions,
5 which may include placement as provided in subsection (7)(a)(ii).

6 (c) If the judge finds that the offender has violated the terms and conditions of the suspended or
7 deferred sentence, that the violation is a compliance violation, and that the offender's conduct indicates that the
8 offender will not be responsive to further efforts under the incentives and interventions grid, the judge may
9 sentence the offender as provided in subsection (7).

10 (9) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that
11 there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must
12 be dismissed and the offender, if in custody, must be immediately released.

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

14 (11) As used in this section, the following definitions apply:

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

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

19 (i) a new criminal offense;

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

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

24 (iv) absconding; or

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

27 (12) The provisions of this section apply to any offender whose suspended or deferred sentence is
28 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 27. Section 46-18-205, MCA, is amended to read:

"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension. (1) If the victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-507, incest; or

(d) 45-8-218, deviate sexual conduct.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

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

(b) 45-5-202, aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3), sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent; and

(h) ~~45-5-603, aggravated promotion of prostitution~~ 45-5-706, aggravated sex trafficking.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

(4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(b), or 45-5-625(4),~~ or [section 19]."

Section 28. Section 46-18-207, MCA, is amended to read:

"46-18-207. Sexual offender treatment. (1) Upon sentencing a person convicted of a sexual offense,

as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.

(2) (a) Except as provided in subsection (2)(b), the court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:

(i) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program;

(ii) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program; and

(iii) if the person is sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), ~~45-5-602(3), 45-5-603(2)(b),~~ [section 19], or 45-5-625(4) and is released on parole, remain in an outpatient sexual offender treatment program for the remainder of the person's life.

(b) A person who has been sentenced to life imprisonment without possibility of release may not participate in treatment provided pursuant to this section.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

(4) (a) Except for an offender sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), ~~45-5-602(3), 45-5-603(2)(b) or (2)(c),~~ [section 19], or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.

(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.

(5) If, following a conviction for a sexual offense as defined in 46-23-502, any portion of a person's sentence is suspended, during the suspended portion of the sentence the person:

(a) shall abide by the standard conditions of probation established by the department of

1 corrections;

2 (b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person
3 is financially able to pay those costs;

4 (c) may have no contact with the victim or the victim's immediate family unless approved by the
5 victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;

6 (d) shall comply with all requirements and conditions of sexual offender treatment as directed by
7 the person's sex offender therapist;

8 (e) may not enter an establishment where alcoholic beverages are sold for consumption on the
9 premises or where gambling takes place;

10 (f) may not consume alcoholic beverages;

11 (g) shall enter and remain in an aftercare program as directed by the person's probation officer;

12 (h) shall submit to random or routine drug and alcohol testing;

13 (i) may not possess pornographic material or access pornography through the internet; and

14 (j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or
15 continuous satellite monitoring.

16 (6) The sentencing of a sexual offender is subject to 46-18-202(2) and 46-18-219.

17 (7) The sentencing court may, upon petition by the department of corrections, modify a sentence
18 of a sexual offender to impose any part of a sentence that was previously suspended."
19

20 **Section 29.** Section 46-18-219, MCA, is amended to read:

21 **"46-18-219. Life sentence without possibility of release.** (1) (a) Except as provided in subsection
22 (3), if an offender convicted of one of the following offenses was previously convicted of one of the following
23 offenses or of an offense under the laws of another state or of the United States that, if committed in this state,
24 would be one of the following offenses, the offender must be sentenced to life in prison, unless the death
25 penalty is applicable and imposed:

26 (i) 45-5-102, deliberate homicide;

27 (ii) 45-5-303, aggravated kidnapping;

28 (iii) 45-5-625, sexual abuse of children;

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

- (iv) 45-5-627, except subsection (1)(b), ritual abuse of a minor; or
- (v) 45-5-508, aggravated sexual intercourse without consent.
- (b) Except as provided in subsection (3), if an offender convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the offender must be sentenced to life in prison, unless the death penalty is applicable and imposed:
- (i) 45-5-103, mitigated deliberate homicide;
- (ii) 45-5-202, aggravated assault;
- (iii) 45-5-215, strangulation of a partner or family member;
- (iv) 45-5-302, kidnapping;
- (v) 45-5-401, robbery; or
- (vi) ~~45-5-603(2)(b), aggravated promotion of prostitution of a child~~ [section 19], child sex trafficking.
- (2) Except as provided in 46-23-210 and subsection (3) of this section, an offender sentenced under subsection (1):
- (a) shall serve the entire sentence;
- (b) shall serve the sentence in prison;
- (c) may not for any reason, except a medical reason, be transferred for any length of time to another type of institution, facility, or program;
- (d) may not be paroled; and
- (e) may not be given time off for good behavior or otherwise be given an early release for any reason.
- (3) If the offender was previously sentenced for either of two or three offenses listed in subsection (1), pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the offender's present sentence.
- (4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or 46-18-205, this

1 section prevails.

2 (5) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are
3 locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private
4 contractor.

5 (b) Prison does not include a work release center, prerelease center, boot camp, or any other type
6 of facility that does not provide secure detention."

7

8 **Section 30.** Section 46-18-222, MCA, is amended to read:

9 **"46-18-222. Exceptions to mandatory minimum sentences, restrictions on deferred imposition**
10 **and suspended execution of sentence, and restrictions on parole eligibility.** Mandatory minimum
11 sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, the
12 restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-
13 205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility prescribed by 45-5-503(4),
14 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(b)~~, [section 19], and 45-5-625(4) do not apply if:

15 (1) the offender was less than 18 years of age at the time of the commission of the offense for
16 which the offender is to be sentenced;

17 (2) the offender's mental capacity, at the time of the commission of the offense for which the
18 offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to
19 the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an
20 impairment for the purposes of this subsection.

21 (3) the offender, at the time of the commission of the offense for which the offender is to be
22 sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a
23 defense to the prosecution;

24 (4) the offender was an accomplice, the conduct constituting the offense was principally the
25 conduct of another, and the offender's participation was relatively minor;

26 (5) except for offenses committed under 45-5-706 and [section 19], in a case in which the threat of
27 bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was
28 inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-508, or 45-5-601(3) ~~45-5-602(3), 45-5-603~~
(2)(b) and the judge determines, based on the findings contained in a psychosexual evaluation report prepared
by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender
while incarcerated, while in a residential treatment facility, or while in a local community affords a better
opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which
case the judge shall include in its judgment a statement of the reasons for its determination."

Section 31. Section 46-18-231, MCA, is amended to read:

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

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

- (i) 45-5-103(4), mitigated deliberate homicide;
- (ii) 45-5-202, aggravated assault;
- (iii) 45-5-213, assault with a weapon;
- (iv) 45-5-302(2), kidnapping;
- (v) 45-5-303(2), aggravated kidnapping;
- (vi) 45-5-401(2), robbery;
- (vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or
more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual
assault;
- (viii) 45-5-503(2) through (5), sexual intercourse without consent;
- (ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years
of age or older at the time of the offense;
- (x) 45-5-508, aggravated sexual intercourse without consent;
- (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~~

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

~~prostitution, or aggravated promotion of prostitution when the person patronized or engaging in prostitution was a child and the offender was 18 years of age or older at the time of the offense or when the person engaging in prostitution was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or coercion, either of which caused the person to be in the situation where the offense occurred, and the offender was 18 years of age or older at the time of the offense and the offender knew or reasonably should have known that the person was a victim of human trafficking or was subjected to force, fraud, or coercion;~~

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

(xiii) 45-5-702, 45-5-703, 45-5-704, or 45-5-705, 45-5-706, or [section 19], sex trafficking of persons, involuntary servitude, sexual servitude, or, labor trafficking, patronizing a victim of sexual servitude sex trafficking, aggravated sex trafficking, or child sex trafficking;

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

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

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

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

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed \$50,000."

Section 32. Section 46-18-608, MCA, is amended to read:

"46-18-608. Motion to vacate conviction -- human trafficking victims. (1) On the motion of a person, a court may vacate a person's conviction of prostitution, ~~promoting prostitution,~~ sex trafficking or prior similar laws in effect at the time the act occurred, or another nonviolent offense if the court finds that the person's participation in the offense was a direct result of having been a victim of human trafficking or of sex

1 trafficking under the federal Trafficking Victims Protection Act, 22 U.S.C. 7103 through 7112.

2 (2) The motion must:

3 (a) be made within a reasonable time after the person ceased to be involved in human trafficking
4 or sought services for human trafficking victims, subject to reasonable concerns for the safety of the person,
5 family members of the person, or other victims of human trafficking who could be jeopardized by filing a motion
6 under this section; and

7 (b) state why the facts giving rise to the motion were not presented to the court during the
8 prosecution of the person.

9 (3) No official determination or documentation is required to grant a motion by a person under this
10 section, but official documentation from a local government or a state or federal agency of the person's status
11 as a victim of human trafficking creates a rebuttable presumption that the person's participation in the offense
12 was a direct result of having been a victim of human trafficking.

13 (4) If a court vacates a conviction under this section, the court shall:

14 (a) send a copy of the order vacating the conviction to the prosecutor and the department of justice
15 accompanied by a form prepared by the department of justice and containing identifying information about the
16 person; and

17 (b) inform the person whose conviction has been vacated under this section that the person may
18 be eligible for certain state and federal programs and services and provide the person with information for
19 contacting appropriate state and federal victim services organizations. After the conviction is vacated, all
20 records and data relating to the conviction are confidential criminal justice information, as defined in 44-5-103,
21 and public access to the information may be obtained only by district court order upon good cause shown.

22 (5) For the purposes of this section, the term "human trafficking" has the meaning provided in 45-
23 5-701."

24

25 **Section 33.** Section 46-23-502, MCA, is amended to read:

26 **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

27 (1) "Department" means the department of corrections provided for in 2-15-2301.

28 (2) "Mental abnormality" means a congenital or acquired condition that affects the mental,

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502 (if the offender is a professional licensed under Title 37 and commits the offense during any treatment, consultation, interview, or evaluation of a person's physical or mental condition, ailment, disease, or injury), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503(1), (3), or (4), 45-5-504(2)(c), 45-5-504(3) (if the victim is less than 16 years of age and the offender is 4 or more years older than the victim), 45-5-507 (if the victim is less than 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-508,

Amendment - 1st Reading-white - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Rachel Weiss, 406-444-5367

HB0112.001.004

1 45-5-601(3), 45-5-602(3), 45-5-603(1)(b), (2)(b), or (2)(c), 45-5-625, 45-5-704, or 45-5-705, 45-5-706, or
2 [section 19]; or

3 (b) any violation of a law of another state, a tribal government, or the federal government that is
4 reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register
5 as a sexual offender after an adjudication or conviction.

6 (10) "Sexual or violent offender" means a person who has been convicted of or, in youth court,
7 found to have committed or been adjudicated for a sexual or violent offense.

8 (11) "Sexually violent predator" means a person who:

9 (a) has been convicted of or, in youth court, found to have committed or been adjudicated for a
10 sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely
11 to engage in predatory sexual offenses; or

12 (b) has been convicted of a sexual offense against a victim 12 years of age or younger and the
13 offender is 18 years of age or older.

14 (12) "Transient" means an offender who has no residence.

15 (13) "Violent offense" means:

16 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-
17 103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-
18 5-215, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-
19 132; or

20 (b) any violation of a law of another state, a tribal government, or the federal government
21 reasonably equivalent to a violation listed in subsection (13)(a)."

22

23 **Section 34.** Section 46-23-1011, MCA, is amended to read:

24 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during
25 their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4),
26 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603 (2)(b), or 45-5-625(4),~~ or [section 19], in accord with the
27 conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of
28 sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation.

1 The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter
2 8 of this title.

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

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

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

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

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

21 (c) The county attorney may file a petition requesting that the court modify or add conditions as
22 requested by the probation and parole officer.

23 (d) The court may grant the petition if the probationer does not object. If the probationer objects to
24 the petition, the court shall hold a hearing pursuant to the provisions of 46-18-203.

25 (e) Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-
26 503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), ~~45-5-603(2)(b)~~, or 45-5-625(4), or [section 19], the provisions of
27 46-18-203(7)(a)(ii) do not apply to this section.

28 (f) The probationer shall sign a copy of new or modified conditions of probation. The court may

waive or modify a condition of restitution only as provided in 46-18-246.

(6) Based on the risk and needs of each individual as determined by the individual's most recent risk and needs assessment, the probation and parole officer shall notify the probationer of eligibility for conditional discharge from supervision when a probationer is in compliance with the conditions of supervision when:

(a) under the women's risks and needs assessment:

(i) a low-risk probationer has served 9 months;

(ii) a moderate-risk probationer has served 12 months;

(iii) a medium-risk probationer has served 18 months; and

(iv) a high-risk probationer has served 24 months; and

(b) under the Montana offender reentry and risk assessment:

(i) a low-risk probationer has served 9 months;

(ii) a moderate-risk probationer has served 12 months;

(iii) a high-risk probationer has served 18 months; and

(iv) a very high-risk probationer has served 24 months.

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

(a) why the probationer meets the requirements of subsection (6); and

(b) whether the department of corrections supports or opposes the motion.

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

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

(a) a copy of the motion;

(b) written notice that:

(i) the victim may provide written input regarding the motion or may ask the county attorney to

1 state the victim's position on the motion;

2 (ii) if a hearing is set, the date, time, and place of the hearing; and

3 (iii) the victim may appear and testify at any hearing held on the motion.

4 (10) (a) The court may hold a hearing on the motion. A judge may conditionally discharge a
5 probationer from supervision before expiration of the probationer's sentence if:

6 (i) the judge determines that a conditional discharge from supervision:

7 (A) is in the best interests of the probationer and society; and

8 (B) will not present unreasonable risk of danger to the victim of the offense; and

9 (ii) the offender has paid all restitution and court-ordered financial obligations in full.

10 (b) Subsection (10)(a) does not prohibit a judge from revoking the order suspending execution or
11 deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally
12 discharged from supervision."
13

14 **Section 35.** Section 61-8-818, MCA, is amended to read:

15 **"61-8-818. Permanent revocation of commercial driver's license -- felony involving use of**
16 **commercial motor vehicle for trafficking of persons.** If the department receives a conviction report that a
17 person used a commercial motor vehicle in the commission of an offense under ~~45-5-702~~ Title 45, chapter 5,
18 part 7, or a similar law in another state or in the commission of a felony of trafficking of persons, the department
19 shall revoke the person's commercial driver's license for life and may not reinstate the commercial driver's
20 license for any reason."
21

22 NEW SECTION. **Section 36. Repealer.** The following sections of the Montana Code Annotated are
23 repealed:

24 45-5-602. Promoting prostitution.

25 45-5-603. Aggravated promotion of prostitution.

26 45-5-604. Evidence in cases of promotion.

27 45-5-704. Sexual servitude.
28

- 2023

Drafter: Rachel Weiss, 406-444-5367

1 NEW SECTION. Section 37. Codification instruction. [Sections 19 and 20] are intended to be
2 codified as an integral part of Title 45, chapter 5, part 7, and the provisions of Title 45, chapter 5, part 7, apply
3 to [sections 19 and 20].

5 NEW SECTION. Section 38. Severability. If a part of [this act] is invalid, all valid parts that are
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
7 the part remains in effect in all valid applications that are severable from the invalid applications.

- END -