

HOUSE BILL NO. 712

INTRODUCED BY B. CARTER, S. KELLY, E. BYRNE, D. BAUM, N. DURAM, C. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING RESTITUTION LAWS; REQUIRING A PERSON CONVICTED OF THE OFFENSE OF VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE TO PAY RESTITUTION FOR THE SUPPORT OF EACH MINOR CHILD WHOSE PARENT OR GUARDIAN WAS THE VICTIM OF THE OFFENSE; PROVIDING EXCEPTIONS; AND AMENDING SECTIONS 45-5-106, 46-18-201, AND 46-18-241, MCA."

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

NEW SECTION. Section 1. Restitution for child of victim -- vehicular homicide while under influence -- definition. (1) (a) A person convicted of the offense of vehicular homicide while under the influence as defined in 45-5-106 shall pay restitution for the support of each minor child whose parent or guardian was the victim of the offense.

(b) The court shall order the support to be paid monthly until the child reaches 18 years of age or graduates from high school, whichever is later.

(c) A person may not be required to pay restitution under this section to an individual who is 19 years of age or older.

(2) The court shall determine the manner in which the restitution is to be paid. In determining an amount of restitution that is reasonable and necessary to support the child, the court shall consider all relevant factors, including:

(a) the financial needs and resources of the child;

(b) the financial needs and resources of the surviving parent or guardian, if any, or other current guardian of the child or, if applicable, the financial resources of the department of public health and human services if the child is in legal custody of the state pursuant to a proceeding under Title 41, chapter 3;

(c) the standard of living to which the child is accustomed;

(d) the physical and emotional condition of the child and the child's educational needs;

1 (e) the child's physical and legal custody arrangements;

2 (f) the reasonable work-related child-care expenses of the surviving parent or guardian or other
3 current guardian, if applicable; and

4 (g) the financial resources of the defendant.

5 (3) If a defendant is ordered to pay restitution under this section and is incarcerated and unable to
6 make the required restitution payments, the defendant shall begin payments no later than the first anniversary
7 of the date of the defendant's release from confinement, including entering into a payment plan to address any
8 arrearage. If the defendant's payments are set to terminate but the defendant's obligation is not paid in full, the
9 restitution payments shall continue until the entire arrearage is paid.

10 (4) (a) If prior to an order by the sentencing court for the defendant to pay restitution under this
11 section, the surviving parent or guardian of the child brings a civil action against the defendant and obtains a
12 judgment in the civil suit, no payments may be ordered under this section.

13 (b) If the court orders the defendant to pay restitution under this section and the surviving parent or
14 guardian subsequently brings a civil action and obtains a judgment, the order for payment of restitution under
15 this section must be offset by the amount of the judgment awarded in the civil action.

16 (5) For the purposes of this section, "victim" means a person who suffered death as a result of
17 vehicular homicide while under the influence as defined in 45-5-106.

18
19 **Section 2.** Section 45-5-106, MCA, is amended to read:

20 **"45-5-106. Vehicular homicide while under influence.** (1) A person commits the offense of
21 vehicular homicide while under the influence if the person negligently causes the death of another human being
22 while the person is operating a vehicle in violation of 61-8-1002.

23 (2) Vehicular homicide while under the influence is not an included offense of deliberate homicide
24 as described in 45-5-102(1)(b).

25 (3) A person convicted of vehicular homicide while under the influence shall be imprisoned in a
26 state prison for a term not to exceed 30 years or be fined an amount not to exceed \$50,000, or both. Imposition
27 of a sentence may not be deferred.

28 (4) If the victim has a surviving minor child, a person convicted of vehicular homicide while under

1 the influence must be ordered to pay restitution pursuant to [section 1]."

2

3 **Section 3.** Section 46-18-201, MCA, is amended to read:

4 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of
5 an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer
6 imposition of sentence, except as otherwise specifically provided by statute, for a period:

7 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

8 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a
9 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless
10 of whether any other conditions are imposed.

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

14 (2) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of
15 guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as provided in
16 subsection (2)(b) or as otherwise specifically provided by statute, for a period up to the maximum sentence
17 allowed or for a period of 6 months, whichever is greater, for each particular offense.

18 (b) (i) Except as provided in subsections (2)(b)(ii) and (2)(b)(iii), a sentencing judge may not
19 suspend execution of sentence, including when imposing a sentence under subsection (3)(a)(vii), in a manner
20 that would result in an offender being supervised in the community as a probationer by the department of
21 corrections for a period of time longer than:

22 (A) 20 years for a sexual offender, as defined in 46-23-502;

23 (B) 20 years for an offender convicted of deliberate homicide, as defined in 45-5-102, or mitigated
24 homicide, as defined in 45-5-103;

25 (C) 15 years for a violent offender, as defined in 46-23-502, an offender convicted of negligent
26 homicide, as defined in 45-5-104, vehicular homicide while under the influence, as defined in 45-5-106, or
27 criminal distribution of dangerous drugs that results in the death of an individual from use of the dangerous
28 drug, as provided in 45-9-101(5);

1 (D) 10 years for an offender convicted of 45-9-101, 45-9-103, 45-9-107, 45-9-109, 45-9-110, 45-9-
2 125, 45-9-127, or 45-9-132; or

3 (E) 5 years for all other felony offenses.

4 (ii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply if the sentencing judge
5 finds that a longer term of supervision is needed for the protection of society or the victim. The sentencing judge
6 shall state as part of the sentence and the judgment the reasons a longer suspended sentence is needed to
7 protect society or the victim.

8 (iii) The provisions of subsections (2)(b)(i)(A) and (2)(b)(i)(B) do not apply to violations of 45-6-301
9 if the amount of restitution ordered exceeds \$50,000.

10 (3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of
11 guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

12 (i) a fine as provided by law for the offense;

13 (ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as
14 provided in 46-8-113;

15 (iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at
16 a state prison to be designated by the department of corrections;

17 (iv) commitment of:

18 (A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a
19 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5
20 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-
21 503(4), 45-5-507(5), 45-5-601(3), 45-5-625(4), and 45-5-711; or

22 (B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an
23 offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for
24 placement in an appropriate correctional facility or program;

25 (v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for
26 by and for a period of time determined by the department of corrections, but not exceeding the period of state
27 supervision of the person;

28 (vi) commitment of an offender to the department of corrections with the requirement that

1 immediately subsequent to sentencing or disposition the offender is released to community supervision and that
2 any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

3 (vii) any combination of subsection (2) and this subsection (3)(a).

4 (b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank
5 program.

6 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence,
7 the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of
8 the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under
9 subsection (1)(a) or (2) may include but are not limited to:

10 (a) limited release during employment hours as provided in 46-18-701;

11 (b) incarceration in a detention center not exceeding 180 days;

12 (c) conditions for probation;

13 (d) payment of the costs of confinement;

14 (e) payment of a fine and accrued interest as provided in 46-18-231;

15 (f) payment of costs as provided in 46-18-232 and 46-18-233;

16 (g) payment of costs of assigned counsel as provided in 46-8-113;

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

19 (i) with the approval of the prerelease center or prerelease program and confirmation by the
20 department of corrections that space is available and that the offender is a suitable candidate, an order that the
21 offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for
22 a period not to exceed 1 year;

23 (j) community service;

24 (k) home arrest as provided in Title 46, chapter 18, part 10;

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

26 (m) participation in a day reporting program provided for in 53-1-203;

27 (n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter
28 4, part 12, for a violation of aggravated driving under the influence as defined in 61-8-1001, a violation of 61-8-

1 1002, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if
2 the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a
3 violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or
4 dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or
5 conviction was for a first, second, or subsequent violation of the statute;

6 (o) participation in a restorative justice program approved by court order and payment of a
7 participation fee of up to \$150 for program expenses if the program agrees to accept the offender;

8 (p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
9 protection of the victim or society;

10 (q) with approval of the program and confirmation by the department of corrections that space is
11 available, an order that the offender be placed in a residential treatment program; or

12 (r) any combination of the restrictions or conditions listed in this subsection (4).

13 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon
14 a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined
15 in 46-18-243, has sustained a pecuniary loss, or the provisions of [section 1] apply, the sentencing judge shall,
16 as part of the sentence, require payment of full restitution and interest to the victim, as provided in 46-18-241
17 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

18 (6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or
19 conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension
20 of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty,
21 restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be
22 accomplished as provided in 61-5-214 through 61-5-217.

23 (b) A person's license or driving privilege may not be suspended due to nonpayment of fines,
24 costs, or restitution.

25 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in
26 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23,
27 part 5.

28 (8) If a felony sentence includes probation, the department of corrections shall supervise the

1 offender unless the court specifies otherwise.

2 (9) When imposing a sentence under this section that includes incarceration in a detention facility
3 or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before
4 trial or sentencing.

5 (10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."
6

7 **Section 4.** Section 46-18-241, MCA, is amended to read:

8 **"46-18-241. (Temporary) Condition of restitution -- interest.** (1) As provided in 46-18-201 and
9 [section 1], a sentencing court shall, as part of the sentence, require an offender to make full restitution to any
10 victim who has sustained pecuniary loss, including a person suffering an economic loss. Full restitution includes
11 the interest required by subsection (4). The duty to pay full restitution under the sentence remains with the
12 offender or the offender's estate until full restitution is paid, whether or not the offender is under state
13 supervision. If the offender is under state supervision, payment of restitution is a condition of any probation or
14 parole.

15 (2) (a) The offender shall pay the cost of supervising the payment of restitution, as provided in 46-
16 18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not less than \$5.

17 (b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to
18 the department of corrections until the offender has fully paid the restitution and the cost of supervising the
19 payment of restitution. The department shall pay the restitution to the person or entity to whom the court
20 ordered restitution to be paid, except that if a victim has been compensated under Title 53, chapter 9, part 1,
21 the restitution must be paid to the crime victims compensation and assistance program in the department of
22 justice for deposit in the account provided for in 53-9-113. The department may contract with a government
23 agency or private entity for the collection of the payments for restitution and the cost of collecting the payments
24 for restitution during the period following state supervision or state custody of the offender. The department
25 shall adopt rules to implement this subsection (2)(b).

26 (c) In a misdemeanor case, payment of restitution and of the cost of supervising the payment of
27 restitution must be made to the court until the offender has fully paid the restitution and the cost of supervising
28 the payment of restitution. The court shall disburse the money to the entity employing the person ordered to

1 supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the
2 court ordered restitution to be paid, except that if a victim has been compensated under Title 53, chapter 9, part
3 1, the restitution must be paid to the crime victims compensation and assistance program in the department of
4 justice for deposit in the account provided for in 53-9-113.

5 (3) If at any time the court finds that, because of circumstances beyond the offender's control, the
6 offender is not able to pay any restitution, the court may order the offender to perform community service during
7 the time that the offender is unable to pay. The offender must be given a credit against restitution due at the
8 rate of the hours of community service times the state minimum wage in effect at the time that the community
9 service is performed.

10 (4) If an offender is out of compliance with court-mandated payments for 6 months or more,
11 interest must accrue on restitution ordered under this section at a rate of 3%. The interest may not compound.
12 Interest only begins to accrue when the judgment is placed for collection with a private person or entity as
13 provided in 3-10-601, 25-30-102, or 46-17-303. (Terminates June 30, 2027--secs. 1, 2, 3, Ch. 139, L. 2021.)

14 **46-18-241. (Effective July 1, 2027) Condition of restitution -- interest.** (1) As provided in 46-18-
15 201 and [section 1], a sentencing court shall, as part of the sentence, require an offender to make full restitution
16 to any victim who has sustained a pecuniary loss, including a person suffering an economic loss. Full restitution
17 includes the interest required by subsection (4). The duty to pay full restitution under the sentence remains with
18 the offender or the offender's estate until full restitution is paid, whether or not the offender is under state
19 supervision. If the offender is under state supervision, payment of restitution is a condition of any probation or
20 parole.

21 (2) (a) The offender shall pay the cost of supervising the payment of restitution, as provided in 46-
22 18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not less than \$5.

23 (b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to
24 the department of corrections until the offender has fully paid the restitution and the cost of supervising the
25 payment of restitution. The department shall pay the restitution to the person or entity to whom the court
26 ordered restitution to be paid. The department may contract with a government agency or private entity for the
27 collection of the payments for restitution and the cost of collecting the payments for restitution during the period
28 following state supervision or state custody of the offender. The department shall adopt rules to implement this

1 subsection (2)(b).

2 (c) In a misdemeanor case, payment of restitution and of the cost of supervising the payment of
3 restitution must be made to the court until the offender has fully paid the restitution and the cost of supervising
4 the payment of restitution. The court shall disburse the money to the entity employing the person ordered to
5 supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the
6 court ordered restitution to be paid.

7 (3) If at any time the court finds that, because of circumstances beyond the offender's control, the
8 offender is not able to pay any restitution, the court may order the offender to perform community service during
9 the time that the offender is unable to pay. The offender must be given a credit against restitution due at the
10 rate of the hours of community service times the state minimum wage in effect at the time that the community
11 service is performed.

12 (4) If an offender is out of compliance with court-mandated payments for 6 months or more,
13 interest must accrue on restitution ordered under this section at a rate of 3%. The interest may not compound.
14 Interest only begins to accrue when the judgment is placed for collection with a private person or entity as
15 provided in 3-10-601, 25-30-102, or 46-17-303."

16
17 NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an
18 integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section 1].

19 - END -