

SENATE BILL NO. 4

2nd Special Session

Introduced and Referred to Committee on Judiciary: 6/22/82

Report: 6/23/82, Do Not Pass As Amended

Report Adopted: 6/23/82

Special Session # 11

Amended BILL NO. 4

INTRODUCED BY Ryan

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT JUDGES IN JUSTICES', CITY, AND MUNICIPAL COURTS FROM USING THE SERVICES OF PROBATION AND PAROLE OFFICERS; AMENDING SECTIONS 3-6-103, 3-6-104, 3-10-111, 3-10-303, 3-11-102, 3-11-103, 46-17-301, 46-18-111, 46-18-201, AND 46-18-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 3-6-103, MCA, is amended to read:

"3-6-103. Jurisdiction. (1) Said court shall have jurisdiction coordinate and coextensive with the justices' courts of the county wherein said city is located and shall, in addition thereto, have exclusive original jurisdiction of all actions and proceedings, both civil and criminal, mentioned and provided for in 3-11-103. Such municipal courts shall also have concurrent jurisdiction with the district court within their respective counties in forcible entry and unlawful detainer.

~~(2) In exercising its jurisdiction, the municipal court may not use the services of a parole or probation officer."~~

Section 2. Section 3-6-104, MCA, is amended to read:

"3-6-104. Powers and duties of the court. (1) Except as otherwise provided by this chapter, chapter 30 of Title 25, and part 4 of chapter 17 of Title 46, the municipal court shall have in matters within its jurisdiction all the powers and duties of district judges in like cases. The court may make and alter rules for the conduct of its business and prescribe forms of process conformable to law. ~~The court may not use the services of a parole or probation officer.~~

(2) The municipal court shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority."

Section 3. Section 3-10-111, MCA, is amended to read:

"3-10-111. What provisions of code applicable to justices' courts. (1) Because justices' courts are courts of peculiar and limited jurisdiction, only those provisions of this code which are, in their nature, applicable to the organization, powers, and course of proceedings in justices' courts or which have been made applicable by special provisions in this chapter, chapter 31 of Title 25, and Title 27 are applicable to justices' courts and the proceedings therein.

~~(2) Justices' courts may not use the services of a parole or probation officer."~~

Section 4. Section 3-10-303, MCA, is amended to read:

1 "3-10-303. Criminal Jurisdiction. (1) The justices'
2 courts have jurisdiction of public offenses committed within
3 the respective counties in which such courts are established
4 as follows:

5 (1)(a) jurisdiction of all misdemeanors punishable by
6 a fine not exceeding \$500 or imprisonment not exceeding 6
7 months or both such fine and imprisonment, excluding
8 jurisdiction in cases commenced under Title 45, chapter 9,
9 except to act as examining and committing courts and to
10 conduct preliminary hearings as provided in subsection (4)
11 (1)(d);

12 (2)(b) jurisdiction of all violations of fish and game
13 statutes punishable by a fine of not more than \$1,000 or
14 imprisonment for not more than 6 months, or both;

15 (3)(c) concurrent jurisdiction with district courts of
16 all misdemeanors punishable by a fine only not exceeding
17 \$1,500; and

18 (4)(d) jurisdiction to act as examining and committing
19 courts and for such purpose to conduct preliminary hearings.

20 (2) In the exercise of its criminal jurisdiction, a
21 justice's court may not use the services of a parole or
22 probation officer."

23 Section 5. Section 3-11-102, MCA, is amended to read:

24 "3-11-102. Concurrent jurisdiction. (1) The city court
25 has concurrent jurisdiction with the justice's court of all

1 misdemeanors punishable by a fine not exceeding \$500 or by
2 imprisonment not exceeding 6 months or by both fine and
3 imprisonment.

4 (2) Applications for search warrants and complaints
5 charging the commission of a felony may be filed in the city
6 court. When they are filed, the city judge has the same
7 jurisdiction and responsibility as a justice of the peace,
8 including the holding of a preliminary hearing. The city
9 attorney may file an application for a search warrant or a
10 complaint charging the commission of a felony when the
11 offense was committed within the city limits. The county
12 attorney, however, must handle any action after a defendant
13 is bound over to district court.

14 (3) In exercising the jurisdiction granted under this
15 section, the city court may not use the services of a parole
16 or probation officer."

17 Section 6. Section 3-11-103, MCA, is amended to read:
18 "3-11-103. Exclusive jurisdiction. Except as provided
19 in 3-11-104, the city court has exclusive jurisdiction of:

20 (1) proceedings for the violation of an ordinance of
21 the city or town, both civil and criminal;

22 (2) when the amount of the taxes or assessments sought
23 does not exceed \$300, actions for the collection of taxes or
24 assessments levied for any of the following purposes, except
25 that no lien on the property taxed or assessed for the

1 nonpayment of the taxes or assessments may be foreclosed in
2 any such action:

- 3 (a) city or town purposes;
4 (b) the erection or improvement of public buildings;
5 (c) the laying out, opening, or improving of a public
6 street, sidewalk, alley, or bridge;
7 (d) the acquisition or improvement of any public
8 grounds; and

9 (e) public improvements made or ordered by the city or
10 town within its limits;

11 (3) actions for the collection of money due to the
12 city or town or from the city or town to any person when the
13 amount sought, exclusive of interest and costs, does not
14 exceed \$300;

15 (4) when the amount claimed, exclusive of costs, does
16 not exceed \$300, actions for:

17 (a) the breach of an official bond given by a city or
18 town officer;

19 (b) the breach of any contract when the city or town
20 is a party or is in any way interested;

21 (c) damages when the city or town is a party or is in
22 any way interested;

23 (d) the enforcement of forfeited recognizances given
24 to, for the benefit of, or on behalf of the city or town;
25 and

1 (e) collection on bonds given upon an appeal taken
2 from the judgment of the court in any action mentioned in
3 subsections (4)(a) through (4)(d);

4 (5) actions for the recovery of personal property
5 belonging to the city or town when the value of the
6 property, exclusive of the damages for the taking or
7 detention, does not exceed \$300; and

8 (6) actions for the collection of a license fee
9 required by an ordinance of the city or town.

10 ~~(7) In exercising its jurisdiction under this section,~~
11 ~~the city court may not use the services of a parole or~~
12 ~~probation officer."~~

13 Section 7. Section 46-17-301, MCA, is amended to read:
14 "46-17-301. Sentence and judgment. (1) If a judgment
15 of acquittal is rendered, the defendant must be immediately
16 discharged.

17 (2) After a plea or verdict of guilty or after a
18 judgment against the defendant, the court must designate a
19 time for sentencing, which must be within a reasonable time
20 after the rendering of the verdict or judgment. The sentence
21 must be entered in the minutes of the court as soon as it is
22 imposed.

23 (3) If the defendant pleads guilty or is convicted
24 either by the court or by a jury, the court must impose a
25 sentence as provided in chapter 18, part 2, of this title.

1 If alcohol or other drugs are involved, the court may impose
2 such rehabilitative measures as it considers advisable under
3 the circumstances.

4 (4) The determination and imposition of sentence are
5 the exclusive duty of the court, ~~except that the court may~~
6 ~~not use the services of a parole or probation officer."~~

7 Section 8. Section 46-18-111, MCA, is amended to read:

8 "46-18-111. Presentence investigation. (1) No
9 defendant convicted of a crime which may result in
10 commitment for 1 year or more in the state prison shall be
11 sentenced or otherwise disposed of before a written report
12 of investigation by a probation officer is presented to and
13 considered by the court unless the court deems such report
14 unnecessary. The court may, in its discretion, order a
15 presentence investigation for a defendant convicted of any
16 lesser crime or offense.

17 ~~(2) The services of a parole or probation officer~~
18 ~~under this section may not be used by the judge of a~~
19 ~~justice's, city, or municipal courts"~~

20 Section 9. Section 46-18-201, MCA, is amended to read:

21 "46-18-201. Sentences that may be imposed. (1)
22 Whenever a person has been found guilty of an offense upon a
23 verdict or a plea of guilty, the court may:

24 (a) defer imposition of sentence, excepting sentences
25 for driving under the influence of alcohol or drugs, for a

1 period not exceeding 1 year for any misdemeanor or for a
2 period not exceeding 3 years for any felony. The sentencing
3 judge may impose upon the defendant any reasonable
4 restrictions or conditions during the period of the deferred
5 imposition. Such reasonable restrictions or conditions may
6 include:

7 (i) jail base release;

8 (ii) jail time not exceeding 90 days;

9 (iii) conditions for probation;

10 (iv) restitution;

11 (v) payment of a fine as provided in 46-18-231;

12 (vi) payment of costs as provided in 46-18-232 and
13 46-18-233;

14 (vii) payment of costs of court appointed counsel as
15 provided in 46-8-113;

16 (viii) community service;

17 (ix) any other reasonable conditions considered
18 necessary for rehabilitation or for the protection of
19 society; or

20 (x) any combination of the above.

21 (b) suspend execution of sentence up to the maximum
22 sentence allowed for the particular offense. The sentencing
23 judge may impose on the defendant any reasonable
24 restrictions or conditions during the period of suspended
25 sentence. Such reasonable restrictions or conditions may

1 include any of those listed in subsections (1)(a)(i) through
2 (1)(a)(x).

3 (c) impose a fine as provided by law for the offense;

4 (d) require payment of costs as provided in 46-18-232
5 or payment of costs of court appointed counsel as provided
6 in 46-8-113;

7 (e) commit the defendant to a correctional institution
8 with or without a fine as provided by law for the offense;

9 (f) impose any combination of subsections (1)(b)
10 through (1)(e).

11 (2) If any restrictions or conditions imposed under
12 subsection (1)(a) or (1)(b) are violated, any elapsed time,
13 except jail time, is not a credit against the sentence
14 unless the court orders otherwise.

15 (3) Except as provided in 46-18-222, the imposition or
16 execution of the first 2 years of a sentence of imprisonment
17 imposed under the following sections may not be deferred or
18 suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2),
19 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)
20 and (3), 45-9-102(3), and 45-9-103(2).

21 (4) Except as provided in 46-18-222, the imposition or
22 execution of the first 10 years of a sentence of
23 imprisonment imposed under 45-5-102(2) may not be deferred
24 or suspended.

25 (5) Except as provided in 46-18-222, imposition of

1 sentence in a felony case may not be deferred in the case of
2 a defendant who has been convicted of a felony on a prior
3 occasion whether or not the sentence was imposed, imposition
4 of the sentence was deferred, or execution of the sentence
5 was suspended.

6 ~~(6) In imposing sentences under this section, the~~
7 ~~judge in a justice's, city, or municipal court may not use~~
8 ~~the services of a parole or probation officer."~~

9 Section 10. Section 46-18-202, MCA, is amended to
10 read:

11 "46-18-202. Additional restrictions on sentence. (1)
12 The district court may also impose any of the following
13 restrictions or conditions on the sentence provided for in
14 46-18-201 which it considers necessary to obtain the
15 objectives of rehabilitation and the protection of society:

16 (a) prohibition of the defendant's holding public
17 office;

18 (b) prohibition of his owning or carrying a dangerous
19 weapon;

20 (c) restrictions on his freedom of association;

21 (d) restrictions on his freedom of movement;

22 (e) any other limitation reasonably related to the
23 objectives of rehabilitation and the protection of society.

24 (2) Whenever the district court imposes a sentence of
25 imprisonment in the state prison for a term exceeding 1

1 year, the court may also impose the restriction that the
2 defendant be ineligible for parole and participation in the
3 supervised release program while serving his term. If such
4 a restriction is to be imposed, the court shall state the
5 reasons for it in writing. If the court finds that the
6 restriction is necessary for the protection of society, it
7 shall impose the restriction as part of the sentence and the
8 judgment shall contain a statement of the reasons for the
9 restriction.

10 (3) The judge in a justice's, city, or municipal court
11 does not have the authority to restrict an individual's
12 rights as enumerated in subsections (1) and (2), ~~and he does~~
13 ~~not have the authority to use the services of a parole or~~
14 ~~probation officer."~~

15 NEW SECTION. Section 11. Effective date. This act is
16 effective on passage and approval.

-End-