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 2 INTRODUCTION BY ORR, Curtis Paul Ellis 7/16/14
 3 Rachel John Katzenberg Rosen

House BILL NO. 540

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING LAWS REQUIRING CRIMINALS TO PAY
 5 RESTITUTION TO THEIR VICTIMS; REQUIRING RESTITUTION TO BE PAID IN FULL; PROVIDING THAT THE
 6 DUTY TO PAY RESTITUTION REMAINS WITH THE CRIMINAL UNTIL RESTITUTION IS PAID; PROVIDING
 7 THAT THE CRIMINAL REMAINS UNDER STATE SUPERVISION UNTIL RESTITUTION IS PAID; PROVIDING
 8 FOR CREDIT AGAINST RESTITUTION FOR COMMUNITY SERVICE BY A CRIMINAL UNABLE TO PAY
 9 RESTITUTION; ALLOWING A COURT TO TAKE ACTION TO ENSURE THAT ASSETS OF A PERSON
 10 CHARGED WITH A CRIME THAT CAN BE USED TO PAY RESTITUTION ARE NOT DISSIPATED; PROVIDING
 11 FOR THE ORDER IN WHICH RESTITUTION MUST BE PAID TO PERSONS AND ENTITIES ENTITLED TO
 12 RESTITUTION PAYMENTS; AND AMENDING SECTIONS 46-18-201, 46-18-241, 46-18-244, 46-18-246,
 13 46-18-247, AND 46-18-251, MCA."

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

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

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

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

- 25 (i) jail base release;
- 26 (ii) jail time not exceeding 180 days;
- 27 (iii) conditions for probation;
- 28 (iv) payment of the costs of confinement;
- 29 (v) payment of a fine as provided in 46-18-231;
- 30 (vi) payment of costs as provided in 46-18-232 and 46-18-233;

- 1 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- 2 (viii) with the approval of the facility or program, an order that the offender be placed in a
3 community corrections facility or program as provided in 53-30-321;
- 4 (ix) community service;
- 5 (x) home arrest as provided in Title 46, chapter 18, part 10;
- 6 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
7 society;
- 8 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 9 or
- 10 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).
- 11 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
12 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
13 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
14 restrictions or conditions may include any of those listed in subsection (1)(a).
- 15 (c) impose a fine as provided by law for the offense;
- 16 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
17 counsel as provided in 46-8-113;
- 18 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
19 the defendant to the department of corrections for placement in an appropriate correctional institution or
20 program;
- 21 (f) with the approval of the facility or program, order the offender to be placed in a community
22 corrections facility or program as provided in 53-30-321; or
- 23 (g) impose any combination of subsections (1)(b) through (1)(f).
- 24 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
25 of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to the victim
26 as provided in 46-18-241 through 46-18-249. ~~If the court determines that the defendant is unable to pay~~
27 ~~restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.~~
- 28 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
29 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
30 a felony, regardless of whether any other conditions are imposed.

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

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

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

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

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

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

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

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

30 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed. (1) Whenever a person has**

1 been found 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;

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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) community service;

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

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

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

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

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

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

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

30 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit

1 the defendant to the department of corrections for placement in an appropriate correctional institution or
2 program;

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

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

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

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

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

17 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
18 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
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20 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

23 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
24 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
25 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
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1 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
2 Title 46, chapter 23, part 5.

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

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

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

15 **Section 2.** Section 46-18-241, MCA, is amended to read:

16 "**46-18-241. Condition of restitution.** (1) As provided in 46-18-201, a sentencing court shall
17 require an offender to make full restitution to any victim of the offense who has sustained pecuniary loss
18 as a result of the offense, including a person suffering an economic loss as a result of the crime. The duty
19 to pay full restitution under the sentence remains with the offender until full restitution is paid, and the
20 offender remains under state supervision until full restitution is paid.

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

26 (3) If at any time the court finds that, because of circumstances beyond the offender's control, the
27 offender is not ~~and will not be~~ able to pay any restitution ~~during the period of state supervision~~, the court
28 may order the offender to perform community service ~~commensurate with the amount of restitution that~~
29 ~~would have been imposed~~ during the time that the offender is unable to pay. The offender must be given
30 a credit against restitution due at the rate of the hours of community service times the state minimum wage

1 in effect at the time that the community service is performed."

2

3 **Section 3.** Section 46-18-244, MCA, is amended to read:

4 **"46-18-244. Type and time of payment -- defenses.** (1) The court shall specify the amount,
5 method, and time of each payment to the victim and may permit payment in installments. ~~The court may~~
6 ~~not establish a payment schedule extending beyond the period of state supervision over the offender.~~

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

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

14 (a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part
15 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are
16 reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the
17 state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after
18 sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale,
19 any remaining amount must be returned to the offender.

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

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

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

25 (5) After a prosecution is commenced and upon petition of the prosecutor, the court may grant a
26 restraining order or injunction, require a satisfactory bond, or take other action if the court finds that the
27 restraining order or injunction, bond, or other action is necessary to preserve property or assets that could
28 be used to satisfy an anticipated restitution order. A hearing must be held on the petition, and any person
29 with an interest in the property is entitled to be heard."

30

1 **Section 4.** Section 46-18-246, MCA, is amended to read:

2 **"46-18-246. Waiver or modification of payment.** An offender may at any time petition the
3 sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court
4 shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date,
5 place, and time and inform the victim that the victim will have an opportunity to be heard. If the court finds
6 that the circumstances upon which it based the imposition of restitution, amount of the victim's pecuniary
7 loss, or method, or time of payment no longer exist or that it otherwise would be unjust to require payment
8 as imposed, the court may adjust or waive unpaid restitution or modify the time or method of making
9 restitution. The court may extend the restitution schedule, ~~but not beyond the period provided for in~~
10 ~~46-18-244.~~"

11
12 **Section 5.** Section 46-18-247, MCA, is amended to read:

13 **"46-18-247. Default.** (1) If an offender sentenced to make restitution is in default, the sentencing
14 court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under
15 46-18-203 requiring the offender to show cause why the offender should not be confined for failure to obey
16 the sentence of the court. The court may order the offender to appear at a time, date, and place for a
17 hearing or, if the offender fails to appear as ordered, issue a warrant for the offender's arrest. The order
18 or warrant must be accompanied by written notice of the offender's right to a hearing as provided in
19 46-18-203.

20 (2) If the court finds that the offender's default was attributable to the offender's failure to make
21 a good faith effort to obtain the necessary funds for payment of the ordered restitution, the court may take
22 any action provided for in 46-18-203. ~~If confinement is ordered, the court, after entering the order, may~~
23 ~~reduce the term of confinement and, in accordance with the provisions of 46-18-246, waive satisfaction~~
24 ~~of the restitution order.~~

25 (3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following
26 a default in the payment of restitution or any installment of restitution, the sentencing court may order the
27 restitution to be collected by any method authorized for the enforcement of other judgments."
28

29 **Section 6.** Section 46-18-251, MCA, is amended to read:

30 **"46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) If an offender is

1 subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same
2 criminal proceeding, money collected from the offender must be allocated as provided in this section.

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

7 (a) payment of charges imposed pursuant to 46-18-236;

8 (b) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

9 (c) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

10 (d) any other payments ordered by the court.

11 (3) The money applied under subsection (2) to the payment of restitution must be paid in the
12 following order:

13 (a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

14 (b) to the crime victims compensation and assistance account provided for in 53-9-109 until the
15 account is fully reimbursed for compensation to the victim;

16 (c) to any other government agency that has compensated the victim for the victim's pecuniary
17 loss;

18 (d) to any insurance company that has compensated the victim for the victim's pecuniary loss.

19 ~~(3)~~(4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has
20 been paid, any additional money collected must be applied to payment of those fines, costs, charges, or
21 other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments
22 have been paid, any additional money collected must be applied toward payment of the restitution."

23 -END-

HOUSE BILL NO. 540

INTRODUCED BY ORR, CURTISS, BANKHEAD, ELLIS, MCGEE, WELLS, KOTTEL, SOFT, KITZENBERG,
BURNETT

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING LAWS REQUIRING CRIMINALS TO PAY RESTITUTION TO THEIR VICTIMS; REQUIRING RESTITUTION TO BE PAID IN FULL; PROVIDING THAT THE DUTY TO PAY RESTITUTION REMAINS WITH THE CRIMINAL UNTIL RESTITUTION IS PAID; ~~PROVIDING THAT THE CRIMINAL REMAINS UNDER STATE SUPERVISION UNTIL RESTITUTION IS PAID;~~ PROVIDING FOR CREDIT AGAINST RESTITUTION FOR COMMUNITY SERVICE BY A CRIMINAL UNABLE TO PAY RESTITUTION; ALLOWING A COURT TO TAKE ACTION TO ENSURE THAT ASSETS OF A PERSON CHARGED WITH A CRIME THAT CAN BE USED TO PAY RESTITUTION ARE NOT DISSIPATED; PROVIDING FOR THE ORDER IN WHICH RESTITUTION MUST BE PAID TO PERSONS AND ENTITIES ENTITLED TO RESTITUTION PAYMENTS; AND AMENDING SECTIONS 46-18-201, 46-18-241, 46-18-244, 46-18-246, 46-18-247, AND 46-18-251, MCA."

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

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4 community corrections facility or program as provided in 53-30-321;
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8 society;
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- 11 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).
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21 program;
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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 placement in an appropriate correctional institution or
3 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) impose any combination of subsections (1)(b) through (1)(f).

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

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

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

18 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
19 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
20 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),
21 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

1 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
 2 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
 3 Title 46, chapter 23, part 5.

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

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

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

15

16 **Section 2.** Section 46-18-241, MCA, is amended to read:

17 **"46-18-241. Condition of restitution.** (1) As provided in 46-18-201, a sentencing court shall
 18 require an offender to make full restitution to any victim of the offense who has sustained pecuniary loss
 19 as a result of the offense, including a person suffering an economic loss as a result of the crime. The duty
 20 to pay full restitution under the sentence remains with the offender until full restitution is paid, and the
 21 offender remains under state supervision until full restitution is paid.

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

27 (3) If at any time the court finds that, because of circumstances beyond the offender's control, the
 28 offender is not ~~and will not be~~ able to pay any restitution ~~during the period of state supervision~~, the court
 29 may order the offender to perform community service ~~commensurate with the amount of restitution that~~
 30 would have been imposed during the time that the offender is unable to pay. The offender must be given

1 a credit against restitution due at the rate of the hours of community service times the state minimum wage
2 in effect at the time that the community service is performed."

3
4 **Section 3.** Section 46-18-244, MCA, is amended to read:

5 **"46-18-244. Type and time of payment -- defenses.** (1) The court shall specify the amount,
6 method, and time of each payment to the victim and may permit payment in installments. ~~The court may~~
7 ~~not establish a payment schedule extending beyond the period of state supervision over the offender.~~

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

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

15 (a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part
16 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are
17 reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the
18 state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after
19 sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale,
20 any remaining amount must be returned to the offender.

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

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

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

26 (5) After a prosecution is commenced and upon petition of the prosecutor, the court may grant a
27 restraining order or injunction, require a satisfactory bond, or take other action if the court finds that the
28 restraining order or injunction, bond, or other action is necessary to preserve property or assets that could
29 be used to satisfy an anticipated restitution order. A hearing must be held on the petition, and any person
30 with an interest in the property is entitled to be heard."

1 **Section 4.** Section 46-18-246, MCA, is amended to read:

2 "**46-18-246. Waiver or modification of payment.** An offender may at any time petition the
3 sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court
4 shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date,
5 place, and time and inform the victim that the victim will have an opportunity to be heard. If the court finds
6 that the circumstances upon which it based the imposition of restitution, amount of the victim's pecuniary
7 loss, or method, or time of payment no longer exist or that it otherwise would be unjust to require payment
8 as imposed, the court may adjust or waive unpaid restitution or modify the time or method of making
9 restitution. The court may extend the restitution schedule, ~~but not beyond the period provided for in~~
10 ~~46-18-244.~~"

11

12 **Section 5.** Section 46-18-247, MCA, is amended to read:

13 "**46-18-247. Default.** (1) If an offender sentenced to make restitution is in default, the sentencing
14 court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under
15 46-18-203 requiring the offender to show cause why the offender should not be confined for failure to obey
16 the sentence of the court. The court may order the offender to appear at a time, date, and place for a
17 hearing or, if the offender fails to appear as ordered, issue a warrant for the offender's arrest. The order
18 or warrant must be accompanied by written notice of the offender's right to a hearing as provided in
19 46-18-203.

20 (2) If the court finds that the offender's default was attributable to the offender's failure to make
21 a good faith effort to obtain the necessary funds for payment of the ordered restitution, the court may take
22 any action provided for in 46-18-203. ~~If confinement is ordered, the court, after entering the order, may~~
23 ~~reduce the term of confinement and, in accordance with the provisions of 46-18-246, waive satisfaction~~
24 ~~of the restitution order.~~

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

28

29 **Section 6.** Section 46-18-251, MCA, is amended to read:

30 "**46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) If an offender is

1 subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same
2 criminal proceeding, money collected from the offender must be allocated as provided in this section.

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

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

11 (3) The money applied under subsection (2) to the payment of restitution must be paid in the
12 following order:

- 13 (a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;
14 (b) to the crime victims compensation and assistance account provided for in 53-9-109 until the
15 account is fully reimbursed for compensation to the victim;
16 (c) to any other government agency that has compensated the victim for the victim's pecuniary
17 loss;
18 (d) to any insurance company that has compensated the victim for the victim's pecuniary loss.

19 ~~(3)~~(4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has
20 been paid, any additional money collected must be applied to payment of those fines, costs, charges, or
21 other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments
22 have been paid, any additional money collected must be applied toward payment of the restitution."

23 -END-

1 HOUSE BILL NO. 540

2 INTRODUCED BY ORR, CURTISS, BANKHEAD, ELLIS, MCGEE, WELLS, KOTTEL, SOFT, KITZENBERG,
3 BURNETT

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING LAWS REQUIRING CRIMINALS TO PAY
6 RESTITUTION TO THEIR VICTIMS; REQUIRING RESTITUTION TO BE PAID IN FULL; PROVIDING THAT THE
7 DUTY TO PAY RESTITUTION REMAINS WITH THE CRIMINAL UNTIL RESTITUTION IS PAID; ~~PROVIDING~~
8 ~~THAT THE CRIMINAL REMAINS UNDER STATE SUPERVISION UNTIL RESTITUTION IS PAID;~~ PROVIDING
9 FOR CREDIT AGAINST RESTITUTION FOR COMMUNITY SERVICE BY A CRIMINAL UNABLE TO PAY
10 RESTITUTION; ALLOWING A COURT TO TAKE ACTION TO ENSURE THAT ASSETS OF A PERSON
11 CHARGED WITH A CRIME THAT CAN BE USED TO PAY RESTITUTION ARE NOT DISSIPATED; PROVIDING
12 FOR THE ORDER IN WHICH RESTITUTION MUST BE PAID TO PERSONS AND ENTITIES ENTITLED TO
13 RESTITUTION PAYMENTS; AND AMENDING SECTIONS 46-18-201, 46-18-241, 46-18-244, 46-18-246,
14 46-18-247, AND 46-18-251, MCA."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**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. 540

2 INTRODUCED BY ORR, CURTISS, BANKHEAD, ELLIS, MCGEE, WELLS, KOTTEL, SOFT, KITZENBERG,

3 BURNETT

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING LAWS REQUIRING CRIMINALS TO PAY
6 RESTITUTION TO THEIR VICTIMS; REQUIRING RESTITUTION TO BE PAID IN FULL; PROVIDING THAT THE
7 DUTY TO PAY RESTITUTION REMAINS WITH THE CRIMINAL UNTIL RESTITUTION IS PAID; ~~PROVIDING~~
8 ~~THAT THE CRIMINAL REMAINS UNDER STATE SUPERVISION UNTIL RESTITUTION IS PAID~~; PROVIDING
9 FOR CREDIT AGAINST RESTITUTION FOR COMMUNITY SERVICE BY A CRIMINAL UNABLE TO PAY
10 RESTITUTION; ALLOWING A COURT TO TAKE ACTION TO ENSURE THAT ASSETS OF A PERSON
11 CHARGED WITH A CRIME THAT CAN BE USED TO PAY RESTITUTION ARE NOT DISSIPATED; PROVIDING
12 FOR THE ORDER IN WHICH RESTITUTION MUST BE PAID TO PERSONS AND ENTITIES ENTITLED TO
13 RESTITUTION PAYMENTS; AND AMENDING SECTIONS 46-18-201, 46-18-241, 46-18-244, 46-18-246,
14 46-18-247, AND 46-18-251, MCA."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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HOUSE BILL NO. 540

INTRODUCED BY ORR, CURTISS, BANKHEAD, ELLIS, MCGEE, WELLS, KOTTEL, SOFT, KITZENBERG,

BURNETT

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING LAWS REQUIRING CRIMINALS TO PAY RESTITUTION TO THEIR VICTIMS; REQUIRING RESTITUTION TO BE PAID IN FULL; PROVIDING THAT THE DUTY TO PAY RESTITUTION REMAINS WITH THE CRIMINAL UNTIL RESTITUTION IS PAID; ~~PROVIDING THAT THE CRIMINAL REMAINS UNDER STATE SUPERVISION UNTIL RESTITUTION IS PAID;~~ PROVIDING FOR CREDIT AGAINST RESTITUTION FOR COMMUNITY SERVICE BY A CRIMINAL UNABLE TO PAY RESTITUTION; ALLOWING A COURT TO TAKE ACTION TO ENSURE THAT ASSETS OF A PERSON CHARGED WITH A CRIME THAT CAN BE USED TO PAY RESTITUTION ARE NOT DISSIPATED; PROVIDING FOR THE ORDER IN WHICH RESTITUTION MUST BE PAID TO PERSONS AND ENTITIES ENTITLED TO RESTITUTION PAYMENTS; AND AMENDING SECTIONS 46-18-201, 46-18-241, 46-18-244, 46-18-246, 46-18-247, AND 46-18-251, MCA."

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

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

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

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

- (i) jail base release;
- (ii) jail time not exceeding 180 days;
- (iii) conditions for probation;
- (iv) payment of the costs of confinement;
- (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) community service;
- 6 (x) home arrest as provided in Title 46, chapter 18, part 10;
- 7 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
8 society;
- 9 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 10 or
- 11 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).
- 12 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period
13 of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the
14 defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable
15 restrictions or conditions may include any of those listed in subsection (1)(a).
- 16 (c) impose a fine as provided by law for the offense;
- 17 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
18 counsel as provided in 46-8-113;
- 19 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit
20 the defendant to the department of corrections for placement in an appropriate correctional institution or
21 program;
- 22 (f) with the approval of the facility or program, order the offender to be placed in a community
23 corrections facility or program as provided in 53-30-321; or
- 24 (g) impose any combination of subsections (1)(b) through (1)(f).
- 25 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim
26 of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to the victim
27 as provided in 46-18-241 through 46-18-249. ~~If the court determines that the defendant is unable to pay~~
28 ~~restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.~~
- 29 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
30 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for

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

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

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

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

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

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

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

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

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

- 1 **46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has
2 been found guilty of an offense upon a verdict or a plea of guilty, the court may:
- 3 (a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for
4 driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise
5 provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony.
6 The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
7 period of the deferred imposition. Reasonable restrictions or conditions may include:
- 8 (i) jail base release;
9 (ii) jail time not exceeding 180 days;
10 (iii) conditions for probation;
11 (iv) payment of the costs of confinement;
12 (v) payment of a fine as provided in 46-18-231;
13 (vi) payment of costs as provided in 46-18-232 and 46-18-233;
14 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
15 (viii) with the approval of the facility or program, an order that the offender be placed in a
16 community corrections facility or program as provided in 53-30-321;
17 (ix) community service;
18 (x) home arrest as provided in Title 46, chapter 18, part 10;
19 (xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of
20 society;
21 (xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
22 or
- 23 (xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).
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 placement in an appropriate correctional institution or
3 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) impose any combination of subsections (1)(b) through (1)(f).

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

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

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

18 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
19 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
20 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),
21 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

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

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

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

1 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
2 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and
3 Title 46, chapter 23, part 5.

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

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

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

15

16 **Section 2.** Section 46-18-241, MCA, is amended to read:

17 "**46-18-241. Condition of restitution.** (1) As provided in 46-18-201, a sentencing court shall
18 require an offender to make full restitution to any victim of the offense who has sustained pecuniary loss
19 as a result of the offense, including a person suffering an economic loss as a result of the crime. The duty
20 to pay full restitution under the sentence remains with the offender until full restitution is paid, and the
21 offender remains under state supervision until full restitution is paid.

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

27 (3) If at any time the court finds that, because of circumstances beyond the offender's control, the
28 offender is not ~~and will not be~~ able to pay any restitution ~~during the period of state supervision~~, the court
29 may order the offender to perform community service ~~commensurate with the amount of restitution that~~
30 ~~would have been imposed~~ during the time that the offender is unable to pay. The offender must be given

1 a credit against restitution due at the rate of the hours of community service times the state minimum wage
2 in effect at the time that the community service is performed."

3
4 **Section 3.** Section 46-18-244, MCA, is amended to read:

5 **"46-18-244. Type and time of payment -- defenses.** (1) The court shall specify the amount,
6 method, and time of each payment to the victim and may permit payment in installments. ~~The court may~~
7 ~~not establish a payment schedule extending beyond the period of state supervision over the offender.~~

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

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

15 (a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part
16 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are
17 reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the
18 state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after
19 sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale,
20 any remaining amount must be returned to the offender.

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

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

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

26 (5) After a prosecution is commenced and upon petition of the prosecutor, the court may grant a
27 restraining order or injunction, require a satisfactory bond, or take other action if the court finds that the
28 restraining order or injunction, bond, or other action is necessary to preserve property or assets that could
29 be used to satisfy an anticipated restitution order. A hearing must be held on the petition, and any person
30 with an interest in the property is entitled to be heard."

1 **Section 4.** Section 46-18-246, MCA, is amended to read:

2 "**46-18-246. Waiver or modification of payment.** An offender may at any time petition the
3 sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court
4 shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date,
5 place, and time and inform the victim that the victim will have an opportunity to be heard. If the court finds
6 that the circumstances upon which it based the imposition of restitution, amount of the victim's pecuniary
7 loss, or method, or time of payment no longer exist or that it otherwise would be unjust to require payment
8 as imposed, the court may adjust or waive unpaid restitution or modify the time or method of making
9 restitution. The court may extend the restitution schedule, ~~but not beyond the period provided for in~~
10 ~~46-18-244.~~"

11

12 **Section 5.** Section 46-18-247, MCA, is amended to read:

13 "**46-18-247. Default.** (1) If an offender sentenced to make restitution is in default, the sentencing
14 court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under
15 46-18-203 requiring the offender to show cause why the offender should not be confined for failure to obey
16 the sentence of the court. The court may order the offender to appear at a time, date, and place for a
17 hearing or, if the offender fails to appear as ordered, issue a warrant for the offender's arrest. The order
18 or warrant must be accompanied by written notice of the offender's right to a hearing as provided in
19 46-18-203.

20 (2) If the court finds that the offender's default was attributable to the offender's failure to make
21 a good faith effort to obtain the necessary funds for payment of the ordered restitution, the court may take
22 any action provided for in 46-18-203. ~~If confinement is ordered, the court, after entering the order, may~~
23 ~~reduce the term of confinement and, in accordance with the provisions of 46-18-246, waive satisfaction~~
24 ~~of the restitution order.~~

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

28

29 **Section 6.** Section 46-18-251, MCA, is amended to read:

30 "**46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) If an offender is

1 subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same
2 criminal proceeding, money collected from the offender must be allocated as provided in this section.

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

7 (a) payment of charges imposed pursuant to 46-18-236;

8 (b) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

9 (c) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

10 (d) any other payments ordered by the court.

11 (3) The money applied under subsection (2) to the payment of restitution must be paid in the
12 following order:

13 (a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

14 (b) to the crime victims compensation and assistance account provided for in 53-9-109 until the
15 account is fully reimbursed for compensation to the victim;

16 (c) to any other government agency that has compensated the victim for the victim's pecuniary
17 loss;

18 (d) to any insurance company that has compensated the victim for the victim's pecuniary loss.

19 ~~(3)~~(4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has
20 been paid, any additional money collected must be applied to payment of those fines, costs, charges, or
21 other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments
22 have been paid, any additional money collected must be applied toward payment of the restitution."

23 -END-