

1 HOUSE BILL NO. 125

2 INTRODUCED BY GRADY

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING INTERMEDIATE SENTENCING
6 OPTIONS; REVISING THE HOME ARREST LAW; REVISING THE LAW RELATING TO COMMUNITY
7 CORRECTIONS PROGRAMS AND FACILITIES; AMENDING SECTIONS 46-18-201, 46-18-1001,
8 46-18-1002, 46-18-1003, 53-1-203, 53-30-302, 53-30-303, 53-30-312, 53-30-313, 53-30-314,
9 53-30-315, 53-30-321, 53-30-322, AND 53-30-326, MCA; AND REPEALING SECTIONS 46-23-401,
10 46-23-405, 46-23-411, 46-23-412, 46-23-421, 46-23-422, 46-23-426, 53-30-324, AND 53-30-325,
11 MCA."

12
13 STATEMENT OF INTENT

14 A statement of intent is required for this bill because 53-1-203 gives the department of corrections
15 authority to adopt administrative rules relating to prerelease centers. The legislature intends the rules to
16 address, at a minimum:

17 (1) a procedure for notifying residents in an area in which a new prerelease center or expansion
18 of an existing center is contemplated;

19 (2) a procedure and timetable for public notice, public comment, and a public hearing on a new
20 prerelease center or expansion of an existing center; and

21 (3) siting criteria to be used to determine the suitability of a specific site for a new prerelease
22 center or expansion of an existing center.

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
25

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

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

29 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
30 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise

1 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
 2 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
 3 period of the deferred imposition. Reasonable restrictions or conditions may include:

4 (i) jail base release;

5 (ii) jail time not exceeding 180 days;

6 (iii) conditions for probation;

7 (iv) payment of the costs of confinement;

8 (v) payment of a fine as provided in 46-18-231;

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

10 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

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

13 (ix) with the approval of the prerelease center or prerelease program and confirmation by the
 14 department of corrections that space is available, an order that the offender be placed in a prerelease center
 15 or prerelease program for a period not to exceed 1 year;

16 ~~(ix)~~(x) community service;

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

18 ~~(xi)~~(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection
 19 of society;

20 ~~(xii)~~(xiii) payment of expenses for use of a judge pro tempore or special master as provided in
 21 3-5-116; or

22 ~~(xiii)~~(xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through ~~(1)(a)(xii)~~
 23 (1)(a)(xiii).

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

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

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

1 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
 2 the defendant to the department of corrections for a period not to exceed 5 years for placement in an
 3 appropriate correctional institution or program;

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

6 (g) with the approval of the prerelease center or prerelease program and confirmation by the
 7 department of corrections that space is available, order the offender to be placed in a prerelease center or
 8 prerelease program for a period not to exceed 1 year; or

9 ~~(g)~~(h) impose any combination of subsections (1)(b) through ~~(1)(f)~~ (1)(g).

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

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

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

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

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

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

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

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

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

10 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
 11 imprisonment of the offender in ~~the a~~ state prison, including placement of the offender in a community
 12 corrections facility or program or a prerelease center or prerelease program. In considering alternatives to
 13 imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court
 14 subsequently sentences the offender ~~is subsequently sentenced to the a~~ state prison ~~or the women's~~
 15 ~~correctional system~~, the court shall state its the reasons why alternatives it did not select an alternative to
 16 imprisonment ~~were not selected~~, based on the criteria contained in 46-18-225.

17 (12) If a felony sentence includes probation, the department of corrections shall supervise the
 18 defendant unless the court specifies otherwise.

19 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
 20 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

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

- 26 (i) jail base release;
 27 (ii) jail time not exceeding 180 days;
 28 (iii) conditions for probation;
 29 (iv) payment of the costs of confinement;
 30 (v) payment of a fine as provided in 46-18-231;

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

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

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

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

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

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

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

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

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

26 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
27 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
28 Title 46, chapter 23, part 5.

29 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
30 imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual

1 offender program.

2 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
3 imprisonment of the offender in the state prison, including placement of the offender in a community
4 corrections facility or program or a prerelease center or prerelease program. In considering alternatives to
5 imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court
6 subsequently sentences the offender is subsequently sentenced to the a state prison or the women's
7 correctional system, the court shall state ~~its~~ the reasons why alternatives it did not select an alternative to
8 imprisonment ~~were not selected~~, based on the criteria contained in 46-18-225.

9 (12) If a felony sentence includes probation, the department of corrections shall supervise the
10 defendant unless the court specifies otherwise.

11 ~~(12)~~(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219
12 does not apply to a person sentenced under 46-18-219."

13
14 **Section 2.** Section 46-18-1001, MCA, is amended to read:
15 **"46-18-1001. Definitions.** As used in this part, the following definitions apply:

16 (1) (a) "Home" means the temporary or permanent residence of an offender consisting of the
17 actual living area approved by the supervising authority.

18 (b) When more than one residence or family are located on a single piece of property, the term
19 does not include the residence of any other person who is not part of the social unit formed by the
20 offender's immediate family.

21 (2) "Home arrest" means the use of a person's home for purposes of confinement and home arrest
22 procedures and conditions imposed under this part. It does not include intensive supervision by the
23 department of corrections.

24 (3) "Monitoring device" means an electronic device or apparatus ~~that is limited in capability to~~
25 capable of recording or transmitting information concerning the offender's presence in or absence from the
26 home. The device ~~must be minimally intrusive~~ may include an apparatus for testing the offender's breath
27 for the presence of alcohol. A telephone alone is not a monitoring device.

28 (4) "Supervising authority" means:

29 (a) in the case of an adult felon, the ~~corrections division of the~~ department of corrections;

30 (b) in the case of an adult misdemeanor, a court-approved entity other than ~~the corrections~~

1 ~~division~~ of the department of corrections; or,

2 (c) in the case of a juvenile, the juvenile probation division of the youth court or any other person
3 or entity appointed by the court.

4 (5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent
5 homicide, aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery,
6 sexual intercourse without consent, sexual abuse of children, arson, aggravated burglary, escape, any
7 criminal attempt to commit an enumerated offense, or conviction as a persistent felony offender when the
8 offender has a felony conviction for any of the listed offenses within the 5-year period preceding the date
9 of the present conviction."

10

11 **Section 3.** Section 46-18-1002, MCA, is amended to read:

12 **"46-18-1002. Home arrest -- petition -- agreement.** (1) An offender may petition a sentencing
13 court for an order directing that all or a portion of a sentence of imprisonment ~~in the county jail or state~~
14 ~~prison~~ be served under conditions of home arrest. The term of home arrest may not exceed 6 months.
15 Petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of
16 the offender's sentence.

17 (2) The petition must include:

18 (a) either a statement by the department of corrections that it has a monitoring device available
19 for its use on the offender or information from the offender as to a private company that can and will
20 implement the home arrest, along with the name and credentials of the company and the type of monitoring
21 device to be used;

22 (b) the place of any employment of the offender and the name of the offender's supervisor;

23 (c) if the offender has been accepted into one, a plan for participation in an educational, treatment,
24 or training program;

25 (d) the source and amount of any income of the offender; and

26 (e) the address at which the home arrest will occur and a list of any other persons who will reside
27 at that address during all or part of the home arrest, their ages, and their relationship to the offender.

28 ~~{2}~~(3) The sentencing judge shall ~~study the records of all persons petitioning for home arrest and,~~
29 ~~in his discretion, may:~~

30 ~~(a) refer the case to the appropriate supervising authority for approval and acceptance into the~~

1 ~~home arrest program. The supervising authority may accept or reject any referral.~~

2 ~~(b) conduct hearings on the desirability of granting home arrest;~~

3 ~~(c) order a term of home arrest in lieu of a sentence of imprisonment in the county jail or state~~
 4 ~~prison. The time actually spent in home arrest pursuant to this section may not exceed 6 months or the~~
 5 ~~maximum term of imprisonment imposed, whichever is shorter.~~

6 ~~(d) issue a warrant for a person when there is reason to believe the person has violated the~~
 7 ~~conditions of home arrest, conduct hearings on the matter, and order imprisonment in the county jail or~~
 8 ~~state prison upon proof of violation; and~~

9 ~~(e) grant final discharge from arrest.~~

10 ~~(3) A home arrestee shall execute a written agreement with the court setting forth all the conditions~~
 11 ~~of home arrest. The order of home arrest must incorporate that agreement and must order compliance with~~
 12 ~~its terms. The order and agreement must be transmitted to the supervising authority and to the appropriate~~
 13 ~~jail or prison official.~~

14 ~~(4) Time spent in home arrest must be credited against the maximum term of imprisonment~~
 15 ~~imposed for the offender pursuant to law. refer the petition to the department of corrections. The~~
 16 ~~department shall review the petition and accept or reject the offender for home arrest. If the offender is~~
 17 ~~rejected, the sentencing judge shall dismiss the petition. If the offender is accepted, the sentencing judge~~
 18 ~~may conduct a hearing on the petition and grant or deny the petition. An order for home arrest must~~
 19 ~~incorporate the home arrest plan, with any modifications by the court, and require compliance with the~~
 20 ~~plan. The clerk of court shall give the county attorney a copy of the order.~~

21 ~~(5)(4) Home arrest must be under the supervision of the supervising authority. A home arrestee~~
 22 ~~is subject to the decisions and applicable rules of the supervising authority during the period of supervision.~~
 23 ~~Fees for supervision or equipment usage must be paid directly to the clerk of the sentencing court and must~~
 24 ~~be distributed by the clerk to the supervising authority.~~

25 ~~(5) The offender shall file with the court the written and notarized consent to the home arrest~~
 26 ~~signed by each adult who will reside with the offender during all or part of the home arrest."~~

27

28 **Section 4.** Section 46-18-1003, MCA, is amended to read:

29 **"46-18-1003. Home arrest -- conditions -- fees -- consent of cohabiters.** (1) A home arrestee must
 30 be confined to his the arrestee's home under conditions imposed by the sentencing court, which may

1 include but are not limited to the following:

2 (a) The home arrestee must be confined to ~~his~~ the arrestee's home at all times except when:

3 (i) working at approved employment or traveling directly to and from employment;

4 (ii) seeking employment;

5 (iii) undergoing medical, psychiatric, or mental health treatment or participating in an approved
6 counseling or aftercare program;

7 (iv) attending an ~~approved~~ educational institution or program approved by the supervising authority;

8 (v) attending a regularly scheduled religious service at a place of worship;

9 (vi) participating in an approved community service program; or

10 (vii) conforming to a schedule prepared by the supervising authority, specifically setting forth the
11 times when ~~he~~ the arrestee may be absent from the home and the locations where ~~he~~ the arrestee may be
12 during those times.

13 ~~(b) The home arrestee may not commit another offense during the period of home arrest.~~

14 ~~(c)~~ (b) The home arrestee may not change the place of home arrest or the schedule without prior
15 approval of the supervising authority.

16 ~~(d)~~ (c) The home arrestee shall maintain a telephone ~~or other approved~~ in the home and the ordered
17 monitoring device ~~in the home or~~ on the arrestee's person at all times.

18 ~~(e)~~ (d) Conditions set by the court or the supervising authority may include:

19 (i) restitution;

20 (ii) supervision fees under 7-32-2245, 46-18-702, ~~or~~ 46-18-703, or 46-23-1031;

21 (iii) any of the conditions imposed on persons on probation or conditional discharge under
22 46-23-1011 or 46-23-1021.

23 (2) ~~A written and notarized consent agreement must be filed with the court by every adult who~~
24 ~~will share the offender's home during the term of home arrest. An arrest warrant may be issued if the~~
25 ~~supervising authority has reason to believe that the home arrestee has violated a condition of the home~~
26 ~~arrest. Upon arrest, the supervising authority shall notify the sentencing court and give the court a written~~
27 ~~report on the violation. The court shall conduct a hearing and, if the violation is established, may revoke~~
28 ~~the home arrest and require the home arrestee to serve all or a part of the sentence. If imposition of~~
29 ~~sentence was suspended, the court may impose any sentence that could have been originally imposed.~~
30 ~~Time spent under home arrest must be credited against any sentence to be served.~~

1 ~~(3) Violation of the provisions of any condition of home arrest may subject the home arrestee to~~
 2 ~~prosecution under 45-7-306."~~

3
 4 **Section 5.** Section 53-1-203, MCA, is amended to read:

5 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections
 6 shall:

7 (a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529, rules necessary
 8 for the siting, establishment, and expansion of prerelease centers, and rules for the admission, custody,
 9 transfer, and release of persons in department programs except as otherwise provided by law. ~~However,~~
 10 ~~rules adopted by the department may not amend or alter the statutory powers and duties of the state board~~
 11 ~~of pardons and parole.~~

12 (b) subject to the functions of the department of administration, lease or purchase lands for use
 13 by ~~institutions~~ correctional facilities and classify those lands to determine those that may be most profitably
 14 used for agricultural purposes, taking into consideration the needs of all ~~institutions~~ correctional facilities
 15 for the food products that can be grown or produced on the lands and the relative value of agricultural
 16 programs in the treatment or rehabilitation of the persons confined in ~~the institutions~~ correctional facilities;

17 (c) contract with private, nonprofit Montana corporations to establish and maintain
 18 ~~community-based~~ prerelease centers for purposes of preparing inmates of ~~the Montana~~ a state prison who
 19 are approaching parole eligibility or discharge for release into the community, providing an alternative
 20 placement for offenders who have violated parole, and providing a sentencing option for felony offenders
 21 pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while
 22 maintaining adequate security. The centers must be operated in coordination with other department
 23 correctional programs, ~~including the supervised release program provided for in Title 46, chapter 23, part~~
 24 **4.** This subsection does not affect the department's authority to operate and maintain ~~community-based~~
 25 prerelease centers.

26 (d) utilize the staff and services of other state agencies and units of the Montana university system,
 27 within their respective statutory functions, to carry out its functions under this title;

28 (e) propose programs to the legislature to meet the projected long-range needs of ~~institutions~~
 29 corrections, including programs and facilities for the ~~diagnosis, treatment, care, and aftercare~~ custody,
 30 supervision, treatment, and skill development of persons placed in ~~institutions~~ correctional facilities or

1 programs;

2 (f) encourage the establishment of programs at the local and ~~institutional~~ state level for the
3 rehabilitation and education of ~~adult~~ felony offenders;

4 (g) administer all state and federal funds allocated to the department for youth in need of
5 supervision and delinquent youth, as defined in 41-5-103;

6 (h) collect and disseminate information relating to youth in need of supervision and delinquent
7 youth;

8 (i) maintain adequate data on placements that it funds in order to keep the legislature properly
9 informed of the specific information, by category, related to youth in need of supervision and delinquent
10 youth in out-of-home care facilities;

11 (j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need
12 of supervision and who are referred or committed to the department;

13 (k) administer youth correctional facilities;

14 (l) provide supervision, care, and control of youth released from a state youth correctional facility;
15 and

16 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

17 (i) provide for children in need of temporary protection or correctional services; and

18 (ii) coordinate and apply the principles of modern ~~institutional~~ correctional administration to the
19 ~~institutions in~~ facilities and programs administered by the department.

20 (2) The department and a private, nonprofit Montana corporation may not enter into a contract
21 under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that
22 limit the term of a contract do not apply to a contract authorized by subsection (1)(c).

23 (3) The department of corrections may enter into contracts with nonprofit corporations or
24 associations or private organizations to provide substitute care for youth in need of supervision and
25 delinquent youth in youth care facilities."

26

27 **Section 6.** Section 53-30-302, MCA, is amended to read:

28 **"53-30-302. Purpose.** It is the purpose of this part to:

29 (1) encourage the development of community corrections facilities and programs by units of local
30 government, tribal governments, and nongovernmental agencies;

- 1 (2) reduce court commitments to the state ~~penitentiary~~ prisons through diversion of ~~low-risk,~~
 2 ~~nonviolent felony~~ offenders determined appropriate by the community corrections board to community
 3 corrections facilities and programs;
- 4 (3) reduce the use of jail space for offenders who need a structured environment, treatment,
 5 counseling, and supervision but who may not require incarceration;
- 6 (4) provide a local facility for employed offenders so that they may maintain their employment
 7 under a structured environment and receive treatment, counseling, and supervision;
- 8 ~~(3)~~(5) provide a procedure by which units of local government, tribal governments, and
 9 nongovernmental agencies may provide corrections services to the sentencing courts; and
- 10 ~~(4)~~(6) include citizen participation in the policymaking and program planning related to community
 11 corrections facilities and programs through the formation of local community corrections boards."
 12

13 **Section 7.** Section 53-30-303, MCA, is amended to read:

14 "53-30-303. **Definitions.** As used in this part, unless the context requires otherwise, the following
 15 definitions apply:

16 (1) "Community corrections board" means a community corrections board as provided in
 17 53-30-312.

18 (2) "Community corrections facility or program" means a community-based or community-oriented
 19 facility or program, other than a jail, that:

20 (a) is established by a local or tribal government and operated by a unit of local government, a
 21 tribal government, or a nongovernmental agency; and

22 (b) provides programs and services to aid offenders in:

23 (i) obtaining and holding regular employment;

24 (ii) enrolling in and maintaining academic courses;

25 (iii) participating in vocational training programs;

26 (iv) utilizing the resources of the community to meet their personal and family needs;

27 (v) obtaining the benefits of specialized treatment services that exist within the community; and

28 (vi) paying restitution or performing community restitution to crime victims.

29 ~~(3) "Crime of violence" means:~~

30 ~~(a) an offense in which a person uses or possesses and threatens the use of a deadly weapon~~

1 ~~during the commission or attempted commission of an offense, including felony assault, kidnapping,~~
 2 ~~aggravated kidnapping, robbery, arson, burglary, aggravated burglary, escape, or intimidation;~~

3 ~~(b) an offense, other than an offense in which negligence is an element of the offense, in which~~
 4 ~~the person causes serious bodily injury or death to a person other than the person committing the offense~~
 5 ~~during the commission or attempted commission of an offense; or~~

6 ~~(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat,~~
 7 ~~intimidation, or force against the victim.~~

8 ~~(4)~~(3) "Department" means the department of corrections created in 2-15-2301.

9 ~~(5)~~(4) "Nongovernmental agency" means a person, private, nonprofit agency, corporation,
 10 association, labor organization, or other nongovernmental entity.

11 ~~(6) "Nonviolent felony offender" means a person who has committed a felony other than a crime~~
 12 ~~of violence.~~

13 ~~(7)~~(5) "Offender" means a person who has entered a plea of guilty or has been convicted of a
 14 ~~felony criminal offense. The term does not include a person who has committed a crime of violence.~~

15 ~~(8)~~(6) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

16 ~~(9)~~(7) "Unit of local government" means a county, city, town, or city-county consolidated
 17 government."

18

19 **Section 8.** Section 53-30-312, MCA, is amended to read:

20 **"53-30-312. Creation of community corrections boards -- membership -- appointment -- terms --**
 21 **compensation.** (1) A unit of local government, the governing bodies of two or more units of local
 22 government, or a tribal government may establish a community corrections board.

23 (2) A community corrections board consists of ~~nine~~ three to seven members, must, when possible,
 24 be gender-balanced and have racial parity, and must ~~be appointed as follows~~ include:

25 (a) one local law enforcement officer;

26 ~~(b) one county attorney;~~

27 ~~(c) one district court judge;~~

28 ~~(d)~~(b) one probation and parole officer; and

29 ~~(e) one local private employer or representative of the department of labor and industry;~~

30 ~~(f) one mental health professional;~~

1 ~~(g) one person representing local or tribal drug and alcohol treatment programs; and~~
 2 ~~(h)(c) two members~~ one member of the public.

3 (3) Members of a community corrections board must be ~~nominated by representatives of units of~~
 4 ~~local government or a tribal government and~~ appointed by the ~~district court judges~~ chief executive officer
 5 of the unit of local government or the tribal ~~judges~~ government in the judicial district in which community
 6 corrections facilities or programs are established.

7 (4) Members of a community corrections board shall serve for a term of 4 years.

8 (5) Members of a community corrections board shall serve without compensation except as
 9 otherwise decided by the units of local government or a tribal government."

10

11 **Section 9.** Section 53-30-313, MCA, is amended to read:

12 "**53-30-313. Powers and duties of community corrections boards.** (1) A community corrections
 13 board may establish and enforce standards for:

14 (a) the operation of community corrections facilities and programs operated by the unit of local
 15 government or a tribal government served by the community corrections board; and

16 (b) the conduct of offenders placed in local community corrections facilities and programs.

17 (2) The community corrections board, together with ~~the department and~~ the judicial district, shall
 18 establish procedures for screening offenders who are to be placed in the community corrections facility or
 19 program. The screening must take into account the aptitude, attitude, and social and occupational skills of
 20 the offender and the risk of harm the offender may present to ~~himself~~ the offender and others.

21 (3) A community corrections board may accept, reject, or reject after acceptance the placement
 22 of any offender in the community corrections facility or program. If an offender is rejected by the
 23 community corrections board after initial acceptance, the ~~offender must be remanded to the custody of the~~
 24 ~~sheriff of the county in which the facility or program is located~~ must take custody of the offender. The
 25 community corrections board shall notify in writing the sentencing judge who, after considering the board's
 26 reasons for rejection, shall appropriately modify the sentencing order."

27

28 **Section 10.** Section 53-30-314, MCA, is amended to read:

29 "**53-30-314. Community corrections facilities and programs operated by tribal governments.** (1)

30 A tribal government may establish, maintain, and operate a community corrections facility or program to

1 serve the needs of offenders who are sentenced to the facility or program by a judge as provided in
2 53-30-321.

3 ~~(2) A tribal government may enter into an agreement with the department, pursuant to Title 18,~~
4 ~~chapter 11, part 1, for the purpose of providing community corrections facilities or programs for offenders.~~
5 ~~The agreement must provide for strict accountability procedures and practices for the conduct and~~
6 ~~supervision of offenders assigned or sentenced to a facility or program operated by a tribal government.~~

7 ~~(3)(2)~~ A tribal government operating a community corrections facility or program may accept,
8 reject, or reject after acceptance the placement of any offender in the facility or program pursuant to an
9 agreement with a unit of local government, a nongovernmental agency, or a judicial district. If an offender
10 is rejected by the tribal government after initial appearance and the offender is a court referral, the offender
11 ~~must be remanded to the custody of the sheriff of the county in which the facility or program is located~~
12 must take custody of the offender. The tribal government shall notify in writing the sentencing judge who,
13 after considering the tribal government's reasons for rejection, shall appropriately modify the sentencing
14 order."

15

16 **Section 11.** Section 53-30-315, MCA, is amended to read:

17 **"53-30-315. Community corrections facilities and programs operated by nongovernmental**
18 **agencies.** (1) Except as provided in subsection (2), a nongovernmental agency may establish, maintain, and
19 operate a community corrections facility or program to serve the needs of offenders who are sentenced to
20 the facility or program by a judge as provided in 53-30-321.

21 (2) A nongovernmental agency may not establish a community corrections facility or program
22 unless approved by the local community corrections board in a local government or tribal government that
23 has established a community corrections board.

24 ~~(3) A nongovernmental agency may enter into a contract or agreement with the department for the~~
25 ~~purpose of providing community corrections facilities or programs for offenders. The contract or agreement~~
26 ~~must provide for strict accountability procedures and practices for the conduct and supervision of offenders~~
27 ~~assigned or sentenced to a facility or program operated by a nongovernmental agency.~~

28 ~~(4)(3)~~ A nongovernmental agency operating a community corrections facility or program may
29 accept, reject, or reject after acceptance the placement of any offender in the facility or program pursuant
30 to a contract or agreement with a unit of local government, a tribal government, or a judicial district. If an

1 offender is rejected by the nongovernmental agency after initial acceptance and the offender is a court
 2 referral, the ~~offender must be remanded to the custody of the sheriff of the county in which the facility or~~
 3 program is located must take custody of the offender. The nongovernmental agency shall notify in writing
 4 the sentencing judge who, after considering the agency's reasons for rejection, shall appropriately modify
 5 the sentencing order."

6

7 **Section 12.** Section 53-30-321, MCA, is amended to read:

8 **"53-30-321. Authority of judge to utilize community corrections facilities or programs —~~procedure~~**

9 **-- restrictions.** (1) Subject to the restrictions contained in subsection ~~(3)~~ (2), a judge may order placement
 10 of a ~~nonviolent felony~~ an offender in a community corrections facility or program operated by a unit of local
 11 government, a tribal government, or a nongovernmental agency. ~~If a judge orders placement of an offender~~
 12 ~~in a community corrections facility or program, the judge shall indicate in the sentencing order that the~~
 13 ~~offender would have been sentenced to prison if the community corrections facility or program had not~~
 14 ~~been available.~~

15 ~~(2) Placement of an offender in a community corrections facility or program may be ordered only~~
 16 ~~if:~~

17 ~~(a) the community corrections facility or program is operated by a unit of local government, a tribal~~
 18 ~~government, or a nongovernmental agency that has entered into a contract or agreement with the~~
 19 ~~department to provide community corrections services for offenders; and~~

20 ~~(b) funding for the placement is available.~~

21 ~~(3)~~(2) A judge may not order placement of an offender in a residential community corrections
 22 facility or program for a period exceeding 1 year. After completing the residential community corrections
 23 portion of ~~his~~ a sentence, an offender shall serve the remainder of ~~his~~ the sentence under normal probation
 24 supervision, if applicable.

25 ~~(4)~~(3) An offender is not eligible for parole while serving a sentence in a community corrections
 26 facility or program.

27 ~~(5)~~(4) The probation and parole officers for the judicial district shall include in their presentence
 28 report to the sentencing judge recommendations for utilization of a community correctional facility or
 29 program that has been approved for use by the judicial district."

30

1 **Section 13.** Section 53-30-322, MCA, is amended to read:

2 "**53-30-322. Powers and responsibilities of department.** ~~rulemaking authority.~~ The department
3 shall may:

4 (1) ~~with the active and full participation of the~~ upon the request of a local community corrections
5 board, ~~establish minimum standards for the operation~~ provide assistance in the planning of community
6 corrections facilities and programs ~~operated by a unit of local government, a tribal government, or a~~
7 ~~nongovernmental agency that has entered into a contract or agreement with the department to provide~~
8 ~~services for offenders; and~~

9 (2) ~~review and evaluate all community corrections facilities and programs established under this~~
10 ~~part, subject to the requirements established in section 14, Chapter 554, Laws of 1991~~ contract with a
11 community corrections facility or program for the provision of services for offenders under the custody of
12 the department. The contract must address facility or program review and evaluation, accounting and
13 reporting standards, and reimbursement of the facility or program;

14 (3) ~~prescribe accounting and reporting standards for all units of local government, tribal~~
15 ~~governments, and nongovernmental agencies that have entered into a contract or agreement with the~~
16 ~~department;~~

17 (4) ~~reimburse units of local government, tribal governments, or nongovernmental agencies for~~
18 ~~community correctional services at a rate to be negotiated by the department;~~

19 (5) ~~adopt rules necessary to carry out the provisions of this part."~~

20
21 **Section 14.** Section 53-30-326, MCA, is amended to read:

22 "**53-30-326. Escape from custody.** An offender is guilty of escape ~~from official detention~~ and shall
23 be punished as provided in 45-7-306 if, without proper authorization, ~~he~~ the offender:

24 (1) fails to remain within the extended limits of ~~his~~ the offender's confinement or fails to return
25 within the time specified to a community corrections facility or program to which ~~he~~ the offender has been
26 assigned, sentenced, or transferred; or

27 (2) leaves ~~his~~ the offender's place of employment or neglects or fails to return to the community
28 corrections facility or program after being specifically ordered to do so."

29

30 NEW SECTION. **Section 15. Repealer.** Sections 46-23-401, 46-23-405, 46-23-411, 46-23-412,

1 46-23-421, 46-23-422, 46-23-426, 53-30-324, and 53-30-325, MCA, are repealed.

2 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0125, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act revising and clarifying intermediate sentencing options; revising the home arrest law; revising the law related to community corrections programs and facilities.

ASSUMPTIONS:

1. This legislation would allow district judges to order offenders with deferred or suspended sentences to be placed in a pre-release center or program.
2. This legislation clarifies the types of offenders eligible for pre-release placement.
3. This legislation clarifies the definition of community correctional facility.


FISCAL IMPACT:

Department of Corrections (DOC):


The DOC is unable to calculate a fiscal impact. More offenders will be sentenced to pre-release programs and placed under house arrest. The department believes that in the long-term, this legislation should have a positive fiscal impact.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

As more offenders are diverted to house arrest and more pre-release centers are opened, the costs of care and custody will be lower than the per day prison costs which would otherwise be expended.



DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



EDWARD GRADY, PRIMARY SPONSOR DATE
Fiscal Note for HB0125, as introduced

HB 125

1 HOUSE BILL NO. 125

2 INTRODUCED BY GRADY

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING INTERMEDIATE SENTENCING
6 OPTIONS; REVISING THE HOME ARREST LAW; REVISING THE LAW RELATING TO COMMUNITY
7 CORRECTIONS PROGRAMS AND FACILITIES; AMENDING SECTIONS 46-18-201, 46-18-1001,
8 46-18-1002, 46-18-1003, 53-1-203, 53-30-302, 53-30-303, 53-30-312, 53-30-313, 53-30-314,
9 53-30-315, 53-30-321, 53-30-322, AND 53-30-326, MCA; AND REPEALING SECTIONS 46-23-401,
10 46-23-405, 46-23-411, 46-23-412, 46-23-421, 46-23-422, 46-23-426, 53-30-324, AND 53-30-325,
11 MCA."

12
13 STATEMENT OF INTENT

14 A statement of intent is required for this bill because 53-1-203 gives the department of corrections
15 authority to adopt administrative rules relating to THE FUTURE BUILDING OR EXPANDING OF NEW
16 prerelease centers. The legislature intends the rules to address, at a minimum:

17 (1) a procedure for notifying residents in an area in which a new prerelease center or expansion
18 of an existing center is contemplated;

19 (2) a procedure and timetable for public notice, public comment, and a public hearing on a new
20 prerelease center or expansion of an existing center; and

21 (3) siting criteria to be used to determine the suitability of a specific site for a new prerelease
22 center or expansion of an existing center.

23 THE RULES ARE NOT INTENDED TO ADDRESS PLANS THAT HAVE BEEN APPROVED BY A
24 COMMUNITY FOR A NEW OR EXPANDED PRERELEASE FACILITY ON [THE EFFECTIVE DATE OF THIS
25 ACT].

26
27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
28

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

30 **"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found

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

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

5 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
6 period of the deferred imposition. Reasonable restrictions or conditions may include:

7 (i) jail base release;

8 (ii) jail time not exceeding 180 days;

9 (iii) conditions for probation;

10 (iv) payment of the costs of confinement;

11 (v) payment of a fine as provided in 46-18-231;

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

13 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

14 (viii) with the approval of the facility or program, an order that the offender be placed in a
15 community corrections facility or program as provided in 53-30-321;

16 (ix) with the approval of the prerelease center or prerelease program and confirmation by the
17 department of corrections that space is available, an order that the offender be placed in a prerelease center
18 or prerelease program for a period not to exceed 1 year;

19 ~~(ix)(x)~~ community service;

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

21 ~~(xi)(xii)~~ any other reasonable conditions considered necessary for rehabilitation or for the protection
22 of society;

23 ~~(xii)(xiii)~~ payment of expenses for use of a judge pro tempore or special master as provided in
24 3-5-116; or

25 ~~(xiii)(xiv)~~ any combination of the restrictions or conditions in subsections (1)(a)(i) through ~~(1)(a)(xiii)~~
26 (1)(a)(xiii).

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

- 1 (c) impose a fine as provided by law for the offense;
- 2 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
3 counsel as provided in 46-8-113;
- 4 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
5 the defendant to the department of corrections for a period not to exceed 5 years for placement in an
6 appropriate correctional institution or program;
- 7 (f) with the approval of the facility or program, order the offender to be placed in a community
8 corrections facility or program as provided in 53-30-321; ~~or~~
- 9 (g) with the approval of the prerelease center or prerelease program and confirmation by the
10 department of corrections that space is available, order the offender to be placed in a prerelease center or
11 prerelease program for a period not to exceed 1 year; or
- 12 ~~(g)(h)~~ impose any combination of subsections (1)(b) through ~~(1)(f)~~ (1)(g).
- 13 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
14 of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim
15 as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay
16 restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.
- 17 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
18 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
19 a felony, regardless of whether any other conditions are imposed.
- 20 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court
21 shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence
22 or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be
23 allowed for jail or home arrest time already served.
- 24 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
25 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
26 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),
27 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).
- 28 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence
29 of imprisonment imposed under 45-5-102 may not be deferred or suspended.
- 30 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred

1 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
 2 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
 3 suspended.

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

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

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

13 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
 14 imprisonment of the offender in ~~the a~~ state prison, including placement of the offender in a community
 15 corrections facility or program or a prerelease center or prerelease program. In considering alternatives to
 16 imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court
 17 subsequently sentences the offender ~~is subsequently sentenced to the a~~ state prison ~~or the women's~~
 18 ~~correctional system~~, the court shall state ~~its~~ the reasons why ~~alternatives it did not select an alternative to~~
 19 imprisonment ~~were not selected~~, based on the criteria contained in 46-18-225.

20 (12) If a felony sentence includes probation, the department of corrections shall supervise the
 21 defendant unless the court specifies otherwise.

22 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
 23 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

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

- 29 (i) jail base release;
 30 (ii) jail time not exceeding 180 days;

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

1 (g) with the approval of the prerelease center or prerelease program and confirmation by the
2 department of corrections that space is available, order the offender to be placed in a prerelease center or
3 prerelease program for a period not to exceed 1 year; or

4 ~~(g)~~(h) impose any combination of subsections (1)(b) through ~~(1)(f)~~ (1)(g).

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

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

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

16 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
17 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
18 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),
19 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

29 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
30 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and

1 Title 46, chapter 23, part 5.

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

5 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
6 imprisonment of the offender in the state prison, including placement of the offender in a community
7 corrections facility or program or a prerelease center or prerelease program. In considering alternatives to
8 imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court
9 subsequently sentences the offender to a state prison or the women's
10 correctional system, the court shall state its the reasons why alternatives it did not select an alternative to
11 imprisonment were not selected, based on the criteria contained in 46-18-225.

12 (12) If a felony sentence includes probation, the department of corrections shall supervise the
13 defendant unless the court specifies otherwise.

14 ~~(12)~~(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219
15 does not apply to a person sentenced under 46-18-219."

16

17 **Section 2.** Section 46-18-1001, MCA, is amended to read:

18 **"46-18-1001. Definitions.** As used in this part, the following definitions apply:

19 (1) (a) "Home" means the temporary or permanent residence of an offender consisting of the
20 actual living area approved by the supervising authority.

21 (b) When more than one residence or family are located on a single piece of property, the term
22 does not include the residence of any other person who is not part of the social unit formed by the
23 offender's immediate family.

24 (2) "Home arrest" means the use of a person's home for purposes of confinement and home arrest
25 procedures and conditions imposed under this part. It does not include intensive supervision by the
26 department of corrections.

27 (3) "Monitoring device" means an electronic device or apparatus ~~that is limited in capability to~~
28 capable of recording or transmitting information concerning the offender's presence in or absence from the
29 home. The device ~~must be minimally intrusive~~ may include an apparatus for testing the offender's breath
30 for the presence of alcohol. A telephone alone is not a monitoring device.

1 (4) "Supervising authority" means:

2 (a) in the case of an adult felon, the ~~corrections division of the~~ department of corrections;

3 (b) in the case of an adult misdemeanor, a court-approved entity other than ~~the corrections~~
4 ~~division of the~~ department of corrections; or,

5 (c) in the case of a juvenile, the juvenile probation division of the youth court or any other person
6 or entity appointed by the court.

7 (5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent
8 homicide, aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery,
9 sexual intercourse without consent, sexual abuse of children, arson, aggravated burglary, escape, any
10 criminal attempt to commit an enumerated offense, or conviction as a persistent felony offender when the
11 offender has a felony conviction for any of the listed offenses within the 5-year period preceding the date
12 of the present conviction."

13
14 **Section 3.** Section 46-18-1002, MCA, is amended to read:

15 **"46-18-1002. Home arrest -- petition -- agreement.** (1) An offender may petition a sentencing
16 court for an order directing that all or a portion of a sentence of imprisonment ~~in the county jail or state~~
17 ~~prison~~ be served under conditions of home arrest. The term of home arrest may not exceed 6 months.
18 Petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of
19 the offender's sentence.

20 (2) The petition must include:

21 (a) either a statement by the department of corrections that it has a monitoring device available
22 for its use on the offender or information from the offender as to a private company that can and will
23 implement the home arrest, along with the name and credentials of the company and the type of monitoring
24 device to be used;

25 (b) the place of any employment of the offender and the name of the offender's supervisor;

26 (c) if the offender has been accepted into one, a plan for participation in an educational, treatment,
27 or training program;

28 (d) the source and amount of any income of the offender; and

29 (e) the address at which the home arrest will occur and a list of any other persons who will reside
30 at that address during all or part of the home arrest, their ages, and their relationship to the offender.

1 ~~(2)(3)~~ The sentencing judge shall ~~study the records of all persons petitioning for home arrest and,~~
2 in his discretion, may:

3 ~~(a) refer the case to the appropriate supervising authority for approval and acceptance into the~~
4 ~~home arrest program. The supervising authority may accept or reject any referral.~~

5 ~~(b) conduct hearings on the desirability of granting home arrest;~~

6 ~~(c) order a term of home arrest in lieu of a sentence of imprisonment in the county jail or state~~
7 ~~prison. The time actually spent in home arrest pursuant to this section may not exceed 6 months or the~~
8 ~~maximum term of imprisonment imposed, whichever is shorter.~~

9 ~~(d) issue a warrant for a person when there is reason to believe the person has violated the~~
10 ~~conditions of home arrest, conduct hearings on the matter, and order imprisonment in the county jail or~~
11 ~~state prison upon proof of violation; and~~

12 ~~(e) grant final discharge from arrest.~~

13 ~~(3) A home arrestee shall execute a written agreement with the court setting forth all the conditions~~
14 ~~of home arrest. The order of home arrest must incorporate that agreement and must order compliance with~~
15 ~~its terms. The order and agreement must be transmitted to the supervising authority and to the appropriate~~
16 ~~jail or prison official.~~

17 ~~(4) Time spent in home arrest must be credited against the maximum term of imprisonment~~
18 ~~imposed for the offender pursuant to law. refer the petition to the department of corrections SUPERVISING~~
19 ~~AUTHORITY. The department SUPERVISING AUTHORITY shall review the petition and accept or reject the~~
20 ~~offender for home arrest. If the offender is rejected, the sentencing judge shall dismiss the petition. If the~~
21 ~~offender is accepted, the sentencing judge may conduct a hearing on the petition and grant or deny the~~
22 ~~petition. An order for home arrest must incorporate the home arrest plan, with any modifications by the~~
23 ~~court, and require compliance with the plan. The clerk of court shall give the county attorney a copy of~~
24 ~~the order.~~

25 ~~(5)(4) Home arrest must be under the supervision of the supervising authority. A home arrestee~~
26 ~~is subject to the decisions and applicable rules of the supervising authority during the period of supervision.~~
27 ~~Fees for supervision or equipment usage must be paid directly to the clerk of the sentencing court and must~~
28 ~~be distributed by the clerk to the supervising authority.~~

29 ~~(5) The offender shall file with the court the written and notarized consent to the home arrest~~
30 ~~signed by each adult who will reside with the offender during all or part of the home arrest."~~

1 **Section 4.** Section 46-18-1003, MCA, is amended to read:

2 **"46-18-1003. Home arrest -- conditions -- fees -- consent of cohabitators.** (1) A home arrestee must
3 be confined to ~~his~~ the arrestee's home under conditions imposed by the sentencing court, which may
4 include but are not limited to the following:

5 (a) The home arrestee must be confined to ~~his~~ the arrestee's home at all times except when:

6 (i) working at approved employment or traveling directly to and from employment;

7 (ii) seeking employment;

8 (iii) undergoing medical, psychiatric, or mental health treatment or participating in an approved
9 counseling or aftercare program;

10 (iv) attending an ~~approved~~ educational institution or program approved by the supervising authority;

11 (v) attending a regularly scheduled religious service at a place of worship;

12 (vi) participating in an approved community service program; or

13 (vii) conforming to a schedule prepared by the supervising authority, specifically setting forth the
14 times when ~~he~~ the arrestee may be absent from the home and the locations where ~~he~~ the arrestee may be
15 during those times.

16 ~~(b) The home arrestee may not commit another offense during the period of home arrest.~~

17 ~~(e)~~(b) The home arrestee may not change the place of home arrest or the schedule without prior
18 approval of the supervising authority.

19 ~~(d)~~(c) The home arrestee shall maintain a telephone ~~or other approved~~ in the home and the ordered
20 monitoring device ~~in the home or~~ on the arrestee's person at all times.

21 ~~(e)~~(d) Conditions set by the court or the supervising authority may include:

22 (i) restitution;

23 (ii) supervision fees under 7-32-2245, 46-18-702, ~~or~~ 46-18-703, or 46-23-1031;

24 (iii) any of the conditions imposed on persons on probation or conditional discharge under
25 46-23-1011 or 46-23-1021.

26 (2) ~~A written and notarized consent agreement must be filed with the court by every adult who~~
27 ~~will share the offender's home during the term of home arrest.~~ An arrest warrant may be issued if the
28 supervising authority has reason to believe that the home arrestee has violated a condition of the home
29 arrest. Upon arrest, the supervising authority shall notify the sentencing court and give the court a written
30 report on the violation. The court shall conduct a hearing and, if the violation is established, may revoke

1 the home arrest and require the home arrestee to serve all or a part of the sentence. If imposition of
 2 sentence was suspended, the court may impose any sentence that could have been originally imposed.
 3 Time spent under home arrest must be credited against any sentence to be served.

4 ~~(3) Violation of the provisions of any condition of home arrest may subject the home arrestee to~~
 5 ~~prosecution under 45-7-306."~~

6

7 **Section 5.** Section 53-1-203, MCA, is amended to read:

8 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections
 9 shall:

10 (a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529, rules necessary
 11 for the siting, establishment, and expansion of prerelease centers, and rules for the admission, custody,
 12 transfer, and release of persons in department programs except as otherwise provided by law. However,
 13 rules adopted by the department may not amend or alter the statutory powers and duties of the state board
 14 of pardons and parole.

15 (b) subject to the functions of the department of administration, lease or purchase lands for use
 16 by ~~institutions~~ correctional facilities and classify those lands to determine those that may be most profitably
 17 used for agricultural purposes, taking into consideration the needs of all ~~institutions~~ correctional facilities
 18 for the food products that can be grown or produced on the lands and the relative value of agricultural
 19 programs in the treatment or rehabilitation of the persons confined in ~~the institutions~~ correctional facilities;

20 (c) contract with private, nonprofit Montana corporations to establish and maintain
 21 ~~community-based~~ prerelease centers for purposes of preparing inmates of ~~the Montana~~ a state prison who
 22 are approaching parole eligibility or discharge for release into the community, providing an alternative
 23 placement for offenders who have violated parole, and providing a sentencing option for felony offenders
 24 pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while
 25 maintaining adequate security. The centers must be operated in coordination with other department
 26 correctional programs, ~~including the supervised release program provided for in Title 46, chapter 23, part~~
 27 **4.** This subsection does not affect the department's authority to operate and maintain ~~community-based~~
 28 prerelease centers.

29 (d) utilize the staff and services of other state agencies and units of the Montana university system,
 30 within their respective statutory functions, to carry out its functions under this title;

1 (e) propose programs to the legislature to meet the projected long-range needs of ~~institutions~~
 2 corrections, including programs and facilities for the ~~diagnosis, treatment, care, and aftercare~~ custody,
 3 supervision, treatment, and skill development of persons placed in ~~institutions~~ correctional facilities or
 4 programs;

5 (f) encourage the establishment of programs at the local and ~~institutional~~ state level for the
 6 rehabilitation and education of ~~adult~~ felony offenders;

7 (g) administer all state and federal funds allocated to the department for youth in need of
 8 supervision and delinquent youth, as defined in 41-5-103;

9 (h) collect and disseminate information relating to youth in need of supervision and delinquent
 10 youth;

11 (i) maintain adequate data on placements that it funds in order to keep the legislature properly
 12 informed of the specific information, by category, related to youth in need of supervision and delinquent
 13 youth in out-of-home care facilities;

14 (j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need
 15 of supervision and who are referred or committed to the department;

16 (k) administer youth correctional facilities;

17 (l) provide supervision, care, and control of youth released from a state youth correctional facility;

18 and

19 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

20 (i) provide for children in need of temporary protection or correctional services; and

21 (ii) coordinate and apply the principles of modern ~~institutional~~ correctional administration to the
 22 ~~institutions in~~ facilities and programs administered by the department.

23 (2) The department and a private, nonprofit Montana corporation may not enter into a contract
 24 under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that
 25 limit the term of a contract do not apply to a contract authorized by subsection (1)(c). PRIOR TO ENTERING
 26 INTO A CONTRACT FOR A PERIOD OF 10 YEARS, THE DEPARTMENT SHALL SUBMIT THE PROPOSED
 27 CONTRACT TO THE LEGISLATIVE AUDIT COMMITTEE. THE LEGISLATIVE AUDIT DIVISION SHALL
 28 REVIEW THE CONTRACT AND MAKE RECOMMENDATIONS OR COMMENTS TO THE LEGISLATIVE AUDIT
 29 COMMITTEE. THE COMMITTEE MAY MAKE RECOMMENDATIONS OR COMMENTS TO THE
 30 DEPARTMENT. THE DEPARTMENT SHALL RESPOND TO THE COMMITTEE, ACCEPTING OR REJECTING

1 THE COMMITTEE RECOMMENDATIONS OR COMMENTS PRIOR TO ENTERING INTO THE CONTRACT.

2 (3) The department of corrections may enter into contracts with nonprofit corporations or
3 associations or private organizations to provide substitute care for youth in need of supervision and
4 delinquent youth in youth care facilities."

5

6 **Section 6.** Section 53-30-302, MCA, is amended to read:

7 "**53-30-302. Purpose.** It is the purpose of this part to:

8 (1) encourage the development of community corrections facilities and programs by units of local
9 government, tribal governments, and nongovernmental agencies;

10 (2) reduce court commitments to the state ~~penitentiary~~ prisons through diversion of ~~low-risk,~~
11 ~~nonviolent felony~~ offenders determined appropriate by the community corrections board to community
12 corrections facilities and programs;

13 (3) reduce the use of jail space for offenders who need a structured environment, treatment,
14 counseling, and supervision but who may not require incarceration;

15 (4) provide a local facility for employed offenders so that they may maintain their employment
16 under a structured environment and receive treatment, counseling, and supervision;

17 ~~(3)(5)~~ provide a procedure by which units of local government, tribal governments, and
18 nongovernmental agencies may provide corrections services to the sentencing courts; and

19 ~~(4)(6)~~ include citizen participation in the policymaking and program planning related to community
20 corrections facilities and programs through the formation of local community corrections boards."

21

22 **Section 7.** Section 53-30-303, MCA, is amended to read:

23 "**53-30-303. Definitions.** As used in this part, unless the context requires otherwise, the following
24 definitions apply:

25 (1) "Community corrections board" means a community corrections board as provided in
26 53-30-312.

27 (2) "Community corrections facility or program" means a community-based or community-oriented
28 facility or program, other than a jail, that:

29 (a) is established by a local or tribal government and operated by a unit of local government, a
30 tribal government, or a nongovernmental agency; and

1 (b) provides programs and services to aid offenders in:

2 (i) obtaining and holding regular employment;

3 (ii) enrolling in and maintaining academic courses;

4 (iii) participating in vocational training programs;

5 (iv) utilizing the resources of the community to meet their personal and family needs;

6 (v) obtaining the benefits of specialized treatment services that exist within the community; and

7 (vi) paying restitution or performing community restitution to crime victims.

8 ~~(3) "Crime of violence" means:~~

9 ~~(a) an offense in which a person uses or possesses and threatens the use of a deadly weapon~~
 10 ~~during the commission or attempted commission of an offense, including felony assault, kidnapping,~~
 11 ~~aggravated kidnapping, robbery, arson, burglary, aggravated burglary, escape, or intimidation;~~

12 ~~(b) an offense, other than an offense in which negligence is an element of the offense, in which~~
 13 ~~the person causes serious bodily injury or death to a person other than the person committing the offense~~
 14 ~~during the commission or attempted commission of an offense; or~~

15 ~~(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat,~~
 16 ~~intimidation, or force against the victim.~~

17 ~~(4)~~(3) "Department" means the department of corrections created in 2-15-2301.

18 ~~(5)~~(4) "Nongovernmental agency" means a person, private, nonprofit agency, corporation,
 19 association, labor organization, or other nongovernmental entity.

20 ~~(6) "Nonviolent felony offender" means a person who has committed a felony other than a crime~~
 21 ~~of violence.~~

22 ~~(7)~~(5) "Offender" means a person who has entered a plea of guilty or has been convicted of a
 23 ~~felony criminal offense. The term does not include a person who has committed a crime of violence.~~

24 ~~(8)~~(6) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

25 ~~(9)~~(7) "Unit of local government" means a county, city, town, or city-county consolidated
 26 government."

27
 28 **Section 8.** Section 53-30-312, MCA, is amended to read:

29 **"53-30-312. Creation of community corrections boards -- membership -- appointment -- terms --**
 30 **compensation.** (1) A unit of local government, the governing bodies of two or more units of local

1 government, or a tribal government may establish a community corrections board.

2 (2) A community corrections board consists of ~~nine~~ three to seven members, must, when possible,
3 be gender-balanced and have racial parity, and must ~~be appointed as follows~~ include:

4 (a) one local law enforcement officer;

5 ~~(b) one county attorney;~~

6 ~~(c) one district court judge;~~

7 ~~(d)~~ (b) one probation and parole officer; and

8 ~~(e) one local private employer or representative of the department of labor and industry;~~

9 ~~(f) one mental health professional;~~

10 ~~(g) one person representing local or tribal drug and alcohol treatment programs; and~~

11 ~~(h)~~ (c) ~~two members~~ one member of the public.

12 (3) Members of a community corrections board must be ~~nominated by representatives of units of~~
13 ~~local government or a tribal government and~~ appointed by the ~~district court judges~~ chief executive officer
14 of the unit of local government or the tribal ~~judges~~ government in the judicial district in which community
15 corrections facilities or programs are established.

16 (4) Members of a community corrections board shall serve for a term of 4 years.

17 (5) Members of a community corrections board shall serve without compensation except as
18 otherwise decided by the units of local government or a tribal government."

19

20 **Section 9.** Section 53-30-313, MCA, is amended to read:

21 "**53-30-313. Powers and duties of community corrections boards.** (1) A community corrections
22 board may establish and enforce standards for:

23 (a) the operation of community corrections facilities and programs operated by the unit of local
24 government or a tribal government served by the community corrections board; and

25 (b) the conduct of offenders placed in local community corrections facilities and programs.

26 (2) The community corrections board, together with ~~the department and~~ the judicial district, shall
27 establish procedures for screening offenders who are to be placed in the community corrections facility or
28 program. The screening must take into account the aptitude, attitude, and social and occupational skills of
29 the offender and the risk of harm the offender may present to ~~himself~~ the offender and others.

30 (3) A community corrections board may accept, reject, or reject after acceptance the placement

1 of any offender in the community corrections facility or program. If an offender is rejected by the
 2 community corrections board after initial acceptance, the ~~offender must be remanded to the custody of the~~
 3 sheriff of the county in which the facility or program is located must take custody of the offender. The
 4 community corrections board shall notify in writing the sentencing judge who, after considering the board's
 5 reasons for rejection, shall appropriately modify the sentencing order."

6
 7 **Section 10.** Section 53-30-314, MCA, is amended to read:

8 **"53-30-314. Community corrections facilities and programs operated by tribal governments.** (1)

9 A tribal government may establish, maintain, and operate a community corrections facility or program to
 10 serve the needs of offenders who are sentenced to the facility or program by a judge as provided in
 11 53-30-321.

12 ~~(2) A tribal government may enter into an agreement with the department, pursuant to Title 18,~~
 13 ~~chapter 11, part 1, for the purpose of providing community corrections facilities or programs for offenders.~~
 14 ~~The agreement must provide for strict accountability procedures and practices for the conduct and~~
 15 ~~supervision of offenders assigned or sentenced to a facility or program operated by a tribal government.~~

16 ~~(3)~~(2) A tribal government operating a community corrections facility or program may accept,
 17 reject, or reject after acceptance the placement of any offender in the facility or program pursuant to an
 18 agreement with a unit of local government, a nongovernmental agency, or a judicial district. If an offender
 19 is rejected by the tribal government after initial appearance and the offender is a court referral, the ~~offender~~
 20 ~~must be remanded to the custody of the~~ sheriff of the county in which the facility or program is located
 21 must take custody of the offender. The tribal government shall notify in writing the sentencing judge who,
 22 after considering the tribal government's reasons for rejection, shall appropriately modify the sentencing
 23 order."

24
 25 **Section 11.** Section 53-30-315, MCA, is amended to read:

26 **"53-30-315. Community corrections facilities and programs operated by nongovernmental**
 27 **agencies.** (1) Except as provided in subsection (2), a nongovernmental agency may establish, maintain, and
 28 operate a community corrections facility or program to serve the needs of offenders who are sentenced to
 29 the facility or program by a judge as provided in 53-30-321.

30 (2) A nongovernmental agency may not establish a community corrections facility or program

1 unless approved by the local community corrections board in a local government or tribal government that
2 has established a community corrections board.

3 ~~(3) A nongovernmental agency may enter into a contract or agreement with the department for the~~
4 ~~purpose of providing community corrections facilities or programs for offenders. The contract or agreement~~
5 ~~must provide for strict accountability procedures and practices for the conduct and supervision of offenders~~
6 ~~assigned or sentenced to a facility or program operated by a nongovernmental agency.~~

7 ~~(4)~~(3) A nongovernmental agency operating a community corrections facility or program may
8 accept, reject, or reject after acceptance the placement of any offender in the facility or program pursuant
9 to a contract or agreement with a unit of local government, a tribal government, or a judicial district. If an
10 offender is rejected by the nongovernmental agency after initial acceptance and the offender is a court
11 referral, the ~~offender must be remanded to the custody of the sheriff of the county in which the facility or~~
12 ~~program is located~~ must take custody of the offender. The nongovernmental agency shall notify in writing
13 the sentencing judge who, after considering the agency's reasons for rejection, shall appropriately modify
14 the sentencing order."

15

16 **Section 12.** Section 53-30-321, MCA, is amended to read:

17 **"53-30-321. Authority of judge to utilize community corrections facilities or programs --~~procedure~~**
18 **-- restrictions.** (1) Subject to the restrictions contained in subsection ~~(3)~~ (2), a judge may order placement
19 of a ~~nonviolent felony~~ an offender in a community corrections facility or program operated by a unit of local
20 government, a tribal government, or a nongovernmental agency. ~~If a judge orders placement of an offender~~
21 ~~in a community corrections facility or program, the judge shall indicate in the sentencing order that the~~
22 ~~offender would have been sentenced to prison if the community corrections facility or program had not~~
23 ~~been available.~~

24 ~~(2) Placement of an offender in a community corrections facility or program may be ordered only~~
25 ~~if:~~

26 ~~(a) the community corrections facility or program is operated by a unit of local government, a tribal~~
27 ~~government, or a nongovernmental agency that has entered into a contract or agreement with the~~
28 ~~department to provide community corrections services for offenders; and~~

29 ~~(b) funding for the placement is available.~~

30 ~~(3)~~(2) A judge may not order placement of an offender in a residential community corrections

1 facility or program for a period exceeding 1 year. After completing the residential community corrections
 2 portion of ~~his a~~ sentence, an offender shall serve the remainder of ~~his the~~ sentence under normal probation
 3 supervision, if applicable.

4 ~~(4)(3)~~ An offender is not eligible for parole while serving a sentence in a community corrections
 5 facility or program.

6 ~~(5)(4)~~ The probation and parole officers for the judicial district shall include in their presentence
 7 report to the sentencing judge recommendations for utilization of a community correctional facility or
 8 program that has been approved for use by the judicial district."
 9

10 **Section 13.** Section 53-30-322, MCA, is amended to read:

11 "**53-30-322. Powers and responsibilities of department.** ~~—rulemaking authority.~~ The department
 12 shall may:

13 (1) ~~with the active and full participation of the~~ upon the request of a local community corrections
 14 board, ~~establish minimum standards for the operation~~ provide assistance in the planning of community
 15 corrections facilities and programs ~~operated by a unit of local government, a tribal government, or a~~
 16 ~~nongovernmental agency that has entered into a contract or agreement with the department to provide~~
 17 ~~services for offenders; and~~

18 (2) ~~review and evaluate all community corrections facilities and programs established under this~~
 19 ~~part, subject to the requirements established in section 14, Chapter 554, Laws of 1991~~ contract with a
 20 community corrections facility or program for the provision of services for offenders under the custody of
 21 the department. The contract must address facility or program review and evaluation, accounting and
 22 reporting standards, and reimbursement of the facility or program;

23 (3) ~~prescribe accounting and reporting standards for all units of local government, tribal~~
 24 ~~governments, and nongovernmental agencies that have entered into a contract or agreement with the~~
 25 ~~department;~~

26 (4) ~~reimburse units of local government, tribal governments, or nongovernmental agencies for~~
 27 ~~community correctional services at a rate to be negotiated by the department;~~

28 (5) ~~adopt rules necessary to carry out the provisions of this part."~~
 29

30 **Section 14.** Section 53-30-326, MCA, is amended to read:

1 HOUSE BILL NO. 125

2 INTRODUCED BY GRADY

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING INTERMEDIATE SENTENCING
6 OPTIONS; REVISING THE HOME ARREST LAW; REVISING THE LAW RELATING TO COMMUNITY
7 CORRECTIONS PROGRAMS AND FACILITIES; AMENDING SECTIONS 46-18-201, 46-18-1001,
8 46-18-1002, 46-18-1003, 53-1-203, 53-30-302, 53-30-303, 53-30-312, 53-30-313, 53-30-314,
9 53-30-315, 53-30-321, 53-30-322, AND 53-30-326, MCA; AND REPEALING SECTIONS 46-23-401,
10 46-23-405, 46-23-411, 46-23-412, 46-23-421, 46-23-422, 46-23-426, 53-30-324, AND 53-30-325,
11 MCA."

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

1 HOUSE BILL NO. 125

2 INTRODUCED BY GRADY

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING INTERMEDIATE SENTENCING
6 OPTIONS; REVISING THE HOME ARREST LAW; REVISING THE LAW RELATING TO COMMUNITY
7 CORRECTIONS PROGRAMS AND FACILITIES; AMENDING SECTIONS 46-18-201, 46-18-1001,
8 46-18-1002, 46-18-1003, 53-1-203, 53-30-302, 53-30-303, 53-30-312, 53-30-313, 53-30-314,
9 53-30-315, 53-30-321, 53-30-322, AND 53-30-326, MCA; AND REPEALING SECTIONS 46-23-401,
10 46-23-405, 46-23-411, 46-23-412, 46-23-421, 46-23-422, 46-23-426, 53-30-324, AND 53-30-325,
11 MCA."

12
13 STATEMENT OF INTENT

14 A statement of intent is required for this bill because 53-1-203 gives the department of corrections
15 authority to adopt administrative rules relating to THE FUTURE BUILDING OR EXPANDING OF NEW
16 prerelease centers. The legislature intends the rules to address, at a minimum:

17 (1) a procedure for notifying residents in an area in which a new prerelease center or expansion
18 of an existing center is contemplated;

19 (2) a procedure and timetable for public notice, public comment, and a public hearing on a new
20 prerelease center or expansion of an existing center; and

21 (3) siting criteria to be used to determine the suitability of a specific site for a new prerelease
22 center or expansion of an existing center.

23 THE RULES ARE NOT INTENDED TO ADDRESS PLANS THAT HAVE BEEN APPROVED BY A
24 COMMUNITY FOR A NEW OR EXPANDED PRERELEASE FACILITY ON [THE EFFECTIVE DATE OF THIS
25 ACT].

26
27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
28

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

30 **"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found

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

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

7 (i) jail base release;

8 (ii) jail time not exceeding 180 days;

9 (iii) conditions for probation;

10 (iv) payment of the costs of confinement;

11 (v) payment of a fine as provided in 46-18-231;

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

13 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

14 (viii) with the approval of the facility or program, an order that the offender be placed in a
15 community corrections facility or program as provided in 53-30-321;

16 (ix) with the approval of the prerelease center or prerelease program and confirmation by the
17 department of corrections that space is available, an order that the offender be placed in a prerelease center
18 or prerelease program for a period not to exceed 1 year;

19 ~~(x)~~(x) community service;

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

21 ~~(xii)~~(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection
22 of society;

23 ~~(xiii)~~(xiii) payment of expenses for use of a judge pro tempore or special master as provided in
24 3-5-116; or

25 ~~(xiv)~~(xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through ~~(1)(a)(xiii)~~
26 (1)(a)(xiii).

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

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

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

4 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
5 the defendant to the department of corrections for a period not to exceed 5 years for placement in an
6 appropriate correctional institution or program;

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

9 (g) with the approval of the prerelease center or prerelease program and confirmation by the
10 department of corrections that space is available, order the offender to be placed in a prerelease center or
11 prerelease program for a period not to exceed 1 year; or

12 ~~(g)(h)~~ impose any combination of subsections (1)(b) through ~~(1)(g)~~ (1)(g).

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

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

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

24 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
25 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
26 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),
27 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

30 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred

1 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
 2 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
 3 suspended.

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

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

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

13 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
 14 imprisonment of the offender in ~~the~~ a state prison, including placement of the offender in a community
 15 corrections facility or program or a prerelease center or prerelease program. In considering alternatives to
 16 imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court
 17 subsequently sentences the offender ~~is subsequently sentenced to the~~ a state prison ~~or the women's~~
 18 ~~correctional system~~, the court shall state its ~~the~~ reasons why alternatives it did not select an alternative to
 19 imprisonment ~~were not selected~~, based on the criteria contained in 46-18-225.

20 (12) If a felony sentence includes probation, the department of corrections shall supervise the
 21 defendant unless the court specifies otherwise.

22 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
 23 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

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

29 (i) jail base release;

30 (ii) jail time not exceeding 180 days;

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

1 (g) with the approval of the prerelease center or prerelease program and confirmation by the
2 department of corrections that space is available, order the offender to be placed in a prerelease center or
3 prerelease program for a period not to exceed 1 year; or

4 ~~(g)(h)~~ impose any combination of subsections (1)(b) through ~~(4)(f)~~ (1)(g).

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

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

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

16 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
17 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
18 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),
19 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

29 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
30 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and

1 Title 46, chapter 23, part 5.

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

5 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
6 imprisonment of the offender in the state prison, including placement of the offender in a community
7 corrections facility or program or a prerelease center or prerelease program. In considering alternatives to
8 imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court
9 subsequently sentences the offender is subsequently sentenced to the a state prison or the women's
10 correctional system, the court shall state its the reasons why alternatives it did not select an alternative to
11 imprisonment were not selected, based on the criteria contained in 46-18-225.

12 (12) If a felony sentence includes probation, the department of corrections shall supervise the
13 defendant unless the court specifies otherwise.

14 ~~(12)~~(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219
15 does not apply to a person sentenced under 46-18-219."
16

17 **Section 2.** Section 46-18-1001, MCA, is amended to read:

18 **"46-18-1001. Definitions.** As used in this part, the following definitions apply:

19 (1) (a) "Home" means the temporary or permanent residence of an offender consisting of the
20 actual living area approved by the supervising authority.

21 (b) When more than one residence or family are located on a single piece of property, the term
22 does not include the residence of any other person who is not part of the social unit formed by the
23 offender's immediate family.

24 (2) "Home arrest" means the use of a person's home for purposes of confinement and home arrest
25 procedures and conditions imposed under this part. It does not include intensive supervision by the
26 department of corrections.

27 (3) "Monitoring device" means an electronic device or apparatus ~~that is limited in capability to~~
28 capable of recording or transmitting information concerning the offender's presence in or absence from the
29 home. The device must be minimally intrusive may include an apparatus for testing the offender's breath
30 for the presence of alcohol. A telephone alone is not a monitoring device.

1 (4) "Supervising authority" means:

2 (a) in the case of an adult felon, the ~~corrections division of the~~ department of corrections;

3 (b) in the case of an adult misdemeanor, a court-approved entity other than ~~the corrections~~

4 ~~division of the~~ department of corrections; or,

5 (c) in the case of a juvenile, the juvenile probation division of the youth court or any other person

6 or entity appointed by the court.

7 (5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent
8 homicide, aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery,
9 sexual intercourse without consent, sexual abuse of children, arson, aggravated burglary, escape, any
10 criminal attempt to commit an enumerated offense, or conviction as a persistent felony offender when the
11 offender has a felony conviction for any of the listed offenses within the 5-year period preceding the date
12 of the present conviction."

13

14 **Section 3.** Section 46-18-1002, MCA, is amended to read:

15 **"46-18-1002. Home arrest -- petition -- agreement.** (1) An offender may petition a sentencing
16 court for an order directing that all or a portion of a sentence of imprisonment ~~in the county jail or state~~
17 ~~prison~~ be served under conditions of home arrest. The term of home arrest may not exceed 6 months.

18 Petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of
19 the offender's sentence.

20 (2) The petition must include:

21 (a) either a statement by the department of corrections that it has a monitoring device available
22 for its use on the offender or information from the offender as to a private company that can and will
23 implement the home arrest, along with the name and credentials of the company and the type of monitoring
24 device to be used;

25 (b) the place of any employment of the offender and the name of the offender's supervisor;

26 (c) if the offender has been accepted into one, a plan for participation in an educational, treatment,
27 or training program;

28 (d) the source and amount of any income of the offender; and

29 (e) the address at which the home arrest will occur and a list of any other persons who will reside
30 at that address during all or part of the home arrest, their ages, and their relationship to the offender.

1 ~~(2)(3)~~ The sentencing judge shall ~~study the records of all persons petitioning for home arrest and,~~
2 ~~in his discretion, may:~~

3 ~~(a) refer the case to the appropriate supervising authority for approval and acceptance into the~~
4 ~~home arrest program. The supervising authority may accept or reject any referral.~~

5 ~~(b) conduct hearings on the desirability of granting home arrest;~~

6 ~~(c) order a term of home arrest in lieu of a sentence of imprisonment in the county jail or state~~
7 ~~prison. The time actually spent in home arrest pursuant to this section may not exceed 6 months or the~~
8 ~~maximum term of imprisonment imposed, whichever is shorter.~~

9 ~~(d) issue a warrant for a person when there is reason to believe the person has violated the~~
10 ~~conditions of home arrest, conduct hearings on the matter, and order imprisonment in the county jail or~~
11 ~~state prison upon proof of violation; and~~

12 ~~(e) grant final discharge from arrest.~~

13 ~~(3) A home arrestee shall execute a written agreement with the court setting forth all the conditions~~
14 ~~of home arrest. The order of home arrest must incorporate that agreement and must order compliance with~~
15 ~~its terms. The order and agreement must be transmitted to the supervising authority and to the appropriate~~
16 ~~jail or prison official.~~

17 ~~(4) Time spent in home arrest must be credited against the maximum term of imprisonment~~
18 ~~imposed for the offender pursuant to law. refer the petition to the department of corrections SUPERVISING~~
19 ~~AUTHORITY. The department SUPERVISING AUTHORITY shall review the petition and accept or reject the~~
20 ~~offender for home arrest. If the offender is rejected, the sentencing judge shall dismiss the petition. If the~~
21 ~~offender is accepted, the sentencing judge may conduct a hearing on the petition and grant or deny the~~
22 ~~petition. An order for home arrest must incorporate the home arrest plan, with any modifications by the~~
23 ~~court, and require compliance with the plan. The clerk of court shall give the county attorney a copy of~~
24 ~~the order.~~

25 ~~(5)(4) Home arrest must be under the supervision of the supervising authority. A home arrestee~~
26 ~~is subject to the decisions and applicable rules of the supervising authority during the period of supervision.~~
27 ~~Fees for supervision or equipment usage must be paid directly to the clerk of the sentencing court and must~~
28 ~~be distributed by the clerk to the supervising authority.~~

29 ~~(5) The offender shall file with the court the written and notarized consent to the home arrest~~
30 ~~signed by each adult who will reside with the offender during all or part of the home arrest."~~

1 **Section 4.** Section 46-18-1003, MCA, is amended to read:

2 "**46-18-1003. Home arrest -- conditions -- fees -- consent of cohabitators.** (1) A home arrestee must
3 be confined to ~~his~~ the arrestee's home under conditions imposed by the sentencing court, which may
4 include but are not limited to the following:

5 (a) The home arrestee must be confined to ~~his~~ the arrestee's home at all times except when:

6 (i) working at approved employment or traveling directly to and from employment;

7 (ii) seeking employment;

8 (iii) undergoing medical, psychiatric, or mental health treatment or participating in an approved
9 counseling or aftercare program;

10 (iv) attending an ~~approved~~ educational institution or program approved by the supervising authority;

11 (v) attending a regularly scheduled religious service at a place of worship;

12 (vi) participating in an approved community service program; or

13 (vii) conforming to a schedule prepared by the supervising authority, specifically setting forth the
14 times when ~~he~~ the arrestee may be absent from the home and the locations where ~~he~~ the arrestee may be
15 during those times.

16 ~~(b) The home arrestee may not commit another offense during the period of home arrest.~~

17 ~~(e)(b)~~ (b) The home arrestee may not change the place of home arrest or the schedule without prior
18 approval of the supervising authority.

19 ~~(d)(c)~~ (c) The home arrestee shall maintain a telephone ~~or other approved~~ in the home and the ordered
20 monitoring device ~~in the home or~~ on the arrestee's person at all times.

21 ~~(e)(d)~~ (d) Conditions set by the court or the supervising authority may include:

22 (i) restitution;

23 (ii) supervision fees under 7-32-2245, 46-18-702, ~~or~~ 46-18-703, or 46-23-1031;

24 (iii) any of the conditions imposed on persons on probation or conditional discharge under
25 46-23-1011 or 46-23-1021.

26 (2) ~~A written and notarized consent agreement must be filed with the court by every adult who~~
27 ~~will share the offender's home during the term of home arrest.~~ An arrest warrant may be issued if the
28 supervising authority has reason to believe that the home arrestee has violated a condition of the home
29 arrest. Upon arrest, the supervising authority shall notify the sentencing court and give the court a written
30 report on the violation. The court shall conduct a hearing and, if the violation is established, may revoke

1 the home arrest and require the home arrestee to serve all or a part of the sentence. If imposition of
 2 sentence was suspended, the court may impose any sentence that could have been originally imposed.
 3 Time spent under home arrest must be credited against any sentence to be served.

4 ~~(3) Violation of the provisions of any condition of home arrest may subject the home arrestee to~~
 5 ~~prosecution under 45-7-306."~~

6

7 **Section 5.** Section 53-1-203, MCA, is amended to read:

8 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections
 9 shall:

10 (a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529, rules necessary
 11 for the siting, establishment, and expansion of prerelease centers, and rules for the admission, custody,
 12 transfer, and release of persons in department programs except as otherwise provided by law. ~~However,~~
 13 ~~rules adopted by the department may not amend or alter the statutory powers and duties of the state board~~
 14 ~~of pardons and parole.~~ THE RULES FOR THE SITING, ESTABLISHMENT, AND EXPANSION OF PRERELEASE
 15 CENTERS MUST STATE THAT THE SITING IS SUBJECT TO ANY EXISTING CONDITIONS, COVENANTS,
 16 RESTRICTIONS OF RECORD, AND ZONING REGULATIONS AND MAY NOT UTILIZE PROVISIONS FOR
 17 SPECIAL USE PERMITS, VARIANCES, OR OTHER ZONING EXCEPTIONS FOR THE SITING. THE
 18 PRERELEASE SITING, ESTABLISHMENT, AND EXPANSION MUST BE SUBJECT TO, AND THE RULES MUST
 19 INCLUDE, A MECHANISM FOR A DETERMINATION OF COMMUNITY SUPPORT OR OBJECTION TO THE
 20 SITING OF A PRERELEASE CENTER IN THE AREA DETERMINED TO BE IMPACTED. THE PRERELEASE
 21 SITING, ESTABLISHMENT, AND EXPANSION RULES MUST PROVIDE FOR A PUBLIC HEARING
 22 CONDUCTED PURSUANT TO TITLE 2, CHAPTER 3.

23 (b) subject to the functions of the department of administration, lease or purchase lands for use
 24 by ~~institutions~~ correctional facilities and classify those lands to determine those that may be most profitably
 25 used for agricultural purposes, taking into consideration the needs of all ~~institutions~~ correctional facilities
 26 for the food products that can be grown or produced on the lands and the relative value of agricultural
 27 programs in the treatment or rehabilitation of the persons confined in ~~the institutions~~ correctional facilities;

28 (c) contract with private, nonprofit Montana corporations to establish and maintain
 29 ~~community-based~~ prerelease centers for purposes of preparing inmates of ~~the Montana~~ a state prison who
 30 are approaching parole eligibility or discharge for release into the community, providing an alternative

1 placement for offenders who have violated parole, and providing a sentencing option for felony offenders
 2 pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while
 3 maintaining adequate security. The centers must be operated in coordination with other department
 4 correctional programs, ~~including the supervised release program provided for in Title 46, chapter 23, part~~
 5 4. This subsection does not affect the department's authority to operate and maintain ~~community-based~~
 6 prerelease centers.

7 (d) utilize the staff and services of other state agencies and units of the Montana university system,
 8 within their respective statutory functions, to carry out its functions under this title;

9 (e) propose programs to the legislature to meet the projected long-range needs of ~~institutions~~
 10 corrections, including programs and facilities for the ~~diagnosis, treatment, care, and aftercare~~ custody,
 11 supervision, treatment, and skill development of persons placed in ~~institutions~~ correctional facilities or
 12 programs;

13 (f) encourage the establishment of programs at the local and ~~institutional~~ state level for the
 14 rehabilitation and education of ~~adult~~ felony offenders;

15 (g) administer all state and federal funds allocated to the department for youth in need of
 16 supervision and delinquent youth, as defined in 41-5-103;

17 (h) collect and disseminate information relating to youth in need of supervision and delinquent
 18 youth;

19 (i) maintain adequate data on placements that it funds in order to keep the legislature properly
 20 informed of the specific information, by category, related to youth in need of supervision and delinquent
 21 youth in out-of-home care facilities;

22 (j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need
 23 of supervision and who are referred or committed to the department;

24 (k) administer youth correctional facilities;

25 (l) provide supervision, care, and control of youth released from a state youth correctional facility;
 26 and

27 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

28 (i) provide for children in need of temporary protection or correctional services; and

29 (ii) coordinate and apply the principles of modern ~~institutional~~ correctional administration to the
 30 ~~institutions in~~ facilities and programs administered by the department.

1 (2) The department and a private, nonprofit Montana corporation may not enter into a contract
 2 under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that
 3 limit the term of a contract do not apply to a contract authorized by subsection (1)(c). PRIOR TO ENTERING
 4 INTO A CONTRACT FOR A PERIOD OF 10 YEARS, THE DEPARTMENT SHALL SUBMIT THE PROPOSED
 5 CONTRACT TO THE LEGISLATIVE AUDIT COMMITTEE. THE LEGISLATIVE AUDIT DIVISION SHALL
 6 REVIEW THE CONTRACT AND MAKE RECOMMENDATIONS OR COMMENTS TO THE LEGISLATIVE AUDIT
 7 COMMITTEE. THE COMMITTEE MAY MAKE RECOMMENDATIONS OR COMMENTS TO THE
 8 DEPARTMENT. THE DEPARTMENT SHALL RESPOND TO THE COMMITTEE, ACCEPTING OR REJECTING
 9 THE COMMITTEE RECOMMENDATIONS OR COMMENTS PRIOR TO ENTERING INTO THE CONTRACT.

10 (3) The department of corrections may enter into contracts with nonprofit corporations or
 11 associations or private organizations to provide substitute care for youth in need of supervision and
 12 delinquent youth in youth care facilities."

13
 14 **Section 6.** Section 53-30-302, MCA, is amended to read:

15 "**53-30-302. Purpose.** It is the purpose of this part to:

16 (1) encourage the development of community corrections facilities and programs by units of local
 17 government, tribal governments, and nongovernmental agencies;

18 (2) reduce court commitments to the state ~~penitentiary~~ prisons through diversion of ~~low-risk,~~
 19 ~~nonviolent felony~~ offenders determined appropriate by the community corrections board to community
 20 corrections facilities and programs;

21 (3) reduce the use of jail space for offenders who need a structured environment, treatment,
 22 counseling, and supervision but who may not require incarceration;

23 (4) provide a local facility for employed offenders so that they may maintain their employment
 24 under a structured environment and receive treatment, counseling, and supervision;

25 ~~(3)(5)~~ provide a procedure by which units of local government, tribal governments, and
 26 nongovernmental agencies may provide corrections services to the sentencing courts; and

27 ~~(4)(6)~~ include citizen participation in the policymaking and program planning related to community
 28 corrections facilities and programs through the formation of local community corrections boards."

29
 30 **Section 7.** Section 53-30-303, MCA, is amended to read:

1 **"53-30-303. Definitions.** As used in this part, unless the context requires otherwise, the following
2 definitions apply:

3 (1) "Community corrections board" means a community corrections board as provided in
4 53-30-312.

5 (2) "Community corrections facility or program" means a community-based or community-oriented
6 facility or program, other than a jail, that:

7 (a) is established by a local or tribal government and operated by a unit of local government, a
8 tribal government, or a nongovernmental agency; and

9 (b) provides programs and services to aid offenders in:

10 (i) obtaining and holding regular employment;

11 (ii) enrolling in and maintaining academic courses;

12 (iii) participating in vocational training programs;

13 (iv) utilizing the resources of the community to meet their personal and family needs;

14 (v) obtaining the benefits of specialized treatment services that exist within the community; and

15 (vi) paying restitution or performing community restitution to crime victims.

16 ~~(3) "Crime of violence" means:~~

17 ~~(a) an offense in which a person uses or possesses and threatens the use of a deadly weapon~~
18 ~~during the commission or attempted commission of an offense, including felony assault, kidnapping,~~
19 ~~aggravated kidnapping, robbery, arson, burglary, aggravated burglary, escape, or intimidation;~~

20 ~~(b) an offense, other than an offense in which negligence is an element of the offense, in which~~
21 ~~the person causes serious bodily injury or death to a person other than the person committing the offense~~
22 ~~during the commission or attempted commission of an offense; or~~

23 ~~(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat,~~
24 ~~intimidation, or force against the victim.~~

25 ~~(4)~~(3) "Department" means the department of corrections created in 2-15-2301.

26 ~~(5)~~(4) "Nongovernmental agency" means a person, private, nonprofit agency, corporation,
27 association, labor organization, or other nongovernmental entity.

28 ~~(6) "Nonviolent felony offender" means a person who has committed a felony other than a crime~~
29 ~~of violence.~~

30 ~~(7)~~(5) "Offender" means a person who has entered a plea of guilty or has been convicted of a

1 ~~felony criminal offense. The term does not include a person who has committed a crime of violence.~~

2 ~~(8)(6)~~ "Tribal government" means a federally recognized Indian tribe within the state of Montana.

3 ~~(9)(7)~~ "Unit of local government" means a county, city, town, or city-county consolidated
4 government."

5

6 **Section 8.** Section 53-30-312, MCA, is amended to read:

7 **"53-30-312. Creation of community corrections boards -- membership -- appointment -- terms --**

8 **compensation.** (1) A unit of local government, the governing bodies of two or more units of local
9 government, or a tribal government may establish a community corrections board.

10 (2) A community corrections board consists of ~~nine~~ three to seven members, must, when possible,
11 be gender-balanced and have racial parity, and must ~~be appointed as follows~~ include:

12 (a) one local law enforcement officer;

13 ~~(b) one county attorney;~~

14 ~~(c) one district court judge;~~

15 ~~(d)~~(b) one probation and parole officer; and

16 ~~(e) one local private employer or representative of the department of labor and industry;~~

17 ~~(f) one mental health professional;~~

18 ~~(g) one person representing local or tribal drug and alcohol treatment programs; and~~

19 ~~(h)~~(c) ~~two members~~ one member of the public.

20 (3) Members of a community corrections board must be ~~nominated by representatives of units of~~
21 ~~local government or a tribal government and~~ appointed by the ~~district court judges~~ chief executive officer
22 of the unit of local government or the tribal ~~judges~~ government in the judicial district in which community
23 corrections facilities or programs are established.

24 (4) Members of a community corrections board shall serve for a term of 4 years.

25 (5) Members of a community corrections board shall serve without compensation except as
26 otherwise decided by the units of local government or a tribal government."

27

28 **Section 9.** Section 53-30-313, MCA, is amended to read:

29 **"53-30-313. Powers and duties of community corrections boards.** (1) A community corrections
30 board may establish and enforce standards for:

1 (a) the operation of community corrections facilities and programs operated by the unit of local
2 government or a tribal government served by the community corrections board; and

3 (b) the conduct of offenders placed in local community corrections facilities and programs.

4 (2) The community corrections board, together with ~~the department and~~ the judicial district, shall
5 establish procedures for screening offenders who are to be placed in the community corrections facility or
6 program. The screening must take into account the aptitude, attitude, and social and occupational skills of
7 the offender and the risk of harm the offender may present to ~~himself~~ the offender and others.

8 (3) A community corrections board may accept, reject, or reject after acceptance the placement
9 of any offender in the community corrections facility or program. If an offender is rejected by the
10 community corrections board after initial acceptance, the ~~offender must be remanded to the custody of the~~
11 ~~sheriff of the county in which the facility or program is located~~ must take custody of the offender. The
12 community corrections board shall notify in writing the sentencing judge who, after considering the board's
13 reasons for rejection, shall appropriately modify the sentencing order."
14

15 **Section 10.** Section 53-30-314, MCA, is amended to read:

16 **"53-30-314. Community corrections facilities and programs operated by tribal governments.** (1)
17 A tribal government may establish, maintain, and operate a community corrections facility or program to
18 serve the needs of offenders who are sentenced to the facility or program by a judge as provided in
19 53-30-321.

20 ~~(2) A tribal government may enter into an agreement with the department, pursuant to Title 18,~~
21 ~~chapter 11, part 1, for the purpose of providing community corrections facilities or programs for offenders.~~
22 ~~The agreement must provide for strict accountability procedures and practices for the conduct and~~
23 ~~supervision of offenders assigned or sentenced to a facility or program operated by a tribal government.~~

24 ~~(3)(2)~~ (2) A tribal government operating a community corrections facility or program may accept,
25 reject, or reject after acceptance the placement of any offender in the facility or program pursuant to an
26 agreement with a unit of local government, a nongovernmental agency, or a judicial district. If an offender
27 is rejected by the tribal government after initial appearance and the offender is a court referral, the ~~offender~~
28 ~~must be remanded to the custody of the~~ sheriff of the county in which the facility or program is located
29 must take custody of the offender. The tribal government shall notify in writing the sentencing judge who,
30 after considering the tribal government's reasons for rejection, shall appropriately modify the sentencing

1 order."

2

3 **Section 11.** Section 53-30-315, MCA, is amended to read:

4 **"53-30-315. Community corrections facilities and programs operated by nongovernmental**
 5 **agencies.** (1) Except as provided in subsection (2), a nongovernmental agency may establish, maintain, and
 6 operate a community corrections facility or program to serve the needs of offenders who are sentenced to
 7 the facility or program by a judge as provided in 53-30-321.

8 (2) A nongovernmental agency may not establish a community corrections facility or program
 9 unless approved by the local community corrections board in a local government or tribal government that
 10 has established a community corrections board.

11 ~~(3) A nongovernmental agency may enter into a contract or agreement with the department for the~~
 12 ~~purpose of providing community corrections facilities or programs for offenders. The contract or agreement~~
 13 ~~must provide for strict accountability procedures and practices for the conduct and supervision of offenders~~
 14 ~~assigned or sentenced to a facility or program operated by a nongovernmental agency.~~

15 ~~(4)~~(3) A nongovernmental agency operating a community corrections facility or program may
 16 accept, reject, or reject after acceptance the placement of any offender in the facility or program pursuant
 17 to a contract or agreement with a unit of local government, a tribal government, or a judicial district. If an
 18 offender is rejected by the nongovernmental agency after initial acceptance and the offender is a court
 19 referral, the ~~offender must be remanded to the custody of the sheriff of the county in which the facility or~~
 20 ~~program is located~~ must take custody of the offender. The nongovernmental agency shall notify in writing
 21 the sentencing judge who, after considering the agency's reasons for rejection, shall appropriately modify
 22 the sentencing order."
 23

23

24 **Section 12.** Section 53-30-321, MCA, is amended to read:

25 **"53-30-321. Authority of judge to utilize community corrections facilities or programs --procedure**
 26 **-- restrictions.** (1) Subject to the restrictions contained in subsection ~~(3)~~ (2), a judge may order placement
 27 of a ~~nonviolent felony~~ an offender in a community corrections facility or program operated by a unit of local
 28 government, a tribal government, or a nongovernmental agency. ~~If a judge orders placement of an offender~~
 29 ~~in a community corrections facility or program, the judge shall indicate in the sentencing order that the~~
 30 ~~offender would have been sentenced to prison if the community corrections facility or program had not~~

1 ~~been available.~~

2 ~~(2) Placement of an offender in a community corrections facility or program may be ordered only~~

3 ~~if:~~

4 ~~(a) the community corrections facility or program is operated by a unit of local government, a tribal~~
5 ~~government, or a nongovernmental agency that has entered into a contract or agreement with the~~
6 ~~department to provide community corrections services for offenders; and~~

7 ~~(b) funding for the placement is available.~~

8 ~~(3)(2)~~ A judge may not order placement of an offender in a residential community corrections
9 facility or program for a period exceeding 1 year. After completing the residential community corrections
10 portion of ~~his~~ a sentence, an offender shall serve the remainder of ~~his~~ the sentence under normal probation
11 supervision, if applicable.

12 ~~(4)(3)~~ An offender is not eligible for parole while serving a sentence in a community corrections
13 facility or program.

14 ~~(5)(4)~~ The probation and parole officers for the judicial district shall include in their presentence
15 report to the sentencing judge recommendations for utilization of a community correctional facility or
16 program that has been approved for use by the judicial district."

17

18 **Section 13.** Section 53-30-322, MCA, is amended to read:

19 **"53-30-322. Powers and responsibilities of department, ~~—rulemaking authority.~~** The department
20 ~~shall~~ may:

21 (1) ~~with the active and full participation of the~~ upon the request of a local community corrections
22 board, ~~establish minimum standards for the operation~~ provide assistance in the planning of community
23 corrections facilities and programs ~~operated by a unit of local government, a tribal government, or a~~
24 ~~nongovernmental agency that has entered into a contract or agreement with the department to provide~~
25 ~~services for offenders; and~~

26 (2) ~~review and evaluate all community corrections facilities and programs established under this~~
27 ~~part, subject to the requirements established in section 14, Chapter 554, Laws of 1991~~ contract with a
28 community corrections facility or program for the provision of services for offenders under the custody of
29 the department. The contract must address facility or program review and evaluation, accounting and
30 reporting standards, and reimbursement of the facility or program.

1 ~~(3) prescribe accounting and reporting standards for all units of local government, tribal~~
 2 ~~governments, and nongovernmental agencies that have entered into a contract or agreement with the~~
 3 ~~department;~~

4 ~~(4) reimburse units of local government, tribal governments, or nongovernmental agencies for~~
 5 ~~community correctional services at a rate to be negotiated by the department;~~

6 ~~(5) adopt rules necessary to carry out the provisions of this part."~~

7
 8 **Section 14.** Section 53-30-326, MCA, is amended to read:

9 **"53-30-326. Escape from custody.** An offender is guilty of escape ~~from official detention~~ and shall
 10 be punished as provided in 45-7-306 if, without proper authorization, ~~he~~ the offender:

11 (1) fails to remain within the extended limits of ~~his~~ the offender's confinement or fails to return
 12 within the time specified to a community corrections facility or program to which ~~he~~ the offender has been
 13 assigned, sentenced, or transferred; or

14 (2) leaves ~~his~~ the offender's place of employment or neglects or fails to return to the community
 15 corrections facility or program after being specifically ordered to do so."

16
 17 **NEW SECTION. Section 15. Repealer.** Sections 46-23-401, 46-23-405, 46-23-411, 46-23-412,
 18 46-23-421, 46-23-422, 46-23-426, 53-30-324, and 53-30-325, MCA, are repealed.

19
 20 **NEW SECTION. SECTION 16. COORDINATION INSTRUCTION. IF SENATE BILL NO. 109 AND**
 21 **[THIS ACT] ARE BOTH PASSED AND APPROVED, THEN THE AMENDED LANGUAGE IN 53-1-203(1)(E),**
 22 **(F), AND (M)(II) IN SENATE BILL NO. 109, REFERENCE BILL AS AMENDED, IS VOID.**

23
 24 **NEW SECTION. SECTION 17. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT RIGHTS AND**
 25 **DUTIES THAT MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN**
 26 **BEFORE [THE EFFECTIVE DATE OF THIS ACT].**

27 -END-

1 HOUSE BILL NO. 125

2 INTRODUCED BY GRADY

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING INTERMEDIATE SENTENCING
 6 OPTIONS; REVISING THE HOME ARREST LAW; REVISING THE LAW RELATING TO COMMUNITY
 7 CORRECTIONS PROGRAMS AND FACILITIES; AMENDING SECTIONS 46-18-201, 46-18-1001,
 8 46-18-1002, 46-18-1003, 53-1-203, 53-30-302, 53-30-303, 53-30-312, 53-30-313, 53-30-314,
 9 53-30-315, 53-30-321, 53-30-322, AND 53-30-326, MCA; AND REPEALING SECTIONS 46-23-401,
 10 46-23-405, 46-23-411, 46-23-412, 46-23-421, 46-23-422, 46-23-426, 53-30-324, AND 53-30-325,
 11 MCA."

12
13 STATEMENT OF INTENT

14 A statement of intent is required for this bill because 53-1-203 gives the department of corrections
 15 authority to adopt administrative rules relating to THE FUTURE BUILDING OR EXPANDING OF NEW
 16 prerelease centers. The legislature intends the rules to address, at a minimum:

17 (1) a procedure for notifying residents in an area in which a new prerelease center or expansion
 18 of an existing center is contemplated;

19 (2) a procedure and timetable for public notice, public comment, and a public hearing on a new
 20 prerelease center or expansion of an existing center; and

21 (3) siting criteria to be used to determine the suitability of a specific site for a new prerelease
 22 center or expansion of an existing center.

23 THE RULES ARE NOT INTENDED TO ADDRESS PLANS THAT HAVE BEEN APPROVED BY A
 24 COMMUNITY FOR A NEW OR EXPANDED PRERELEASE FACILITY ON [THE EFFECTIVE DATE OF THIS
 25 ACT].

26
 27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

28
 29 **Section 1.** Section 46-18-201, MCA, is amended to read:

30 **"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found

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

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

7 (i) jail base release;

8 (ii) jail time not exceeding 180 days;

9 (iii) conditions for probation;

10 (iv) payment of the costs of confinement;

11 (v) payment of a fine as provided in 46-18-231;

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

13 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

14 (viii) with the approval of the facility or program, an order that the offender be placed in a
15 community corrections facility or program as provided in 53-30-321;

16 (ix) with the approval of the prerelease center or prerelease program and confirmation by the
17 department of corrections that space is available, an order that the offender be placed in a prerelease center
18 or prerelease program for a period not to exceed 1 year;

19 ~~(x)~~ (x) community service;

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

21 ~~(xii)~~ (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection
22 of society;

23 ~~(xiii)~~ (xiii) payment of expenses for use of a judge pro tempore or special master as provided in
24 3-5-116; or

25 ~~(xiv)~~ (xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through ~~(1)(a)(xii)~~
26 (1)(a)(xiii).

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

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

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

4 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
5 the defendant to the department of corrections for a period not to exceed 5 years for placement in an
6 appropriate correctional institution or program;

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

9 (g) with the approval of the prerelease center or prerelease program and confirmation by the
10 department of corrections that space is available, order the offender to be placed in a prerelease center or
11 prerelease program for a period not to exceed 1 year; or

12 ~~(g)(h)~~ impose any combination of subsections (1)(b) through ~~(1)(f)~~ (1)(g).

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

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

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

24 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
25 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
26 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),
27 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

30 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred

1 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
 2 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
 3 suspended.

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

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

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

13 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
 14 imprisonment of the offender in ~~the a~~ state prison, including placement of the offender in a community
 15 corrections facility or program or a prerelease center or prerelease program. In considering alternatives to
 16 imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court
 17 subsequently sentences the offender ~~is subsequently sentenced to the a state prison or the women's~~
 18 ~~correctional system~~, the court shall state its the reasons why alternatives it did not select an alternative
 19 imprisonment were not selected, based on the criteria contained in 46-18-225.

20 (12) If a felony sentence includes probation, the department of corrections shall supervise the
 21 defendant unless the court specifies otherwise.

22 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
 23 been found guilty of an offense upon a verdict or a plea of guilty, the court may:

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

- 29 (i) jail base release;
 30 (ii) jail time not exceeding 180 days;

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

1 (g) with the approval of the prerelease center or prerelease program and confirmation by the
2 department of corrections that space is available, order the offender to be placed in a prerelease center or
3 prerelease program for a period not to exceed 1 year; or

4 ~~(g)~~(h) impose any combination of subsections (1)(b) through ~~(1)(f)~~ (1)(g).

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

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

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

16 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
17 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
18 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),
19 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

29 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
30 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and

1 Title 46, chapter 23, part 5.

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

5 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
6 imprisonment of the offender in the state prison, including placement of the offender in a community
7 corrections facility or program or a prerelease center or prerelease program. In considering alternatives to
8 imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court
9 subsequently sentences the offender is subsequently sentenced to the a state prison or the women's
10 correctional system, the court shall state its the reasons why alternatives it did not select an alternative to
11 imprisonment were not selected, based on the criteria contained in 46-18-225.

12 (12) If a felony sentence includes probation, the department of corrections shall supervise the
13 defendant unless the court specifies otherwise.

14 ~~(12)~~(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219
15 does not apply to a person sentenced under 46-18-219."

16

17 **Section 2.** Section 46-18-1001, MCA, is amended to read:

18 **"46-18-1001. Definitions.** As used in this part, the following definitions apply:

19 (1) (a) "Home" means the temporary or permanent residence of an offender consisting of the
20 actual living area approved by the supervising authority.

21 (b) When more than one residence or family are located on a single piece of property, the term
22 does not include the residence of any other person who is not part of the social unit formed by the
23 offender's immediate family.

24 (2) "Home arrest" means the use of a person's home for purposes of confinement and home arrest
25 procedures and conditions imposed under this part. It does not include intensive supervision by the
26 department of corrections.

27 (3) "Monitoring device" means an electronic device or apparatus ~~that is limited in capability to~~
28 capable of recording or transmitting information concerning the offender's presence in or absence from the
29 home. The device must be minimally intrusive may include an apparatus for testing the offender's breath
30 for the presence of alcohol. A telephone alone is not a monitoring device.

- 1 (4) "Supervising authority" means:
- 2 (a) in the case of an adult felon, the ~~corrections division of the~~ department of corrections;
- 3 (b) in the case of an adult misdemeanor, a court-approved entity other than ~~the corrections~~
- 4 ~~division of the~~ department of corrections; or,
- 5 (c) in the case of a juvenile, the juvenile probation division of the youth court or any other person
- 6 or entity appointed by the court.
- 7 (5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent
- 8 homicide, aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery,
- 9 sexual intercourse without consent, sexual abuse of children, arson, aggravated burglary, escape, any
- 10 criminal attempt to commit an enumerated offense, or conviction as a persistent felony offender when the
- 11 offender has a felony conviction for any of the listed offenses within the 5-year period preceding the date
- 12 of the present conviction."

13

14 **Section 3.** Section 46-18-1002, MCA, is amended to read:

15 **"46-18-1002. Home arrest -- petition -- agreement.** (1) An offender may petition a sentencing

16 court for an order directing that all or a portion of a sentence of imprisonment ~~in the county jail or state~~

17 ~~prison~~ be served under conditions of home arrest. The term of home arrest may not exceed 6 months.

18 Petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of

19 the offender's sentence.

20 (2) The petition must include:

21 (a) either a statement by the department of corrections that it has a monitoring device available

22 for its use on the offender or information from the offender as to a private company that can and will

23 implement the home arrest, along with the name and credentials of the company and the type of monitoring

24 device to be used;

25 (b) the place of any employment of the offender and the name of the offender's supervisor;

26 (c) if the offender has been accepted into one, a plan for participation in an educational, treatment,

27 or training program;

28 (d) the source and amount of any income of the offender; and

29 (e) the address at which the home arrest will occur and a list of any other persons who will reside

30 at that address during all or part of the home arrest, their ages, and their relationship to the offender.

1 ~~(2)(3)~~ The sentencing judge shall ~~study the records of all persons petitioning for home arrest and,~~
2 in his discretion, may:

3 ~~(a) refer the case to the appropriate supervising authority for approval and acceptance into the~~
4 ~~home arrest program. The supervising authority may accept or reject any referral.~~

5 ~~(b) conduct hearings on the desirability of granting home arrest;~~

6 ~~(c) order a term of home arrest in lieu of a sentence of imprisonment in the county jail or state~~
7 ~~prison. The time actually spent in home arrest pursuant to this section may not exceed 6 months or the~~
8 ~~maximum term of imprisonment imposed, whichever is shorter.~~

9 ~~(d) issue a warrant for a person when there is reason to believe the person has violated the~~
10 ~~conditions of home arrest, conduct hearings on the matter, and order imprisonment in the county jail or~~
11 ~~state prison upon proof of violation; and~~

12 ~~(e) grant final discharge from arrest.~~

13 ~~(3) A home arrestee shall execute a written agreement with the court setting forth all the conditions~~
14 ~~of home arrest. The order of home arrest must incorporate that agreement and must order compliance with~~
15 ~~its terms. The order and agreement must be transmitted to the supervising authority and to the appropriate~~
16 ~~jail or prison official.~~

17 ~~(4) Time spent in home arrest must be credited against the maximum term of imprisonment~~
18 ~~imposed for the offender pursuant to law. refer the petition to the department of corrections SUPERVISING~~
19 ~~AUTHORITY. The department SUPERVISING AUTHORITY shall review the petition and accept or reject the~~
20 ~~offender for home arrest. If the offender is rejected, the sentencing judge shall dismiss the petition. If the~~
21 ~~offender is accepted, the sentencing judge may conduct a hearing on the petition and grant or deny the~~
22 ~~petition. An order for home arrest must incorporate the home arrest plan, with any modifications by the~~
23 ~~court, and require compliance with the plan. The clerk of court shall give the county attorney a copy of~~
24 ~~the order.~~

25 ~~(5)(4) Home arrest must be under the supervision of the supervising authority. A home arrestee~~
26 ~~is subject to the decisions and applicable rules of the supervising authority during the period of supervision.~~
27 ~~Fees for supervision or equipment usage must be paid directly to the clerk of the sentencing court and must~~
28 ~~be distributed by the clerk to the supervising authority.~~

29 ~~(5) The offender shall file with the court the written and notarized consent to the home arrest~~
30 ~~signed by each adult who will reside with the offender during all or part of the home arrest."~~

1 **Section 4.** Section 46-18-1003, MCA, is amended to read:

2 "**46-18-1003. Home arrest -- conditions -- fees -- consent of cohabitators.** (1) A home arrestee must
3 be confined to ~~his~~ the arrestee's home under conditions imposed by the sentencing court, which may
4 include but are not limited to the following:

5 (a) The home arrestee must be confined to ~~his~~ the arrestee's home at all times except when:

6 (i) working at approved employment or traveling directly to and from employment;

7 (ii) seeking employment;

8 (iii) undergoing medical, psychiatric, or mental health treatment or participating in an approved
9 counseling or aftercare program;

10 (iv) attending an ~~approved~~ educational institution or program approved by the supervising authority;

11 (v) attending a regularly scheduled religious service at a place of worship;

12 (vi) participating in an approved community service program; or

13 (vii) conforming to a schedule prepared by the supervising authority, specifically setting forth the
14 times when ~~he~~ the arrestee may be absent from the home and the locations where ~~he~~ the arrestee may be
15 during those times.

16 ~~(b) The home arrestee may not commit another offense during the period of home arrest.~~

17 ~~(c)~~ (b) The home arrestee may not change the place of home arrest or the schedule without prior
18 approval of the supervising authority.

19 ~~(d)~~ (c) The home arrestee shall maintain a telephone ~~or other approved~~ in the home and the ordered
20 monitoring device ~~in the home or~~ on the arrestee's person at all times.

21 ~~(e)~~ (d) Conditions set by the court or the supervising authority may include:

22 (i) restitution;

23 (ii) supervision fees under 7-32-2245, 46-18-702, ~~or~~ 46-18-703, or 46-23-1031;

24 (iii) any of the conditions imposed on persons on probation or conditional discharge under
25 46-23-1011 or 46-23-1021.

26 (2) ~~A written and notarized consent agreement must be filed with the court by every adult who~~
27 ~~will share the offender's home during the term of home arrest.~~ An arrest warrant may be issued if the
28 supervising authority has reason to believe that the home arrestee has violated a condition of the home
29 arrest. Upon arrest, the supervising authority shall notify the sentencing court and give the court a written
30 report on the violation. The court shall conduct a hearing and, if the violation is established, may revoke

1 the home arrest and require the home arrestee to serve all or a part of the sentence. If imposition of
 2 sentence was suspended, the court may impose any sentence that could have been originally imposed.
 3 Time spent under home arrest must be credited against any sentence to be served.

4 ~~(3) Violation of the provisions of any condition of home arrest may subject the home arrestee to~~
 5 ~~prosecution under 45-7-306."~~

6
 7 **Section 5.** Section 53-1-203, MCA, is amended to read:

8 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections
 9 shall:

10 (a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529, rules necessary
 11 for the siting, establishment, and expansion of prerelease centers, and rules for the admission, custody,
 12 transfer, and release of persons in department programs except as otherwise provided by law. ~~However,~~
 13 ~~rules adopted by the department may not amend or alter the statutory powers and duties of the state board~~
 14 ~~of pardons and parole. HOWEVER, RULES ADOPTED BY THE DEPARTMENT MAY NOT AMEND OR ALTER~~
 15 ~~THE STATUTORY POWERS AND DUTIES OF THE STATE BOARD OF PARDONS AND PAROLE. THE RULES~~
 16 ~~FOR THE SITING, ESTABLISHMENT, AND EXPANSION OF PRERELEASE CENTERS MUST STATE THAT~~
 17 ~~THE SITING IS SUBJECT TO ANY EXISTING CONDITIONS, COVENANTS, RESTRICTIONS OF RECORD,~~
 18 ~~AND ZONING REGULATIONS AND MAY NOT UTILIZE PROVISIONS FOR SPECIAL USE PERMITS,~~
 19 ~~VARIANCES, OR OTHER ZONING EXCEPTIONS FOR THE SITING. THE RULES MUST PROVIDE THAT A~~
 20 ~~PRERELEASE CENTER MAY NOT BE SITED AT ANY LOCATION WITHOUT COMMUNITY SUPPORT. THE~~
 21 ~~PRERELEASE SITING, ESTABLISHMENT, AND EXPANSION MUST BE SUBJECT TO, AND THE RULES MUST~~
 22 ~~INCLUDE, A REASONABLE MECHANISM FOR A DETERMINATION OF COMMUNITY SUPPORT OR~~
 23 ~~OBJECTION TO THE SITING OF A PRERELEASE CENTER IN THE AREA DETERMINED TO BE IMPACTED.~~
 24 ~~THE PRERELEASE SITING, ESTABLISHMENT, AND EXPANSION RULES MUST PROVIDE FOR A PUBLIC~~
 25 ~~HEARING CONDUCTED PURSUANT TO TITLE 2, CHAPTER 3.~~

26 (b) subject to the functions of the department of administration, lease or purchase lands for use
 27 by ~~institutions~~ correctional facilities and classify those lands to determine those that may be most profitably
 28 used for agricultural purposes, taking into consideration the needs of all ~~institutions~~ correctional facilities
 29 for the food products that can be grown or produced on the lands and the relative value of agricultural
 30 programs in the treatment or rehabilitation of the persons confined in ~~the institutions~~ correctional facilities;

1 (c) contract with private, nonprofit Montana corporations to establish and maintain
2 ~~community-based~~ prerelease centers for purposes of preparing inmates of ~~the Montana~~ a state prison who
3 are approaching parole eligibility or discharge for release into the community, providing an alternative
4 placement for offenders who have violated parole, and providing a sentencing option for felony offenders
5 pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while
6 maintaining adequate security. The centers must be operated in coordination with other department
7 correctional programs, ~~including the supervised release program provided for in Title 46, chapter 23, part~~
8 4. This subsection does not affect the department's authority to operate and maintain ~~community-based~~
9 prerelease centers.

10 (d) utilize the staff and services of other state agencies and units of the Montana university system,
11 within their respective statutory functions, to carry out its functions under this title;

12 (e) propose programs to the legislature to meet the projected long-range needs of ~~institutions~~
13 corrections, including programs and facilities for the ~~diagnosis, treatment, care, and aftercare~~ custody,
14 supervision, treatment, and skill development of persons placed in ~~institutions~~ correctional facilities or
15 programs;

16 (f) encourage the establishment of programs at the local and ~~institutional~~ state level for the
17 rehabilitation and education of ~~adult~~ felony offenders;

18 (g) administer all state and federal funds allocated to the department for youth in need of
19 supervision and delinquent youth, as defined in 41-5-103;

20 (h) collect and disseminate information relating to youth in need of supervision and delinquent
21 youth;

22 (i) maintain adequate data on placements that it funds in order to keep the legislature properly
23 informed of the specific information, by category, related to youth in need of supervision and delinquent
24 youth in out-of-home care facilities;

25 (j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need
26 of supervision and who are referred or committed to the department;

27 (k) administer youth correctional facilities;

28 (l) provide supervision, care, and control of youth released from a state youth correctional facility;
29 and

30 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

- 1 (i) provide for children in need of temporary protection or correctional services; and
 2 (ii) coordinate and apply the principles of modern ~~institutional~~ correctional administration to the
 3 ~~institutions in facilities and programs administered by~~ the department.

4 (2) The department and a private, nonprofit Montana corporation may not enter into a contract
 5 under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that
 6 limit the term of a contract do not apply to a contract authorized by subsection (1)(c). PRIOR TO ENTERING
 7 INTO A CONTRACT FOR A PERIOD OF 10 YEARS, THE DEPARTMENT SHALL SUBMIT THE PROPOSED
 8 CONTRACT TO THE LEGISLATIVE AUDIT COMMITTEE. THE LEGISLATIVE AUDIT DIVISION SHALL
 9 REVIEW THE CONTRACT AND MAKE RECOMMENDATIONS OR COMMENTS TO THE LEGISLATIVE AUDIT
 10 COMMITTEE. THE COMMITTEE MAY MAKE RECOMMENDATIONS OR COMMENTS TO THE
 11 DEPARTMENT. THE DEPARTMENT SHALL RESPOND TO THE COMMITTEE, ACCEPTING OR REJECTING
 12 THE COMMITTEE RECOMMENDATIONS OR COMMENTS PRIOR TO ENTERING INTO THE CONTRACT.

13 (3) The department of corrections may enter into contracts with nonprofit corporations or
 14 associations or private organizations to provide substitute care for youth in need of supervision and
 15 delinquent youth in youth care facilities."

16

17 **Section 6.** Section 53-30-302, MCA, is amended to read:

18 "**53-30-302. Purpose.** It is the purpose of this part to:

19 (1) encourage the development of community corrections facilities and programs by units of local
 20 government, tribal governments, and nongovernmental agencies;

21 (2) reduce court commitments to the state ~~penitentiary~~ prisons through diversion of ~~low-risk,~~
 22 ~~nonviolent felony~~ offenders determined appropriate by the community corrections board to community
 23 corrections facilities and programs;

24 (3) reduce the use of jail space for offenders who need a structured environment, treatment,
 25 counseling, and supervision but who may not require incarceration;

26 (4) provide a local facility for employed offenders so that they may maintain their employment
 27 under a structured environment and receive treatment, counseling, and supervision;

28 ~~(3)(5)~~ provide a procedure by which units of local government, tribal governments, and
 29 nongovernmental agencies may provide corrections services to the sentencing courts; and

30 ~~(4)(6)~~ include citizen participation in the policymaking and program planning related to community

1 corrections facilities and programs through the formation of local community corrections boards."

2

3 **Section 7.** Section 53-30-303, MCA, is amended to read:

4 "53-30-303. **Definitions.** As used in this part, unless the context requires otherwise, the following
5 definitions apply:

6 (1) "Community corrections board" means a community corrections board as provided in
7 53-30-312.

8 (2) "Community corrections facility or program" means a community-based or community-oriented
9 facility or program, other than a jail, that:

10 (a) is established by a local or tribal government and operated by a unit of local government, a
11 tribal government, or a nongovernmental agency; and

12 (b) provides programs and services to aid offenders in:

13 (i) obtaining and holding regular employment;

14 (ii) enrolling in and maintaining academic courses;

15 (iii) participating in vocational training programs;

16 (iv) utilizing the resources of the community to meet their personal and family needs;

17 (v) obtaining the benefits of specialized treatment services that exist within the community; and

18 (vi) paying restitution or performing community restitution to crime victims.

19 ~~(3) "Crime of violence" means:~~

20 ~~(a) an offense in which a person uses or possesses and threatens the use of a deadly weapon~~
21 ~~during the commission or attempted commission of an offense, including felony assault, kidnapping,~~
22 ~~aggravated kidnapping, robbery, arson, burglary, aggravated burglary, escape, or intimidation;~~

23 ~~(b) an offense, other than an offense in which negligence is an element of the offense, in which~~
24 ~~the person causes serious bodily injury or death to a person other than the person committing the offense~~
25 ~~during the commission or attempted commission of an offense; or~~

26 ~~(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat,~~
27 ~~intimidation, or force against the victim.~~

28 ~~(4)~~(3) "Department" means the department of corrections created in 2-15-2301.

29 ~~(5)~~(4) "Nongovernmental agency" means a person, private, nonprofit agency, corporation,
30 association, labor organization, or other nongovernmental entity.

1 ~~(6) "Nonviolent felony offender" means a person who has committed a felony other than a crime~~
2 ~~of violence.~~

3 ~~(7)(5) "Offender" means a person who has entered a plea of guilty or has been convicted of a~~
4 ~~felony criminal offense. The term does not include a person who has committed a crime of violence.~~

5 ~~(8)(6) "Tribal government" means a federally recognized Indian tribe within the state of Montana.~~

6 ~~(9)(7) "Unit of local government" means a county, city, town, or city-county consolidated~~
7 ~~government."~~

8

9 **Section 8.** Section 53-30-312, MCA, is amended to read:

10 **"53-30-312. Creation of community corrections boards -- membership -- appointment -- terms --**
11 **compensation.** (1) A unit of local government, the governing bodies of two or more units of local
12 government, or a tribal government may establish a community corrections board.

13 (2) A community corrections board consists of ~~nine~~ three to seven members, must, when possible,
14 be gender-balanced and have racial parity, and must ~~be appointed as follows~~ include:

15 (a) one local law enforcement officer;

16 ~~(b) one county attorney;~~

17 ~~(c) one district court judge;~~

18 ~~(d)~~ (b) one probation and parole officer; and

19 ~~(e) one local private employer or representative of the department of labor and industry;~~

20 ~~(f) one mental health professional;~~

21 ~~(g) one person representing local or tribal drug and alcohol treatment programs; and~~

22 ~~(h)~~ (c) ~~two members~~ one member of the public.

23 (3) Members of a community corrections board must be ~~nominated by representatives of units of~~
24 ~~local government or a tribal government and~~ appointed by the ~~district court judges~~ chief executive officer
25 of the unit of local government or the ~~tribal judges~~ tribal government in the judicial district in which community
26 corrections facilities or programs are established.

27 (4) Members of a community corrections board shall serve for a term of 4 years.

28 (5) Members of a community corrections board shall serve without compensation except as
29 otherwise decided by the units of local government or a tribal government."
30

1 **Section 9.** Section 53-30-313, MCA, is amended to read:

2 **"53-30-313. Powers and duties of community corrections boards.** (1) A community corrections
3 board may establish and enforce standards for:

4 (a) the operation of community corrections facilities and programs operated by the unit of local
5 government or a tribal government served by the community corrections board; and

6 (b) the conduct of offenders placed in local community corrections facilities and programs.

7 (2) The community corrections board, together with ~~the department and~~ the judicial district, shall
8 establish procedures for screening offenders who are to be placed in the community corrections facility or
9 program. The screening must take into account the aptitude, attitude, and social and occupational skills of
10 the offender and the risk of harm the offender may present to ~~himself~~ the offender and others.

11 (3) A community corrections board may accept, reject, or reject after acceptance the placement
12 of any offender in the community corrections facility or program. If an offender is rejected by the
13 community corrections board after initial acceptance, the ~~offender must be remanded to the custody of the~~
14 sheriff of the county in which the facility or program is located must take custody of the offender. The
15 community corrections board shall notify in writing the sentencing judge who, after considering the board's
16 reasons for rejection, shall appropriately modify the sentencing order."

17

18 **Section 10.** Section 53-30-314, MCA, is amended to read:

19 **"53-30-314. Community corrections facilities and programs operated by tribal governments.** (1)
20 A tribal government may establish, maintain, and operate a community corrections facility or program to
21 serve the needs of offenders who are sentenced to the facility or program by a judge as provided in
22 53-30-321.

23 ~~(2) A tribal government may enter into an agreement with the department, pursuant to Title 18,~~
24 ~~chapter 11, part 1, for the purpose of providing community corrections facilities or programs for offenders.~~
25 ~~The agreement must provide for strict accountability procedures and practices for the conduct and~~
26 ~~supervision of offenders assigned or sentenced to a facility or program operated by a tribal government.~~

27 ~~(3)~~(2) A tribal government operating a community corrections facility or program may accept,
28 reject, or reject after acceptance the placement of any offender in the facility or program pursuant to an
29 agreement with a unit of local government, a nongovernmental agency, or a judicial district. If an offender
30 is rejected by the tribal government after initial appearance and the offender is a court referral, the ~~offender~~

1 ~~must be remanded to the custody of the~~ sheriff of the county in which the facility or program is located
 2 must take custody of the offender. The tribal government shall notify in writing the sentencing judge who,
 3 after considering the tribal government's reasons for rejection, shall appropriately modify the sentencing
 4 order."

5

6 **Section 11.** Section 53-30-315, MCA, is amended to read:

7 **"53-30-315. Community corrections facilities and programs operated by nongovernmental**
 8 **agencies.** (1) Except as provided in subsection (2), a nongovernmental agency may establish, maintain, and
 9 operate a community corrections facility or program to serve the needs of offenders who are sentenced to
 10 the facility or program by a judge as provided in 53-30-321.

11 (2) A nongovernmental agency may not establish a community corrections facility or program
 12 unless approved by the local community corrections board in a local government or tribal government that
 13 has established a community corrections board.

14 ~~(3) A nongovernmental agency may enter into a contract or agreement with the department for the~~
 15 ~~purpose of providing community corrections facilities or programs for offenders. The contract or agreement~~
 16 ~~must provide for strict accountability procedures and practices for the conduct and supervision of offenders~~
 17 ~~assigned or sentenced to a facility or program operated by a nongovernmental agency.~~

18 ~~(4)~~⁽³⁾ A nongovernmental agency operating a community corrections facility or program may
 19 accept, reject, or reject after acceptance the placement of any offender in the facility or program pursuant
 20 to a contract or agreement with a unit of local government, a tribal government, or a judicial district. If an
 21 offender is rejected by the nongovernmental agency after initial acceptance and the offender is a court
 22 referral, the offender ~~must be remanded to the custody of the~~ sheriff of the county in which the facility or
 23 program is located must take custody of the offender. The nongovernmental agency shall notify in writing
 24 the sentencing judge who, after considering the agency's reasons for rejection, shall appropriately modify
 25 the sentencing order."

26

27 **Section 12.** Section 53-30-321, MCA, is amended to read:

28 **"53-30-321. Authority of judge to utilize community corrections facilities or programs --procedure**
 29 **-- restrictions.** (1) Subject to the restrictions contained in subsection ~~(3)~~ ⁽²⁾, a judge may order placement
 30 of ~~a nonviolent felony~~ an offender in a community corrections facility or program operated by a unit of local

1 government, a tribal government, or a nongovernmental agency. If a judge orders placement of an offender
 2 in a community corrections facility or program, the judge shall indicate in the sentencing order that the
 3 offender would have been sentenced to prison if the community corrections facility or program had not
 4 been available.

5 ~~(2)~~ Placement of an offender in a community corrections facility or program may be ordered only
 6 if:

7 ~~(a)~~ the community corrections facility or program is operated by a unit of local government, a tribal
 8 government, or a nongovernmental agency that has entered into a contract or agreement with the
 9 department to provide community corrections services for offenders; and

10 ~~(b)~~ funding for the placement is available.

11 ~~(3)~~(2) A judge may not order placement of an offender in a residential community corrections
 12 facility or program for a period exceeding 1 year. After completing the residential community corrections
 13 portion of his a sentence, an offender shall serve the remainder of his the sentence under normal probation
 14 supervision, if applicable.

15 ~~(4)~~(3) An offender is not eligible for parole while serving a sentence in a community corrections
 16 facility or program.

17 ~~(5)~~(4) The probation and parole officers for the judicial district shall include in their presentence
 18 report to the sentencing judge recommendations for utilization of a community correctional facility or
 19 program that has been approved for use by the judicial district."

20

21 **Section 13.** Section 53-30-322, MCA, is amended to read:

22 **"53-30-322. Powers and responsibilities of department.** ~~rulemaking authority.~~ The department
 23 shall may:

24 (1) ~~with the active and full participation of the~~ upon the request of a local community corrections
 25 board, ~~establish minimum standards for the operation~~ provide assistance in the planning of community
 26 corrections facilities and programs ~~operated by a unit of local government, a tribal government, or a~~
 27 ~~nongovernmental agency that has entered into a contract or agreement with the department to provide~~
 28 ~~services for offenders; and~~

29 (2) ~~review and evaluate all community corrections facilities and programs established under this~~
 30 ~~part, subject to the requirements established in section 14, Chapter 554, Laws of 1991~~ contract with a

1 community corrections facility or program for the provision of services for offenders under the custody of
 2 the department. The contract must address facility or program review and evaluation, accounting and
 3 reporting standards, and reimbursement of the facility or program;

4 ~~(3) prescribe accounting and reporting standards for all units of local government, tribal~~
 5 ~~governments, and nongovernmental agencies that have entered into a contract or agreement with the~~
 6 ~~department;~~

7 ~~(4) reimburse units of local government, tribal governments, or nongovernmental agencies for~~
 8 ~~community correctional services at a rate to be negotiated by the department;~~

9 ~~(5) adopt rules necessary to carry out the provisions of this part."~~

10
 11 **Section 14.** Section 53-30-326, MCA, is amended to read:

12 **"53-30-326. Escape from custody.** An offender is guilty of escape ~~from official detention~~ and shall
 13 be punished as provided in 45-7-306 if, without proper authorization, ~~he~~ the offender:

14 (1) fails to remain within the extended limits of ~~his~~ the offender's confinement or fails to return
 15 within the time specified to a community corrections facility or program to which ~~he~~ the offender has been
 16 assigned, sentenced, or transferred; or

17 (2) leaves ~~his~~ the offender's place of employment or neglects or fails to return to the community
 18 corrections facility or program after being specifically ordered to do so."

19
 20 **NEW SECTION. Section 15. Repealer.** Sections 46-23-401, 46-23-405, 46-23-411, 46-23-412,
 21 46-23-421, 46-23-422, 46-23-426, 53-30-324, and 53-30-325, MCA, are repealed.

22
 23 **NEW SECTION. SECTION 16. COORDINATION INSTRUCTION. IF SENATE BILL NO. 109 AND**
 24 **[THIS ACT] ARE BOTH PASSED AND APPROVED, THEN THE AMENDED LANGUAGE IN 53-1-203(1)(E),**
 25 **(F), AND (M)(II) IN SENATE BILL NO. 109, REFERENCE BILL AS AMENDED, IS VOID.**

26
 27 **NEW SECTION. SECTION 17. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT RIGHTS AND**
 28 **DUTIES THAT MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN**
 29 **BEFORE [THE EFFECTIVE DATE OF THIS ACT].**

30 -END-