

HOUSE BILL 839

Introduced by Lee, et al.

2/14	Introduced
2/14	Referred to Judiciary
2/14	First Reading
2/21	Hearing
2/22	Committee Report--Bill Passed as Amended
2/22	Placed on Consent Calendar
2/27	3rd Reading Passed
	Transmitted to Senate
2/27	Referred o Judiciary
3/04	First Reading
3/21	Hearing
3/23	Tabled in Committee

1 *HOUSE BILL NO. 839*
 2 INTRODUCED BY *Sen. Tom Messmore* *Sen. Mark K. Kie*
 3 *Sen. Tom Messmore* BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE *Sen. Dan B. Russell*
 4 *Sen. Tom Messmore* *Sen. Mark K. Kie*

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT AN
 6 OFFENDER WHO FAILS TO COMPLETE COURT-ORDERED COUNSELING OR
 7 TREATMENT IN LIEU OF INCARCERATION MAY BE ORDERED TO SERVE
 8 ALL OR PART OF THE TERM OF INCARCERATION IF HE FAILS TO
 9 COMPLETE THE COUNSELING OR TREATMENT, EVEN IF A PERIOD OF
 10 TIME EQUAL TO OR GREATER THAN THE ORIGINAL TERM OF
 11 INCARCERATION HAS EXPIRED; AND AMENDING SECTION 46-18-201,
 12 MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

16 ***46-18-201. Sentences that may be imposed.** (1) Whenever
 17 a person has been found guilty of an offense upon a verdict
 18 or a plea of guilty, the court may:

19 (a) defer imposition of sentence, excepting sentences
 20 for driving under the influence of alcohol or drugs, for a
 21 period, except as otherwise provided, not exceeding 1 year
 22 for any misdemeanor or for a period not exceeding 3 years
 23 for any felony. The sentencing judge may impose upon the
 24 defendant any reasonable restrictions or conditions during
 25 the period of the deferred imposition. Reasonable

1 restrictions or conditions may include:
 2 (i) jail base release;
 3 (ii) jail time not exceeding 180 days;
 4 (iii) conditions for probation;
 5 (iv) restitution;
 6 (v) payment of the costs of confinement;
 7 (vi) payment of a fine as provided in 46-18-231;
 8 (vii) payment of costs as provided in 46-18-232 and
 9 46-18-233;
 10 (viii) payment of costs of court appointed counsel as
 11 provided in 46-8-113;
 12 (ix) community service;
 13 (x) any other reasonable conditions considered
 14 necessary for rehabilitation or for the protection of
 15 society; or
 16 (xi) any combination of the above.
 17 (b) suspend execution of sentence up to the maximum
 18 sentence allowed for each particular offense. The sentencing
 19 judge may impose on the defendant any reasonable
 20 restrictions or conditions during the period of suspended
 21 sentence. Reasonable restrictions or conditions may include
 22 any of those listed in subsections (1)(a)(i) through
 23 (1)(a)(xi).
 24 (c) impose a fine as provided by law for the offense;
 25 (d) require payment of costs as provided in 46-18-232

1 or payment of costs of court-appointed counsel as provided
2 in 46-8-113;

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

5 (f) impose any combination of subsections (1)(b)
6 through (1)(e).

7 (2) If any financial obligation is imposed as a
8 condition under subsection (1)(a), sentence may be deferred
9 for a period not exceeding 2 years for any misdemeanor or
10 for a period not exceeding 6 years for any felony,
11 regardless of whether any other conditions are imposed.

12 (3) If any restrictions or conditions imposed under
13 subsection (1)(a) or (1)(b) are violated, the court shall
14 consider any elapsed time and either expressly allow part or
15 all of it as a credit against the sentence or reject all or
16 part as a credit and state its reasons in the order. Credit,
17 however, must be allowed for jail time already served.

18 (4) Except as provided in 46-18-222, the imposition or
19 execution of the first 2 years of a sentence of imprisonment
20 imposed under the following sections may not be deferred or
21 suspended: 45-5-103, 45-5-202(3) relating to aggravated
22 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
23 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
24 45-9-103(2).

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

1 execution of the first 10 years of a sentence of
2 imprisonment imposed under 45-5-102 may not be deferred or
3 suspended.

4 (6) Except as provided in 46-18-222, imposition of
5 sentence in a felony case may not be deferred in the case of
6 a defendant who has been convicted of a felony on a prior
7 occasion, whether or not the sentence was imposed,
8 imposition of the sentence was deferred, or execution of the
9 sentence was suspended.

10 (7) If the victim was less than 16 years old, the
11 imposition or execution of the first 30 days of a sentence
12 of imprisonment imposed under 45-5-502(3), 45-5-503,
13 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
14 suspended. Section 46-18-222 does not apply to the first 30
15 days of such imprisonment.

16 (8) In imposing a sentence on a defendant convicted of
17 a sexual offense as defined in 46-23-502, the court may not
18 waive the registration requirement provided in 46-18-254,
19 46-18-255, and Title 46, chapter 23, part 5.

20 (9) A person convicted of a sexual offense, as defined
21 in 46-23-502, and sentenced to imprisonment in the state
22 prison shall enroll in the educational phase of the prison's
23 sexual offender program.

24 (10) If a person is convicted of an offense for which
25 the maximum term of incarceration is 1 year or less and if

1 the court determines that rehabilitation requiring a period
2 of counseling or treatment of the offender is needed and
3 that the period of counseling or treatment may exceed the
4 maximum term of incarceration, the court may defer or
5 suspend imposition of the term of incarceration, conditioned
6 upon the offender's completing the counseling or treatment.
7 If the offender fails to complete the counseling or
8 treatment, he may be ordered to serve all or part of the
9 term of incarceration, even if a period of time equal to or
10 greater than the original term of incarceration has expired.
11 The period for counseling or treatment may not exceed 3
12 years. The court shall retain jurisdiction for the period of
13 counseling or treatment."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 839

INTRODUCED BY LEE, TOOLE, STICKNEY, DARKO, J. RICE, KELLER,
STRIZICH, MESSMORE, D. BROWN, RUSSELL, BECKER
BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT AN
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TREATMENT IN LIEU OF INCARCERATION MAY BE ORDERED TO SERVE
ALL OR PART OF THE TERM OF INCARCERATION IF HE FAILS TO
COMPLETE THE COUNSELING OR TREATMENT, EVEN IF A PERIOD OF
TIME EQUAL TO OR GREATER THAN THE ORIGINAL TERM OF
INCARCERATION HAS EXPIRED; AND AMENDING SECTION 46-18-201,
MCA."

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

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

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

(a) defer imposition of sentence, excepting sentences
for driving under the influence of alcohol or drugs, for a
period, except as otherwise provided, not exceeding 1 year
for any misdemeanor or for a period not exceeding 3 years
for any felony. The sentencing judge may impose upon the
defendant any reasonable restrictions or conditions during

the period of the deferred imposition. Reasonable
restrictions or conditions may include:

- (i) jail base release;
 - (ii) jail time not exceeding 180 days;
 - (iii) conditions for probation;
 - (iv) restitution;
 - (v) payment of the costs of confinement;
 - (vi) payment of a fine as provided in 46-18-231;
 - (vii) payment of costs as provided in 46-18-232 and
46-18-233;
 - (viii) payment of costs of court appointed counsel as
provided in 46-8-113;
 - (ix) community service;
 - (x) any other reasonable conditions considered
necessary for rehabilitation or for the protection of
society; or
 - (xi) any combination of the above.
- (b) suspend execution of sentence up to the maximum
sentence allowed for each particular offense. The sentencing
judge may impose on the defendant any reasonable
restrictions or conditions during the period of suspended
sentence. Reasonable restrictions or conditions may include
any of those listed in subsections (1)(a)(i) through
(1)(a)(xi).
- (c) impose a fine as provided by law for the offense;

1 (d) require payment of costs as provided in 46-18-232
2 or payment of costs of court-appointed counsel as provided
3 in 46-8-113;

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

6 (f) impose any combination of subsections (1)(b)
7 through (1)(e).

8 (2) If any financial obligation is imposed as a
9 condition under subsection (1)(a), sentence may be deferred
10 for a period not exceeding 2 years for any misdemeanor or
11 for a period not exceeding 6 years for any felony,
12 regardless of whether any other conditions are imposed.

13 (3) If any restrictions or conditions imposed under
14 subsection (1)(a) or (1)(b) are violated, the court shall
15 consider any elapsed time and either expressly allow part or
16 all of it as a credit against the sentence or reject all or
17 part as a credit and state its reasons in the order. Credit,
18 however, must be allowed for jail time already served.

19 (4) Except as provided in 46-18-222, the imposition or
20 execution of the first 2 years of a sentence of imprisonment
21 imposed under the following sections may not be deferred or
22 suspended: 45-5-103, 45-5-202(3) relating to aggravated
23 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2)
24 and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and
25 45-9-103(2).

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

5 (6) Except as provided in 46-18-222, imposition of
6 sentence in a felony case may not be deferred in the case of
7 a defendant who has been convicted of a felony on a prior
8 occasion, whether or not the sentence was imposed,
9 imposition of the sentence was deferred, or execution of the
10 sentence was suspended.

11 (7) If the victim was less than 16 years old, the
12 imposition or execution of the first 30 days of a sentence
13 of imprisonment imposed under 45-5-502(3), 45-5-503,
14 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
15 suspended. Section 46-18-222 does not apply to the first 30
16 days of such imprisonment.

17 (8) In imposing a sentence on a defendant convicted of
18 a sexual offense as defined in 46-23-502, the court may not
19 waive the registration requirement provided in 46-18-254,
20 46-18-255, and Title 46, chapter 23, part 5.

21 (9) A person convicted of a sexual offense, as defined
22 in 46-23-502, and sentenced to imprisonment in the state
23 prison shall enroll in the educational phase of the prison's
24 sexual offender program.

25 (10) If a person is convicted of an offense for which

1 the maximum term of incarceration is 1 year or less and if
2 the court determines that rehabilitation requiring a period
3 of counseling or treatment of the offender is needed and
4 that the period of counseling or treatment may exceed the
5 maximum term of incarceration, the court may, IF NOT
6 OTHERWISE PROHIBITED BY LAW, defer IMPOSITION OF or suspend
7 ~~imposition--of~~ the term of incarceration, conditioned upon
8 the offender's completing the counseling or treatment. If
9 the offender fails to complete the counseling or treatment,
10 he may be ordered to serve all or part of the term of
11 incarceration, even if a period of time equal to or greater
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14 The court shall retain jurisdiction for the period of
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