

SENATE BILL NO. 353

INTRODUCED BY

[Handwritten signatures]

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING JUDICIAL PROCEDURES; PROVIDING FOR APPOINTMENT OF A NONATTORNEY AS GUARDIAN AD LITEM IN A CASE INVOLVING SUPPORT, CUSTODY, AND VISITATION; ALLOWING DISTRICT COURT JUDGES TO APPOINT JUDGES PRO TEMPORE OR SPECIAL MASTERS TO CONDUCT PRELIMINARY, NONDISPOSITIVE PROCEEDINGS IN CRIMINAL CASES; PROVIDING FOR THE COSTS OF A JUDGE PRO TEMPORE OR SPECIAL MASTER TO BE PAID BY A CONVICTED DEFENDANT; AMENDING SECTIONS 3-5-113, 3-5-116, 40-4-205, AND 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 3-5-113, MCA, is amended to read:

"3-5-113. Judges pro tempore -- special masters -- scope of authority in criminal and civil cases.

(1) (a) A civil action in the district court may be tried by a judge pro tempore or special master, who must be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of record, appointed by the court as provided in 3-5-115, and sworn to try the cause before entering upon ~~his~~ the duties in trying the cause.

~~(2)~~(b) The judge pro tempore or special master has the authority and power of an elected district court judge in the particular civil action tried in the manner provided for in this subsection (1). All proceedings before a judge pro tempore or special master must be conducted in accordance with the rules of evidence and procedure governing district courts.

~~(3)~~(c) Any order, judgment, or decree made or rendered in a civil case by the judge pro tempore or special master ~~shall have~~ has the same force and effect as if made or rendered by the district court with the regular judge presiding.

(2)(a) Preliminary, nondispositive proceedings in criminal actions in a district court may be conducted by a judge pro tempore or special master. The judge pro tempore or special master in a criminal case must be appointed by a district court judge or judges as provided in [section 2].

(b) All proceedings before a judge pro tempore or special master in a criminal case must be

1 conducted in accordance with the rules of evidence and procedure governing district courts.

2 (c) The judge pro tempore or special master in a criminal case has the authority and power of a
 3 district court judge to issue orders pursuant to Title 46, chapter 9, concerning bail and conditions of release
 4 or detention of persons pending trial, and to conduct arraignments, initial appearances on warrants, and
 5 initial appearances on probation revocations. An order made by the judge pro tempore or special master
 6 in a criminal case has the same force and effect as if made by a district court judge.

7 (d) Within 10 days after issuance of an order by a judge pro tempore or special master in a criminal
 8 case, a party may object to the order as provided by rules of court and a district court judge shall make a
 9 de novo determination of that portion of the order to which objection is made. The district court judge may
 10 accept, reject, or modify the order in whole or in part. The district court judge may also receive further
 11 evidence or recommit the matter to the judge pro tempore or special master with instructions.

12 (e) All proceedings before a judge pro tempore or special master in a criminal case must be
 13 conducted in a suitable room in the courthouse, subject to the provisions of Title 46 relating to the use of
 14 two-way electronic audio-video communication. All records must be filed and kept in accordance with the
 15 rules governing the district court."

16
 17 **NEW SECTION. Section 2. Judge pro tempore or special master in criminal cases -- appointment.**

18 (1) One or more judges of a judicial district may designate a judge pro tempore or a special master in a
 19 criminal case to hear and determine any preliminary, nondispositive matter pending in a criminal case before
 20 the court if the district court judge or judges find that the appointment serves justice.

21 (2) Any of the following individuals may act as a special master in a criminal case:

22 (a) a justice of the peace or a city judge;

23 (b) a retired district court judge;

24 (c) a retired supreme court justice; or

25 (d) a member of the state bar.

26
 27 **Section 3.** Section 3-5-116, MCA, is amended to read:

28 **"3-5-116. Compensation -- expenses.** (1) The salary of the judge pro tempore or special master
 29 and the court reporter and all other expenses associated with the trial are the responsibility of the parties
 30 to the action. The amount of salaries and other expenses and the manner of payment must be established

1 by written agreement.

2 (2) The judge pro tempore or special master may not withhold ~~his~~ judgment as security for
3 compensation."

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5 **Section 4.** Section 40-4-205, MCA, is amended to read:

6 "**40-4-205. Representation of child.** (1) The court may appoint ~~an attorney~~ a guardian ad litem to
7 represent the interests of a minor dependent child with respect to the child's support, custody, and
8 visitation. The guardian ad litem may be an attorney. The county attorney, a deputy county attorney, if any,
9 or the department of family services or any of its staff may not be appointed for this purpose.

10 (2) The guardian ad litem has the following general duties:

11 (a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts
12 related to the child's support, custody, and visitation;

13 (b) to interview or observe the child who is the subject of the proceeding;

14 (c) to make written reports to the court concerning the child's support, custody, and visitation;

15 (d) to appear and participate in all proceedings to the degree necessary to adequately represent
16 the child and make recommendations to the court concerning the child's support, custody, and visitation;
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18 (e) to perform other duties as directed by the court.

19 (3) The guardian ad litem has access to court, medical, psychological, law enforcement, social
20 services, and school records pertaining to the child and the child's siblings and parents or custodians.

21 (4) The court shall enter an order for costs and fees in favor of the child's ~~attorney~~ guardian ad
22 litem. The order must be made against either or both parents, except that if the responsible party is
23 indigent, the costs must be waived."

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25 **Section 5.** Section 46-18-201, MCA, is amended to read:

26 "**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an
27 offense upon a verdict or a plea of guilty, the court may:

28 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
29 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
30 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.

- 1 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
 2 period of the deferred imposition. Reasonable restrictions or conditions may include:
- 3 (i) jail base release;
 - 4 (ii) jail time not exceeding 180 days;
 - 5 (iii) conditions for probation;
 - 6 (iv) restitution;
 - 7 (v) payment of the costs of confinement;
 - 8 (vi) payment of a fine as provided in 46-18-231;
 - 9 (vii) payment of costs as provided in 46-18-232 and 46-18-233;
 - 10 (viii) payment of costs of court-appointed counsel as provided in 46-8-113;
 - 11 (ix) with the approval of the facility or program, order the offender to be placed in a community
 12 corrections facility or program as provided in 53-30-321;
 - 13 (x) community service;
 - 14 (xi) home arrest as provided in Title 46, chapter 18, part 10;
 - 15 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection
 16 of society; ~~or~~
 - 17 (xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
 - 18 or
 - 19 ~~(xiii)~~ (xiv) any combination of the above restrictions or conditions in subsections (1)(a)(i) through
 20 (1)(a)(xiii).
 - 21 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
 22 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
 23 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
 24 restrictions or conditions may include any of those listed in subsection (1)(a).
 - 25 (c) impose a fine as provided by law for the offense;
 - 26 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
 27 counsel as provided in 46-8-113;
 - 28 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
 29 the defendant to the department of corrections and human services for placement in an appropriate
 30 correctional institution or program;

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

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

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

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

11 (4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
12 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
13 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
14 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

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

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

30 (10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to

1 imprisonment of the offender in the state prison, including placement of the offender in a community
2 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
3 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
4 or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were
5 not selected, based on the criteria contained in 46-18-225."

6

7 **NEW SECTION. Section 6. Codification instruction.** [Section 2] is intended to be codified as an
8 integral part of Title 3, chapter 5, part 1, and the provisions of Title 3, chapter 5, part 1, apply to [section
9 2].

10

11 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

12

-END-

1 SENATE BILL NO. 353

2 INTRODUCED BY HALLIGAN, GRIMES

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING JUDICIAL PROCEDURES; PROVIDING
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 **Section 1.** Section 3-5-113, MCA, is amended to read:

15 **"3-5-113. Judges pro tempore -- special masters -- scope of authority in criminal and civil cases.**

16 (1) (a) A civil action in the district court may be tried by a judge pro tempore or special master, who must
17 be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of
18 record, appointed by the court as provided in 3-5-115, and sworn to try the cause before entering upon
19 ~~his~~ the duties in trying the cause.

20 ~~(2)(b)~~ The judge pro tempore or special master has the authority and power of an elected district
21 court judge in the particular civil action tried in the manner provided for in this subsection (1). All
22 proceedings before a judge pro tempore or special master must be conducted in accordance with the rules
23 of evidence and procedure governing district courts.

24 ~~(3)(c)~~ Any order, judgment, or decree made or rendered in a civil case by the judge pro tempore or
25 special master ~~shall have~~ has the same force and effect as if made or rendered by the district court with
26 the regular judge presiding.

27 (2)(a) Preliminary, nondispositive proceedings in criminal actions in a district court may be
28 conducted by a judge pro tempore or special master. The judge pro tempore or special master in a criminal
29 case must be appointed by a district court judge or judges as provided in [section 2].

30 (b) All proceedings before a judge pro tempore or special master in a criminal case must be

1 conducted in accordance with the rules of evidence and procedure governing district courts.

2 (c) The judge pro tempore or special master in a criminal case has the authority and power of a
 3 district court judge to issue orders pursuant to Title 46, chapter 9, concerning bail and conditions of release
 4 or detention of persons pending trial, and to conduct arraignments, initial appearances on warrants, and
 5 initial appearances on probation revocations. An order made by the judge pro tempore or special master
 6 in a criminal case has the same force and effect as if made by a district court judge.

7 (d) Within 10 days after issuance of an order by a judge pro tempore or special master in a criminal
 8 case, a party may object to the order as provided by rules of court and a district court judge shall make a
 9 de novo determination of that portion of the order to which objection is made. The district court judge may
 10 accept, reject, or modify the order in whole or in part. The district court judge may also receive further
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 19 criminal case to hear and determine any preliminary, nondispositive matter pending in a criminal case before
 20 the court if the district court judge or judges find that the appointment serves justice.

21 (2) Any of the following individuals may act as a special master in a criminal case:

- 22 (a) a justice of the peace or a city judge;
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 25 (d) a member of the state bar.

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28 **"3-5-116. Compensation -- expenses.** (1) The salary of the judge pro tempore or special master
 29 and the court reporter and all other expenses associated with the trial OR DUTIES PERFORMED UNDER
 30 3-5-113(2)(A) are the responsibility of the parties to the action. The amount of salaries and other expenses

1 and the manner of payment must be established by written agreement.

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6 "**40-4-205. Representation of child.** (1) The court may appoint ~~an attorney~~ a guardian ad litem to
7 represent the interests of a minor dependent child with respect to the child's support, custody, and
8 visitation. The guardian ad litem may be an attorney. The county attorney, a deputy county attorney, if any,
9 or the department of family services or any of its staff may not be appointed for this purpose.

10 (2) The guardian ad litem has the following general duties:

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16 the child and make recommendations to the court concerning the child's support, custody, and visitation;

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30 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.

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

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

13 (x) community service;

14 (xi) home arrest as provided in Title 46, chapter 18, part 10;

15 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection
16 of society; or

17 (xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

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19 ~~(xiii)~~ (xiv) any combination of the above restrictions or conditions in subsections (1)(a)(i) through
20 (1)(a)(xiii).

21 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
22 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
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24 restrictions or conditions may include any of those listed in subsection (1)(a).

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30 correctional institution or program;

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6 a felony, regardless of whether any other conditions are imposed.

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8 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
9 or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail
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29 program.

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20 ~~(2)(b)~~ (b) The judge pro tempore or special master has the authority and power of an elected district
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10 (2) The guardian ad litem has the following general duties:

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17 and

18 (e) to perform other duties as directed by the court.

19 (3) The guardian ad litem has access to court, medical, psychological, law enforcement, social
20 services, and school records pertaining to the child and the child's siblings and parents or custodians.

21 (4) The court shall enter an order for costs and fees in favor of the child's ~~attorney~~ guardian ad
22 litem. The order must be made against either or both parents, except that if the responsible party is
23 indigent, the costs must be waived."

24

25 **Section 5.** Section 46-18-201, MCA, is amended to read:

26 **"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an
27 offense upon a verdict or a plea of guilty, the court may:

28 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
29 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
30 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.

- 1 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
 2 period of the deferred imposition. Reasonable restrictions or conditions may include:
- 3 (i) jail base release;
 - 4 (ii) jail time not exceeding 180 days;
 - 5 (iii) conditions for probation;
 - 6 (iv) restitution;
 - 7 (v) payment of the costs of confinement;
 - 8 (vi) payment of a fine as provided in 46-18-231;
 - 9 (vii) payment of costs as provided in 46-18-232 and 46-18-233;
 - 10 (viii) payment of costs of court-appointed counsel as provided in 46-8-113;
 - 11 (ix) with the approval of the facility or program, order the offender to be placed in a community
 12 corrections facility or program as provided in 53-30-321;
 - 13 (x) community service;
 - 14 (xi) home arrest as provided in Title 46, chapter 18, part 10;
 - 15 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection
 16 of society; ~~or~~
 - 17 (xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
 - 18 or
 - 19 ~~(xiii)~~ (xiv) any combination of the above restrictions or conditions in subsections (1)(a)(i) through
 20 (1)(a)(xiii).
 - 21 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
 22 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
 23 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
 24 restrictions or conditions may include any of those listed in subsection (1)(a).
 - 25 (c) impose a fine as provided by law for the offense;
 - 26 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
 27 counsel as provided in 46-8-113;
 - 28 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
 29 the defendant to the department of corrections and human services for placement in an appropriate
 30 correctional institution or program;

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

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

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

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

11 (4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
12 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
13 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
14 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

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

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

30 (10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to

1 imprisonment of the offender in the state prison, including placement of the offender in a community
2 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
3 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
4 or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were
5 not selected, based on the criteria contained in 46-18-225."

6

7 NEW SECTION. Section 6. Codification instruction. [Section 2] is intended to be codified as an
8 integral part of Title 3, chapter 5, part 1, and the provisions of Title 3, chapter 5, part 1, apply to [section
9 2].

10

11 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

12

-END-

SENATE BILL NO. 353

INTRODUCED BY HALLIGAN, GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING JUDICIAL PROCEDURES; PROVIDING FOR APPOINTMENT OF A NONATTORNEY AS GUARDIAN AD LITEM IN A CASE INVOLVING SUPPORT, CUSTODY, AND VISITATION; ALLOWING DISTRICT COURT JUDGES TO APPOINT JUDGES PRO TEMPORE OR SPECIAL MASTERS TO CONDUCT PRELIMINARY, NONDISPOSITIVE PROCEEDINGS IN CRIMINAL CASES; PROVIDING FOR THE COSTS OF A JUDGE PRO TEMPORE OR SPECIAL MASTER TO BE PAID BY A CONVICTED DEFENDANT; AMENDING SECTIONS 3-5-113, 3-5-116, 40-4-205, AND 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 3-5-113, MCA, is amended to read:

"3-5-113. Judges pro tempore -- special masters -- scope of authority in criminal and civil cases.

(1) (a) A civil action in the district court may be tried by a judge pro tempore or special master, who must be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of record, appointed by the court as provided in 3-5-115, and sworn to try the cause before entering upon ~~his~~ the duties in trying the cause.

~~(2)(b)~~ (b) The judge pro tempore or special master has the authority and power of an elected district court judge in the particular civil action tried in the manner provided for in this subsection (1). All proceedings before a judge pro tempore or special master must be conducted in accordance with the rules of evidence and procedure governing district courts.

~~(3)(c)~~ (c) Any order, judgment, or decree made or rendered in a civil case by the judge pro tempore or special master ~~shall have~~ has the same force and effect as if made or rendered by the district court with the regular judge presiding.

(2)(a) Preliminary, nondispositive proceedings in criminal actions in a district court may be conducted by a judge pro tempore or special master. The judge pro tempore or special master in a criminal case must be appointed by a district court judge or judges as provided in [section 2].

(b) All proceedings before a judge pro tempore or special master in a criminal case must be

1 conducted in accordance with the rules of evidence and procedure governing district courts.

2 (c) The judge pro tempore or special master in a criminal case has the authority and power of a
 3 district court judge to issue orders pursuant to Title 46, chapter 9, concerning bail and conditions of release
 4 or detention of persons pending trial, and to conduct arraignments, initial appearances on warrants, and
 5 initial appearances on probation revocations. An order made by the judge pro tempore or special master
 6 in a criminal case has the same force and effect as if made by a district court judge.

7 (d) Within 10 days after issuance of an order by a judge pro tempore or special master in a criminal
 8 case, a party may object to the order as provided by rules of court and a district court judge shall make a
 9 de novo determination of that portion of the order to which objection is made. The district court judge may
 10 accept, reject, or modify the order in whole or in part. The district court judge may also receive further
 11 evidence or recommit the matter to the judge pro tempore or special master with instructions.

12 (e) All proceedings before a judge pro tempore or special master in a criminal case must be
 13 conducted in a suitable room in the courthouse, subject to the provisions of Title 46 relating to the use of
 14 two-way electronic audio-video communication. All records must be filed and kept in accordance with the
 15 rules governing the district court."

16

17 **NEW SECTION. Section 2. Judge pro tempore or special master in criminal cases -- appointment.**

18 (1) One or more judges of a judicial district may designate a judge pro tempore or a special master in a
 19 criminal case to hear and determine any preliminary, nondispositive matter pending in a criminal case before
 20 the court if the district court judge or judges find that the appointment serves justice.

21 (2) Any of the following individuals may act as a special master in a criminal case:

22 (a) a justice of the peace or a city judge;

23 (b) a retired district court judge;

24 (c) a retired supreme court justice; or

25 (d) a member of the state bar.

26

27 **Section 3.** Section 3-5-116, MCA, is amended to read:

28 **"3-5-116. Compensation -- expenses.** (1) The salary of the judge pro tempore or special master
 29 and the court reporter and all other expenses associated with the trial ~~OR DUTIES PERFORMED UNDER~~
 30 ~~3-5-113(2)(A)~~ are the responsibility of the parties to the action. The amount of salaries and other expenses

1 and the manner of payment must be established by written agreement.

2 (2) The judge pro tempore or special master may not withhold his judgment as security for
3 compensation."

4
5 **Section 4.** Section 40-4-205, MCA, is amended to read:

6 **"40-4-205. Representation of child.** (1) The court may appoint ~~an attorney~~ a guardian ad litem to
7 represent the interests of a minor dependent child with respect to the child's support, custody, and
8 visitation. The guardian ad litem may be an attorney. The county attorney, a deputy county attorney, if any,
9 or the department of family services or any of its staff may not be appointed for this purpose.

10 (2) The guardian ad litem has the following general duties:

11 (a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts
12 related to the child's support, custody, and visitation;

13 (b) to interview or observe the child who is the subject of the proceeding;

14 (c) to make written reports to the court concerning the child's support, custody, and visitation;

15 (d) to appear and participate in all proceedings to the degree necessary to adequately represent
16 the child and make recommendations to the court concerning the child's support, custody, and visitation;

17 and

18 (e) to perform other duties as directed by the court.

19 (3) The guardian ad litem has access to court, medical, psychological, law enforcement, social
20 services, and school records pertaining to the child and the child's siblings and parents or custodians.

21 (4) The court shall enter an order for costs and fees in favor of the child's ~~attorney~~ guardian ad
22 litem. The order must be made against either or both parents, except that if the responsible party is
23 indigent, the costs must be waived."

24

25 **Section 5.** Section 46-18-201, MCA, is amended to read:

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27 offense upon a verdict or a plea of guilty, the court may:

28 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
29 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
30 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.

- 1 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
2 period of the deferred imposition. Reasonable restrictions or conditions may include:
- 3 (i) jail base release;
 - 4 (ii) jail time not exceeding 180 days;
 - 5 (iii) conditions for probation;
 - 6 (iv) restitution;
 - 7 (v) payment of the costs of confinement;
 - 8 (vi) payment of a fine as provided in 46-18-231;
 - 9 (vii) payment of costs as provided in 46-18-232 and 46-18-233;
 - 10 (viii) payment of costs of court-appointed counsel as provided in 46-8-113;
 - 11 (ix) with the approval of the facility or program, order the offender to be placed in a community
12 corrections facility or program as provided in 53-30-321;
 - 13 (x) community service;
 - 14 (xi) home arrest as provided in Title 46, chapter 18, part 10;
 - 15 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection
16 of society; or
 - 17 (xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
18 or
 - 19 ~~(xiii)~~ (xiv) any combination of the above restrictions or conditions in subsections (1)(a)(i) through
20 (1)(a)(xiii).
 - 21 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
22 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
23 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
24 restrictions or conditions may include any of those listed in subsection (1)(a).
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 - 26 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
27 counsel as provided in 46-8-113;
 - 28 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
29 the defendant to the department of corrections and human services for placement in an appropriate
30 correctional institution or program;

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

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

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

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

11 (4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
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23 or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

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28 imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender
29 program.

30 (10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to

1 imprisonment of the offender in the state prison, including placement of the offender in a community
2 corrections facility or program. In considering alternatives to imprisonment, the court shall examine the
3 sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison
4 or the women's correctional center, the court shall state its reasons why alternatives to imprisonment were
5 not selected, based on the criteria contained in 46-18-225."

6

7 NEW SECTION. **Section 6. Codification instruction.** [Section 2] is intended to be codified as an
8 integral part of Title 3, chapter 5, part 1, and the provisions of Title 3, chapter 5, part 1, apply to [section
9 2].

10

11 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

12

-END-