

HB 685 INTRODUCED BY WHALEN, ET AL.
BAIL FOR MISDEMEANOR MUST BE SET BEFORE PLEA; FINE
MAY NOT EXCEED BAIL

2/10 INTRODUCED
2/10 REFERRED TO JUDICIARY
2/18 HEARING
2/18 TABLED IN COMMITTEE

1 House BILL NO. 685
2 INTRODUCED BY Whelan Quinn

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT WHEN A
5 MISDEMEANOR IS CHARGED, BAIL MUST BE DETERMINED BEFORE A
6 PLEA IS ENTERED AND THAT THE COMBINED AMOUNT OF A FINE AND A
7 CHARGE IMPOSED UNDER 46-18-236 MAY NOT EXCEED THE AMOUNT OF
8 THE BAIL; AND AMENDING SECTIONS 46-18-201, 46-18-212, AND
9 46-18-231, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

13 "46-18-201. Sentences that may be imposed. (1)
14 Whenever a person has been found guilty of an offense upon a
15 verdict or a plea of guilty, the court may:

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

- 24 (i) jail base release;
- 25 (ii) jail time not exceeding 180 days;

- 1 (iii) conditions for probation;
- 2 (iv) restitution;
- 3 (v) payment of the costs of confinement;
- 4 (vi) payment of a fine as provided in 46-18-231;
- 5 (vii) payment of costs as provided in 46-18-232 and
- 6 46-18-233;
- 7 (viii) payment of costs of court---appointed
- 8 court-appointed counsel as provided in 46-8-113;
- 9 (ix) community service;
- 10 (x) any other reasonable conditions considered
- 11 necessary for rehabilitation or for the protection of
- 12 society; or
- 13 (xi) any combination of the above.
- 14 (b) suspend execution of sentence up to the maximum
- 15 sentence allowed for each particular offense. The sentencing
- 16 judge may impose on the defendant any reasonable
- 17 restrictions or conditions during the period of suspended
- 18 sentence. Such reasonable restrictions or conditions may
- 19 include any of those listed in subsections (1)(a)(i) through
- 20 (1)(a)(xi).
- 21 (c) impose a fine as provided by law for the offense;
- 22 (d) require payment of costs as provided in 46-18-232
- 23 or payment of costs of court-appointed counsel as provided
- 24 in 46-8-113;
- 25 (e) commit the defendant to a correctional institution

1 with or without a fine as provided by law for the offense;
 2 (f) impose any combination of subsections (1)(b)
 3 through (1)(e).

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

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

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

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

23 (6) Except as provided in 46-18-222, imposition of
 24 sentence in a felony case may not be deferred in the case of
 25 a defendant who has been convicted of a felony on a prior

1 occasion whether or not the sentence was imposed, imposition
 2 of the sentence was deferred, or execution of the sentence
 3 was suspended.

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

10 (8) If an offense under any provision of this code or
 11 a local government ordinance is classified as a misdemeanor
 12 for purposes of 45-1-201 and bail is required, the bail must
 13 be determined before a plea is entered. If the defendant is
 14 convicted and fined, the combined amount of the fine and the
 15 charge imposed under 46-18-236 may not exceed the amount of
 16 the bail."

17 Section 2. Section 46-18-212, MCA, is amended to read:
 18 "46-18-212. When no penalty is specified. The court,
 19 in imposing sentence upon an offender convicted of an
 20 offense for which no penalty is otherwise provided or if the
 21 offense is designated a misdemeanor and no penalty is
 22 otherwise provided, may sentence the offender to a term of
 23 imprisonment not to exceed 6 months in the county jail or a
 24 fine not to exceed \$500, or both. If an offense under any
 25 provision of this code or a local government ordinance is

1 classified as a misdemeanor for purposes of 45-1-201 and
 2 bail is required, the bail must be determined before a plea
 3 is entered. If the defendant is convicted and fined, the
 4 combined amount of the fine and the charge imposed under
 5 46-18-236 may not exceed the amount of the bail."

6 Section 3. Section 46-18-231, MCA, is amended to read:

7 "46-18-231. Fines in felony and misdemeanor cases. (1)

8 Whenever, upon a verdict or a plea of guilty, a person has
 9 been found guilty of an offense for which a felony penalty
 10 of imprisonment could be imposed, the court may impose a
 11 fine, only in accordance with subsection (3), and in lieu of
 12 or in addition to a sentence of imprisonment. For those
 13 crimes for which penalties are provided in 45-5-103(2),
 14 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2),
 15 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2) and (3),
 16 45-9-102(3), and 45-9-103(2), a fine may be imposed in
 17 accordance with subsection (3) in addition to a sentence of
 18 imprisonment.

19 (2) Whenever, upon a verdict or plea of guilty, a
 20 person has been found guilty of an offense for which a
 21 misdemeanor penalty of a fine could be imposed, the court
 22 may impose a fine only in accordance with subsection (3).

23 (3) The court may not sentence a defendant to pay a
 24 fine unless the defendant is or will be able to pay the
 25 fine. In determining the amount and method of payment, the

1 court shall take into account the nature of the crime
 2 committed, the financial resources of the defendant, and the
 3 nature of the burden that payment of the fine will impose.

4 (4) Any fine levied under this section in a felony
 5 case shall be in an amount fixed by the court not to exceed
 6 \$50,000.

7 (5) If an offense under any provision of this code or
 8 a local government ordinance is classified as a misdemeanor
 9 for purposes of 45-1-201 and bail is required, the bail must
 10 be determined before a plea is entered. If the defendant is
 11 convicted and fined, the combined amount of the fine and the
 12 charge imposed under 46-18-236 may not exceed the amount of
 13 the bail."

-End-