

SENATE BILL NO. 179

1/21 Introduced
1/22 Referred to Judiciary
2/04 Hearing
2/04 Tabled in Committee

1 Senate BILL NO. 179
 2 INTRODUCED BY Goodover Hagan Pinnard
 3 Boyer Alford Boyer Alford
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO FURTHER THE INTEREST
 5 OF THE PUBLIC IN SEEING THAT JUSTICE IS DONE BY ADOPTING THE
 6 UNITED STATES SUPREME COURT'S GOOD FAITH RELIANCE EXCEPTION
 7 TO THE EXCLUSIONARY RULE AND MAKING RESTITUTION BY CRIMINALS
 8 A MANDATORY LIFETIME OBLIGATION AND A DEBT OF THEIR ESTATE;
 9 AMENDING SECTIONS 46-13-302, 46-18-201, 46-18-241,
 10 46-18-242, 46-18-244, AND 46-18-246, MCA."

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

12 Section 1. Section 46-13-302, MCA, is amended to read:
 13 "46-13-302. Motion to suppress evidence illegally
 14 seized -- exception. (1) A defendant aggrieved by an
 15 unlawful search and seizure may move the court to suppress
 16 as evidence anything so obtained. The motion shall be in
 17 writing and state facts showing wherein the search and
 18 seizure were unlawful.

19 (2) The motion shall be made before trial unless for
 20 good cause shown the court shall otherwise direct.

21 (3) The defendant shall give at least 10 days' notice
 22 of such motion to the attorney prosecuting or such other
 23 time as the court may direct. The defendant shall serve a
 24 copy of the notice and motion upon the attorney prosecuting.
 25

1 (4) If the allegations of the motion state facts which
 2 if true show that the search and seizure were unlawful, the
 3 court shall conduct a hearing into the merits of the motion.
 4 The burden of proving that the search and seizure were
 5 unlawful shall be on the defendant.

6 (5) If the ~~motion is granted, the evidence shall not~~
 7 ~~be admissible against the movant at any trial of the case~~
 8 court finds that the search and seizure were illegal, the
 9 evidence is not admissible against the defendant in any
 10 criminal proceeding unless the court further finds that the
 11 search and seizure were made in an objectively reasonable
 12 good faith reliance on a search warrant that was issued by a
 13 detached and neutral magistrate and later found invalid."

14 Section 2. Section 46-18-201, MCA, is amended to read:
 15 "46-18-201. Sentences that may be imposed. (1)
 16 Whenever a person has been found guilty of an offense upon a
 17 verdict or a plea of guilty, the court may:

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

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

1 in 46-8-113;
 2 (e) commit the defendant to a correctional institution
 3 with or without a fine as provided by law for the offense;
 4 (f) impose any combination of subsections (1)(b)
 5 through (1)(e).
 6 (2) ~~If restitution is imposed as a condition under~~
 7 ~~subsection (1)(a) or (1)(b),~~ Whenever a person has been
 8 found guilty of an offense upon a verdict or a plea of
 9 guilty, the court shall order restitution as provided in
 10 46-18-241 through 46-18-245. The rest of the sentence may
 11 be deferred for a period not exceeding 2 years for any
 12 misdemeanor or for a period not exceeding 6 years for any
 13 felony, regardless of whether any other conditions are
 14 imposed.
 15 (3) If any restrictions or conditions imposed under
 16 subsection (1)(a), or (1)(b), or (2) are violated, any
 17 elapsed time, except jail time, is not a credit against the
 18 sentence unless the court orders otherwise.
 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(2), 45-5-202(2), 45-5-302(2),
 23 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2)
 24 and (3), 45-9-102(3), and 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(2) may not be deferred
3 or 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, imposition
8 of the sentence was deferred, or execution of the sentence
9 was suspended."

10 Section 3. Section 46-18-241, MCA, is amended to read:

11 "46-18-241. Condition of restitution. (1) As provided
12 in 46-18-201, a sentencing court may-require shall order an
13 offender to make restitution to any victim of the offense,
14 whether or not he is able to pay restitution, and the order
15 may not be suspended except as provided in subsection (2).

16 (2) Upon motion by the defendant made at the time of
17 the order to pay restitution or at any time before
18 restitution is completed, the court shall temporarily
19 relieve the defendant from payment of restitution during any
20 period that the defendant shows by a preponderance of the
21 evidence that he is unable to pay restitution. The court,
22 any restitution officer or other person designated under
23 46-18-245 and, if defendant is on probation or parole, his
24 probation or parole officer must make every reasonable
25 effort within the bounds of their official duties to assist

1 the defendant in ordering his life, including obtaining and
2 keeping employment, in a manner that will enable him to pay
3 restitution."

4 Section 4. Section 46-18-242, MCA, is amended to read:

5 "46-18-242. Investigation and report of victim's loss.

6 ~~(1) Whenever the court believes-that orders~~ restitution may
7 ~~be-a-proper-condition-of-a-deferred-or-suspended-sentence~~ or
8 the prosecuting attorney requests, the court shall order the
9 probation officer, restitution officer, or other designated
10 person to include in the presentence investigation and
11 report:

12 (a) documentation of the offender's financial
13 resources and future ability to pay restitution; and

14 (b) documentation of the victim's pecuniary loss,
15 submitted by the victim.

16 (2) Where no presentence report is authorized or
17 requested, the court may receive evidence of the offender's
18 ability to pay and the victim's loss at the time of
19 sentencing."

20 Section 5. Section 46-18-244, MCA, is amended to read:

21 "46-18-244. Type and time of payment -- defenses. (1)

22 The court shall specify the amount, method, and time of
23 payment to the victim and may permit payment in
24 installments, except that the order and duty to make
25 restitution remain in effect until restitution is completed.

1 If restitution has not been completed upon the defendant's
 2 death, it becomes a debt of his estate. The court may not
 3 establish a payment schedule extending beyond the period for
 4 which the sentence has been suspended or deferred under
 5 46-18-201.

1 the restitution schedule, but not beyond the period for
 2 which the sentence has been suspended or deferred under
 3 46-18-201."

-End-

6 (2) In determining the amount, method, and time of
 7 payment, the court shall consider the financial resources
 8 and future ability of the offender to pay. The court may
 9 provide for payment to a victim up to but not in excess of
 10 the pecuniary loss caused by the offense. The offender may
 11 assert any defense that he could raise in a civil action for
 12 the loss sought to be compensated by the restitution order."

13 Section 6. Section 46-18-246, MCA, is amended to read:

14 "46-18-246. Waiver or modification of payment. An
 15 offender may at any time petition the sentencing court to
 16 adjust or otherwise waive payment of any part of any ordered
 17 restitution. The court shall schedule a hearing and give a
 18 victim to whom restitution was ordered notice of the hearing
 19 date, place, and time and inform the victim that he will
 20 have an opportunity to be heard. If the court finds that the
 21 circumstances upon which it based the imposition, amount,
 22 method, or time of payment no longer exist or that it
 23 otherwise would be unjust to require payment as imposed, the
 24 court may adjust or waive unpaid restitution or modify the
 25 time or method of making restitution. The court may extend