

1 HOUSE BILL NO. 69

2 INTRODUCED BY FISHER

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE BOARD OF CRIME CONTROL
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
6 PROTECTION AND TREATMENT OF VICTIMS OF CRIME AND TO THE PAYMENT OF RESTITUTION BY THE
7 OFFENDER; AMENDING SECTIONS 44-2-601, 44-5-303, 45-9-205, 46-11-701, 46-18-101, 46-18-112,
8 46-18-113, 46-18-115, 46-18-201, 46-18-202, 46-18-222, 46-18-241, 46-18-242, 46-18-243,
9 46-18-244, 46-18-245, 46-18-246, 46-18-247, 46-18-302, 46-23-202, 46-23-210, 46-23-215,
10 46-23-405, 46-23-1011, 46-23-1021, 46-23-1025, 46-24-103, 46-24-104, 46-24-201, 46-24-202,
11 46-24-203, 46-24-205, AND 53-9-128, MCA; REPEALING SECTION 46-23-204, MCA; AND PROVIDING
12 AN APPLICABILITY DATE."
13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1516 **Section 1.** Section 44-2-601, MCA, is amended to read:17 **"44-2-601. Notification of escape or release from confinement.** (1) The notice required by
18 subsection (2) must be given if:19 (a) a person committed to a hospital or mental health facility under Title 46, chapter 14, escapes
20 or is released from confinement;21 (b) a person confined in an institution other than a jail pending or during trial for a criminal offense
22 involving the use or threat of physical force or violence or confined in a prison or other state institution after
23 conviction of a criminal offense involving the use or threat of physical force or violence or after being
24 designated as a dangerous offender under 46-18-404 escapes or is released from confinement; or25 (c) a person confined in a jail pending or during trial for a criminal offense involving the use or
26 threat of physical force or violence or confined in a jail after conviction of a criminal offense involving the
27 use or threat of physical force or violence or after being designated as a dangerous offender under
28 46-18-404 escapes from confinement.29 (2) If a person referred to in subsection (1) escapes or is released from confinement, the institution
30 in which the person was confined shall notify:

- 1 (a) the sheriff or other law enforcement officials in the county in which the offense occurred;
- 2 (b) the sheriff or other law enforcement officials in the county or counties, if known, in which a
3 victim or the victims of the offense reside at the time of the escape or release;
- 4 (c) the sheriff or other law enforcement officials in the county, if known, in which the person
5 intends to reside upon leaving confinement;
- 6 (d) the sheriff or other law enforcement officials in the county in which the jail, prison, hospital,
7 mental health facility, or other institution from which the person escaped or was released is located; ~~and~~
- 8 (e) a victim of the offense who has requested notification in the event of an escape or a release
9 of the person; and
- 10 ~~(f)~~ (f) a court that has requested that it be notified in the event of an escape or a release or an
11 escape of the person."

12

13 **Section 2.** Section 44-5-303, MCA, is amended to read:

14 **"44-5-303. Dissemination of confidential criminal justice information.** ~~Dissemination~~ (1) Except
15 as provided in subsection (2), dissemination of confidential criminal justice information is restricted to
16 criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by
17 a district court upon a written finding that the demands of individual privacy do not clearly exceed the
18 merits of public disclosure.

19 (2) If the prosecutor determines that dissemination would not jeopardize a pending investigation
20 or other criminal proceeding of confidential criminal justice information, the information may be
21 disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency
22 after consultation with the prosecutor.

23 (3) A ~~Unless otherwise ordered by a court, a person or~~ criminal justice agency that accepts
24 confidential criminal justice information assumes equal responsibility for the security of ~~such~~ the information
25 with the originating agency. ~~Whenever confidential criminal justice information is disseminated, it must be~~
26 designated as confidential."

27

28 **NEW SECTION. Section 3. Nondisclosure of information about victim.** (1) If a victim of an offense
29 requests confidentiality, a criminal justice agency may not disseminate, except to another criminal justice
30 agency, the address, telephone number, or place of employment of the victim or a member of the victim's

1 family unless disclosure is of the location of the crime scene, is required by law, is necessary for law
2 enforcement purposes, or is authorized by a district court upon a showing of good cause.

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

6 (3) A criminal justice agency may not disseminate to the public any information directly or indirectly
7 identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, or 45-5-507 unless
8 disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement
9 purposes, or is authorized by a district court upon a showing of good cause.

10

11 **Section 4.** Section 45-9-205, MCA, is amended to read:

12 **"45-9-205. Exemption from mandatory minimum sentences.** If a court imposes any of the
13 sentencing alternatives specified in 45-9-202, the mandatory minimum sentences provided in
14 46-18-201~~(4)~~(5) do not apply."

15

16 **Section 5.** Section 46-11-701, MCA, is amended to read:

17 **"46-11-701. Pretrial proceedings -- exclusion of public and sealing of records.** (1) Except as
18 provided in this section, pretrial proceedings and records of those proceedings are open to the public. If,
19 at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a
20 trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation
21 of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the
22 jury or until an earlier time consistent with the administration of justice.

23 (2) The defendant may move that all or part of the proceeding be closed to the public, or with the
24 consent of the defendant, the judge may take action on the judge's own motion.

25 (3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding,
26 including a hearing on a motion to suppress, and may seal the record only if:

27 (a) the dissemination of information from the pretrial proceeding and its record would create a clear
28 and present danger to the fairness of the trial; and

29 (b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable
30 alternative means.

1 (4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the
 2 public under this section, a complete record must be kept and made available to the public following the
 3 completion of the trial or earlier if consistent with trial fairness.

4 (5) Notwithstanding closure of a proceeding to the public, the judge shall permit a victim of the
 5 offense to be present unless the judge determines that exclusion of the victim is necessary to protect either
 6 party's right to a fair trial or the safety of the victim. If the victim is present, the judge, at the victim's
 7 request, shall permit the presence of an individual to provide support to the victim unless the judge
 8 determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.

9 ~~(5)~~(6) When the judge determines that all or part of a document filed in support of a charge or
 10 warrant would present a clear and present danger to the defendant's right to a fair trial, the document or
 11 portion of the document must be sealed until the trial is completed unless the document or portion of the
 12 document must be used for trial fairness."
 13

14 **Section 6.** Section 46-18-101, MCA, is amended to read:

15 "**46-18-101. Correctional policy.** (1) It is the purpose of this section to declare the correctional
 16 policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted
 17 are drawn to implement the policy established by this section.

18 (2) The correctional policy of the state of Montana is to protect society by preventing crime
 19 through punishment and rehabilitation of the convicted. The legislature finds that an individual is
 20 responsible for and must be held accountable for the individual's actions, including, whenever possible, the
 21 restoration of all pecuniary losses sustained by a victim of the offense. Corrections laws and programs
 22 must be implemented to impress upon each individual the responsibility for obeying the law. To achieve
 23 this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever
 24 probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore,
 25 it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual
 26 characteristics, circumstances, needs, and potentialities. Finally, it is the policy of the state to recognize
 27 that the interests of crime victims should be considered so that, to the extent possible, victims of crime
 28 may be protected from threat of future harm by the offender.

29 (3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

30 (i) the crime committed;

1 (ii) the prospects of rehabilitation of the offender;

2 (iii) the circumstances under which the crime was committed;

3 (iv) the criminal history of the offender; and

4 (v) consideration of alternatives to imprisonment of the offender in the state prison or the women's
5 correctional center.

6 (b) Dangerous offenders who habitually violate the law and victimize the public must be removed
7 from society and correctively treated in custody for long terms, as needed. Other offenders must be dealt
8 with by probation, suspended sentence, community corrections, community service, or fine whenever such
9 disposition appears practicable and not detrimental to the needs of public safety and the welfare of the
10 individual. Whenever possible, sentences for offenders must include restitution to the victim, payment of
11 costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

12 (4) It is also the policy of the state that alternatives to imprisonment, such as community
13 corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them
14 opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate
15 in other activities that will reduce recidivism and enable offenders to become productive members of
16 society."

17
18 **Section 7.** Section 46-18-112, MCA, is amended to read:

19 **"46-18-112. Content of presentence investigation report.** (1) Whenever an investigation is
20 required, the probation officer shall promptly inquire into and report upon:

21 (a) the defendant's characteristics, circumstances, needs, and potentialities;

22 (b) the defendant's criminal record and social history;

23 (c) the circumstances of the offense;

24 (d) the time of the defendant's detention for the offenses charged; ~~and~~

25 (e) the harm caused, as a result of the offense, to the victim, the victim's immediate family, and
26 the community; and

27 (f) the victim's pecuniary loss, if any. The officer shall make a reasonable effort to confer with the
28 victim to ascertain whether the victim has sustained a pecuniary loss. If the victim is not available or
29 declines to confer, the officer shall record that information in the report.

30 (2) All local and state mental and correctional institutions, courts, and law enforcement agencies

1 shall furnish, upon request of the officer preparing a presentence investigation, the defendant's criminal
2 record and other relevant information.

3 (3) The court may, in its discretion, require that the presentence investigation report include a
4 physical and mental examination of the defendant.

5 ~~(4) If applicable, the court may require the officer to inquire into the victim's pecuniary loss and
6 make a restitution report to the court as provided by law."~~

7

8 **Section 8.** Section 46-18-113, MCA, is amended to read:

9 **"46-18-113. Availability of presentence investigation report.** (1) All presentence investigation
10 reports must be a part of the court record but may not be opened for public inspection. A copy of the
11 presentence investigation report must be provided to the prosecution, the defendant and the defendant's
12 attorney, and the agency or institution to which the defendant is committed. The prosecutor may discuss
13 the contents of the presentence report with a victim of the offense.

14 (2) The court having jurisdiction of the case may permit other access to the presentence
15 investigation report as it considers necessary."

16

17 **Section 9.** Section 46-18-115, MCA, is amended to read:

18 **"46-18-115. Sentencing hearing.** Before imposing sentence or making any other disposition upon
19 acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing,
20 without unreasonable delay, as follows:

21 (1) The court shall afford the parties an opportunity to be heard on any matter relevant to the
22 disposition, including the applicability of sentencing enhancement provisions, mandatory minimum
23 sentences, persistent felony offender status, or an exception to these matters.

24 (2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided
25 by 46-18-301.

26 (3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address
27 the defendant personally to ascertain whether the defendant wishes to make a statement and to present
28 any information in mitigation of punishment or reason why the defendant should not be sentenced. If the
29 defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to
30 do so.

1 (4) (a) The court shall permit the victim to present a statement concerning the effects of the crime
2 on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated,
3 and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present
4 the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or
5 both.

6 (b) The court shall give copies of any written statements of the victim to the prosecutor and the
7 defendant prior to imposing sentence.

8 (c) The court shall consider the victim's statement along with other factors. However, if the
9 victim's statement includes new material facts upon which the court intends to rely, the court shall allow
10 the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

11 ~~(4)~~(5) The court shall impose sentence or make any other disposition authorized by law.

12 ~~(5)~~(6) In felony cases, the court shall specifically state all reasons for the sentence, including
13 restrictions, conditions, or enhancements imposed, in open court on the record and in the written
14 judgment."
15

16 **Section 10.** Section 46-18-201, MCA, is amended to read:

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

19 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
20 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
21 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
22 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
23 period of the deferred imposition. Reasonable restrictions or conditions may include:

24 (i) jail base release;

25 (ii) jail time not exceeding 180 days;

26 (iii) conditions for probation;

27 ~~(iv)~~ restitution;

28 ~~(v)~~(iv) payment of the costs of confinement;

29 ~~(vi)~~(v) payment of a fine as provided in 46-18-231;

30 ~~(vii)~~(vi) payment of costs as provided in 46-18-232 and 46-18-233;

1 ~~(viii)~~(vii) payment of costs of court-appointed counsel as provided in 46-8-113;
2 ~~(ix)~~(viii) with the approval of the facility or program, order the offender to be placed in a community
3 corrections facility or program as provided in 53-30-321;
4 ~~(x)~~(ix) community service;
5 ~~(xi)~~(x) home arrest as provided in Title 46, chapter 18, part 10;
6 ~~(xii)~~(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection
7 of society; or
8 ~~(xiii)~~(xii) any combination of the above.

9 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
10 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
11 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
12 restrictions or conditions may include any of those listed in subsection (1)(a).

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

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

16 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
17 the defendant to the department of corrections and human services for placement in an appropriate
18 correctional institution or program;

19 (f) with the approval of the facility or program, order the offender to be placed in a community
20 corrections facility or program as provided in 53-30-321; or

21 (g) impose any combination of subsections (1)(b) through (1)(f).

22 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
23 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
24 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
25 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

26 ~~(2)~~(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
27 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
28 a felony, regardless of whether any other conditions are imposed.

29 ~~(3)~~(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the
30 court shall consider any elapsed time and either expressly allow part or all of it as a credit against the

1 sentence or reject all or part as a credit ~~and~~. The court shall state its reasons in the order. Credit,
2 however, must be allowed for jail or home arrest time already served.

3 ~~(4)~~(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2
4 years of a sentence of imprisonment imposed under the following sections may not be deferred or
5 suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
6 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

7 ~~(5)~~(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a
8 sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

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

13 ~~(7)~~(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of
14 a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be
15 deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

16 ~~(8)~~(9) In imposing a sentence on a defendant convicted of a sexual offense as defined in
17 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
18 Title 46, chapter 23, part 5.

19 ~~(9)~~(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
20 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
21 program.

22 ~~(10)~~(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
23 imprisonment of the offender in the state prison, including placement of the offender in a community
24 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
25 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
26 or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were
27 not selected, based on the criteria contained in 46-18-225."

28

29 **Section 11.** Section 46-18-202, MCA, is amended to read:

30 **"46-18-202. Additional restrictions on sentence.** (1) The district court may also impose any of

1 the following restrictions or conditions on the sentence provided for in 46-18-201 that it considers
2 necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

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

4 (b) prohibition of the defendant's owning or carrying a dangerous weapon;

5 (c) restrictions on the defendant's freedom of association;

6 (d) restrictions on the defendant's freedom of movement;

7 (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of
8 the victim and society.

9 (2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term
10 exceeding 1 year, the court may also impose the restriction that the defendant ~~be~~ is ineligible for parole and
11 participation in the supervised release program while serving that term. If such a restriction is to be
12 imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary
13 for the protection of society, it shall impose the restriction as part of the sentence and the judgment ~~shall~~
14 must contain a statement of the reasons for the restriction.

15 (3) The judge in a justice's, city, or municipal court does not have the authority to restrict an
16 individual's rights as enumerated in subsection (1)(a).

17 (4) When the district court imposes a sentence of probation, as defined in 46-23-1001, any
18 probation agreement signed by the defendant may contain a clause waiving extradition."
19

20 **Section 12.** Section 46-18-222, MCA, is amended to read:

21 **"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition**
22 **and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this
23 state and the restrictions on deferred imposition and suspended execution of sentence prescribed by
24 46-18-201(4)(5) through (6)(7), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

25 (1) the defendant was less than 18 years of age at the time of the commission of the offense for
26 which the defendant is to be sentenced;

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

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

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

6 (5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual
 7 element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the
 8 commission of the offense; or

9 (6) the offense was committed under 45-5-502(3) and the court determines that treatment of the
 10 defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the
 11 ultimate protection of the victim and society, in which case the court shall include in its judgment a
 12 statement of the reasons for its determination."

13
 14 **Section 13.** Section 46-18-241, MCA, is amended to read:

15 **"46-18-241. Condition of restitution.** (1) As provided in 46-18-201, a sentencing court ~~may~~ shall
 16 require an offender to make restitution to any victim of the offense who has sustained pecuniary loss as
 17 a result of the offense.

18 (2) The court may require the offender to pay the cost of supervising the payment of restitution,
 19 as provided in 46-18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not
 20 less than \$5 or more than \$250. Payment must be made to the court, which shall disburse the money to
 21 the entity employing the person ordered to supervise restitution under 46-18-245.

22 (3) If the court finds that, because of circumstances beyond the offender's control, the offender
 23 is not and will not be able to pay any restitution during the period of state supervision, the court may order
 24 the offender to perform community service commensurate with the amount of restitution that would have
 25 been imposed."

26
 27 **Section 14.** Section 46-18-242, MCA, is amended to read:

28 **"46-18-242. Investigation and report of victim's loss.** (1) Whenever the court believes that
 29 ~~restitution may be a proper condition of a deferred or suspended sentence~~ a victim of the offense may have
 30 sustained a pecuniary loss as a result of the offense or whenever the prosecuting attorney requests, the

1 court shall order the probation officer, restitution officer, or other designated person to include in the
2 presentence investigation and report:

- 3 (a) documentation of the offender's financial resources and future ability to pay restitution; and
4 (b) documentation of the victim's pecuniary loss, submitted by the victim or by the board of crime
5 control if compensation for the victim's loss has been reimbursed by the crime victims compensation and
6 assistance account.

7 (2) ~~Where no~~ When a presentence report is not authorized or requested, the court may receive
8 evidence of the offender's ability to pay and the victim's loss at the time of sentencing."
9

10 **Section 15.** Section 46-18-243, MCA, is amended to read:

11 **"46-18-243. ~~Definition~~ Definitions.** For purposes of 46-18-241 through 46-18-249, the following
12 definitions apply:

13 (1) "Pecuniary loss" means:

- 14 (a) all special damages, but not general damages, substantiated by evidence in the record, that a
15 person could recover against the offender in a civil action arising out of the facts or events constituting the
16 offender's criminal activities, including without limitation the money equivalent of loss resulting from
17 property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical
18 expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that
19 the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings
20 related to the commission of the offense, and reasonable expenses related to funeral and burial or
21 crematory services; and

22 (b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in
23 the investigation and prosecution of the offense.

24 (2)(a) "Victim" means:

25 ~~(i)~~ (i) a person who suffers loss of property, bodily injury, or death as a result of:

26 ~~(i)(A)~~ (A) ~~criminally injurious conduct~~ the commission of an offense; or

27 ~~(i)(B)~~ (B) ~~his~~ the good faith effort to prevent ~~criminally injurious conduct~~ the commission of an offense;

28 or

29 (C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

30 (ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a

1 homicide victim;

2 (iii) a governmental entity that suffers loss of property as a result of the commission of an offense
3 in this state; or

4 ~~(iv)~~ (iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim
5 of the offense for his pecuniary loss.

6 (b) Victim does not include a person who is accountable for the crime or accountable for a crime
7 arising from the same transaction."

8

9 **Section 16.** Section 46-18-244, MCA, is amended to read:

10 **"46-18-244. Type and time of payment -- defenses.** (1) The court shall specify the amount,
11 method, and time of payment to the victim and may permit payment in installments. The court may not
12 establish a payment schedule extending beyond the period ~~for which the sentence has been suspended or~~
13 ~~deferred under 46-18-201~~ of state supervision over the offender.

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

18 (3) In addition to other methods of payment, the court may order one or more of the following in
19 order to satisfy the offender's restitution obligation:

20 (a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part
21 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are
22 reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the
23 state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after
24 sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale,
25 any remaining amount must be returned to the offender.

26 (b) return of any property to the victim;

27 (c) payment of up to one-third of the offender's prison earnings.

28 (4) With the consent of the victim and in the discretion of the court, an offender may be ordered
29 to make restitution in services in lieu of money or to make restitution to a person designated by the victim,
30 if that person provided services to the victim as a result of the offense."

1 **Section 17.** Section 46-18-245, MCA, is amended to read:

2 "**46-18-245. Supervision of payment.** The court may order a probation officer, restitution officer,
3 officer of the board of crime control, or other designated person to supervise the making of restitution and
4 to report to the court any default in payment."

5

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

7 "**46-18-246. Waiver or modification of payment.** An offender may at any time petition the
8 sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court
9 shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date,
10 place, and time and inform the victim that ~~he~~ the victim will have an opportunity to be heard. If the court
11 finds that the circumstances upon which it based the imposition, amount, method, or time of payment no
12 longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or
13 waive unpaid restitution or modify the time or method of making restitution. The court may extend the
14 restitution schedule, but not beyond the period ~~for which the sentence has been suspended or deferred~~
15 ~~under 46-18-201~~ provided for in 46-18-244."

16

17 **Section 19.** Section 46-18-247, MCA, is amended to read:

18 "**46-18-247. Default.** (1) If an offender sentenced to make restitution is in default, the sentencing
19 court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under
20 46-18-203 requiring the offender to show cause why ~~he~~ the offender should not be confined for failure to
21 obey the sentence of the court. The court may order the offender to appear at a time, date, and place for
22 a hearing or, if ~~he~~ the offender fails to appear as ordered, issue a warrant for ~~his~~ the offender's arrest. The
23 order or warrant must be accompanied by written notice of the offender's right to a hearing as provided
24 in 46-18-203.

25 (2) If the court finds that the offender's default was attributable to a the offender's failure ~~on his~~
26 ~~part~~ to make a good faith effort to obtain the necessary funds for payment of the ordered restitution, the
27 court may take any action provided for in 46-18-203. If confinement is ordered, the court, after entering
28 the order, may ~~at any time, for good cause shown,~~ reduce the term of confinement and, in accordance with
29 the provisions of 46-18-246, waive satisfaction of the restitution order.

30 (3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following

1 a default in the payment of restitution or any installment ~~thereof~~ of restitution, the sentencing court may
 2 order the restitution to be collected by any method authorized for the enforcement of other judgments."

3

4 **NEW SECTION. Section 20. Allocation of fines, costs, restitution, and other charges.** (1) If an
 5 offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out
 6 of the same criminal proceeding, money collected from the offender must be allocated as provided in this
 7 section.

8 (2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution
 9 and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50%
 10 of all money collected from the defendant must be applied to payment of restitution and the balance must
 11 be applied to other payments in the following order:

- 12 (a) payment of charges imposed pursuant to 46-18-236;
 13 (b) payment of costs imposed pursuant to 46-18-232 or 46-18-233;
 14 (c) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and
 15 (d) any other payments ordered by the court.

16 (3) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has
 17 been paid, any additional money collected must be applied to payment of those fines, costs, charges, or
 18 other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments
 19 have been paid, any additional money collected must be applied toward payment of the restitution.

20

21 **Section 21.** Section 46-18-302, MCA, is amended to read:

22 **"46-18-302. Evidence that may be received.** In the sentencing hearing, evidence may be presented
 23 as to any matter the court considers relevant to the sentence, including but not limited to the nature and
 24 circumstances of the crime; the defendant's character, background, history, and mental and physical
 25 condition; the harm caused to the victim and the victim's family as a result of the offense; and any other
 26 facts in aggravation or mitigation of the penalty. Any evidence that the court considers to have probative
 27 force may be received regardless of its admissibility under the rules governing admission of evidence at
 28 criminal trials. Evidence admitted at the trial relating to ~~such~~ aggravating or mitigating circumstances ~~shall~~
 29 must be considered without reintroducing it at the sentencing proceeding. The state and the defendant or
 30 ~~his~~ the defendant's counsel ~~shall~~ must be permitted to present argument for or against sentence of death."

1 **Section 22.** Section 46-23-202, MCA, is amended to read:

2 **"46-23-202. Investigation of prisoner by board -- consideration of victim's statement.** (1) Within
3 the 2 months prior to a prisoner's official parole eligibility date or within the 2 months following the date
4 on which a prisoner becomes eligible pursuant to 53-30-105(5), the board shall consider all pertinent
5 information regarding each prisoner, including the circumstances of the offense; the prisoner's previous
6 social history and criminal record; the prisoner's conduct, employment, and attitude in prison; and the
7 reports of any physical and mental examinations that have been made.

8 (2) Before ordering the parole of any prisoner, the board shall:

9 (a) conduct a hearing and interview the prisoner. At the time of the hearing, the board shall receive
10 relevant statements from interested persons and any person may be represented by counsel, provided that
11 the board has the power to regulate procedures at all hearings.

12 (b) permit a victim to present a statement concerning the effects of the crime on the victim, the
13 circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's
14 opinion regarding whether the prisoner should be paroled. In the board's discretion, the victim's statement
15 may be kept confidential. The board shall consider the victim's statement, along with the information
16 provided under subsection (1), in determining whether to grant parole."

17
18 **Section 23.** Section 46-23-210, MCA, is amended to read:

19 **"46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order
20 a person placed in a correctional institution or program, except a person under sentence of death. To be
21 eligible for a medical parole, a person must have an examination and written diagnosis by a physician
22 licensed under Title 37 to practice medicine. The diagnosis must include:

23 (a) a determination that the person suffers from an incapacitating physical condition, disease, or
24 syndrome that renders the person highly unlikely to present a clear and present danger to public safety;

25 (b) a description of the physical condition, disease, or syndrome and a detailed description of the
26 person's physical incapacity; and

27 (c) a prognosis addressing the likelihood of the person's recovery from the physical condition,
28 disease, or syndrome and the extent of any potential recovery.

29 (2) The diagnosis must be reviewed and accepted by the department before the board may consider
30 granting a medical parole.

1 (3) The board shall require as a condition of medical parole that the person agree to placement in
 2 an environment chosen by the department during the parole period, including but not limited to a hospital,
 3 nursing home, or family home. The board may require as a condition of parole that the person agree to
 4 periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis
 5 must be submitted to the board and department by the examining physician. If either the board or
 6 department determines that the person's physical capacity has improved to the extent that the person is
 7 likely to pose a possible detriment to society, the board may revoke the parole and return the person to the
 8 custody of the department.

9 (4) Medical parole may be requested by the board, the department, an incarcerated person, or an
 10 incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the
 11 administrator of the correctional institution in which the person is incarcerated.

12 (5) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

13 (6) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply
 14 to nonmedical parole."

15
 16 **Section 24.** Section 46-23-215, MCA, is amended to read:

17 "**46-23-215. Conditions of parole.** (1) ~~Every~~ A prisoner while on parole ~~shall remain~~ remains in
 18 the legal custody of the institution from which ~~he~~ the prisoner was released but ~~shall be~~ is subject to the
 19 orders of the board.

20 (2) When an order for parole is issued, it ~~shall~~ must recite the conditions ~~thereof~~ of parole. If
 21 restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a
 22 condition to pay restitution to the victim. An order for parole or any parole agreement signed by a prisoner
 23 may contain a clause waiving extradition.

24 (3) Whenever a prisoner in the Montana state prison has been approved for parole on condition that
 25 ~~he~~ the prisoner obtain employment or secure suitable living arrangements or on any other condition that
 26 is difficult to fulfill while incarcerated, the warden may grant ~~him~~ the prisoner a furlough, not to exceed 10
 27 days, for purposes of fulfilling the condition. While on ~~such~~ furlough, the prisoner remains in the legal
 28 custody of the prison and is subject to all other conditions recited by the board."

29
 30 **Section 25.** Section 46-23-405, MCA, is amended to read:

1 **"46-23-405. Establishing program -- rules.** The department ~~is authorized and directed to~~ shall
 2 establish a supervised release program and make rules in accordance with Title 2, chapter 4 (the Montana
 3 Administrative Procedure Act), to implement and control the ~~same~~ program. Rules ~~shall~~ must include
 4 guidelines for:

5 (1) prisoner eligibility;

6 (2) prisoner participation in a recognized educational, treatment, or training program or work
 7 program in conjunction with any of the ~~above~~ programs listed in this subsection;

8 (3) approval of the sponsor;

9 (4) review of a board decision to deny an applicant admittance into the program;

10 (5) supervision of the prisoner by or under the direction of a supervising agent while ~~he~~ the prisoner
 11 is in the program;

12 (6) implementation of a plan for the prisoner to satisfy any restitution or community service
 13 obligation imposed as part of the prisoner's sentence under 46-18-201;

14 ~~(6)(7)~~ conducting revocation hearings;

15 ~~(7)(8)~~ establishment of a program by the prisoner; and

16 ~~(8)(9)~~ any other provisions necessary to implement this part."
 17

18 **Section 26.** Section 46-23-1011, MCA, is amended to read:

19 **"46-23-1011. Supervision on probation.** (1) The department shall supervise persons during their
 20 probation period in accord with the conditions set by a court.

21 (2) A copy of the conditions of probation must be signed by the probationer and given to the
 22 probationer and the probationer's probation and parole officer, who shall report on the probationer's
 23 progress under rules of the court.

24 (3) The probation and parole officer shall regularly advise and consult with the probationer to
 25 encourage the probationer to improve the probationer's condition and conduct and shall inform the
 26 probationer of the restoration of rights on successful completion of the sentence.

27 (4) The probation and parole officer may recommend and a court may modify any condition of
 28 probation or suspension of sentence at any time. Notice must be given to the probation and parole officer
 29 before any condition is modified, and the officer must be given an opportunity to present the officer's ideas
 30 or recommendations on any modification. A copy of a modification of conditions must be delivered to the

1 probation and parole officer and the probationer. Waiver or modification of restitution may be ordered only
 2 as provided under the provisions of 46-18-246.

3 (5) The probation and parole officer shall keep records as the department or the court may require.

4 (6) (a) Upon recommendation of the probation and parole officer, a court may conditionally
 5 discharge a probationer from supervision before expiration of the probationer's sentence if the court
 6 determines that a conditional discharge from supervision is in the best interests of the probationer and
 7 society and will not present unreasonable risk of danger to the victim of the offense.

8 (b) Subsection (6)(a) does not prohibit a court from revoking the order suspending execution or
 9 deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally
 10 discharged from supervision.

11 (c) If the department certifies to the court that the workload of a district probation and parole office
 12 has exceeded the optimum workload for the district over the preceding 60 days, the court may not place
 13 an offender on probation under supervision by that district office unless it grants a conditional discharge
 14 to a probationer being supervised by that district office. The department may recommend probationers to
 15 the court for conditional discharge. The court may accept or reject the recommendations of the
 16 department. The department shall determine the optimum workload for each district probation and parole
 17 office."

18

19 **Section 27.** Section 46-23-1021, MCA, is amended to read:

20 **"46-23-1021. Supervision on parole.** (1) The department shall retain custody of all persons placed
 21 on parole and shall supervise the persons during their parole ~~period~~ periods ~~in accord~~ accordance with the
 22 conditions set by the board.

23 (2) The department shall assign personnel to assist ~~persons~~ a person who is eligible for parole in
 24 preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board
 25 prior to its consideration of the case of the eligible person.

26 (3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and
 27 to the parolee's probation and parole officer, who shall report on the parolee's progress under the rules of
 28 the board.

29 (4) The probation and parole officer shall regularly advise and consult with the parolee, assist the
 30 parolee in adjusting to community life, and inform the parolee of the restoration of rights on successful

1 completion of the sentence.

2 (5) The probation and parole officer shall keep records as the board or department may require.
3 All records must be entered in the master file of the individual.

4 (6) (a) Upon recommendation of the probation and parole officer, the board may conditionally
5 discharge a parolee from supervision before expiration of the parolee's sentence if the board determines
6 that a conditional discharge from supervision is in the best interests of the parolee and society and will not
7 present unreasonable risk of danger to the victim of the offense.

8 (b) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in
9 46-23-1025, of a parolee who has been conditionally discharged from supervision.

10 (c) If the department certifies to the board that the workload of a district probation and parole
11 office has exceeded the optimum workload for the district over the preceding 60 days, the board may not
12 parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised
13 by that district office. The department may recommend parolees to the board for conditional discharge.
14 The board may accept or reject the recommendations of the department. The department shall determine
15 the optimum workload for each district probation and parole office."
16

17 **Section 28.** Section 46-23-1025, MCA, is amended to read:

18 "**46-23-1025. Report to and action by the board.** (1) If the hearings officer determines that there
19 is probable cause to believe that the prisoner has violated a condition of ~~his~~ parole, the probation and parole
20 officer shall immediately notify the board and shall submit in writing a report showing in what manner the
21 prisoner has violated the conditions of release. This report ~~shall~~ must be accompanied by the findings of
22 the hearings officer.

23 (2) ~~Thereupon~~ Upon receipt of a report, the board shall cause the prisoner to be promptly brought
24 before it for a hearing on the violation charged under ~~such~~ rules as that the board may adopt. If the
25 violation is established, the board may continue or revoke the parole or conditional release or may enter
26 ~~such other~~ an order as it ~~may see~~ sees fit.

27 (3) If the prisoner has violated a condition of release requiring the payment of restitution, the board
28 shall notify the victim of the offense prior to the hearing required by subsection (2) and give the victim an
29 opportunity to be heard. If the board finds that due to circumstances beyond the prisoner's control, the
30 prisoner is unable to make the required restitution payments, the board may not revoke the prisoner's parole

1 for failure to pay restitution. The board may modify the time or method of making restitution and may
 2 extend the restitution schedule, but the schedule may not be extended beyond the period of state
 3 supervision over the prisoner.

4 ~~(3)~~(4) If it appears that ~~he~~ the prisoner has violated the provisions of ~~his~~ release, the board shall
 5 determine whether the time from the issuing of the warrant to the date of ~~his~~ the prisoner's arrest or any
 6 part of it will be counted as time served under the sentence."

7
 8 **Section 29.** Section 46-24-103, MCA, is amended to read:

9 **"46-24-103. Duty of attorney general.** The attorney general shall ~~assure~~ ensure that victims and
 10 witnesses of crime receive fair and proper treatment in the criminal justice system. The attorney general
 11 shall prepare a written notice of the rights and services available to victims of crime under this chapter.
 12 The notice must be distributed to local law enforcement agencies in the state. In addition, the attorney
 13 general shall ~~assure~~ ensure that victims and witnesses are provided important services and assistance as
 14 required under this chapter."

15
 16 **Section 30.** Section 46-24-104, MCA, is amended to read:

17 **"46-24-104. Consultation with victim of ~~felony offense~~ certain offenses.** ~~The~~ As soon as possible
 18 prior to disposition of the case, the prosecuting attorney in a criminal case shall consult with the victim of
 19 a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the
 20 victim or, in the case of a minor child victim or homicide victim, with the family of the victim in order to
 21 obtain the views of the victim or ~~his~~ the victim's family regarding the disposition of the case, including:

- 22 (1) dismissal of the case;
 23 (2) release of the accused pending judicial proceedings;
 24 (3) plea negotiations; and
 25 (4) pretrial diversion of the case from the judicial process."

26
 27 **Section 31.** Section 46-24-201, MCA, is amended to read:

28 **"46-24-201. Services to victims of crime.** (1) Law enforcement personnel shall ~~assure~~ ensure that
 29 a victim of a crime receives emergency social and medical services as soon as possible and that ~~such~~ the
 30 victim is given ~~information on~~ written notice, in the form supplied by the attorney general, of the following:

- 1 ~~(1)~~(a) the availability of crime victim compensation;
- 2 ~~(2) community-based victim treatment programs;~~
- 3 (b) access by the victim and the defendant to information about the case;
- 4 ~~(3)~~(c) the role of the victim in the criminal justice process, including what ~~he~~ the victim can expect
- 5 from the system, as well as what the system expects from the victim; and
- 6 ~~(4)~~(d) stages in the criminal justice process of significance to a crime victim and the manner in
- 7 which information about ~~such~~ the stages may be obtained.

8 (2) In addition to the information supplied under subsection (1), law enforcement personnel shall

9 provide the victim with written information on community-based victim treatment programs, including

10 medical, housing, counseling, and emergency services available in the community.

11 (3) As soon as possible, law enforcement personnel shall give to the victim the following

12 information:

13 (a) the name, office address, and telephone number of a law enforcement officer assigned to

14 investigate the case; and

15 (b) the prosecuting attorney's name, office address, and telephone number."

16

17 **Section 32.** Section 46-24-202, MCA, is amended to read:

18 **"46-24-202. Notification of available protective services.** Law enforcement officers and

19 prosecuting attorneys shall provide a victim or witness information on the availability of services to protect

20 the victim or witness from intimidation, including the process for obtaining a protective order from the

21 court."

22

23 **Section 33.** Section 46-24-203, MCA, is amended to read:

24 **"46-24-203. Prompt notification to victims and witnesses of felony certain offenses.** (1) A person

25 described in subsection (2) who provides the appropriate official with a current address and telephone

26 number must receive prompt advance notification, if possible, of proceedings relating to ~~his~~ the person's

27 case, including:

28 (a) the arrest of an accused;

29 (b) the release of the accused pending judicial proceedings; ~~and~~

30 (c) the crime with which the accused has been charged, including an explanation of the elements

1 of the offense when necessary to an understanding of the nature of the crime;

2 ~~(e)(d)~~ proceedings in the prosecution of the accused, including entry of a plea of guilty, and the
3 setting of a trial date, ~~the sentencing schedule, the sentence imposed, the term of imprisonment, if~~
4 ~~imposed, and the release of the accused from imprisonment;~~

5 (e) if the accused is convicted or pleads guilty, the function of a presentence report; the name,
6 office address, and telephone number of the person preparing the report; and the convicted person's right
7 of access to the report, as well as the victim's right under 46-18-115 to present a statement in writing or
8 orally at the sentencing proceeding and the convicted person's right to be present at the sentencing
9 proceeding and to have access to the victim's statement;

10 (f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of
11 imprisonment, if imposed; and

12 (g) the right under [section 36] of a victim of a felony offense to receive information from the
13 department of corrections and human services concerning the convicted person's incarceration.

14 (2) A person entitled to notification under subsection (1) must be a victim or witness of a felony
15 offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim, a
16 relative of such a victim or witness who is a minor, or a relative of a homicide victim."

17
18 **Section 34.** Section 46-24-205, MCA, is amended to read:

19 **"46-24-205. Notification to employer or creditor -- limitations on employer.** (1) The law
20 enforcement agency or prosecuting attorney in a criminal case shall assist a victim or witness who requests
21 assistance in informing an employer that the need for victim and witness cooperation in the prosecution
22 of the case may necessitate absence of the victim or witness from ~~his~~ the place of employment.

23 (2) A law enforcement agency or prosecuting attorney shall assist a victim or witness who, as a
24 direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney,
25 is subjected to serious financial strain. ~~Such~~ The agency or prosecuting attorney shall assist the victim or
26 witness by explaining to creditors the reason for ~~such~~ the serious financial strain.

27 (3) An employer may not discharge or discipline a victim or a member of the victim's family for
28 participation at the prosecuting attorney's request in preparation for or attendance at a criminal justice
29 proceeding.

30 (4) As used in this section, "member of the victim's family" means the victim's spouse, child by

1 birth or adoption, stepchild, parent, stepparent, or sibling, but does not include a person who is accountable
2 for the crime or accountable for a crime arising from the same transaction."

3
4 **NEW SECTION. Section 35. Information concerning appeal or postconviction remedies.** If the
5 defendant appeals or pursues a postconviction remedy, the attorney general, or the county attorney if the
6 case has not been referred to the attorney general, shall promptly inform the victim of the notice of appeal
7 or postconviction petition, of the date, time, and place of any hearing, and of the decision.

8
9 **NEW SECTION. Section 36. Information concerning confinement.** Upon request of a victim of a
10 felony offense, the department of corrections and human services or the board of pardons, as applicable,
11 shall:

12 (1) promptly inform the victim of the estimated date of the prisoner's release from confinement in
13 the Montana state prison, if reasonably ascertainable;

14 (2) promptly inform the victim of the time and place of a parole hearing concerning the prisoner
15 and of the victim's right to submit a statement to the board of pardons under 46-23-202;

16 (3) provide reasonable advance notice to the victim before release of the defendant on furlough
17 or to a work-release program, half-way house, or other community-based program or correctional facility;
18 and

19 (4) promptly inform the victim of the occurrence of any of the following events concerning the
20 prisoner:

21 (a) an escape from a correctional or mental health facility or community program;

22 (b) a recapture;

23 (c) a decision of the board of pardons;

24 (d) a decision of the governor to commute the sentence or to grant executive clemency;

25 (e) a release from confinement and any conditions attached to the release; and

26 (f) the prisoner's death.

27
28 **NEW SECTION. Section 37. General requirements for information.** (1) Unless specifically stated
29 otherwise, the requirements of 44-2-601, 46-24-104, 46-24-201 through 46-24-203, [section 35], and
30 [section 36] to provide information to the victim may be satisfied by either written or oral communication

1 with the victim or the victim's designee.

2 (2) The person responsible for providing information required by 44-2-601, 46-24-104, 46-24-201
3 through 46-24-203, [section 35], and [section 36] shall promptly inform the victim of significant changes
4 in the information.

5 (3) The obligation to furnish information to a victim under 44-2-601, 46-24-104, 46-24-201
6 through 46-24-203, [section 35], and [section 36] is conditioned upon the victim informing the appropriate
7 agency in writing of the name, address, and telephone number of the person to whom the information
8 should be provided and of any change of name, address, or telephone number.

9

10 **Section 38.** Section 53-9-128, MCA, is amended to read:

11 **"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits
12 when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct.
13 During the time the claimant seeks ~~such~~ weekly benefits, the claimant, as a result of ~~such~~ the injury, must
14 have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit
15 amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a
16 maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly
17 compensation payments ~~shall~~ must be made at the end of each 2-week period. ~~No weekly~~ Weekly
18 compensation payments may not be paid for the first week after the criminally injurious conduct occurred,
19 but if total actual loss of wages continues for 1 week, weekly compensation payments ~~shall~~ must be paid
20 from the date the wage loss began. Weekly compensation payments ~~shall~~ must continue until the claimant
21 has a reasonable prospect of being regularly employed in the normal labor market.

22 (2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon,
23 reasonable hospital services and medicines, and ~~such~~ other treatment ~~as may be~~ approved by the division
24 for the injuries suffered due to criminally injurious conduct.

25 (3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are
26 entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66
27 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to
28 a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly
29 compensation payments ~~shall~~ must be made at the end of each 2-week period.

30 (b) Benefits under subsection (3)(a) ~~of this section shall~~ must be paid to the spouse for the benefit

1 of the spouse and other dependents unless the division determines that other payment arrangements should
2 be made. If a spouse dies or remarries, benefits under subsection (3)(a) ~~shall~~ must cease to be paid to the
3 spouse but ~~shall~~ must continue to be paid to the other dependents ~~so~~ as long as their dependent status
4 continues.

5 (4) Reasonable funeral and burial expenses of the victim, not exceeding ~~\$2,000~~ \$3,500, ~~shall~~ must
6 be paid if all other collateral sources have properly paid ~~such~~ expenses but have not covered all ~~such~~
7 expenses.

8 (5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's
9 death because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000
10 in the aggregate.

11 (6) Compensation benefits are not payable for pain and suffering, inconvenience, physical
12 impairment, or nonbodily damage.

13 (7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result
14 of ~~such~~ the injury has no reasonable prospect of being regularly employed in the normal labor market, and
15 who was employable but was not employed at the time of ~~such~~ the injury, may in the discretion of the
16 division be awarded weekly compensation benefits in an amount determined by the division not to exceed
17 \$100 per week. Weekly compensation payments ~~shall~~ must continue until the claimant has a reasonable
18 prospect of being regularly employed in the normal labor market or for a shorter period as determined by
19 the division. The claimant ~~shall~~ must be awarded benefits as provided in subsection (2) ~~of this section~~.

20 (b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was
21 employable but not employed at the time of death may in the discretion of the division be awarded, in a
22 gross single amount payable to all dependents, a sum not to exceed \$100 per week, which ~~shall be~~ is
23 payable in the manner and for the period provided by subsection (3)(b) ~~of this section~~ or for ~~such~~ a shorter
24 period as determined by the division. The claimant ~~shall~~ must be awarded benefits as provided in
25 subsection (4) ~~of this section~~.

26 (8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not
27 be paid less frequently than every 2 weeks.

28 (9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister
29 of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental
30 health treatment received as a result of the victim's death.

1 (b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is
2 a victim of a sexual crime ~~for which a person has been charged~~ and who is not entitled to receive services
3 under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of
4 the crime.

5 (c) Total payments made under subsections (9)(a) and (9)(b) may not exceed ~~\$500~~ \$2,000 or 12
6 consecutive months of treatment for each person ~~or \$1,500 for a family, whichever occurs first.~~"

7
8 **NEW SECTION. Section 39. Repealer.** Section 46-23-204, MCA, is repealed.

9
10 **NEW SECTION. Section 40. Codification instruction.** (1) [Section 3] is intended to be codified
11 as an integral part of Title 44, chapter 5, part 3, and the provisions of Title 44, chapter 5, part 3, apply to
12 [section 3].

13 (2) [Section 20] is intended to be codified as an integral part of Title 46, chapter 18, part 2, and
14 the provisions of Title 46, chapter 18, part 2, apply to [section 20].

15 (3) [Sections 35 through 37] are intended to be codified as an integral part of Title 46, chapter 24,
16 part 2, and the provisions of Title 46, chapter 24, part 2, apply to [sections 35 through 37].

17
18 **NEW SECTION. Section 41. Severability.** If a part of [this act] is invalid, all valid parts that are
19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
20 applications, the part remains in effect in all valid applications that are severable from the invalid
21 applications.

22
23 **NEW SECTION. Section 42. Applicability.** [Sections 10, 13, and 21] apply to trials for and
24 sentences imposed for crimes that were committed on or after [the effective date of this act].

25 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0069, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill generally revising the laws relating to the protection and treatment of victims of crime and to the payment of restitution by the offender.

ASSUMPTIONS:

Crime Control Division:

1. An officer/employee of the Board of Crime Control will not be required to perform actual restitution collection duties.
2. An officer/employee of the Board of Crime Control will coordinate information with the courts and assist with restitution case management for offenders whose victims have received benefits from the Crime Victims Compensation Account administered by the Board of Crime Control.
3. The caseload for restitution offenders for which the Board of Crime Control will be assisting is estimated at 126 for FY96, 250 for FY97, and over 350 by FY98.
4. The estimated additional FTE required by the Crime Control Division to assist with case management is 0.50 FTE for FY96 and 1.00 FTE for FY97. The FTE is part of a new proposal in the Governor's Executive Budget. Associated operating expenses, also in the Executive Budget, will increase by \$8,000 in FY96 and \$12,000 in FY97.
5. The estimated increase in victim compensation payments as a result of increased burial expenses is \$20,000 per year, as recommended in the Executive Budget.
6. The estimated increase in victim compensation payments for secondary mental health counseling is \$30,000 per year, as recommended in the Executive Budget.
7. Funding for the increased expenditures is from the crime victim compensation state special revenue account and total \$74,700 in FY96 and \$94,420 in FY97.
8. The amount of restitution ordered by the courts will increase as a result of this bill, but there is inadequate information at this time to provide a reasonable estimate.

Department of Corrections and Human Services (DCHS):

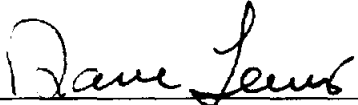
9. The Probation and Parole Bureau writes approximately 1,500 pre-sentence reports per year. These reports include a victim impact statement.
10. Established community service programs are limited in the State of Montana.
11. There may be a significant fiscal impact to community service programs if restitution can be substituted for community services and the department is responsible for supervision. Additional impact would stem primarily from increased costs of providing workers' compensation insurance, which are not subject to reasonable estimation.
12. There will be no fiscal impact to the Parole Board.

FISCAL IMPACT:

None other than as included in the Executive Budget.

TECHNICAL NOTES:

Page 20, line 27 requires the Board of Pardons to notify the victim of the offense prior to the hearing for a violation of a condition of release requiring restitution. Consideration may be given to changing the requirement to the "hearings officer" to encourage victim testimony and to make it easier for victims to testify at preliminary hearings, rather than travel to Deer Lodge.

 1-10-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

MARJORIE FISHER, PRIMARY SPONSOR DATE

Fiscal Note for HB0069, as introduced

HB 69

HOUSE BILL NO. 69

INTRODUCED BY FISHER, QUILICI, GAGE, BROOKE, EWER

BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE PROTECTION AND TREATMENT OF VICTIMS OF CRIME AND TO THE PAYMENT OF RESTITUTION BY THE OFFENDER; AMENDING SECTIONS 27-2-201, 44-2-601, 44-5-303, 45-9-205, 46-11-701, 46-18-101, 46-18-112, 46-18-113, 46-18-115, 46-18-201, 46-18-202, 46-18-222, 46-18-241, 46-18-242, 46-18-243, 46-18-244, 46-18-245, 46-18-246, 46-18-247, 46-18-302, 46-23-202, 46-23-210, 46-23-215, 46-23-405, 46-23-1011, 46-23-1021, 46-23-1025, 46-24-103, 46-24-104, 46-24-201, 46-24-202, 46-24-203, 46-24-205, AND 53-9-128, MCA; REPEALING SECTION 46-23-204, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 44-2-601, MCA, is amended to read:

"44-2-601. Notification of escape or release from confinement. (1) The notice required by subsection (2) must be given if:

(a) a person committed to a hospital or mental health facility under Title 46, chapter 14, escapes or is released from confinement;

(b) a person confined in an institution other than a jail pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a prison or other state institution after conviction of a criminal offense involving the use or threat of physical force or violence or after being designated as a dangerous offender under 46-18-404 escapes or is released from confinement; or

(c) a person confined in a jail pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a jail after conviction of a criminal offense involving the use or threat of physical force or violence or after being designated as a dangerous offender under 46-18-404 escapes from confinement.

(2) If a person referred to in subsection (1) escapes or is released from confinement, the institution in which the person was confined shall notify:

- 1 (a) the sheriff or other law enforcement officials in the county in which the offense occurred;
- 2 (b) the sheriff or other law enforcement officials in the county or counties, if known, in which a
3 victim or the victims of the offense reside at the time of the escape or release;
- 4 (c) the sheriff or other law enforcement officials in the county, if known, in which the person
5 intends to reside upon leaving confinement;
- 6 (d) the sheriff or other law enforcement officials in the county in which the jail, prison, hospital,
7 mental health facility, or other institution from which the person escaped or was released is located; ~~and~~
- 8 (e) a victim of the offense who has requested notification in the event of an escape or a release
9 of the person; and
- 10 ~~(f)~~ (f) a court that has requested that it be notified in the event of an escape or a release or an
11 escape of the person."

12

13 **Section 2.** Section 44-5-303, MCA, is amended to read:

14 **"44-5-303. Dissemination of confidential criminal justice information.** ~~Dissemination (1) Except~~
15 as provided in subsection (2), dissemination of confidential criminal justice information is restricted to
16 criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by
17 a district court upon a written finding that the demands of individual privacy do not clearly exceed the
18 merits of public disclosure.

19 (2) If the prosecutor determines that dissemination would not jeopardize a pending investigation
20 or other criminal proceeding of confidential criminal justice information, the information may be
21 disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency
22 after consultation with the prosecutor.

23 (3) A Unless otherwise ordered by a court, a person or criminal justice agency that accepts
24 confidential criminal justice information assumes equal responsibility for the security of ~~such~~ the information
25 with the originating agency. Whenever confidential criminal justice information is disseminated, it must be
26 designated as confidential."

27

28 **NEW SECTION. Section 3. Nondisclosure of information about victim.** (1) If a victim of an offense
29 requests confidentiality, a criminal justice agency may not disseminate, except to another criminal justice
30 agency, the address, telephone number, or place of employment of the victim or a member of the victim's

1 family unless disclosure is of the location of the crime scene, is required by law, is necessary for law
2 enforcement purposes, or is authorized by a district court upon a showing of good cause.

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

6 (3) A criminal justice agency may not disseminate to the public any information directly or indirectly
7 identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, or 45-5-507 unless
8 disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement
9 purposes, or is authorized by a district court upon a showing of good cause.

10

11 **Section 4.** Section 45-9-205, MCA, is amended to read:

12 **"45-9-205. Exemption from mandatory minimum sentences.** If a court imposes any of the
13 sentencing alternatives specified in 45-9-202, the mandatory minimum sentences provided in
14 46-18-201~~(4)~~(5) do not apply."

15

16 **Section 5.** Section 46-11-701, MCA, is amended to read:

17 **"46-11-701. Pretrial proceedings -- exclusion of public and sealing of records.** (1) Except as
18 provided in this section, pretrial proceedings and records of those proceedings are open to the public. If,
19 at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a
20 trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation
21 of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the
22 jury or until an earlier time consistent with the administration of justice.

23 (2) The defendant may move that all or part of the proceeding be closed to the public, or with the
24 consent of the defendant, the judge may take action on the judge's own motion.

25 (3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding,
26 including a hearing on a motion to suppress, and may seal the record only if:

27 (a) the dissemination of information from the pretrial proceeding and its record would create a clear
28 and present danger to the fairness of the trial; and

29 (b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable
30 alternative means.

1 (4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the
 2 public under this section, a complete record must be kept and made available to the public following the
 3 completion of the trial or earlier if consistent with trial fairness.

4 (5) Notwithstanding closure of a proceeding to the public, the judge shall permit a victim of the
 5 offense to be present unless the judge determines that exclusion of the victim is necessary to protect either
 6 party's right to a fair trial or the safety of the victim. If the victim is present, the judge, at the victim's
 7 request, shall permit the presence of an individual to provide support to the victim unless the judge
 8 determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.

9 ~~(5)(6)~~ When the judge determines that all or part of a document filed in support of a charge or
 10 warrant would present a clear and present danger to the defendant's right to a fair trial, the document or
 11 portion of the document must be sealed until the trial is completed unless the document or portion of the
 12 document must be used for trial fairness."

13
 14 **Section 6.** Section 46-18-101, MCA, is amended to read:

15 **"46-18-101. Correctional policy.** (1) It is the purpose of this section to declare the correctional
 16 policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted
 17 are drawn to implement the policy established by this section.

18 (2) The correctional policy of the state of Montana is to protect society by preventing crime
 19 through punishment and rehabilitation of the convicted. The legislature finds that an individual is
 20 responsible for and must be held accountable for the individual's actions, including, whenever possible, the
 21 restoration of all pecuniary losses sustained by a victim of the offense. Corrections laws and programs
 22 must be implemented to impress upon each individual the responsibility for obeying the law. To achieve
 23 this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever
 24 probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore,
 25 it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual
 26 characteristics, circumstances, needs, and potentialities. Finally, it is the policy of the state to recognize
 27 that the interests of crime victims should be considered so that, to the extent possible, victims of crime
 28 may be protected from threat of future harm by the offender.

29 (3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

30 (i) the crime committed;

1 (ii) the prospects of rehabilitation of the offender;

2 (iii) the circumstances under which the crime was committed;

3 (iv) the criminal history of the offender; and

4 (v) consideration of alternatives to imprisonment of the offender in the state prison or the women's
5 correctional center.

6 (b) Dangerous offenders who habitually violate the law and victimize the public must be removed
7 from society and correctively treated in custody for long terms, as needed. Other offenders must be dealt
8 with by probation, suspended sentence, community corrections, community service, or fine whenever such
9 disposition appears practicable and not detrimental to the needs of public safety and the welfare of the
10 individual. Whenever possible, sentences for offenders must include restitution to the victim, payment of
11 costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

12 (4) It is also the policy of the state that alternatives to imprisonment, such as community
13 corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them
14 opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate
15 in other activities that will reduce recidivism and enable offenders to become productive members of
16 society."

17
18 **Section 7.** Section 46-18-112, MCA, is amended to read:

19 **"46-18-112. Content of presentence investigation report.** (1) Whenever an investigation is
20 required, the probation officer shall promptly inquire into and report upon:

21 (a) the defendant's characteristics, circumstances, needs, and potentialities;

22 (b) the defendant's criminal record and social history;

23 (c) the circumstances of the offense;

24 (d) the time of the defendant's detention for the offenses charged; ~~and~~

25 (e) the harm caused, as a result of the offense, to the victim, the victim's immediate family, and
26 the community; and

27 (f) the victim's pecuniary loss, if any. The officer shall make a reasonable effort to confer with the
28 victim to ascertain whether the victim has sustained a pecuniary loss. If the victim is not available or
29 declines to confer, the officer shall record that information in the report.

30 (2) All local and state mental and correctional institutions, courts, and law enforcement agencies

1 shall furnish, upon request of the officer preparing a presentence investigation, the defendant's criminal
2 record and other relevant information.

3 (3) The court may, in its discretion, require that the presentence investigation report include a
4 physical and mental examination of the defendant.

5 ~~(4) If applicable, the court may require the officer to inquire into the victim's pecuniary loss and
6 make a restitution report to the court as provided by law."~~

7

8 **Section 8.** Section 46-18-113, MCA, is amended to read:

9 **"46-18-113. Availability of presentence investigation report.** (1) All presentence investigation
10 reports must be a part of the court record but may not be opened for public inspection. A copy of the
11 presentence investigation report must be provided to the prosecution, the defendant and the defendant's
12 attorney, and the agency or institution to which the defendant is committed. The prosecutor may discuss
13 DISCLOSE the contents of the presentence report with TO a victim of the offense.

14 (2) The court having jurisdiction of the case may permit other access to the presentence
15 investigation report as it considers necessary."

16

17 **Section 9.** Section 46-18-115, MCA, is amended to read:

18 **"46-18-115. Sentencing hearing.** Before imposing sentence or making any other disposition upon
19 acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing,
20 without unreasonable delay, as follows:

21 (1) The court shall afford the parties an opportunity to be heard on any matter relevant to the
22 disposition, including the applicability of sentencing enhancement provisions, mandatory minimum
23 sentences, persistent felony offender status, or an exception to these matters.

24 (2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided
25 by 46-18-301.

26 (3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address
27 the defendant personally to ascertain whether the defendant wishes to make a statement and to present
28 any information in mitigation of punishment or reason why the defendant should not be sentenced. If the
29 defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to
30 do so.

1 (4) (a) The court shall permit the victim to present a statement concerning the effects of the crime
 2 on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated,
 3 and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present
 4 the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or
 5 both.

6 (b) The court shall give copies of any written statements of the victim to the prosecutor and the
 7 defendant prior to imposing sentence.

8 (c) The court shall consider the victim's statement along with other factors. However, if the
 9 victim's statement includes new material facts upon which the court intends to rely, the court shall allow
 10 the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

11 ~~(4)~~(5) The court shall impose sentence or make any other disposition authorized by law.

12 ~~(5)~~(6) In felony cases, the court shall specifically state all reasons for the sentence, including
 13 restrictions, conditions, or enhancements imposed, in open court on the record and in the written
 14 judgment."

15

16 **Section 10.** Section 46-18-201, MCA, is amended to read:

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

19 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
 20 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
 21 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
 22 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
 23 period of the deferred imposition. Reasonable restrictions or conditions may include:

24 (i) jail base release;

25 (ii) jail time not exceeding 180 days;

26 (iii) conditions for probation;

27 ~~(iv)~~ restitution;

28 ~~(v)~~(iv) payment of the costs of confinement;

29 ~~(vi)~~(v) payment of a fine as provided in 46-18-231;

30 ~~(vii)~~(vi) payment of costs as provided in 46-18-232 and 46-18-233;

- 1 ~~(viii)~~(vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- 2 ~~(ix)~~(viii) with the approval of the facility or program, order the offender to be placed in a community
- 3 corrections facility or program as provided in 53-30-321;
- 4 ~~(x)~~(ix) community service;
- 5 ~~(xi)~~(x) home arrest as provided in Title 46, chapter 18, part 10;
- 6 ~~(xii)~~(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection
- 7 of society; or
- 8 ~~(xiii)~~(xii) any combination of the above.
- 9 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
- 10 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
- 11 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
- 12 restrictions or conditions may include any of those listed in subsection (1)(a).
- 13 (c) impose a fine as provided by law for the offense;
- 14 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
- 15 counsel as provided in 46-8-113;
- 16 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
- 17 the defendant to the department of corrections and human services for placement in an appropriate
- 18 correctional institution or program;
- 19 (f) with the approval of the facility or program, order the offender to be placed in a community
- 20 corrections facility or program as provided in 53-30-321; or
- 21 (g) impose any combination of subsections (1)(b) through (1)(f).
- 22 ~~(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim~~
- 23 ~~of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim~~
- 24 ~~as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay~~
- 25 ~~restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.~~
- 26 ~~(2)~~(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
- 27 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
- 28 a felony, regardless of whether any other conditions are imposed.
- 29 ~~(3)~~(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the
- 30 court shall consider any elapsed time and either expressly allow part or all of it as a credit against the

1 sentence or reject all or part as a credit ~~and~~. The court shall state its reasons in the order. Credit,
2 however, must be allowed for jail or home arrest time already served.

3 ~~(4)(5)~~ Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2
4 years of a sentence of imprisonment imposed under the following sections may not be deferred or
5 suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
6 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

7 ~~(6)(6)~~ Except as provided in 46-18-222, the imposition or execution of the first 10 years of a
8 sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

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

13 ~~(7)(8)~~ If the victim was less than 16 years old, the imposition or execution of the first 30 days of
14 a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be
15 deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

16 ~~(8)(9)~~ In imposing a sentence on a defendant convicted of a sexual offense as defined in
17 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
18 Title 46, chapter 23, part 5.

19 ~~(9)(10)~~ A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
20 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
21 program.

22 ~~(10)(11)~~ In sentencing a nonviolent felony offender, the court shall first consider alternatives to
23 imprisonment of the offender in the state prison, including placement of the offender in a community
24 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
25 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
26 or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were
27 not selected, based on the criteria contained in 46-18-225."

28

29 **Section 11.** Section 46-18-202, MCA, is amended to read:

30 **"46-18-202. Additional restrictions on sentence.** (1) The district court may also impose any of

1 the following restrictions or conditions on the sentence provided for in 46-18-201 that it considers
 2 necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

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

4 (b) prohibition of the defendant's owning or carrying a dangerous weapon;

5 (c) restrictions on the defendant's freedom of association;

6 (d) restrictions on the defendant's freedom of movement;

7 (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of
 8 the victim and society.

9 (2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term
 10 exceeding 1 year, the court may also impose the restriction that the defendant ~~be~~ is ineligible for parole and
 11 participation in the supervised release program while serving that term. If such a restriction is to be
 12 imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary
 13 for the protection of society, it shall impose the restriction as part of the sentence and the judgment ~~shall~~
 14 must contain a statement of the reasons for the restriction.

15 (3) The judge in a justice's, city, or municipal court does not have the authority to restrict an
 16 individual's rights as enumerated in subsection (1)(a).

17 (4) When the district court imposes a sentence of probation, as defined in 46-23-1001, any
 18 probation agreement signed by the defendant may contain a clause waiving extradition."
 19

20 **Section 12.** Section 46-18-222, MCA, is amended to read:

21 **"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition**
 22 **and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this
 23 state and the restrictions on deferred imposition and suspended execution of sentence prescribed by
 24 46-18-201(4)(5) through (6)(7), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

25 (1) the defendant was less than 18 years of age at the time of the commission of the offense for
 26 which the defendant is to be sentenced;

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

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

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

6 (5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual
 7 element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the
 8 commission of the offense; or

9 (6) the offense was committed under 45-5-502(3) and the court determines that treatment of the
 10 defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the
 11 ultimate protection of the victim and society, in which case the court shall include in its judgment a
 12 statement of the reasons for its determination."
 13

14 **Section 13.** Section 46-18-241, MCA, is amended to read:

15 **"46-18-241. Condition of restitution.** (1) As provided in 46-18-201, a sentencing court ~~may~~ shall
 16 require an offender to make restitution to any victim of the offense who has sustained pecuniary loss as
 17 a result of the offense.

18 (2) The court may require the offender to pay the cost of supervising the payment of restitution,
 19 as provided in 46-18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not
 20 less than \$5 or more than \$250. Payment must be made to the court, which shall disburse the money to
 21 the entity employing the person ordered to supervise restitution under 46-18-245.

22 ~~(3) If the court finds that, because of circumstances beyond the offender's control, the offender~~
 23 ~~is not and will not be able to pay any restitution during the period of state supervision, the court may order~~
 24 ~~the offender to perform community service commensurate with the amount of restitution that would have~~
 25 ~~been imposed."~~

26
 27 **Section 14.** Section 46-18-242, MCA, is amended to read:

28 **"46-18-242. Investigation and report of victim's loss.** (1) Whenever the court believes that
 29 ~~restitution may be a proper condition of a deferred or suspended sentence~~ a victim of the offense may have
 30 sustained a pecuniary loss as a result of the offense or whenever the prosecuting attorney requests, the

1 court shall order the probation officer, restitution officer, or other designated person to include in the
2 presentence investigation and report:

- 3 (a) documentation of the offender's financial resources and future ability to pay restitution;
4 (b) documentation of the victim's pecuniary loss, submitted by the victim or by the board of crime
5 control if compensation for the victim's loss has been reimbursed by the crime victims compensation and
6 assistance account.

7 (2) ~~Where no~~ When a presentence report is not authorized or requested, the court may receive
8 evidence of the offender's ability to pay and the victim's loss at the time of sentencing."
9

10 **Section 15.** Section 46-18-243, MCA, is amended to read:

11 **"46-18-243. ~~Definition~~ Definitions.** For purposes of 46-18-241 through 46-18-249, the following
12 definitions apply:

13 (1) "Pecuniary loss" means:

14 (a) all special damages, but not general damages, substantiated by evidence in the record, that a
15 person could recover against the offender in a civil action arising out of the facts or events constituting the
16 offender's criminal activities, including without limitation the money equivalent of loss resulting from
17 property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical
18 expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that
19 the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings
20 related to the commission of the offense, and reasonable expenses related to funeral and burial or
21 crematory services; and

22 (b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in
23 the investigation and prosecution of the offense.

24 (2)(a) "Victim" means:

25 ~~(i)~~ (i) a person who suffers loss of property, bodily injury, or death as a result of:

26 ~~(A)~~ (A) criminally injurious conduct the commission of an offense; or

27 ~~(B)~~ (B) his the good faith effort to prevent criminally injurious conduct the commission of an offense;

28 or

29 (C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

30 (ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a

1 homicide victim;

2 (iii) a governmental entity that suffers loss of property as a result of the commission of an offense
 3 in this state; or

4 ~~(b)(iv)~~ (iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim
 5 of the offense for his pecuniary loss.

6 (b) Victim does not include a person who is accountable for the crime or accountable for a crime
 7 arising from the same transaction."

8

9 **Section 16.** Section 46-18-244, MCA, is amended to read:

10 **"46-18-244. Type and time of payment -- defenses.** (1) The court shall specify the amount,
 11 method, and time of payment to the victim and may permit payment in installments. The court may not
 12 establish a payment schedule extending beyond the period ~~for which the sentence has been suspended or~~
 13 ~~deferred under 46-18-201~~ of state supervision over the offender.

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

18 (3) In addition to other methods of payment, the court may order one or more of the following in
 19 order to satisfy the offender's restitution obligation:

20 (a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part
 21 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are
 22 reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the
 23 state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after
 24 sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale,
 25 any remaining amount must be returned to the offender.

26 (b) return of any property to the victim;

27 (c) payment of up to one-third of the offender's prison earnings.

28 (4) With the consent of the victim and in the discretion of the court, an offender may be ordered
 29 to make restitution in services in lieu of money or to make restitution to a person designated by the victim,
 30 if that person provided services to the victim as a result of the offense."

1 **Section 17.** Section 46-18-245, MCA, is amended to read:

2 "**46-18-245. Supervision of payment.** The court may order a probation officer, restitution officer,
3 ~~officer of the board of crime control,~~ or other designated person to supervise the making of restitution and
4 to report to the court any default in payment. IF THE VICTIM HAS RECEIVED COMPENSATION UNDER
5 TITLE 53, CHAPTER 9, THE COURT MAY ALSO ORDER AN EMPLOYEE OF THE BOARD OF CRIME
6 CONTROL TO SUPERVISE THE MAKING OF RESTITUTION AND TO REPORT TO THE COURT ANY
7 DEFAULT IN PAYMENT."

8
9 **Section 18.** Section 46-18-246, MCA, is amended to read:

10 "**46-18-246. Waiver or modification of payment.** An offender may at any time petition the
11 sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court
12 shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date,
13 place, and time and inform the victim that ~~he~~ the victim will have an opportunity to be heard. If the court
14 finds that the circumstances upon which it based the imposition, amount, method, or time of payment no
15 longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or
16 waive unpaid restitution or modify the time or method of making restitution. The court may extend the
17 restitution schedule, but not beyond the period ~~for which the sentence has been suspended or deferred~~
18 ~~under 46-18-201~~ provided for in 46-18-244."

19
20 **Section 19.** Section 46-18-247, MCA, is amended to read:

21 "**46-18-247. Default.** (1) If an offender sentenced to make restitution is in default, the sentencing
22 court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under
23 46-18-203 requiring the offender to show cause why ~~he~~ the offender should not be confined for failure to
24 obey the sentence of the court. The court may order the offender to appear at a time, date, and place for
25 a hearing or, if ~~he~~ the offender fails to appear as ordered, issue a warrant for ~~his~~ the offender's arrest. The
26 order or warrant must be accompanied by written notice of the offender's right to a hearing as provided
27 in 46-18-203.

28 (2) If the court finds that the offender's default was attributable to a ~~a~~ the offender's failure ~~on his~~
29 ~~part~~ to make a good faith effort to obtain the necessary funds for payment of the ordered restitution, the
30 court may take any action provided for in 46-18-203. If confinement is ordered, the court, after entering

1 the order, ~~may at any time, for good cause shown,~~ reduce the term of confinement and, in accordance with
 2 the provisions of 46-18-246, waive satisfaction of the restitution order.

3 (3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following
 4 a default in the payment of restitution or any installment ~~thereof~~ of restitution, the sentencing court may
 5 order the restitution to be collected by any method authorized for the enforcement of other judgments."
 6

7 **NEW SECTION. Section 20. Allocation of fines, costs, restitution, and other charges.** (1) If an
 8 offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out
 9 of the same criminal proceeding, money collected from the offender must be allocated as provided in this
 10 section.

11 (2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution
 12 and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50%
 13 of all money collected from the defendant must be applied to payment of restitution and the balance must
 14 be applied to other payments in the following order:

- 15 (a) payment of charges imposed pursuant to 46-18-236;
- 16 (b) payment of costs imposed pursuant to 46-18-232 or 46-18-233;
- 17 (c) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and
- 18 (d) any other payments ordered by the court.

19 (3) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has
 20 been paid, any additional money collected must be applied to payment of those fines, costs, charges, or
 21 other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments
 22 have been paid, any additional money collected must be applied toward payment of the restitution.
 23

24 **Section 21.** Section 46-18-302, MCA, is amended to read:

25 **"46-18-302. Evidence that may be received.** In the sentencing hearing, evidence may be presented
 26 as to any matter the court considers relevant to the sentence, including but not limited to the nature and
 27 circumstances of the crime₇; the defendant's character, background, history, and mental and physical
 28 condition₇; the harm caused to the victim and the victim's family as a result of the offense; and any other
 29 facts in aggravation or mitigation of the penalty. Any evidence that the court considers to have probative
 30 force may be received regardless of its admissibility under the rules governing admission of evidence at

1 criminal trials. Evidence admitted at the trial relating to ~~such~~ aggravating or mitigating circumstances ~~shall~~
 2 must be considered without reintroducing it at the sentencing proceeding. The state and the defendant or
 3 ~~his~~ the defendant's counsel ~~shall~~ must be permitted to present argument for or against sentence of death."
 4

5 **Section 22.** Section 46-23-202, MCA, is amended to read:

6 **"46-23-202. Investigation of prisoner by board -- consideration of victim's statement.** (1) Within
 7 the 2 months prior to a prisoner's official parole eligibility date or within the 2 months following the date
 8 on which a prisoner becomes eligible pursuant to 53-30-105(5), the board shall consider all pertinent
 9 information regarding each prisoner, including the circumstances of the offense;₂ the prisoner's previous
 10 social history and criminal record;₂ the prisoner's conduct, employment, and attitude in prison;₂ and the
 11 reports of any physical and mental examinations that have been made.

12 (2) Before ordering the parole of any prisoner, the board shall:

13 (a) conduct a hearing and interview the prisoner. At the time of the hearing, the board shall receive
 14 relevant statements from interested persons and any person may be represented by counsel, provided that
 15 the board has the power to regulate procedures at all hearings.

16 (b) permit a victim to present a statement concerning the effects of the crime on the victim, the
 17 circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's
 18 opinion regarding whether the prisoner should be paroled. In the board's discretion, the victim's statement
 19 may be kept confidential. The board shall consider the victim's statement, along with the information
 20 provided under subsection (1), in determining whether to grant parole."
 21

22 **Section 23.** Section 46-23-210, MCA, is amended to read:

23 **"46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order
 24 a person placed in a correctional institution or program, except a person under sentence of death. To be
 25 eligible for a medical parole, a person must have an examination and written diagnosis by a physician
 26 licensed under Title 37 to practice medicine. The diagnosis must include:

27 (a) a determination that the person suffers from an incapacitating physical condition, disease, or
 28 syndrome that renders the person highly unlikely to present a clear and present danger to public safety;

29 (b) a description of the physical condition, disease, or syndrome and a detailed description of the
 30 person's physical incapacity; and

1 (c) a prognosis addressing the likelihood of the person's recovery from the physical condition,
2 disease, or syndrome and the extent of any potential recovery.

3 (2) The diagnosis must be reviewed and accepted by the department before the board may consider
4 granting a medical parole.

5 (3) The board shall require as a condition of medical parole that the person agree to placement in
6 an environment chosen by the department during the parole period, including but not limited to a hospital,
7 nursing home, or family home. The board may require as a condition of parole that the person agree to
8 periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis
9 must be submitted to the board and department by the examining physician. If either the board or
10 department determines that the person's physical capacity has improved to the extent that the person is
11 likely to pose a possible detriment to society, the board may revoke the parole and return the person to the
12 custody of the department.

13 (4) Medical parole may be requested by the board, the department, an incarcerated person, or an
14 incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the
15 administrator of the correctional institution in which the person is incarcerated.

16 (5) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

17 (6) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply
18 to nonmedical parole."
19

20 **Section 24.** Section 46-23-215, MCA, is amended to read:

21 "**46-23-215. Conditions of parole.** (1) ~~Every~~ A prisoner while on parole ~~shall remain~~ remains in
22 the legal custody of the institution from which ~~he~~ the prisoner was released but ~~shall be~~ is subject to the
23 orders of the board.

24 (2) When an order for parole is issued, it ~~shall~~ must recite the conditions ~~thereof~~ of parole. If
25 restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a
26 condition to pay restitution to the victim. An order for parole or any parole agreement signed by a prisoner
27 may contain a clause waiving extradition.

28 (3) Whenever a prisoner in the Montana state prison has been approved for parole on condition that
29 ~~he~~ the prisoner obtain employment or secure suitable living arrangements or on any other condition that
30 is difficult to fulfill while incarcerated, the warden may grant ~~him~~ the prisoner a furlough, not to exceed 10

1 days, for purposes of fulfilling the condition. While on ~~such~~ furlough, the prisoner remains in the legal
 2 custody of the prison and is subject to all other conditions recited by the board."

3

4 **Section 25.** Section 46-23-405, MCA, is amended to read:

5 "**46-23-405. Establishing program -- rules.** The department ~~is authorized and directed to~~ shall
 6 establish a supervised release program and make rules in accordance with Title 2, chapter 4 (the Montana
 7 Administrative Procedure Act), to implement and control the ~~same~~ program. Rules ~~shall~~ must include
 8 guidelines for:

9 (1) prisoner eligibility;

10 (2) prisoner participation in a recognized educational, treatment, or training program or work
 11 program in conjunction with any of the ~~above~~ programs listed in this subsection;

12 (3) approval of the sponsor;

13 (4) review of a board decision to deny an applicant admittance into the program;

14 (5) supervision of the prisoner by or under the direction of a supervising agent while ~~he~~ the prisoner
 15 is in the program;

16 (6) implementation of a plan for the prisoner to satisfy any restitution or community service
 17 obligation imposed as part of the prisoner's sentence under 46-18-201;

18 ~~(6)(7)~~ conducting revocation hearings;

19 ~~(7)(8)~~ establishment of a program by the prisoner; and

20 ~~(8)(9)~~ any other provisions necessary to implement this part."

21

22 **Section 26.** Section 46-23-1011, MCA, is amended to read:

23 "**46-23-1011. Supervision on probation.** (1) The department shall supervise persons during their
 24 probation period in accord with the conditions set by a court.

25 (2) A copy of the conditions of probation must be signed by the probationer and given to the
 26 probationer and the probationer's probation and parole officer, who shall report on the probationer's
 27 progress under rules of the court.

28 (3) The probation and parole officer shall regularly advise and consult with the probationer to
 29 encourage the probationer to improve the probationer's condition and conduct and shall inform the
 30 probationer of the restoration of rights on successful completion of the sentence.

1 (4) The probation and parole officer may recommend and a court may modify any condition of
 2 probation or suspension of sentence at any time. Notice must be given to the probation and parole officer
 3 before any condition is modified, and the officer must be given an opportunity to present the officer's ideas
 4 or recommendations on any modification. A copy of a modification of conditions must be delivered to the
 5 probation and parole officer and the probationer. Waiver or modification of restitution may be ordered only
 6 as provided under the provisions of 46-18-246.

7 (5) The probation and parole officer shall keep records as the department or the court may require.

8 (6) (a) Upon recommendation of the probation and parole officer, a court may conditionally
 9 discharge a probationer from supervision before expiration of the probationer's sentence if the court
 10 determines that a conditional discharge from supervision is in the best interests of the probationer and
 11 society and will not present unreasonable risk of danger to the victim of the offense.

12 (b) Subsection (6)(a) does not prohibit a court from revoking the order suspending execution or
 13 deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally
 14 discharged from supervision.

15 (c) If the department certifies to the court that the workload of a district probation and parole office
 16 has exceeded the optimum workload for the district over the preceding 60 days, the court may not place
 17 an offender on probation under supervision by that district office unless it grants a conditional discharge
 18 to a probationer being supervised by that district office. The department may recommend probationers to
 19 the court for conditional discharge. The court may accept or reject the recommendations of the
 20 department. The department shall determine the optimum workload for each district probation and parole
 21 office."

22
 23 **Section 27.** Section 46-23-1021, MCA, is amended to read:

24 **"46-23-1021. Supervision on parole.** (1) The department shall retain custody of all persons placed
 25 on parole and shall supervise the persons during their parole ~~period~~ periods in ~~accord~~ accordance with the
 26 conditions set by the board.

27 (2) The department shall assign personnel to assist ~~persons~~ a person who is eligible for parole in
 28 preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board
 29 prior to its consideration of the case of the eligible person.

30 (3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and

1 to the parolee's probation and parole officer, who shall report on the parolee's progress under the rules of
2 the board.

3 (4) The probation and parole officer shall regularly advise and consult with the parolee, assist the
4 parolee in adjusting to community life, and inform the parolee of the restoration of rights on successful
5 completion of the sentence.

6 (5) The probation and parole officer shall keep records as the board or department may require.
7 All records must be entered in the master file of the individual.

8 (6) (a) Upon recommendation of the probation and parole officer, the board may conditionally
9 discharge a parolee from supervision before expiration of the parolee's sentence if the board determines
10 that a conditional discharge from supervision is in the best interests of the parolee and society and will not
11 present unreasonable risk of danger to the victim of the offense.

12 (b) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in
13 46-23-1025, of a parolee who has been conditionally discharged from supervision.

14 (c) If the department certifies to the board that the workload of a district probation and parole
15 office has exceeded the optimum workload for the district over the preceding 60 days, the board may not
16 parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised
17 by that district office. The department may recommend parolees to the board for conditional discharge.
18 The board may accept or reject the recommendations of the department. The department shall determine
19 the optimum workload for each district probation and parole office."
20

21 **Section 28.** Section 46-23-1025, MCA, is amended to read:

22 **"46-23-1025. Report to and action by the board.** (1) If the hearings officer determines that there
23 is probable cause to believe that the prisoner has violated a condition of ~~his~~ parole, the probation and parole
24 officer shall immediately notify the board and shall submit in writing a report showing in what manner the
25 prisoner has violated the conditions of release. This report ~~shall~~ must be accompanied by the findings of
26 the hearings officer.

27 (2) ~~Thereupon~~ Upon receipt of a report, the board shall cause the prisoner to be promptly brought
28 before it for a hearing on the violation charged under ~~such~~ rules ~~as~~ that the board may adopt. If the
29 violation is established, the board may continue or revoke the parole or conditional release or may enter
30 ~~such other~~ an order as it ~~may see~~ sees fit.

1 (3) If the prisoner has violated a condition of release requiring the payment of restitution, the board
 2 shall notify the victim of the offense prior to the hearing required by subsection (2) and give the victim an
 3 opportunity to be heard. If the board finds that due to circumstances beyond the prisoner’s control, the
 4 prisoner is unable to make the required restitution payments, the board may not revoke the prisoner’s parole
 5 for failure to pay restitution. The board may modify the time or method of making restitution and may
 6 extend the restitution schedule, but the schedule may not be extended beyond the period of state
 7 supervision over the prisoner.

8 ~~(3)~~(4) If it appears that ~~he~~ the prisoner has violated the provisions of ~~his~~ release, the board shall
 9 determine whether the time from the issuing of the warrant to the date of ~~his~~ the prisoner’s arrest or any
 10 part of it will be counted as time served under the sentence."
 11

12 **Section 29.** Section 46-24-103, MCA, is amended to read:

13 **"46-24-103. Duty of attorney general.** The attorney general shall ~~assure~~ ensure that victims and
 14 witnesses of crime receive fair and proper treatment in the criminal justice system. The attorney general
 15 shall prepare a written notice of the rights and services available to victims of crime under this chapter.
 16 The notice must be distributed to local law enforcement agencies in the state. In addition, the attorney
 17 general shall ~~assure~~ ensure that victims and witnesses are provided important services and assistance as
 18 required under this chapter."
 19

20 **Section 30.** Section 46-24-104, MCA, is amended to read:

21 **"46-24-104. Consultation with victim of ~~felony offense~~ certain offenses.** ~~The~~ As soon as possible
 22 prior to disposition of the case, the prosecuting attorney in a criminal case shall consult with the victim of
 23 a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the
 24 victim or, in the case of a minor child victim or homicide victim, with the family of the victim in order to
 25 obtain the views of the victim or ~~his~~ the victim’s family regarding the disposition of the case, including:

- 26 (1) dismissal of the case;
- 27 (2) release of the accused pending judicial proceedings;
- 28 (3) plea negotiations; and
- 29 (4) pretrial diversion of the case from the judicial process."
 30

1 **Section 31.** Section 46-24-201, MCA, is amended to read:

2 "**46-24-201. Services to victims of crime.** (1) Law enforcement personnel shall ~~secure~~ ensure that
3 a victim of a crime receives emergency social and medical services as soon as possible and that ~~such~~ the
4 victim is given ~~information on~~ written notice, in the form supplied by the attorney general, of the following:

5 ~~(1)(a)~~ (a) the availability of crime victim compensation;

6 ~~(2) community-based victim treatment programs;~~

7 (b) access by the victim and the defendant to information about the case;

8 ~~(3)(c)~~ (c) the role of the victim in the criminal justice process, including what ~~he~~ the victim can expect
9 from the system, as well as what the system expects from the victim; and

10 ~~(4)(d)~~ (d) stages in the criminal justice process of significance to a crime victim and the manner in
11 which information about ~~such~~ the stages may be obtained.

12 (2) In addition to the information supplied under subsection (1), law enforcement personnel shall
13 provide the victim with written information on community-based victim treatment programs, including
14 medical, housing, counseling, and emergency services available in the community.

15 (3) As soon as possible, law enforcement personnel shall give to the victim the following
16 information:

17 (a) the name, office address, and telephone number of a law enforcement officer assigned to
18 investigate the case; and

19 (b) the prosecuting attorney's name, office address, and telephone number."

20
21 **Section 32.** Section 46-24-202, MCA, is amended to read:

22 "**46-24-202. Notification of available protective services.** Law enforcement officers and
23 prosecuting attorneys shall provide a victim or witness information on the availability of services to protect
24 the victim or witness from intimidation, including the process for obtaining a protective order from the
25 court."

26
27 **Section 33.** Section 46-24-203, MCA, is amended to read:

28 "**46-24-203. Prompt notification to victims and witnesses of felony certain offenses.** (1) A person
29 described in subsection (2) who provides the appropriate official with a current address and telephone
30 number must receive prompt advance notification, if possible, of proceedings relating to ~~his~~ the person's

1 case, including:

2 (a) the arrest of an accused;

3 (b) the release of the accused pending judicial proceedings; ~~and~~

4 (c) the crime with which the accused has been charged, including an explanation of the elements
5 of the offense when necessary to an understanding of the nature of the crime;

6 ~~(d)~~ (d) proceedings in the prosecution of the accused, including entry of a plea of guilty, and the
7 setting of a trial date, the sentencing schedule, the sentence imposed, the term of imprisonment, if
8 imposed, and the release of the accused from imprisonment;

9 (e) if the accused is convicted or pleads guilty, the function of a presentence report; the name,
10 office address, and telephone number of the person preparing the report; and the convicted person's right
11 of access to the report, as well as the victim's right under 46-18-115 to present a statement in writing or
12 orally at the sentencing proceeding and the convicted person's right to be present at the sentencing
13 proceeding and to have access to the victim's statement;

14 (f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of
15 imprisonment, if imposed; and

16 (g) the right under [section 36] of a victim of a felony offense to receive information from the
17 department of corrections and human services concerning the convicted person's incarceration.

18 (2) A person entitled to notification under subsection (1) must be a victim or witness of a felony
19 offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim, a
20 relative of such a victim or witness who is a minor, or a relative of a homicide victim."

21

22 **Section 34.** Section 46-24-205, MCA, is amended to read:

23 "**46-24-205. Notification to employer or creditor -- limitations on employer.** (1) The law
24 enforcement agency or prosecuting attorney in a criminal case shall assist a victim or witness who requests
25 assistance in informing an employer that the need for victim and witness cooperation in the prosecution
26 of the case may necessitate absence of the victim or witness from ~~his~~ the place of employment.

27 (2) A law enforcement agency or prosecuting attorney shall assist a victim or witness who, as a
28 direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney,
29 is subjected to serious financial strain. ~~Such~~ The agency or prosecuting attorney shall assist the victim or
30 witness by explaining to creditors the reason for ~~such~~ the serious financial strain.

1 (3) An employer may not discharge or discipline a victim or a member of the victim's family for
 2 participation at the prosecuting attorney's request in preparation for or attendance at a criminal justice
 3 proceeding.

4 (4) As used in this section, "member of the victim's family" means the victim's spouse, child by
 5 birth or adoption, stepchild, parent, stepparent, or sibling, but does not include a person who is accountable
 6 for the crime or accountable for a crime arising from the same transaction."

7
 8 **NEW SECTION. Section 35. Information concerning appeal or postconviction remedies.** If the
 9 defendant appeals or pursues a postconviction remedy, the attorney general, or the county attorney if the
 10 case has not been referred to the attorney general, shall promptly inform the victim of the notice of appeal
 11 or postconviction petition, of the date, time, and place of any hearing, and of the decision.

12
 13 **NEW SECTION. Section 36. Information concerning confinement.** Upon request of a victim of a
 14 felony offense, the department of corrections and human services or the board of pardons, as applicable,
 15 shall:

16 (1) promptly inform the victim of the estimated date of the prisoner's release from confinement in
 17 the Montana state prison, if reasonably ascertainable;

18 (2) promptly inform the victim of the time and place of a parole hearing concerning the prisoner
 19 and of the victim's right to submit a statement to the board of pardons under 46-23-202;

20 (3) provide reasonable advance notice to the victim before release of the defendant on furlough
 21 or to a work-release program, half-way house, or other community-based program or correctional facility;
 22 and

23 (4) promptly inform the victim of the occurrence of any of the following events concerning the
 24 prisoner:

25 (a) an escape from a correctional or mental health facility or community program;

26 (b) a recapture;

27 (c) a decision of the board of pardons;

28 (d) a decision of the governor to commute the sentence or to grant executive clemency;

29 (e) a release from confinement and any conditions attached to the release; and

30 (f) the prisoner's death.

1 **NEW SECTION. Section 37. General requirements for information.** (1) Unless specifically stated
2 otherwise, the requirements of 44-2-601, 46-24-104, 46-24-201 through 46-24-203, [section 35], and
3 [section 36] to provide information to the victim may be satisfied by either written or oral communication
4 with the victim or the victim's designee.

5 (2) The person responsible for providing information required by 44-2-601, 46-24-104, 46-24-201
6 through 46-24-203, [section 35], and [section 36] shall promptly inform the victim of significant changes
7 in the information.

8 (3) The obligation to furnish information to a victim under 44-2-601, 46-24-104, 46-24-201
9 through 46-24-203, [section 35], and [section 36] is conditioned upon the victim informing the appropriate
10 agency in writing of the name, address, and telephone number of the person to whom the information
11 should be provided and of any change of name, address, or telephone number.

12
13 **Section 38.** Section 53-9-128, MCA, is amended to read:

14 **"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits
15 when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct.
16 During the time the claimant seeks ~~such~~ weekly benefits, the claimant, as a result of ~~such~~ the injury, must
17 have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit
18 amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a
19 maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly
20 compensation payments ~~shall~~ must be made at the end of each 2-week period. ~~No weekly~~ Weekly
21 compensation payments may not be paid for the first week after the criminally injurious conduct occurred,
22 but if total actual loss of wages continues for 1 week, weekly compensation payments ~~shall~~ must be paid
23 from the date the wage loss began. Weekly compensation payments ~~shall~~ must continue until the claimant
24 has a reasonable prospect of being regularly employed in the normal labor market.

25 (2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon,
26 reasonable hospital services and medicines, and ~~such~~ other treatment ~~as may be~~ approved by the division
27 for the injuries suffered due to criminally injurious conduct.

28 (3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are
29 entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66
30 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to

1 a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly
2 compensation payments ~~shall~~ must be made at the end of each 2-week period.

3 (b) Benefits under subsection (3)(a) ~~of this section shall~~ must be paid to the spouse for the benefit
4 of the spouse and other dependents unless the division determines that other payment arrangements should
5 be made. If a spouse dies or remarries, benefits under subsection (3)(a) ~~shall~~ must cease to be paid to the
6 spouse but ~~shall~~ must continue to be paid to the other dependents ~~so~~ as long as their dependent status
7 continues.

8 (4) Reasonable funeral and burial expenses of the victim, not exceeding ~~\$2,000~~ \$3,500, ~~shall~~ must
9 be paid if all other collateral sources have properly paid ~~such~~ expenses but have not covered all ~~such~~
10 expenses.

11 (5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's
12 death because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000
13 in the aggregate.

14 (6) Compensation benefits are not payable for pain and suffering, inconvenience, physical
15 impairment, or nonbodily damage.

16 (7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result
17 of ~~such~~ the injury has no reasonable prospect of being regularly employed in the normal labor market, and
18 who was employable but was not employed at the time of ~~such~~ the injury, may in the discretion of the
19 division be awarded weekly compensation benefits in an amount determined by the division not to exceed
20 \$100 per week. Weekly compensation payments ~~shall~~ must continue until the claimant has a reasonable
21 prospect of being regularly employed in the normal labor market or for a shorter period as determined by
22 the division. The claimant ~~shall~~ must be awarded benefits as provided in subsection (2) ~~of this section~~.

23 (b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was
24 employable but not employed at the time of death may in the discretion of the division be awarded, in a
25 gross single amount payable to all dependents, a sum not to exceed \$100 per week, which ~~shall be~~ is
26 payable in the manner and for the period provided by subsection (3)(b) ~~of this section~~ or for ~~such a~~ shorter
27 period as determined by the division. The claimant ~~shall~~ must be awarded benefits as provided in
28 subsection (4) ~~of this section~~.

29 (8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not
30 be paid less frequently than every 2 weeks.

1 (9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister
2 of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental
3 health treatment received as a result of the victim's death.

4 (b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is
5 a victim of a sexual crime ~~for which a person has been charged~~ and who is not entitled to receive services
6 under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of
7 the crime.

8 (c) Total payments made under subsections (9)(a) and (9)(b) may not exceed ~~\$500~~ \$2,000 or 12
9 consecutive months of treatment for each person ~~or \$1,500 for a family, whichever occurs first.~~"

10
11 **SECTION 39. SECTION 27-2-201, MCA, IS AMENDED TO READ:**

12 "**27-2-201. Actions upon judgments.** (1) Except as provided in ~~subsection~~ subsections (3) and (4),
13 the period prescribed for the commencement of an action upon a judgment or decree of any court of record
14 of the United States or of any state within the United States is within 10 years.

15 (2) The period prescribed for the commencement of an action upon a judgment or decree rendered
16 in a court not of record is within 5 years. The cause of action is considered, in that case, to have accrued
17 when final judgment was rendered.

18 (3) The period prescribed for the commencement of an action to collect past-due child support that
19 has accrued after October 1, 1993, under an order entered by a court of record or administrative authority
20 is within 10 years of the termination of support obligation.

21 (4) An action under 46-18-247(3) to enforce an order of restitution entered by a court of record
22 may be commenced at any time within the offender's lifetime during which restitution remains unpaid."

23
24 **NEW SECTION. Section 40. Repealer.** Section 46-23-204, MCA, is repealed.

25
26 **NEW SECTION. Section 41. Codification instruction.** (1) [Section 3] is intended to be codified
27 as an integral part of Title 44, chapter 5, part 3, and the provisions of Title 44, chapter 5, part 3, apply to
28 [section 3].

29 (2) [Section 20] is intended to be codified as an integral part of Title 46, chapter 18, part 2, and
30 the provisions of Title 46, chapter 18, part 2, apply to [section 20].

1 the provisions of Title 46, chapter 18, part 2, apply to [section 20].

2 (3) [Sections 35 through 37] are intended to be codified as an integral part of Title 46, chapter 24,
3 part 2, and the provisions of Title 46, chapter 24, part 2, apply to [sections 35 through 37].

4

5 NEW SECTION. **Section 42. 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
7 applications, the part remains in effect in all valid applications that are severable from the invalid
8 applications.

9

10 NEW SECTION. **Section 43. Applicability.** [Sections 10, 13, and 21] apply to trials for and
11 sentences imposed for crimes that were committed on or after [the effective date of this act].

12

-END-

1 HOUSE BILL NO. 69

2 INTRODUCED BY FISHER, QUILICI, GAGE, BROOKE, EWER

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE BOARD OF CRIME CONTROL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
6 PROTECTION AND TREATMENT OF VICTIMS OF CRIME AND TO THE PAYMENT OF RESTITUTION BY THE
7 OFFENDER; AMENDING SECTIONS 27-2-201, 44-2-601, 44-5-303, 45-9-205, 46-11-701, 46-18-101,
8 46-18-112, 46-18-113, 46-18-115, 46-18-201, 46-18-202, 46-18-222, 46-18-241, 46-18-242,
9 46-18-243, 46-18-244, 46-18-245, 46-18-246, 46-18-247, 46-18-302, 46-23-202, 46-23-210,
10 46-23-215, 46-23-405, 46-23-1011, 46-23-1021, 46-23-1025, 46-24-103, 46-24-104, 46-24-201,
11 46-24-202, 46-24-203, 46-24-205, AND 53-9-128, MCA; REPEALING SECTION 46-23-204, MCA; AND
12 PROVIDING AN APPLICABILITY DATE."

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

15
16 Section 1. Section 44-2-601, MCA, is amended to read:

17 "44-2-601. Notification of escape or release from confinement. (1) The notice required by
18 subsection (2) must be given if:

19 (a) a person committed to a hospital or mental health facility under Title 46, chapter 14, escapes
20 or is released from confinement;

21 (b) a person confined in an institution other than a jail pending or during trial for a criminal offense
22 involving the use or threat of physical force or violence or confined in a prison or other state institution after
23 conviction of a criminal offense involving the use or threat of physical force or violence or after being
24 designated as a dangerous offender under 46-18-404 escapes or is released from confinement; or

25 (c) a person confined in a jail pending or during trial for a criminal offense involving the use or
26 threat of physical force or violence or confined in a jail after conviction of a criminal offense involving the
27 use or threat of physical force or violence or after being designated as a dangerous offender under
28 46-18-404 escapes from confinement.

29 (2) If a person referred to in subsection (1) escapes or is released from confinement, the institution
30 in which the person was confined shall notify:

1 (a) the sheriff or other law enforcement officials in the county in which the offense occurred;

2 (b) the sheriff or other law enforcement officials in the county or counties, if known, in which a
3 victim or the victims of the offense reside at the time of the escape or release;

4 (c) the sheriff or other law enforcement officials in the county, if known, in which the person
5 intends to reside upon leaving confinement;

6 (d) the sheriff or other law enforcement officials in the county in which the jail, prison, hospital,
7 mental health facility, or other institution from which the person escaped or was released is located; ~~and~~

8 (e) a victim of the offense who has requested notification in the event of an escape or a release
9 of the person; and

10 ~~(f)~~ (f) a court that has requested that it be notified in the event of an escape or a release or an
11 escape of the person."

12

13 **Section 2.** Section 44-5-303, MCA, is amended to read:

14 **"44-5-303. Dissemination of confidential criminal justice information.** ~~Dissemination (1) Except~~
15 as provided in subsection (2), dissemination of confidential criminal justice information is restricted to
16 criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by
17 a district court upon a written finding that the demands of individual privacy do not clearly exceed the
18 merits of public disclosure.

19 (2) If the prosecutor determines that dissemination would not jeopardize a pending investigation
20 or other criminal proceeding of confidential criminal justice information, the information may be
21 disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency
22 after consultation with the prosecutor.

23 (3) A Unless otherwise ordered by a court, a person or criminal justice agency that accepts
24 confidential criminal justice information assumes equal responsibility for the security of ~~such~~ the information
25 with the originating agency. Whenever confidential criminal justice information is disseminated, it must be
26 designated as confidential."

27

28 **NEW SECTION. Section 3. Nondisclosure of information about victim.** (1) If a victim of an offense
29 requests confidentiality, a criminal justice agency may not disseminate, except to another criminal justice
30 agency, the address, telephone number, or place of employment of the victim or a member of the victim's

1 family unless disclosure is of the location of the crime scene, is required by law, is necessary for law
2 enforcement purposes, or is authorized by a district court upon a showing of good cause.

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

6 (3) A criminal justice agency may not disseminate to the public any information directly or indirectly
7 identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, or 45-5-507 unless
8 disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement
9 purposes, or is authorized by a district court upon a showing of good cause.

10
11 **Section 4.** Section 45-9-205, MCA, is amended to read:

12 **"45-9-205. Exemption from mandatory minimum sentences.** If a court imposes any of the
13 sentencing alternatives specified in 45-9-202, the mandatory minimum sentences provided in
14 46-18-201(4)(5) do not apply."

15
16 **Section 5.** Section 46-11-701, MCA, is amended to read:

17 **"46-11-701. Pretrial proceedings -- exclusion of public and sealing of records.** (1) Except as
18 provided in this section, pretrial proceedings and records of those proceedings are open to the public. If,
19 at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a
20 trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation
21 of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the
22 jury or until an earlier time consistent with the administration of justice.

23 (2) The defendant may move that all or part of the proceeding be closed to the public, or with the
24 consent of the defendant, the judge may take action on the judge's own motion.

25 (3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding,
26 including a hearing on a motion to suppress, and may seal the record only if:

27 (a) the dissemination of information from the pretrial proceeding and its record would create a clear
28 and present danger to the fairness of the trial; and

29 (b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable
30 alternative means.

1 (4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the
2 public under this section, a complete record must be kept and made available to the public following the
3 completion of the trial or earlier if consistent with trial fairness.

4 (5) Notwithstanding closure of a proceeding to the public, the judge shall permit a victim of the
5 offense to be present unless the judge determines that exclusion of the victim is necessary to protect either
6 party's right to a fair trial or the safety of the victim. If the victim is present, the judge, at the victim's
7 request, shall permit the presence of an individual to provide support to the victim unless the judge
8 determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.

9 ~~(5)(6)~~ When the judge determines that all or part of a document filed in support of a charge or
10 warrant would present a clear and present danger to the defendant's right to a fair trial, the document or
11 portion of the document must be sealed until the trial is completed unless the document or portion of the
12 document must be used for trial fairness."
13

14 **Section 6.** Section 46-18-101, MCA, is amended to read:

15 **"46-18-101. Correctional policy.** (1) It is the purpose of this section to declare the correctional
16 policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted
17 are drawn to implement the policy established by this section.

18 (2) The correctional policy of the state of Montana is to protect society by preventing crime
19 through punishment and rehabilitation of the convicted. The legislature finds that an individual is
20 responsible for and must be held accountable for the individual's actions, including, whenever possible, the
21 restoration of all pecuniary losses sustained by a victim of the offense. Corrections laws and programs
22 must be implemented to impress upon each individual the responsibility for obeying the law. To achieve
23 this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever
24 probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore,
25 it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual
26 characteristics, circumstances, needs, and potentialities. Finally, it is the policy of the state to recognize
27 that the interests of crime victims should be considered so that, to the extent possible, victims of crime
28 may be protected from threat of future harm by the offender.

29 (3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

30 (i) the crime committed;

1 (ii) the prospects of rehabilitation of the offender;

2 (iii) the circumstances under which the crime was committed;

3 (iv) the criminal history of the offender; and

4 (v) consideration of alternatives to imprisonment of the offender in the state prison or the women's
5 correctional center.

6 (b) Dangerous offenders who habitually violate the law and victimize the public must be removed
7 from society and correctively treated in custody for long terms, as needed. Other offenders must be dealt
8 with by probation, suspended sentence, community corrections, community service, or fine whenever such
9 disposition appears practicable and not detrimental to the needs of public safety and the welfare of the
10 individual. Whenever possible, sentences for offenders must include restitution to the victim, payment of
11 costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

12 (4) It is also the policy of the state that alternatives to imprisonment, such as community
13 corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them
14 opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate
15 in other activities that will reduce recidivism and enable offenders to become productive members of
16 society."

17
18 **Section 7.** Section 46-18-112, MCA, is amended to read:

19 **"46-18-112. Content of presentence investigation report.** (1) Whenever an investigation is
20 required, the probation officer shall promptly inquire into and report upon:

21 (a) the defendant's characteristics, circumstances, needs, and potentialities;

22 (b) the defendant's criminal record and social history;

23 (c) the circumstances of the offense;

24 (d) the time of the defendant's detention for the offenses charged; ~~and~~

25 (e) the harm caused, as a result of the offense, to the victim, the victim's immediate family, and
26 the community; and

27 (f) the victim's pecuniary loss, if any. The officer shall make a reasonable effort to confer with the
28 victim to ascertain whether the victim has sustained a pecuniary loss. If the victim is not available or
29 declines to confer, the officer shall record that information in the report.

30 (2) All local and state mental and correctional institutions, courts, and law enforcement agencies

1 shall furnish, upon request of the officer preparing a presentence investigation, the defendant's criminal
2 record and other relevant information.

3 (3) The court may, in its discretion, require that the presentence investigation report include a
4 physical and mental examination of the defendant.

5 ~~(4) If applicable, the court may require the officer to inquire into the victim's pecuniary loss and
6 make a restitution report to the court as provided by law."~~

7

8 **Section 8.** Section 46-18-113, MCA, is amended to read:

9 **"46-18-113. Availability of presentence investigation report.** (1) All presentence investigation
10 reports must be a part of the court record but may not be opened for public inspection. A copy of the
11 presentence investigation report must be provided to the prosecution, the defendant and the defendant's
12 attorney, and the agency or institution to which the defendant is committed. The prosecutor may discuss
13 DISCLOSE the contents of the presentence report with TO a victim of the offense.

14 (2) The court having jurisdiction of the case may permit other access to the presentence
15 investigation report as it considers necessary."

16

17 **Section 9.** Section 46-18-115, MCA, is amended to read:

18 **"46-18-115. Sentencing hearing.** Before imposing sentence or making any other disposition upon
19 acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing,
20 without unreasonable delay, as follows:

21 (1) The court shall afford the parties an opportunity to be heard on any matter relevant to the
22 disposition, including the applicability of sentencing enhancement provisions, mandatory minimum
23 sentences, persistent felony offender status, or an exception to these matters.

24 (2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided
25 by 46-18-301.

26 (3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address
27 the defendant personally to ascertain whether the defendant wishes to make a statement and to present
28 any information in mitigation of punishment or reason why the defendant should not be sentenced. If the
29 defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to
30 do so.

1 (4) (a) The court shall permit the victim to present a statement concerning the effects of the crime
 2 on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated,
 3 and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present
 4 the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or
 5 both.

6 (b) The court shall give copies of any written statements of the victim to the prosecutor and the
 7 defendant prior to imposing sentence.

8 (c) The court shall consider the victim's statement along with other factors. However, if the
 9 victim's statement includes new material facts upon which the court intends to rely, the court shall allow
 10 the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

11 ~~(4)(5)~~ The court shall impose sentence or make any other disposition authorized by law.

12 ~~(5)(6)~~ In felony cases, the court shall specifically state all reasons for the sentence, including
 13 restrictions, conditions, or enhancements imposed, in open court on the record and in the written
 14 judgment."
 15

16 **Section 10.** Section 46-18-201, MCA, is amended to read:

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

19 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
 20 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
 21 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
 22 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
 23 period of the deferred imposition. Reasonable restrictions or conditions may include:

24 (i) jail base release;

25 (ii) jail time not exceeding 180 days;

26 (iii) conditions for probation;

27 ~~(iv) restitution;~~

28 ~~(v)(iv)~~ payment of the costs of confinement;

29 ~~(vi)(v)~~ payment of a fine as provided in 46-18-231;

30 ~~(vii)(vi)~~ payment of costs as provided in 46-18-232 and 46-18-233;

1 ~~(viii)~~(vii) payment of costs of court-appointed counsel as provided in 46-8-113;
 2 ~~(ix)~~(viii) with the approval of the facility or program, order the offender to be placed in a community
 3 corrections facility or program as provided in 53-30-321;
 4 ~~(x)~~(ix) community service;
 5 ~~(xi)~~(x) home arrest as provided in Title 46, chapter 18, part 10;
 6 ~~(xii)~~(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection
 7 of society; or
 8 ~~(xiii)~~(xii) any combination of the above.

9 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
 10 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
 11 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
 12 restrictions or conditions may include any of those listed in subsection (1)(a).

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

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

16 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
 17 the defendant to the department of corrections and human services for placement in an appropriate
 18 correctional institution or program;

19 (f) with the approval of the facility or program, order the offender to be placed in a community
 20 corrections facility or program as provided in 53-30-321; or

21 (g) impose any combination of subsections (1)(b) through (1)(f).

22 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
 23 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
 24 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
 25 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241. IF
 26 THE COURT DETERMINES THAT THE DEFENDANT IS UNABLE TO PAY RESTITUTION, THEN IT MAY
 27 IMPOSE, IN ADDITION TO ANY OTHER SENTENCE, COMMUNITY SERVICE UNDER 46-18-241.

28 ~~(2)~~(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
 29 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
 30 a felony, regardless of whether any other conditions are imposed.

1 ~~(3)~~(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the
2 court shall consider any elapsed time and either expressly allow part or all of it as a credit against the
3 sentence or reject all or part as a credit ~~and~~. The court shall state its reasons in the order. Credit,
4 however, must be allowed for jail or home arrest time already served.

5 ~~(4)~~(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2
6 years of a sentence of imprisonment imposed under the following sections may not be deferred or
7 suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
8 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

9 ~~(5)~~(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a
10 sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

11 ~~(6)~~(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be
12 deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not
13 the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
14 suspended.

15 ~~(7)~~(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of
16 a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be
17 deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

18 ~~(8)~~(9) In imposing a sentence on a defendant convicted of a sexual offense as defined in
19 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
20 Title 46, chapter 23, part 5.

21 ~~(9)~~(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
22 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
23 program.

24 ~~(10)~~(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
25 imprisonment of the offender in the state prison, including placement of the offender in a community
26 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
27 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
28 or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were
29 not selected, based on the criteria contained in 46-18-225."
30

1 **Section 11.** Section 46-18-202, MCA, is amended to read:

2 **"46-18-202. Additional restrictions on sentence.** (1) The district court may also impose any of
3 the following restrictions or conditions on the sentence provided for in 46-18-201 that it considers
4 necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

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

6 (b) prohibition of the defendant's owning or carrying a dangerous weapon;

7 (c) restrictions on the defendant's freedom of association;

8 (d) restrictions on the defendant's freedom of movement;

9 (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of
10 the victim and society.

11 (2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term
12 exceeding 1 year, the court may also impose the restriction that the defendant ~~be~~ is ineligible for parole and
13 participation in the supervised release program while serving that term. If such a restriction is to be
14 imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary
15 for the protection of society, it shall impose the restriction as part of the sentence and the judgment ~~shall~~
16 must contain a statement of the reasons for the restriction.

17 (3) The judge in a justice's, city, or municipal court does not have the authority to restrict an
18 individual's rights as enumerated in subsection (1)(a).

19 (4) When the district court imposes a sentence of probation, as defined in 46-23-1001, any
20 probation agreement signed by the defendant may contain a clause waiving extradition."
21

22 **Section 12.** Section 46-18-222, MCA, is amended to read:

23 **"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition**
24 **and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this
25 state and the restrictions on deferred imposition and suspended execution of sentence prescribed by
26 46-18-201~~(4)~~(5) through ~~(6)~~(7), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

27 (1) the defendant was less than 18 years of age at the time of the commission of the offense for
28 which the defendant is to be sentenced;

29 (2) the defendant's mental capacity, at the time of the commission of the offense for which the
30 defendant is to be sentenced, was significantly impaired, although not so impaired as to constitute a

1 defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be
2 considered an impairment for the purposes of this subsection.

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

6 (4) the defendant was an accomplice, the conduct constituting the offense was principally the
7 conduct of another, and the defendant's participation was relatively minor;

8 (5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual
9 element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the
10 commission of the offense; or

11 (6) the offense was committed under 45-5-502(3) and the court determines that treatment of the
12 defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the
13 ultimate protection of the victim and society, in which case the court shall include in its judgment a
14 statement of the reasons for its determination."
15

16 **Section 13.** Section 46-18-241, MCA, is amended to read:

17 "**46-18-241. Condition of restitution.** (1) As provided in 46-18-201, a sentencing court ~~may~~ shall
18 require an offender to make restitution to any victim of the offense who has sustained pecuniary loss as
19 a result of the offense.

20 (2) The court may require the offender to pay the cost of supervising the payment of restitution,
21 as provided in 46-18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not
22 less than \$5 or more than \$250. Payment must be made to the court, which shall disburse the money to
23 the entity employing the person ordered to supervise restitution under 46-18-245.

24 ~~(3) If the court finds that, because of circumstances beyond the offender's control, the offender~~
25 ~~is not and will not be able to pay any restitution during the period of state supervision, the court may order~~
26 ~~the offender to perform community service commensurate with the amount of restitution that would have~~
27 ~~been imposed.~~

28 (3) IF THE COURT FINDS THAT, BECAUSE OF CIRCUMSTANCES BEYOND THE OFFENDER'S
29 CONTROL, THE OFFENDER IS NOT AND WILL NOT BE ABLE TO PAY ANY RESTITUTION DURING THE
30 PERIOD OF STATE SUPERVISION, THE COURT MAY ORDER THE OFFENDER TO PERFORM COMMUNITY

1 SERVICE COMMENSURATE WITH THE AMOUNT OF RESTITUTION THAT WOULD HAVE BEEN IMPOSED."

2

3 **Section 14.** Section 46-18-242, MCA, is amended to read:

4 **"46-18-242. Investigation and report of victim's loss.** (1) Whenever the court believes that
5 ~~restitution may be a proper condition of a deferred or suspended sentence~~ a victim of the offense may have
6 sustained a pecuniary loss as a result of the offense or whenever the prosecuting attorney requests, the
7 court shall order the probation officer, restitution officer, or other designated person to include in the
8 presentence investigation and report:

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

10 (b) documentation of the victim's pecuniary loss, submitted by the victim or by the board of crime
11 control if compensation for the victim's loss has been reimbursed by the crime victims compensation and
12 assistance account.

13 (2) ~~Where no~~ When a presentence report is not authorized or requested, the court may receive
14 evidence of the offender's ability to pay and the victim's loss at the time of sentencing."

15

16 **Section 15.** Section 46-18-243, MCA, is amended to read:

17 **"46-18-243. ~~Definition~~ Definitions.** For purposes of 46-18-241 through 46-18-249, the following
18 definitions apply:

19 (1) "Pecuniary loss" means:

20 (a) all special damages, but not general damages, substantiated by evidence in the record, that a
21 person could recover against the offender in a civil action arising out of the facts or events constituting the
22 offender's criminal activities, including without limitation the money equivalent of loss resulting from
23 property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical
24 expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that
25 the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings
26 related to the commission of the offense, and reasonable expenses related to funeral and burial or
27 crematory services; and

28 (b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in
29 the investigation and prosecution of the offense.

30 (2)(a) "Victim" means:

- 1 ~~(a)(i)~~ a person who suffers loss of property, bodily injury, or death as a result of:
- 2 ~~(i)(A)~~ eriminally injurious conduct the commission of an offense; or
- 3 ~~(i)(B)~~ his the good faith effort to prevent eriminally injurious conduct the commission of an offense;
- 4 or
- 5 (C) the good faith effort to apprehend a person reasonably suspected of committing an offense;
- 6 (ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a
- 7 homicide victim;
- 8 (iii) a governmental entity that suffers loss of property as a result of the commission of an offense
- 9 in this state; or
- 10 ~~(b)(iv)~~ an insurer or surety with a right of subrogation to the extent it has reimbursed the victim
- 11 of the offense for his pecuniary loss.
- 12 (b) Victim does not include a person who is accountable for the crime or accountable for a crime
- 13 arising from the same transaction."

14

15 **Section 16.** Section 46-18-244, MCA, is amended to read:

16 **"46-18-244. Type and time of payment -- defenses.** (1) The court shall specify the amount,

17 method, and time of payment to the victim and may permit payment in installments. The court may not

18 establish a payment schedule extending beyond the period ~~for which the sentence has been suspended or~~

19 ~~deferred under 46-18-201~~ of state supervision over the offender.

20 (2) In determining the amount, method, and time of payment, the court shall consider the financial

21 resources and future ability of the offender to pay. The court may provide for payment to a victim up to

22 but not in excess of the pecuniary loss caused by the offense. The offender may assert any defense that

23 ~~he~~ the offender could raise in a civil action for the loss sought to be compensated by the restitution order.

24 (3) In addition to other methods of payment, the court may order one or more of the following in

25 order to satisfy the offender's restitution obligation:

26 (a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part

27 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are

28 reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the

29 state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after

30 sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale,

1 any remaining amount must be returned to the offender.

2 (b) return of any property to the victim;

3 (c) payment of up to one-third of the offender's prison earnings.

4 (4) With the consent of the victim and in the discretion of the court, an offender may be ordered
 5 to make restitution in services in lieu of money or to make restitution to a person designated by the victim,
 6 if that person provided services to the victim as a result of the offense."

7

8 **Section 17.** Section 46-18-245, MCA, is amended to read:

9 **"46-18-245. Supervision of payment.** The court may order a probation officer, restitution officer,
 10 ~~officer of the board of crime control,~~ or other designated person to supervise the making of restitution and
 11 to report to the court any default in payment. IF THE VICTIM HAS RECEIVED COMPENSATION UNDER
 12 TITLE 53, CHAPTER 9, THE COURT MAY ALSO ORDER AN EMPLOYEE OF THE BOARD OF CRIME
 13 CONTROL TO SUPERVISE THE MAKING OF RESTITUTION AND TO REPORT TO THE COURT ANY
 14 DEFAULT IN PAYMENT."

15

16 **Section 18.** Section 46-18-246, MCA, is amended to read:

17 **"46-18-246. Waiver or modification of payment.** An offender may at any time petition the
 18 sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court
 19 shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date,
 20 place, and time and inform the victim that ~~he~~ the victim will have an opportunity to be heard. If the court
 21 finds that the circumstances upon which it based the imposition, amount, method, or time of payment no
 22 longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or
 23 waive unpaid restitution or modify the time or method of making restitution. The court may extend the
 24 restitution schedule, but not beyond the period ~~for which the sentence has been suspended or deferred~~
 25 ~~under 46-18-201~~ provided for in 46-18-244."

26

27 **Section 19.** Section 46-18-247, MCA, is amended to read:

28 **"46-18-247. Default.** (1) If an offender sentenced to make restitution is in default, the sentencing
 29 court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under
 30 46-18-203 requiring the offender to show cause why ~~he~~ the offender should not be confined for failure to

1 obey the sentence of the court. The court may order the offender to appear at a time, date, and place for
 2 a hearing or, if ~~he~~ the offender fails to appear as ordered, issue a warrant for ~~his~~ the offender's arrest. The
 3 order or warrant must be accompanied by written notice of the offender's right to a hearing as provided
 4 in 46-18-203.

5 (2) If the court finds that the offender's default was attributable to a the offender's failure ~~on his~~
 6 ~~part~~ to make a good faith effort to obtain the necessary funds for payment of the ordered restitution, the
 7 court may take any action provided for in 46-18-203. If confinement is ordered, the court, after entering
 8 the order, may ~~at any time, for good cause shown,~~ reduce the term of confinement and, in accordance with
 9 the provisions of 46-18-246, waive satisfaction of the restitution order.

10 (3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following
 11 a default in the payment of restitution or any installment ~~thereof~~ of restitution, the sentencing court may
 12 order the restitution to be collected by any method authorized for the enforcement of other judgments."
 13

14 **NEW SECTION. Section 20. Allocation of fines, costs, restitution, and other charges.** (1) If an
 15 offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out
 16 of the same criminal proceeding, money collected from the offender must be allocated as provided in this
 17 section.

18 (2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution
 19 and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50%
 20 of all money collected from the defendant must be applied to payment of restitution and the balance must
 21 be applied to other payments in the following order:

- 22 (a) payment of charges imposed pursuant to 46-18-236;
- 23 (b) payment of costs imposed pursuant to 46-18-232 or 46-18-233;
- 24 (c) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and
- 25 (d) any other payments ordered by the court.

26 (3) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has
 27 been paid, any additional money collected must be applied to payment of those fines, costs, charges, or
 28 other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments
 29 have been paid, any additional money collected must be applied toward payment of the restitution.
 30

1 **Section 21.** Section 46-18-302, MCA, is amended to read:

2 **"46-18-302. Evidence that may be received.** In the sentencing hearing, evidence may be presented
3 as to any matter the court considers relevant to the sentence, including but not limited to the nature and
4 circumstances of the crime; the defendant's character, background, history, and mental and physical
5 condition; the harm caused to the victim and the victim's family as a result of the offense; and any other
6 facts in aggravation or mitigation of the penalty. Any evidence that the court considers to have probative
7 force may be received regardless of its admissibility under the rules governing admission of evidence at
8 criminal trials. Evidence admitted at the trial relating to ~~such~~ aggravating or mitigating circumstances ~~shall~~
9 must be considered without reintroducing it at the sentencing proceeding. The state and the defendant or
10 ~~his~~ the defendant's counsel ~~shall~~ must be permitted to present argument for or against sentence of death."

11

12 **Section 22.** Section 46-23-202, MCA, is amended to read:

13 **"46-23-202. Investigation of prisoner by board -- consideration of victim's statement.** (1) Within
14 the 2 months prior to a prisoner's official parole eligibility date or within the 2 months following the date
15 on which a prisoner becomes eligible pursuant to 53-30-105(5), the board shall consider all pertinent
16 information regarding each prisoner, including the circumstances of the offense; the prisoner's previous
17 social history and criminal record; the prisoner's conduct, employment, and attitude in prison; and the
18 reports of any physical and mental examinations that have been made.

19 (2) Before ordering the parole of any prisoner, the board shall:

20 (a) conduct a hearing and interview the prisoner. At the time of the hearing, the board shall receive
21 relevant statements from interested persons and any person may be represented by counsel, provided that
22 the board has the power to regulate procedures at all hearings.

23 (b) permit a victim to present a statement concerning the effects of the crime on the victim, the
24 circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's
25 opinion regarding whether the prisoner should be paroled. In the board's discretion, the victim's statement
26 may be kept confidential. The board shall consider the victim's statement, along with the information
27 provided under subsection (1), in determining whether to grant parole."

28

29 **Section 23.** Section 46-23-210, MCA, is amended to read:

30 **"46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order

1 a person placed in a correctional institution or program, except a person under sentence of death. To be
2 eligible for a medical parole, a person must have an examination and written diagnosis by a physician
3 licensed under Title 37 to practice medicine. The diagnosis must include:

4 (a) a determination that the person suffers from an incapacitating physical condition, disease, or
5 syndrome that renders the person highly unlikely to present a clear and present danger to public safety;

6 (b) a description of the physical condition, disease, or syndrome and a detailed description of the
7 person's physical incapacity; and

8 (c) a prognosis addressing the likelihood of the person's recovery from the physical condition,
9 disease, or syndrome and the extent of any potential recovery.

10 (2) The diagnosis must be reviewed and accepted by the department before the board may consider
11 granting a medical parole.

12 (3) The board shall require as a condition of medical parole that the person agree to placement in
13 an environment chosen by the department during the parole period, including but not limited to a hospital,
14 nursing home, or family home. The board may require as a condition of parole that the person agree to
15 periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis
16 must be submitted to the board and department by the examining physician. If either the board or
17 department determines that the person's physical capacity has improved to the extent that the person is
18 likely to pose a possible detriment to society, the board may revoke the parole and return the person to the
19 custody of the department.

20 (4) Medical parole may be requested by the board, the department, an incarcerated person, or an
21 incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the
22 administrator of the correctional institution in which the person is incarcerated.

23 (5) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

24 (6) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply
25 to nonmedical parole."
26

27 **Section 24.** Section 46-23-215, MCA, is amended to read:

28 "**46-23-215. Conditions of parole.** (1) ~~Every~~ A prisoner while on parole ~~shall remain~~ remains in
29 the legal custody of the institution from which ~~he~~ the prisoner was released but ~~shall be~~ is subject to the
30 orders of the board.

1 (2) When an order for parole is issued, it ~~shall~~ must recite the conditions ~~thereof~~ of parole. If
 2 restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a
 3 condition to pay restitution to the victim. An order for parole or any parole agreement signed by a prisoner
 4 may contain a clause waiving extradition.

5 (3) Whenever a prisoner in the Montana state prison has been approved for parole on condition that
 6 he the prisoner obtain employment or secure suitable living arrangements or on any other condition that
 7 is difficult to fulfill while incarcerated, the warden may grant ~~him~~ the prisoner a furlough, not to exceed 10
 8 days, for purposes of fulfilling the condition. While on ~~such~~ furlough, the prisoner remains in the legal
 9 custody of the prison and is subject to all other conditions recited by the board."
 10

11 **Section 25.** Section 46-23-405, MCA, is amended to read:

12 "**46-23-405. Establishing program -- rules.** The department ~~is authorized and directed to~~ shall
 13 establish a supervised release program and make rules in accordance with Title 2, chapter 4 (the Montana
 14 Administrative Procedure Act), to implement and control the ~~same~~ program. Rules ~~shall~~ must include
 15 guidelines for:

16 (1) prisoner eligibility;

17 (2) prisoner participation in a recognized educational, treatment, or training program or work
 18 program in conjunction with any of the ~~above~~ programs listed in this subsection;

19 (3) approval of the sponsor;

20 (4) review of a board decision to deny an applicant admittance into the program;

21 (5) supervision of the prisoner by or under the direction of a supervising agent while ~~he~~ the prisoner
 22 is in the program;

23 (6) implementation of a plan for the prisoner to satisfy any restitution or community service
 24 obligation imposed as part of the prisoner's sentence under 46-18-201;

25 ~~(6)(7)~~ conducting revocation hearings;

26 ~~(7)(8)~~ establishment of a program by the prisoner; and

27 ~~(8)(9)~~ any other provisions necessary to implement this part."
 28

29 **Section 26.** Section 46-23-1011, MCA, is amended to read:

30 "**46-23-1011. Supervision on probation.** (1) The department shall supervise persons during their

1 probation period in accord with the conditions set by a court.

2 (2) A copy of the conditions of probation must be signed by the probationer and given to the
3 probationer and the probationer's probation and parole officer, who shall report on the probationer's
4 progress under rules of the court.

5 (3) The probation and parole officer shall regularly advise and consult with the probationer to
6 encourage the probationer to improve the probationer's condition and conduct and shall inform the
7 probationer of the restoration of rights on successful completion of the sentence.

8 (4) The probation and parole officer may recommend and a court may modify any condition of
9 probation or suspension of sentence at any time. Notice must be given to the probation and parole officer
10 before any condition is modified, and the officer must be given an opportunity to present the officer's ideas
11 or recommendations on any modification. A copy of a modification of conditions must be delivered to the
12 probation and parole officer and the probationer. Waiver or modification of restitution may be ordered only
13 as provided under the provisions of 46-18-246.

14 (5) The probation and parole officer shall keep records as the department or the court may require.

15 (6) (a) Upon recommendation of the probation and parole officer, a court may conditionally
16 discharge a probationer from supervision before expiration of the probationer's sentence if the court
17 determines that a conditional discharge from supervision is in the best interests of the probationer and
18 society and will not present unreasonable risk of danger to the victim of the offense.

19 (b) Subsection (6)(a) does not prohibit a court from revoking the order suspending execution or
20 deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally
21 discharged from supervision.

22 (c) If the department certifies to the court that the workload of a district probation and parole office
23 has exceeded the optimum workload for the district over the preceding 60 days, the court may not place
24 an offender on probation under supervision by that district office unless it grants a conditional discharge
25 to a probationer being supervised by that district office. The department may recommend probationers to
26 the court for conditional discharge. The court may accept or reject the recommendations of the
27 department. The department shall determine the optimum workload for each district probation and parole
28 office."

29

30 **Section 27.** Section 46-23-1021, MCA, is amended to read:

1 **"46-23-1021. Supervision on parole.** (1) The department shall retain custody of all persons placed
2 on parole and shall supervise the persons during their parole ~~period~~ periods in ~~accord~~ accordance with the
3 conditions set by the board.

4 (2) The department shall assign personnel to assist ~~persons~~ a person who is eligible for parole in
5 preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board
6 prior to its consideration of the case of the eligible person.

7 (3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and
8 to the parolee's probation and parole officer, who shall report on the parolee's progress under the rules of
9 the board.

10 (4) The probation and parole officer shall regularly advise and consult with the parolee, assist the
11 parolee in adjusting to community life, and inform the parolee of the restoration of rights on successful
12 completion of the sentence.

13 (5) The probation and parole officer shall keep records as the board or department may require.
14 All records must be entered in the master file of the individual.

15 (6) (a) Upon recommendation of the probation and parole officer, the board may conditionally
16 discharge a parolee from supervision before expiration of the parolee's sentence if the board determines
17 that a conditional discharge from supervision is in the best interests of the parolee and society and will not
18 present unreasonable risk of danger to the victim of the offense.

19 (b) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in
20 46-23-1025, of a parolee who has been conditionally discharged from supervision.

21 (c) If the department certifies to the board that the workload of a district probation and parole
22 office has exceeded the optimum workload for the district over the preceding 60 days, the board may not
23 parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised
24 by that district office. The department may recommend parolees to the board for conditional discharge.
25 The board may accept or reject the recommendations of the department. The department shall determine
26 the optimum workload for each district probation and parole office."
27

28 **Section 28.** Section 46-23-1025, MCA, is amended to read:

29 **"46-23-1025. Report to and action by the board.** (1) If the hearings officer determines that there
30 is probable cause to believe that the prisoner has violated a condition of ~~his~~ parole, the probation and parole

1 officer shall immediately notify the board and shall submit in writing a report showing in what manner the
 2 prisoner has violated the conditions of release. This report ~~shall~~ must be accompanied by the findings of
 3 the hearings officer.

4 (2) ~~Thereupon~~ Upon receipt of a report, the board shall cause the prisoner to be promptly brought
 5 before it for a hearing on the violation charged under ~~such rules as~~ that the board may adopt. If the
 6 violation is established, the board may continue or revoke the parole or conditional release or may enter
 7 ~~such other an~~ an order as it ~~may see~~ sees fit.

8 (3) If the prisoner has violated a condition of release requiring the payment of restitution, the board
 9 shall notify the victim of the offense prior to the hearing required by subsection (2) and give the victim an
 10 opportunity to be heard. If the board finds that due to circumstances beyond the prisoner's control, the
 11 prisoner is unable to make the required restitution payments, the board may not revoke the prisoner's parole
 12 for failure to pay restitution. The board may modify the time or method of making restitution and may
 13 extend the restitution schedule, but the schedule may not be extended beyond the period of state
 14 supervision over the prisoner.

15 (3)(4) ~~If it appears that he~~ the prisoner has violated the provisions of ~~his~~ release, the board shall
 16 determine whether the time from the issuing of the warrant to the date of ~~his~~ the prisoner's arrest or any
 17 part of it will be counted as time served under the sentence."

18
 19 **Section 29.** Section 46-24-103, MCA, is amended to read:

20 "**46-24-103. Duty of attorney general.** The attorney general shall ~~assure~~ ensure that victims and
 21 witnesses of crime receive fair and proper treatment in the criminal justice system. The attorney general
 22 shall prepare a written notice of the rights and services available to victims of crime under this chapter.
 23 The notice must be distributed to local law enforcement agencies in the state. In addition, the attorney
 24 general shall ~~assure~~ ensure that victims and witnesses are provided important services and assistance as
 25 required under this chapter."

26
 27 **Section 30.** Section 46-24-104, MCA, is amended to read:

28 "**46-24-104. Consultation with victim of felony offense certain offenses.** ~~The~~ As soon as possible
 29 prior to disposition of the case, the prosecuting attorney in a criminal case shall consult with the victim of
 30 a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the

1 victim or, in the case of a minor child victim or homicide victim, with the family of the victim in order to
 2 obtain the views of the victim or ~~his~~ the victim's family regarding the disposition of the case, including:

- 3 (1) dismissal of the case;
- 4 (2) release of the accused pending judicial proceedings;
- 5 (3) plea negotiations; and
- 6 (4) pretrial diversion of the case from the judicial process."

7
 8 **Section 31.** Section 46-24-201, MCA, is amended to read:

9 **"46-24-201. Services to victims of crime.** (1) Law enforcement personnel shall ~~assure~~ ensure that
 10 a victim of a crime receives emergency social and medical services as soon as possible and that ~~such~~ the
 11 victim is given ~~information on~~ written notice, in the form supplied by the attorney general, of the following:

- 12 (1)(a) the availability of crime victim compensation;
- 13 (2) ~~community-based victim treatment programs;~~
- 14 (b) access by the victim and the defendant to information about the case;
- 15 (3)(c) the role of the victim in the criminal justice process, including what ~~he~~ the victim can expect
 16 from the system, as well as what the system expects from the victim; and
- 17 (4)(d) stages in the criminal justice process of significance to a crime victim and the manner in
 18 which information about ~~such~~ the stages may be obtained.

19 (2) In addition to the information supplied under subsection (1), law enforcement personnel shall
 20 provide the victim with written information on community-based victim treatment programs, including
 21 medical, housing, counseling, and emergency services available in the community.

22 (3) As soon as possible, law enforcement personnel shall give to the victim the following
 23 information:

- 24 (a) the name, office address, and telephone number of a law enforcement officer assigned to
 25 investigate the case; and
- 26 (b) the prosecuting attorney's name, office address, and telephone number."

27
 28 **Section 32.** Section 46-24-202, MCA, is amended to read:

29 **"46-24-202. Notification of available protective services.** Law enforcement officers and
 30 prosecuting attorneys shall provide a victim or witness information on the availability of services to protect

1 the victim or witness from intimidation, including the process for obtaining a protective order from the
 2 court."

3
 4 **Section 33.** Section 46-24-203, MCA, is amended to read:

5 **"46-24-203. Prompt notification to victims and witnesses of felony certain offenses.** (1) A person
 6 described in subsection (2) who provides the appropriate official with a current address and telephone
 7 number must receive prompt advance notification, if possible, of proceedings relating to his the person's
 8 case, including:

9 (a) the arrest of an accused;

10 (b) the release of the accused pending judicial proceedings; ~~and~~

11 (c) the crime with which the accused has been charged, including an explanation of the elements
 12 of the offense when necessary to an understanding of the nature of the crime;

13 ~~(d) proceedings in the prosecution of the accused, including entry of a plea of guilty, and the~~
 14 ~~setting of a trial date, the sentencing schedule, the sentence imposed, the term of imprisonment, if~~
 15 ~~imposed, and the release of the accused from imprisonment;~~

16 (e) if the accused is convicted or pleads guilty, the function of a presentence report; the name,
 17 office address, and telephone number of the person preparing the report; and the convicted person's right
 18 of access to the report, as well as the victim's right under 46-18-115 to present a statement in writing or
 19 orally at the sentencing proceeding and the convicted person's right to be present at the sentencing
 20 proceeding and to have access to the victim's statement;

21 (f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of
 22 imprisonment, if imposed; and

23 (g) the right under [section 36] of a victim of a felony offense to receive information from the
 24 department of corrections and human services concerning the convicted person's incarceration.

25 (2) A person entitled to notification under subsection (1) must be a victim or witness of a felony
 26 offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim, a
 27 relative of such a victim or witness who is a minor, or a relative of a homicide victim."

28
 29 **Section 34.** Section 46-24-205, MCA, is amended to read:

30 **"46-24-205. Notification to employer or creditor -- limitations on employer.** (1) The law

1 enforcement agency or prosecuting attorney in a criminal case shall assist a victim or witness who requests
 2 assistance in informing an employer that the need for victim and witness cooperation in the prosecution
 3 of the case may necessitate absence of the victim or witness from ~~his~~ the place of employment.

4 (2) A law enforcement agency or prosecuting attorney shall assist a victim or witness who, as a
 5 direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney,
 6 is subjected to serious financial strain. ~~Such~~ The agency or prosecuting attorney shall assist the victim or
 7 witness by explaining to creditors the reason for ~~such~~ the serious financial strain.

8 (3) An employer may not discharge or discipline a victim or a member of the victim's family for
 9 participation at the prosecuting attorney's request in preparation for or attendance at a criminal justice
 10 proceeding.

11 (4) As used in this section, "member of the victim's family" means the victim's spouse, child by
 12 birth or adoption, stepchild, parent, stepparent, or sibling, but does not include a person who is accountable
 13 for the crime or accountable for a crime arising from the same transaction."

14
 15 **NEW SECTION. Section 35. Information concerning appeal or postconviction remedies.** If the
 16 defendant appeals or pursues a postconviction remedy, the attorney general, or the county attorney if the
 17 case has not been referred to the attorney general, shall promptly inform the victim of the notice of appeal
 18 or postconviction petition, of the date, time, and place of any hearing, and of the decision.

19
 20 **NEW SECTION. Section 36. Information concerning confinement.** Upon request of a victim of a
 21 felony offense, the department of corrections and human services or the board of pardons, as applicable,
 22 shall:

23 (1) promptly inform the victim of the estimated date of the prisoner's release from confinement in
 24 the Montana state prison, if reasonably ascertainable;

25 (2) promptly inform the victim of the time and place of a parole hearing concerning the prisoner
 26 and of the victim's right to submit a statement to the board of pardons under 46-23-202;

27 (3) provide reasonable advance notice to the victim before release of the defendant on furlough
 28 or to a work-release program, half-way house, or other community-based program or correctional facility;
 29 and

30 (4) promptly inform the victim of the occurrence of any of the following events concerning the

1 prisoner:

- 2 (a) an escape from a correctional or mental health facility or community program;
- 3 (b) a recapture;
- 4 (c) a decision of the board of pardons;
- 5 (d) a decision of the governor to commute the sentence or to grant executive clemency;
- 6 (e) a release from confinement and any conditions attached to the release; and
- 7 (f) the prisoner's death.

8

9 **NEW SECTION. Section 37. General requirements for information.** (1) Unless specifically stated
10 otherwise, the requirements of 44-2-601, 46-24-104, 46-24-201 through 46-24-203, [section 35], and
11 [section 36] to provide information to the victim may be satisfied by either written or oral communication
12 with the victim or the victim's designee.

13 (2) The person responsible for providing information required by 44-2-601, 46-24-104, 46-24-201
14 through 46-24-203, [section 35], and [section 36] shall promptly inform the victim of significant changes
15 in the information.

16 (3) The obligation to furnish information to a victim under 44-2-601, 46-24-104, 46-24-201
17 through 46-24-203, [section 35], and [section 36] is conditioned upon the victim informing the appropriate
18 agency in writing of the name, address, and telephone number of the person to whom the information
19 should be provided and of any change of name, address, or telephone number.

20

21 **Section 38.** Section 53-9-128, MCA, is amended to read:

22 **"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits
23 when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct.
24 During the time the claimant seeks ~~such~~ weekly benefits, the claimant, as a result of ~~such~~ the injury, must
25 have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit
26 amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a
27 maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly
28 compensation payments ~~shall~~ must be made at the end of each 2-week period. ~~No weekly~~ Weekly
29 compensation payments may not be paid for the first week after the criminally injurious conduct occurred,
30 but if total actual loss of wages continues for 1 week, weekly compensation payments ~~shall~~ must be paid

1 from the date the wage loss began. Weekly compensation payments ~~shall~~ must continue until the claimant
2 has a reasonable prospect of being regularly employed in the normal labor market.

3 (2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon,
4 reasonable hospital services and medicines, and ~~such~~ other treatment ~~as may be~~ approved by the division
5 for the injuries suffered due to criminally injurious conduct.

6 (3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are
7 entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66
8 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to
9 a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly
10 compensation payments ~~shall~~ must be made at the end of each 2-week period.

11 (b) Benefits under subsection (3)(a) ~~of this section shall~~ must be paid to the spouse for the benefit
12 of the spouse and other dependents unless the division determines that other payment arrangements should
13 be made. If a spouse dies or remarries, benefits under subsection (3)(a) ~~shall~~ must cease to be paid to the
14 spouse but ~~shall~~ must continue to be paid to the other dependents ~~so~~ as long as their dependent status
15 continues.

16 (4) Reasonable funeral and burial expenses of the victim, not exceeding ~~\$2,000~~ \$3,500, ~~shall~~ must
17 be paid if all other collateral sources have properly paid ~~such~~ expenses but have not covered all ~~such~~
18 expenses.

19 (5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's
20 death because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000
21 in the aggregate.

22 (6) Compensation benefits are not payable for pain and suffering, inconvenience, physical
23 impairment, or nonbodily damage.

24 (7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result
25 of ~~such~~ the injury has no reasonable prospect of being regularly employed in the normal labor market, and
26 who was employable but was not employed at the time of ~~such~~ the injury, may in the discretion of the
27 division be awarded weekly compensation benefits in an amount determined by the division not to exceed
28 \$100 per week. Weekly compensation payments ~~shall~~ must continue until the claimant has a reasonable
29 prospect of being regularly employed in the normal labor market or for a shorter period as determined by
30 the division. The claimant ~~shall~~ must be awarded benefits as provided in subsection (2) ~~of this section~~.

1 (b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was
 2 employable but not employed at the time of death may in the discretion of the division be awarded, in a
 3 gross single amount payable to all dependents, a sum not to exceed \$100 per week, which ~~shall be~~ is
 4 payable in the manner and for the period provided by subsection (3)(b) ~~of this section~~ or for ~~such a~~ shorter
 5 period as determined by the division. The claimant ~~shall~~ must be awarded benefits as provided in
 6 subsection (4) ~~of this section~~.

7 (8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not
 8 be paid less frequently than every 2 weeks.

9 (9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister
 10 of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental
 11 health treatment received as a result of the victim's death.

12 (b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is
 13 a victim of a sexual crime ~~for which a person has been charged~~ and who is not entitled to receive services
 14 under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of
 15 the crime.

16 (c) Total payments made under subsections (9)(a) and (9)(b) may not exceed ~~\$500~~ \$2,000 or 12
 17 consecutive months of treatment for each person ~~or \$1,500 for a family, whichever occurs first."~~

18
 19 **SECTION 39. SECTION 27-2-201, MCA, IS AMENDED TO READ:**

20 "27-2-201. **Actions upon judgments.** (1) Except as provided in ~~subsection~~ subsections (3) and (4),
 21 the period prescribed for the commencement of an action upon a judgment or decree of any court of record
 22 of the United States or of any state within the United States is within 10 years.

23 (2) The period prescribed for the commencement of an action upon a judgment or decree rendered
 24 in a court not of record is within 5 years. The cause of action is considered, in that case, to have accrued
 25 when final judgment was rendered.

26 (3) The period prescribed for the commencement of an action to collect past-due child support that
 27 has accrued after October 1, 1993, under an order entered by a court of record or administrative authority
 28 is within 10 years of the termination of support obligation.

29 (4) An action under 46-18-247(3) to enforce an order of restitution entered by a court of record
 30 may be commenced at any time within the offender's lifetime during which restitution remains unpaid."

1 **NEW SECTION. Section 40. Repealer.** Section 46-23-204, MCA, is repealed.

2

3 **NEW SECTION. Section 41. Codification instruction.** (1) [Section 3] is intended to be codified
4 as an integral part of Title 44, chapter 5, part 3, and the provisions of Title 44, chapter 5, part 3, apply to
5 [section 3].

6 (2) [Section 20] is intended to be codified as an integral part of Title 46, chapter 18, part 2, and
7 the provisions of Title 46, chapter 18, part 2, apply to [section 20].

8 (3) [Sections 35 through 37] are intended to be codified as an integral part of Title 46, chapter 24,
9 part 2, and the provisions of Title 46, chapter 24, part 2, apply to [sections 35 through 37].

10

11 **NEW SECTION. Section 42. Severability.** If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
13 applications, the part remains in effect in all valid applications that are severable from the invalid
14 applications.

15

16 **NEW SECTION. Section 43. Applicability.** [Sections 10, 13, and 21] apply to trials for and
17 sentences imposed for crimes that were committed on or after [the effective date of this act].

18

-END-

1 HOUSE BILL NO. 69

2 INTRODUCED BY FISHER, QUILICI, GAGE, BROOKE, EWER

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE BOARD OF CRIME CONTROL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
6 PROTECTION AND TREATMENT OF VICTIMS OF CRIME AND TO THE PAYMENT OF RESTITUTION BY THE
7 OFFENDER; AMENDING SECTIONS 27-2-201, 44-2-601, 44-5-303, 45-9-205, 46-11-701, 46-18-101,
8 46-18-112, 46-18-113, 46-18-115, 46-18-201, 46-18-202, 46-18-222, 46-18-241, 46-18-242,
9 46-18-243, 46-18-244, 46-18-245, 46-18-246, 46-18-247, 46-18-302, 46-23-202, 46-23-210,
10 46-23-215, 46-23-405, 46-23-1011, 46-23-1021, 46-23-1025, 46-24-103, 46-24-104, 46-24-201,
11 46-24-202, 46-24-203, 46-24-205, AND 53-9-128, MCA; REPEALING SECTION 46-23-204, MCA; AND
12 PROVIDING AN APPLICABILITY DATE."

13

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

15

16 **Section 1.** Section 44-2-601, MCA, is amended to read:17 **"44-2-601. Notification of escape or release from confinement.** (1) The notice required by
18 subsection (2) must be given if:19 (a) a person committed to a hospital or mental health facility under Title 46, chapter 14, escapes
20 or is released from confinement;21 (b) a person confined in an institution other than a jail pending or during trial for a criminal offense
22 involving the use or threat of physical force or violence or confined in a prison or other state institution after
23 conviction of a criminal offense involving the use or threat of physical force or violence or after being
24 designated as a dangerous offender under 46-18-404 escapes or is released from confinement; or25 (c) a person confined in a jail pending or during trial for a criminal offense involving the use or
26 threat of physical force or violence or confined in a jail after conviction of a criminal offense involving the
27 use or threat of physical force or violence or after being designated as a dangerous offender under
28 46-18-404 escapes from confinement.29 (2) If a person referred to in subsection (1) escapes or is released from confinement, the institution
30 in which the person was confined shall notify:

- 1 (a) the sheriff or other law enforcement officials in the county in which the offense occurred;
- 2 (b) the sheriff or other law enforcement officials in the county or counties, if known, in which a
3 victim or the victims of the offense reside at the time of the escape or release;
- 4 (c) the sheriff or other law enforcement officials in the county, if known, in which the person
5 intends to reside upon leaving confinement;
- 6 (d) the sheriff or other law enforcement officials in the county in which the jail, prison, hospital,
7 mental health facility, or other institution from which the person escaped or was released is located; ~~and~~
- 8 (e) a victim of the offense who has requested notification in the event of an escape or a release
9 of the person; and
- 10 ~~(f)~~ a court that has requested that it be notified in the event of an escape or a release ~~or an~~
11 ~~escape~~ of the person."

12

13 **Section 2.** Section 44-5-303, MCA, is amended to read:

14 **"44-5-303. Dissemination of confidential criminal justice information.** ~~Dissemination~~ (1) Except
15 as provided in subsection (2), dissemination of confidential criminal justice information is restricted to
16 criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by
17 a district court upon a written finding that the demands of individual privacy do not clearly exceed the
18 merits of public disclosure.

19 (2) If the prosecutor determines that dissemination would not jeopardize a pending investigation
20 or other criminal proceeding of confidential criminal justice information, the information may be
21 disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency
22 after consultation with the prosecutor.

23 (3) A Unless otherwise ordered by a court, a person or criminal justice agency that accepts
24 confidential criminal justice information assumes equal responsibility for the security of ~~each~~ the information
25 with the originating agency. Whenever confidential criminal justice information is disseminated, it must be
26 designated as confidential."

27

28 **NEW SECTION. Section 3. Nondisclosure of information about victim.** (1) If a victim of an offense
29 requests confidentiality, a criminal justice agency may not disseminate, except to another criminal justice
30 agency, the address, telephone number, or place of employment of the victim or a member of the victim's

1 family unless disclosure is of the location of the crime scene, is required by law, is necessary for law
2 enforcement purposes, or is authorized by a district court upon a showing of good cause.

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

6 (3) A criminal justice agency may not disseminate to the public any information directly or indirectly
7 identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, or 45-5-507 unless
8 disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement
9 purposes, or is authorized by a district court upon a showing of good cause.

10
11 **Section 4.** Section 45-9-205, MCA, is amended to read:

12 **"45-9-205. Exemption from mandatory minimum sentences.** If a court imposes any of the
13 sentencing alternatives specified in 45-9-202, the mandatory minimum sentences provided in
14 46-18-201(4)(5) do not apply."

15
16 **Section 5.** Section 46-11-701, MCA, is amended to read:

17 **"46-11-701. Pretrial proceedings -- exclusion of public and sealing of records.** (1) Except as
18 provided in this section, pretrial proceedings and records of those proceedings are open to the public. If,
19 at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a
20 trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation
21 of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the
22 jury or until an earlier time consistent with the administration of justice.

23 (2) The defendant may move that all or part of the proceeding be closed to the public, or with the
24 consent of the defendant, the judge may take action on the judge's own motion.

25 (3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding,
26 including a hearing on a motion to suppress, and may seal the record only if:

27 (a) the dissemination of information from the pretrial proceeding and its record would create a clear
28 and present danger to the fairness of the trial; and

29 (b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable
30 alternative means.

1 (4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the
2 public under this section, a complete record must be kept and made available to the public following the
3 completion of the trial or earlier if consistent with trial fairness.

4 (5) Notwithstanding closure of a proceeding to the public, the judge shall permit a victim of the
5 offense to be present unless the judge determines that exclusion of the victim is necessary to protect either
6 party's right to a fair trial or the safety of the victim. If the victim is present, the judge, at the victim's
7 request, shall permit the presence of an individual to provide support to the victim unless the judge
8 determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.

9 ~~(5)(6)~~ When the judge determines that all or part of a document filed in support of a charge or
10 warrant would present a clear and present danger to the defendant's right to a fair trial, the document or
11 portion of the document must be sealed until the trial is completed unless the document or portion of the
12 document must be used for trial fairness."

13
14 **Section 6.** Section 46-18-101, MCA, is amended to read:

15 **"46-18-101. Correctional policy.** (1) It is the purpose of this section to declare the correctional
16 policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted
17 are drawn to implement the policy established by this section.

18 (2) The correctional policy of the state of Montana is to protect society by preventing crime
19 through punishment and rehabilitation of the convicted. The legislature finds that an individual is
20 responsible for and must be held accountable for the individual's actions, including, whenever possible, the
21 restoration of all pecuniary losses sustained by a victim of the offense. Corrections laws and programs
22 must be implemented to impress upon each individual the responsibility for obeying the law. To achieve
23 this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever
24 probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore,
25 it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual
26 characteristics, circumstances, needs, and potentialities. Finally, it is the policy of the state to recognize
27 that the interests of crime victims should be considered so that, to the extent possible, victims of crime
28 may be protected from threat of future harm by the offender.

29 (3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

30 (i) the crime committed;

1 (ii) the prospects of rehabilitation of the offender;

2 (iii) the circumstances under which the crime was committed;

3 (iv) the criminal history of the offender; and

4 (v) consideration of alternatives to imprisonment of the offender in the state prison or the women's
5 correctional center.

6 (b) Dangerous offenders who habitually violate the law and victimize the public must be removed
7 from society and correctively treated in custody for long terms, as needed. Other offenders must be dealt
8 with by probation, suspended sentence, community corrections, community service, or fine whenever such
9 disposition appears practicable and not detrimental to the needs of public safety and the welfare of the
10 individual. Whenever possible, sentences for offenders must include restitution to the victim, payment of
11 costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

12 (4) It is also the policy of the state that alternatives to imprisonment, such as community
13 corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them
14 opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate
15 in other activities that will reduce recidivism and enable offenders to become productive members of
16 society."

17
18 **Section 7.** Section 46-18-112, MCA, is amended to read:

19 **"46-18-112. Content of presentence investigation report.** (1) Whenever an investigation is
20 required, the probation officer shall promptly inquire into and report upon:

21 (a) the defendant's characteristics, circumstances, needs, and potentialities;

22 (b) the defendant's criminal record and social history;

23 (c) the circumstances of the offense;

24 (d) the time of the defendant's detention for the offenses charged; ~~and~~

25 (e) the harm caused, as a result of the offense, to the victim, the victim's immediate family, and
26 the community; and

27 (f) the victim's pecuniary loss, if any. The officer shall make a reasonable effort to confer with the
28 victim to ascertain whether the victim has sustained a pecuniary loss. If the victim is not available or
29 declines to confer, the officer shall record that information in the report.

30 (2) All local and state mental and correctional institutions, courts, and law enforcement agencies

1 shall furnish, upon request of the officer preparing a presentence investigation, the defendant's criminal
2 record and other relevant information.

3 (3) The court may, in its discretion, require that the presentence investigation report include a
4 physical and mental examination of the defendant.

5 ~~(4) If applicable, the court may require the officer to inquire into the victim's pecuniary loss and
6 make a restitution report to the court as provided by law."~~

7

8 **Section 8.** Section 46-18-113, MCA, is amended to read:

9 **"46-18-113. Availability of presentence investigation report.** (1) All presentence investigation
10 reports must be a part of the court record but may not be opened for public inspection. A copy of the
11 presentence investigation report must be provided to the prosecution, the defendant and the defendant's
12 attorney, and the agency or institution to which the defendant is committed. The prosecutor may discuss
13 DISCLOSE the contents of the presentence report with TO a victim of the offense.

14 (2) The court having jurisdiction of the case may permit other access to the presentence
15 investigation report as it considers necessary."

16

17 **Section 9.** Section 46-18-115, MCA, is amended to read:

18 **"46-18-115. Sentencing hearing.** Before imposing sentence or making any other disposition upon
19 acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing,
20 without unreasonable delay, as follows:

21 (1) The court shall afford the parties an opportunity to be heard on any matter relevant to the
22 disposition, including the applicability of sentencing enhancement provisions, mandatory minimum
23 sentences, persistent felony offender status, or an exception to these matters.

24 (2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided
25 by 46-18-301.

26 (3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address
27 the defendant personally to ascertain whether the defendant wishes to make a statement and to present
28 any information in mitigation of punishment or reason why the defendant should not be sentenced. If the
29 defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to
30 do so.

1 (4) (a) The court shall permit the victim to present a statement concerning the effects of the crime
 2 on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated,
 3 and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present
 4 the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or
 5 both.

6 (b) The court shall give copies of any written statements of the victim to the prosecutor and the
 7 defendant prior to imposing sentence.

8 (c) The court shall consider the victim's statement along with other factors. However, if the
 9 victim's statement includes new material facts upon which the court intends to rely, the court shall allow
 10 the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

11 ~~(4)~~(5) The court shall impose sentence or make any other disposition authorized by law.

12 ~~(5)~~(6) In felony cases, the court shall specifically state all reasons for the sentence, including
 13 restrictions, conditions, or enhancements imposed, in open court on the record and in the written
 14 judgment."
 15

16 **Section 10.** Section 46-18-201, MCA, is amended to read:

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

19 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
 20 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
 21 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
 22 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
 23 period of the deferred imposition. Reasonable restrictions or conditions may include:

- 24 (i) jail base release;
- 25 (ii) jail time not exceeding 180 days;
- 26 (iii) conditions for probation;
- 27 ~~(iv)~~ restitution;
- 28 ~~(v)~~(iv) payment of the costs of confinement;
- 29 ~~(vi)~~(v) payment of a fine as provided in 46-18-231;
- 30 ~~(vii)~~(vi) payment of costs as provided in 46-18-232 and 46-18-233;

- 1 ~~(viii)~~(vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- 2 ~~(ix)~~(viii) with the approval of the facility or program, order the offender to be placed in a community
- 3 corrections facility or program as provided in 53-30-321;
- 4 ~~(x)~~(ix) community service;
- 5 ~~(xi)~~(x) home arrest as provided in Title 46, chapter 18, part 10;
- 6 ~~(xii)~~(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection
- 7 of society; or
- 8 ~~(xiii)~~(xii) any combination of the above.

9 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period

10 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the

11 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable

12 restrictions or conditions may include any of those listed in subsection (1)(a).

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

14 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed

15 counsel as provided in 46-8-113;

16 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit

17 the defendant to the department of corrections and human services for placement in an appropriate

18 correctional institution or program;

19 (f) with the approval of the facility or program, order the offender to be placed in a community

20 corrections facility or program as provided in 53-30-321; or

21 (g) impose any combination of subsections (1)(b) through (1)(f).

22 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim

23 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim

24 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay

25 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241. IF

26 THE COURT DETERMINES THAT THE DEFENDANT IS UNABLE TO PAY RESTITUTION, THEN IT MAY

27 IMPOSE, IN ADDITION TO ANY OTHER SENTENCE, COMMUNITY SERVICE UNDER 46-18-241.

28 ~~(2)~~(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be

29 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for

30 a felony, regardless of whether any other conditions are imposed.

1 ~~(3)~~(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the
2 court shall consider any elapsed time and either expressly allow part or all of it as a credit against the
3 sentence or reject all or part as a credit ~~and~~. The court shall state its reasons in the order. Credit,
4 however, must be allowed for jail or home arrest time already served.

5 ~~(4)~~(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2
6 years of a sentence of imprisonment imposed under the following sections may not be deferred or
7 suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
8 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

9 ~~(5)~~(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a
10 sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

11 ~~(6)~~(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be
12 deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not
13 the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
14 suspended.

15 ~~(7)~~(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of
16 a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be
17 deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

18 ~~(8)~~(9) In imposing a sentence on a defendant convicted of a sexual offense as defined in
19 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
20 Title 46, chapter 23, part 5.

21 ~~(9)~~(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
22 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
23 program.

24 ~~(10)~~(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
25 imprisonment of the offender in the state prison, including placement of the offender in a community
26 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
27 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
28 or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were
29 not selected, based on the criteria contained in 46-18-225."

30

1 **Section 11.** Section 46-18-202, MCA, is amended to read:

2 **"46-18-202. Additional restrictions on sentence.** (1) The district court may also impose any of
3 the following restrictions or conditions on the sentence provided for in 46-18-201 that it considers
4 necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

- 5 (a) prohibition of the defendant's holding public office;
6 (b) prohibition of the defendant's owning or carrying a dangerous weapon;
7 (c) restrictions on the defendant's freedom of association;
8 (d) restrictions on the defendant's freedom of movement;
9 (e) any other limitation reasonably related to the objectives of rehabilitation and the protection of
10 the victim and society.

11 (2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term
12 exceeding 1 year, the court may also impose the restriction that the defendant ~~be~~ is ineligible for parole and
13 participation in the supervised release program while serving that term. If such a restriction is to be
14 imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary
15 for the protection of society, it shall impose the restriction as part of the sentence and the judgment ~~shall~~
16 must contain a statement of the reasons for the restriction.

17 (3) The judge in a justice's, city, or municipal court does not have the authority to restrict an
18 individual's rights as enumerated in subsection (1)(a).

19 (4) When the district court imposes a sentence of probation, as defined in 46-23-1001, any
20 probation agreement signed by the defendant may contain a clause waiving extradition."

21

22 **Section 12.** Section 46-18-222, MCA, is amended to read:

23 **"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition**
24 **and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this
25 state and the restrictions on deferred imposition and suspended execution of sentence prescribed by
26 46-18-201~~(4)~~(5) through ~~(6)~~(7), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

27 (1) the defendant was less than 18 years of age at the time of the commission of the offense for
28 which the defendant is to be sentenced;

29 (2) the defendant's mental capacity, at the time of the commission of the offense for which the
30 defendant is to be sentenced, was significantly impaired, although not so impaired as to constitute a

1 defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be
2 considered an impairment for the purposes of this subsection.

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

6 (4) the defendant was an accomplice, the conduct constituting the offense was principally the
7 conduct of another, and the defendant's participation was relatively minor;

8 (5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual
9 element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the
10 commission of the offense; or

11 (6) the offense was committed under 45-5-502(3) and the court determines that treatment of the
12 defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the
13 ultimate protection of the victim and society, in which case the court shall include in its judgment a
14 statement of the reasons for its determination."
15

16 **Section 13.** Section 46-18-241, MCA, is amended to read:

17 **"46-18-241. Condition of restitution.** (1) As provided in 46-18-201, a sentencing court ~~may~~ shall
18 require an offender to make restitution to any victim of the offense who has sustained pecuniary loss as
19 a result of the offense.

20 (2) The court may require the offender to pay the cost of supervising the payment of restitution,
21 as provided in 46-18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not
22 less than \$5 or more than \$250. Payment must be made to the court, which shall disburse the money to
23 the entity employing the person ordered to supervise restitution under 46-18-245.

24 ~~(3) If the court finds that, because of circumstances beyond the offender's control, the offender~~
25 ~~is not and will not be able to pay any restitution during the period of state supervision, the court may order~~
26 ~~the offender to perform community service commensurate with the amount of restitution that would have~~
27 ~~been imposed.~~

28 (3) IF THE COURT FINDS THAT, BECAUSE OF CIRCUMSTANCES BEYOND THE OFFENDER'S
29 CONTROL, THE OFFENDER IS NOT AND WILL NOT BE ABLE TO PAY ANY RESTITUTION DURING THE
30 PERIOD OF STATE SUPERVISION, THE COURT MAY ORDER THE OFFENDER TO PERFORM COMMUNITY

1 SERVICE COMMENSURATE WITH THE AMOUNT OF RESTITUTION THAT WOULD HAVE BEEN IMPOSED."

2

3 **Section 14.** Section 46-18-242, MCA, is amended to read:

4 **"46-18-242. Investigation and report of victim's loss.** (1) Whenever the court believes that
5 ~~restitution may be a proper condition of a deferred or suspended sentence~~ a victim of the offense may have
6 sustained a pecuniary loss as a result of the offense or whenever the prosecuting attorney requests, the
7 court shall order the probation officer, restitution officer, or other designated person to include in the
8 presentence investigation and report:

- 9 (a) documentation of the offender's financial resources and future ability to pay restitution; and
10 (b) documentation of the victim's pecuniary loss, submitted by the victim or by the board of crime
11 control if compensation for the victim's loss has been reimbursed by the crime victims compensation and
12 assistance account.

13 (2) ~~Where no~~ When a presentence report is not authorized or requested, the court may receive
14 evidence of the offender's ability to pay and the victim's loss at the time of sentencing."
15

16 **Section 15.** Section 46-18-243, MCA, is amended to read:

17 **"46-18-243. Definition Definitions.** For purposes of 46-18-241 through 46-18-249, the following
18 definitions apply:

19 (1) "Pecuniary loss" means:

- 20 (a) all special damages, but not general damages, substantiated by evidence in the record, that a
21 person could recover against the offender in a civil action arising out of the facts or events constituting the
22 offender's criminal activities, including without limitation the money equivalent of loss resulting from
23 property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical
24 expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that
25 the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings
26 related to the commission of the offense, and reasonable expenses related to funeral and burial or
27 crematory services; and

28 (b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in
29 the investigation and prosecution of the offense.

30 (2){a} "Victim" means:

- 1 ~~(a)(i)~~ (i) a person who suffers loss of property, bodily injury, or death as a result of:
- 2 ~~(i)(A) criminally injurious conduct the commission of an offense; or~~
- 3 ~~(i)(B) his the good faith effort to prevent criminally injurious conduct the commission of an offense;~~
- 4 or
- 5 (C) the good faith effort to apprehend a person reasonably suspected of committing an offense;
- 6 (ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a
- 7 homicide victim;
- 8 (iii) a governmental entity that suffers loss of property as a result of the commission of an offense
- 9 in this state; or
- 10 ~~(b)(iv)~~ (iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim
- 11 of the offense for ~~his~~ pecuniary loss.

12 (b) Victim does not include a person who is accountable for the crime or accountable for a crime

13 arising from the same transaction."

14

15 **Section 16.** Section 46-18-244, MCA, is amended to read:

16 **"46-18-244. Type and time of payment -- defenses.** (1) The court shall specify the amount,

17 method, and time of payment to the victim and may permit payment in installments. The court may not

18 establish a payment schedule extending beyond the period ~~for which the sentence has been suspended or~~

19 ~~deferred under 46-18-201~~ of state supervision over the offender.

20 (2) In determining the amount, method, and time of payment, the court shall consider the financial

21 resources and future ability of the offender to pay. The court may provide for payment to a victim up to

22 but not in excess of the pecuniary loss caused by the offense. The offender may assert any defense that

23 ~~he the offender~~ could raise in a civil action for the loss sought to be compensated by the restitution order.

24 (3) In addition to other methods of payment, the court may order one or more of the following in

25 order to satisfy the offender's restitution obligation:

26 (a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part

27 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are

28 reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the

29 state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after

30 sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale,

1 any remaining amount must be returned to the offender.

2 (b) return of any property to the victim;

3 (c) payment of up to one-third of the offender's prison earnings.

4 (4) With the consent of the victim and in the discretion of the court, an offender may be ordered
 5 to make restitution in services in lieu of money or to make restitution to a person designated by the victim,
 6 if that person provided services to the victim as a result of the offense."

7

8 **Section 17.** Section 46-18-245, MCA, is amended to read:

9 **"46-18-245. Supervision of payment.** The court may order a probation officer, restitution officer,
 10 ~~officer of the board of crime control,~~ or other designated person to supervise the making of restitution and
 11 to report to the court any default in payment. IF THE VICTIM HAS RECEIVED COMPENSATION UNDER
 12 TITLE 53, CHAPTER 9, THE COURT MAY ALSO ORDER AN EMPLOYEE OF THE BOARD OF CRIME
 13 CONTROL TO SUPERVISE THE MAKING OF RESTITUTION AND TO REPORT TO THE COURT ANY
 14 DEFAULT IN PAYMENT."

15

16 **Section 18.** Section 46-18-246, MCA, is amended to read:

17 **"46-18-246. Waiver or modification of payment.** An offender may at any time petition the
 18 sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court
 19 shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date,
 20 place, and time and inform the victim that ~~he~~ the victim will have an opportunity to be heard. If the court
 21 finds that the circumstances upon which it based the imposition, amount, method, or time of payment no
 22 longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or
 23 waive unpaid restitution or modify the time or method of making restitution. The court may extend the
 24 restitution schedule, but not beyond the period ~~for which the sentence has been suspended or deferred~~
 25 ~~under 46-18-201~~ provided for in 46-18-244."

26

27 **Section 19.** Section 46-18-247, MCA, is amended to read:

28 **"46-18-247. Default.** (1) If an offender sentenced to make restitution is in default, the sentencing
 29 court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under
 30 46-18-203 requiring the offender to show cause why ~~he~~ the offender should not be confined for failure to

1 obey the sentence of the court. The court may order the offender to appear at a time, date, and place for
 2 a hearing or, if ~~he~~ the offender fails to appear as ordered, issue a warrant for ~~his~~ the offender's arrest. The
 3 order or warrant must be accompanied by written notice of the offender's right to a hearing as provided
 4 in 46-18-203.

5 (2) If the court finds that the offender's default was attributable to a the offender's failure ~~on his~~
 6 ~~part~~ to make a good faith effort to obtain the necessary funds for payment of the ordered restitution, the
 7 court may take any action provided for in 46-18-203. If confinement is ordered, the court, after entering
 8 the order, may ~~at any time, for good cause shown,~~ reduce the term of confinement and, in accordance with
 9 the provisions of 46-18-246, waive satisfaction of the restitution order.

10 (3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following
 11 a default in the payment of restitution or any installment ~~thereof~~ of restitution, the sentencing court may
 12 order the restitution to be collected by any method authorized for the enforcement of other judgments."
 13

14 **NEW SECTION. Section 20. Allocation of fines, costs, restitution, and other charges.** (1) If an
 15 offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out
 16 of the same criminal proceeding, money collected from the offender must be allocated as provided in this
 17 section.

18 (2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution
 19 and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50%
 20 of all money collected from the defendant must be applied to payment of restitution and the balance must
 21 be applied to other payments in the following order:

- 22 (a) payment of charges imposed pursuant to 46-18-236;
- 23 (b) payment of costs imposed pursuant to 46-18-232 or 46-18-233;
- 24 (c) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and
- 25 (d) any other payments ordered by the court.

26 (3) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has
 27 been paid, any additional money collected must be applied to payment of those fines, costs, charges, or
 28 other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments
 29 have been paid, any additional money collected must be applied toward payment of the restitution.
 30

1 **Section 21.** Section 46-18-302, MCA, is amended to read:

2 **"46-18-302. Evidence that may be received.** In the sentencing hearing, evidence may be presented
3 as to any matter the court considers relevant to the sentence, including but not limited to the nature and
4 circumstances of the crime; the defendant's character, background, history, and mental and physical
5 condition; the harm caused to the victim and the victim's family as a result of the offense; and any other
6 facts in aggravation or mitigation of the penalty. Any evidence that the court considers to have probative
7 force may be received regardless of its admissibility under the rules governing admission of evidence at
8 criminal trials. Evidence admitted at the trial relating to ~~such~~ aggravating or mitigating circumstances ~~shall~~
9 must be considered without reintroducing it at the sentencing proceeding. The state and the defendant or
10 ~~his~~ the defendant's counsel ~~shall~~ must be permitted to present argument for or against sentence of death."

11
12 **Section 22.** Section 46-23-202, MCA, is amended to read:

13 **"46-23-202. Investigation of prisoner by board -- consideration of victim's statement.** (1) Within
14 the 2 months prior to a prisoner's official parole eligibility date or within the 2 months following the date
15 on which a prisoner becomes eligible pursuant to 53-30-105(5), the board shall consider all pertinent
16 information regarding each prisoner, including the circumstances of the offense; the prisoner's previous
17 social history and criminal record; the prisoner's conduct, employment, and attitude in prison; and the
18 reports of any physical and mental examinations that have been made.

19 (2) Before ordering the parole of any prisoner, the board shall:

20 (a) conduct a hearing and interview the prisoner. At the time of the hearing, the board shall receive
21 relevant statements from interested persons and any person may be represented by counsel, provided that
22 the board has the power to regulate procedures at all hearings.

23 (b) permit a victim to present a statement concerning the effects of the crime on the victim, the
24 circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's
25 opinion regarding whether the prisoner should be paroled. In the board's discretion, the victim's statement
26 may be kept confidential. The board shall consider the victim's statement, along with the information
27 provided under subsection (1), in determining whether to grant parole."

28
29 **Section 23.** Section 46-23-210, MCA, is amended to read:

30 **"46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order

1 a person placed in a correctional institution or program, except a person under sentence of death. To be
2 eligible for a medical parole, a person must have an examination and written diagnosis by a physician
3 licensed under Title 37 to practice medicine. The diagnosis must include:

4 (a) a determination that the person suffers from an incapacitating physical condition, disease, or
5 syndrome that renders the person highly unlikely to present a clear and present danger to public safety;

6 (b) a description of the physical condition, disease, or syndrome and a detailed description of the
7 person's physical incapacity; and

8 (c) a prognosis addressing the likelihood of the person's recovery from the physical condition,
9 disease, or syndrome and the extent of any potential recovery.

10 (2) The diagnosis must be reviewed and accepted by the department before the board may consider
11 granting a medical parole.

12 (3) The board shall require as a condition of medical parole that the person agree to placement in
13 an environment chosen by the department during the parole period, including but not limited to a hospital,
14 nursing home, or family home. The board may require as a condition of parole that the person agree to
15 periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis
16 must be submitted to the board and department by the examining physician. If either the board or
17 department determines that the person's physical capacity has improved to the extent that the person is
18 likely to pose a possible detriment to society, the board may revoke the parole and return the person to the
19 custody of the department.

20 (4) Medical parole may be requested by the board, the department, an incarcerated person, or an
21 incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the
22 administrator of the correctional institution in which the person is incarcerated.

23 (5) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

24 (6) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply
25 to nonmedical parole."

26

27 **Section 24.** Section 46-23-215, MCA, is amended to read:

28 **"46-23-215. Conditions of parole.** (1) ~~Every~~ A prisoner while on parole ~~shall remain~~ remains in
29 the legal custody of the institution from which ~~he~~ the prisoner was released but ~~shall be~~ is subject to the
30 orders of the board.

1 (2) When an order for parole is issued, it ~~shall~~ must recite the conditions ~~thereof~~ of parole. If
2 restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a
3 condition to pay restitution to the victim. An order for parole or any parole agreement signed by a prisoner
4 may contain a clause waiving extradition.

5 (3) Whenever a prisoner in the Montana state prison has been approved for parole on condition that
6 ~~he~~ the prisoner obtain employment or secure suitable living arrangements or on any other condition that
7 is difficult to fulfill while incarcerated, the warden may grant ~~him~~ the prisoner a furlough, not to exceed 10
8 days, for purposes of fulfilling the condition. While on ~~such~~ furlough, the prisoner remains in the legal
9 custody of the prison and is subject to all other conditions recited by the board."
10

11 **Section 25.** Section 46-23-405, MCA, is amended to read:

12 "**46-23-405. Establishing program -- rules.** The department ~~is authorized and directed to~~ shall
13 establish a supervised release program and make rules in accordance with Title 2, chapter 4 (the Montana
14 Administrative Procedure Act), to implement and control the ~~same~~ program. Rules ~~shall~~ must include
15 guidelines for:

16 (1) prisoner eligibility;

17 (2) prisoner participation in a recognized educational, treatment, or training program or work
18 program in conjunction with any of the ~~above~~ programs listed in this subsection;

19 (3) approval of the sponsor;

20 (4) review of a board decision to deny an applicant admittance into the program;

21 (5) supervision of the prisoner by or under the direction of a supervising agent while ~~he~~ the prisoner
22 is in the program;

23 (6) implementation of a plan for the prisoner to satisfy any restitution or community service
24 obligation imposed as part of the prisoner's sentence under 46-18-201;

25 ~~(6)(7)~~ conducting revocation hearings;

26 ~~(7)(8)~~ establishment of a program by the prisoner; and

27 ~~(8)(9)~~ any other provisions necessary to implement this part."
28

29 **Section 26.** Section 46-23-1011, MCA, is amended to read:

30 "**46-23-1011. Supervision on probation.** (1) The department shall supervise persons during their

1 probation period in accord with the conditions set by a court.

2 (2) A copy of the conditions of probation must be signed by the probationer and given to the
3 probationer and the probationer's probation and parole officer, who shall report on the probationer's
4 progress under rules of the court.

5 (3) The probation and parole officer shall regularly advise and consult with the probationer to
6 encourage the probationer to improve the probationer's condition and conduct and shall inform the
7 probationer of the restoration of rights on successful completion of the sentence.

8 (4) The probation and parole officer may recommend and a court may modify any condition of
9 probation or suspension of sentence at any time. Notice must be given to the probation and parole officer
10 before any condition is modified, and the officer must be given an opportunity to present the officer's ideas
11 or recommendations on any modification. A copy of a modification of conditions must be delivered to the
12 probation and parole officer and the probationer. Waiver or modification of restitution may be ordered only
13 as provided under the provisions of 46-18-246.

14 (5) The probation and parole officer shall keep records as the department or the court may require.

15 (6) (a) Upon recommendation of the probation and parole officer, a court may conditionally
16 discharge a probationer from supervision before expiration of the probationer's sentence if the court
17 determines that a conditional discharge from supervision is in the best interests of the probationer and
18 society and will not present unreasonable risk of danger to the victim of the offense.

19 (b) Subsection (6)(a) does not prohibit a court from revoking the order suspending execution or
20 deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally
21 discharged from supervision.

22 (c) If the department certifies to the court that the workload of a district probation and parole office
23 has exceeded the optimum workload for the district over the preceding 60 days, the court may not place
24 an offender on probation under supervision by that district office unless it grants a conditional discharge
25 to a probationer being supervised by that district office. The department may recommend probationers to
26 the court for conditional discharge. The court may accept or reject the recommendations of the
27 department. The department shall determine the optimum workload for each district probation and parole
28 office."

29

30 **Section 27.** Section 46-23-1021, MCA, is amended to read:

1 **"46-23-1021. Supervision on parole.** (1) The department shall retain custody of all persons placed
2 on parole and shall supervise the persons during their parole ~~period~~ periods in ~~accord~~ accordance with the
3 conditions set by the board.

4 (2) The department shall assign personnel to assist ~~persons~~ a person who is eligible for parole in
5 preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board
6 prior to its consideration of the case of the eligible person.

7 (3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and
8 to the parolee's probation and parole officer, who shall report on the parolee's progress under the rules of
9 the board.

10 (4) The probation and parole officer shall regularly advise and consult with the parolee, assist the
11 parolee in adjusting to community life, and inform the parolee of the restoration of rights on successful
12 completion of the sentence.

13 (5) The probation and parole officer shall keep records as the board or department may require.
14 All records must be entered in the master file of the individual.

15 (6) (a) Upon recommendation of the probation and parole officer, the board may conditionally
16 discharge a parolee from supervision before expiration of the parolee's sentence if the board determines
17 that a conditional discharge from supervision is in the best interests of the parolee and society and will not
18 present unreasonable risk of danger to the victim of the offense.

19 (b) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in
20 46-23-1025, of a parolee who has been conditionally discharged from supervision.

21 (c) If the department certifies to the board that the workload of a district probation and parole
22 office has exceeded the optimum workload for the district over the preceding 60 days, the board may not
23 parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised
24 by that district office. The department may recommend parolees to the board for conditional discharge.
25 The board may accept or reject the recommendations of the department. The department shall determine
26 the optimum workload for each district probation and parole office."

27
28 **Section 28.** Section 46-23-1025, MCA, is amended to read:

29 **"46-23-1025. Report to and action by the board.** (1) If the hearings officer determines that there
30 is probable cause to believe that the prisoner has violated a condition of ~~his~~ parole, the probation and parole

1 officer shall immediately notify the board and shall submit in writing a report showing in what manner the
 2 prisoner has violated the conditions of release. This report ~~shall~~ must be accompanied by the findings of
 3 the hearings officer.

4 (2) ~~Thereupon~~ Upon receipt of a report, the board shall cause the prisoner to be promptly brought
 5 before it for a hearing on the violation charged under ~~such~~ rules ~~as~~ that the board may adopt. If the
 6 violation is established, the board may continue or revoke the parole or conditional release or may enter
 7 ~~such other~~ an order as it ~~may see~~ sees fit.

8 (3) If the prisoner has violated a condition of release requiring the payment of restitution, the board
 9 shall notify the victim of the offense prior to the hearing required by subsection (2) and give the victim an
 10 opportunity to be heard. If the board finds that due to circumstances beyond the prisoner's control, the
 11 prisoner is unable to make the required restitution payments, the board may not revoke the prisoner's parole
 12 for failure to pay restitution. The board may modify the time or method of making restitution and may
 13 extend the restitution schedule, but the schedule may not be extended beyond the period of state
 14 supervision over the prisoner.

15 (3)(4) ~~If it appears that he~~ the prisoner has violated the provisions of ~~his~~ release, the board shall
 16 determine whether the time from the issuing of the warrant to the date of ~~his~~ the prisoner's arrest or any
 17 part of it will be counted as time served under the sentence."
 18

19 **Section 29.** Section 46-24-103, MCA, is amended to read:

20 "**46-24-103. Duty of attorney general.** The attorney general shall ~~assure~~ ensure that victims and
 21 witnesses of crime receive fair and proper treatment in the criminal justice system. The attorney general
 22 shall prepare a written notice of the rights and services available to victims of crime under this chapter.
 23 The notice must be distributed to local law enforcement agencies in the state. In addition, the attorney
 24 general shall ~~assure~~ ensure that victims and witnesses are provided important services and assistance as
 25 required under this chapter."
 26

27 **Section 30.** Section 46-24-104, MCA, is amended to read:

28 "**46-24-104. Consultation with victim of ~~felony offense~~ certain offenses.** ~~The~~ As soon as possible
 29 prior to disposition of the case, the prosecuting attorney in a criminal case shall consult with the victim of
 30 a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the

1 victim or, in the case of a minor child victim or homicide victim, with the family of the victim in order to
 2 obtain the views of the victim or ~~his~~ the victim's family regarding the disposition of the case, including:

- 3 (1) dismissal of the case;
- 4 (2) release of the accused pending judicial proceedings;
- 5 (3) plea negotiations; and
- 6 (4) pretrial diversion of the case from the judicial process."

7

8 **Section 31.** Section 46-24-201, MCA, is amended to read:

9 "**46-24-201. Services to victims of crime.** (1) Law enforcement personnel shall ~~assure~~ ensure that
 10 a victim of a crime receives emergency social and medical services as soon as possible and that ~~such~~ the
 11 victim is given ~~information on~~ written notice, in the form supplied by the attorney general, of the following:

- 12 ~~(1)(a)~~ the availability of crime victim compensation;
- 13 ~~(2) community-based victim treatment programs;~~
- 14 (b) access by the victim and the defendant to information about the case;
- 15 ~~(3)(c)~~ the role of the victim in the criminal justice process, including what ~~he~~ the victim can expect
 16 from the system, as well as what the system expects from the victim; and
- 17 ~~(4)(d)~~ stages in the criminal justice process of significance to a crime victim and the manner in
 18 which information about ~~such~~ the stages may be obtained.

19 (2) In addition to the information supplied under subsection (1), law enforcement personnel shall
 20 provide the victim with written information on community-based victim treatment programs, including
 21 medical, housing, counseling, and emergency services available in the community.

22 (3) As soon as possible, law enforcement personnel shall give to the victim the following
 23 information:

- 24 (a) the name, office address, and telephone number of a law enforcement officer assigned to
 25 investigate the case; and
- 26 (b) the prosecuting attorney's name, office address, and telephone number."

27

28 **Section 32.** Section 46-24-202, MCA, is amended to read:

29 "**46-24-202. Notification of available protective services.** Law enforcement officers and
 30 prosecuting attorneys shall provide a victim or witness information on the availability of services to protect

1 the victim or witness from intimidation, including the process for obtaining a protective order from the
 2 court."

3

4 **Section 33.** Section 46-24-203, MCA, is amended to read:

5 **"46-24-203. Prompt notification to victims and witnesses of felony certain offenses.** (1) A person
 6 described in subsection (2) who provides the appropriate official with a current address and telephone
 7 number must receive prompt advance notification, if possible, of proceedings relating to ~~his~~ the person's
 8 case, including:

9 (a) the arrest of an accused;

10 (b) the release of the accused pending judicial proceedings; ~~and~~

11 (c) the crime with which the accused has been charged, including an explanation of the elements
 12 of the offense when necessary to an understanding of the nature of the crime;

13 ~~(d)~~ (d) proceedings in the prosecution of the accused, including entry of a plea of guilty, and the
 14 setting of a trial date, ~~the sentencing schedule, the sentence imposed, the term of imprisonment, if~~
 15 ~~imposed, and the release of the accused from imprisonment;~~

16 (e) if the accused is convicted or pleads guilty, the function of a presentence report; the name,
 17 office address, and telephone number of the person preparing the report; and the convicted person's right
 18 of access to the report, as well as the victim's right under 46-18-115 to present a statement in writing or
 19 orally at the sentencing proceeding and the convicted person's right to be present at the sentencing
 20 proceeding and to have access to the victim's statement;

21 (f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of
 22 imprisonment, if imposed; and

23 (g) the right under [section 36] of a victim of a felony offense to receive information from the
 24 department of corrections and human services concerning the convicted person's incarceration.

25 (2) A person entitled to notification under subsection (1) must be a victim or witness of a felony
 26 offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim, a
 27 relative of such a victim or witness who is a minor, or a relative of a homicide victim."

28

29 **Section 34.** Section 46-24-205, MCA, is amended to read:

30 **"46-24-205. Notification to employer or creditor -- limitations on employer.** (1) The law

1 enforcement agency or prosecuting attorney in a criminal case shall assist a victim or witness who requests
 2 assistance in informing an employer that the need for victim and witness cooperation in the prosecution
 3 of the case may necessitate absence of the victim or witness from ~~his~~ the place of employment.

4 (2) A law enforcement agency or prosecuting attorney shall assist a victim or witness who, as a
 5 direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney,
 6 is subjected to serious financial strain. ~~Such~~ The agency or prosecuting attorney shall assist the victim or
 7 witness by explaining to creditors the reason for ~~such~~ the serious financial strain.

8 (3) An employer may not discharge or discipline a victim or a member of the victim's family for
 9 participation at the prosecuting attorney's request in preparation for or attendance at a criminal justice
 10 proceeding.

11 (4) As used in this section, "member of the victim's family" means the victim's spouse, child by
 12 birth or adoption, stepchild, parent, stepparent, or sibling, but does not include a person who is accountable
 13 for the crime or accountable for a crime arising from the same transaction."

14
 15 **NEW SECTION. Section 35. Information concerning appeal or postconviction remedies.** If the
 16 defendant appeals or pursues a postconviction remedy, the attorney general, or the county attorney if the
 17 case has not been referred to the attorney general, shall promptly inform the victim of the notice of appeal
 18 or postconviction petition, of the date, time, and place of any hearing, and of the decision.

19
 20 **NEW SECTION. Section 36. Information concerning confinement.** Upon request of a victim of a
 21 felony offense, the department of corrections and human services or the board of pardons, as applicable,
 22 shall:

23 (1) promptly inform the victim of the estimated date of the prisoner's release from confinement in
 24 the Montana state prison, if reasonably ascertainable;

25 (2) promptly inform the victim of the time and place of a parole hearing concerning the prisoner
 26 and of the victim's right to submit a statement to the board of pardons under 46-23-202;

27 (3) provide reasonable advance notice to the victim before release of the defendant on furlough
 28 or to a work-release program, half-way house, or other community-based program or correctional facility;
 29 and

30 (4) promptly inform the victim of the occurrence of any of the following events concerning the

1 prisoner:

- 2 (a) an escape from a correctional or mental health facility or community program;
- 3 (b) a recapture;
- 4 (c) a decision of the board of pardons;
- 5 (d) a decision of the governor to commute the sentence or to grant executive clemency;
- 6 (e) a release from confinement and any conditions attached to the release; and
- 7 (f) the prisoner's death.

8

9 **NEW SECTION. Section 37. General requirements for information.** (1) Unless specifically stated
10 otherwise, the requirements of 44-2-601, 46-24-104, 46-24-201 through 46-24-203, [section 35], and
11 [section 36] to provide information to the victim may be satisfied by either written or oral communication
12 with the victim or the victim's designee.

13 (2) The person responsible for providing information required by 44-2-601, 46-24-104, 46-24-201
14 through 46-24-203, [section 35], and [section 36] shall promptly inform the victim of significant changes
15 in the information.

16 (3) The obligation to furnish information to a victim under 44-2-601, 46-24-104, 46-24-201
17 through 46-24-203, [section 35], and [section 36] is conditioned upon the victim informing the appropriate
18 agency in writing of the name, address, and telephone number of the person to whom the information
19 should be provided and of any change of name, address, or telephone number.

20

21 **Section 38.** Section 53-9-128, MCA, is amended to read:

22 "**53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits
23 when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct.
24 During the time the claimant seeks ~~such~~ weekly benefits, the claimant, as a result of ~~such~~ the injury, must
25 have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit
26 amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a
27 maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly
28 compensation payments ~~shall~~ must be made at the end of each 2-week period. ~~No weekly~~ Weekly
29 compensation payments may not be paid for the first week after the criminally injurious conduct occurred,
30 but if total actual loss of wages continues for 1 week, weekly compensation payments ~~shall~~ must be paid

1 from the date the wage loss began. Weekly compensation payments ~~shall~~ must continue until the claimant
2 has a reasonable prospect of being regularly employed in the normal labor market.

3 (2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon,
4 reasonable hospital services and medicines, and ~~such~~ other treatment ~~as may be~~ approved by the division
5 for the injuries suffered due to criminally injurious conduct.

6 (3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are
7 entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66
8 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to
9 a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly
10 compensation payments ~~shall~~ must be made at the end of each 2-week period.

11 (b) Benefits under subsection (3)(a) ~~of this section shall~~ must be paid to the spouse for the benefit
12 of the spouse and other dependents unless the division determines that other payment arrangements should
13 be made. If a spouse dies or remarries, benefits under subsection (3)(a) ~~shall~~ must cease to be paid to the
14 spouse but ~~shall~~ must continue to be paid to the other dependents ~~so~~ as long as their dependent status
15 continues.

16 (4) Reasonable funeral and burial expenses of the victim, not exceeding ~~\$2,000~~ \$3,500, ~~shall~~ must
17 be paid if all other collateral sources have properly paid ~~such~~ expenses but have not covered all ~~such~~
18 expenses.

19 (5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's
20 death because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000
21 in the aggregate.

22 (6) Compensation benefits are not payable for pain and suffering, inconvenience, physical
23 impairment, or nonbodily damage.

24 (7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result
25 of ~~such~~ the injury has no reasonable prospect of being regularly employed in the normal labor market, and
26 who was employable but was not employed at the time of ~~such~~ the injury, may in the discretion of the
27 division be awarded weekly compensation benefits in an amount determined by the division not to exceed
28 \$100 per week. Weekly compensation payments ~~shall~~ must continue until the claimant has a reasonable
29 prospect of being regularly employed in the normal labor market or for a shorter period as determined by
30 the division. The claimant ~~shall~~ must be awarded benefits as provided in subsection (2) ~~of this section~~.

1 (b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was
 2 employable but not employed at the time of death may in the discretion of the division be awarded, in a
 3 gross single amount payable to all dependents, a sum not to exceed \$100 per week, which ~~shall be is~~
 4 payable in the manner and for the period provided by subsection (3)(b) ~~of this section~~ or for ~~such a~~ shorter
 5 period as determined by the division. The claimant ~~shall~~ must be awarded benefits as provided in
 6 subsection (4) ~~of this section~~.

7 (8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not
 8 be paid less frequently than every 2 weeks.

9 (9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister
 10 of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental
 11 health treatment received as a result of the victim's death.

12 (b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is
 13 a victim of a sexual crime ~~for which a person has been charged~~ and who is not entitled to receive services
 14 under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of
 15 the crime.

16 (c) Total payments made under subsections (9)(a) and (9)(b) may not exceed ~~\$500~~ \$2,000 or 12
 17 consecutive months of treatment for each person ~~or \$1,500 for a family, whichever occurs first.~~"

18
 19 **SECTION 39. SECTION 27-2-201, MCA, IS AMENDED TO READ:**

20 **"27-2-201. Actions upon judgments.** (1) Except as provided in ~~subsection~~ subsections (3) and (4),
 21 the period prescribed for the commencement of an action upon a judgment or decree of any court of record
 22 of the United States or of any state within the United States is within 10 years.

23 (2) The period prescribed for the commencement of an action upon a judgment or decree rendered
 24 in a court not of record is within 5 years. The cause of action is considered, in that case, to have accrued
 25 when final judgment was rendered.

26 (3) The period prescribed for the commencement of an action to collect past-due child support that
 27 has accrued after October 1, 1993, under an order entered by a court of record or administrative authority
 28 is within 10 years of the termination of support obligation.

29 (4) An action under 46-18-247(3) to enforce an order of restitution entered by a court of record
 30 may be commenced at any time within the offender's lifetime during which restitution remains unpaid."

1 **NEW SECTION. Section 40. Repealer.** Section 46-23-204, MCA, is repealed.

2

3 **NEW SECTION. Section 41. Codification instruction.** (1) [Section 3] is intended to be codified
4 as an integral part of Title 44, chapter 5, part 3, and the provisions of Title 44, chapter 5, part 3, apply to
5 [section 3].

6 (2) [Section 20] is intended to be codified as an integral part of Title 46, chapter 18, part 2, and
7 the provisions of Title 46, chapter 18, part 2, apply to [section 20].

8 (3) [Sections 35 through 37] are intended to be codified as an integral part of Title 46, chapter 24,
9 part 2, and the provisions of Title 46, chapter 24, part 2, apply to [sections 35 through 37].

10

11 **NEW SECTION. Section 42. Severability.** If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
13 applications, the part remains in effect in all valid applications that are severable from the invalid
14 applications.

15

16 **NEW SECTION. Section 43. Applicability.** [Sections 10, 13, and 21] apply to trials for and
17 sentences imposed for crimes that were committed on or after [the effective date of this act].

18

-END-